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Report of the Human Rights Council

Report of the Independent International Fact-Finding Mission

Note by the President of the General Assembly

1. In its decision 64/507 of 28 October 2009, the General Assembly decided to consider the report of the Human Rights Council on its twelfth special session (A/64/53/Add.1) directly in plenary meeting.
2. In its resolution S/12/1, contained in the above-mentioned report, the Human Rights Council recommended that the General Assembly consider the report of the Independent International Fact-Finding Mission during the main part of its sixty-fourth session.
3. The President of the sixty-fourth session of the General Assembly has the honour to transmit to Member States the report of the Independent Mission (see annex).



Annex

**Report of the United Nations Fact-Finding Mission on the
Gaza Conflict***

* English only: to be issued as A/HRC/12/48.

**Report of the United Nations Fact-Finding Mission
on the Gaza Conflict**

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ACRONYMS AND ABBREVIATIONS

ACRI	Association for Civil Rights in Israel
BMC	businessman card
CLA	Coordination and Liaison Administration
CMWU	Coastal Municipalities Water Utility
COGAT	Coordinator of Government Activities in the Territories
DFLP	Democratic Front for the Liberation of Palestine
DIME	dense inert metal explosive
DSS	United Nations Department of Safety and Security
FAO	Food and Agriculture Organization of the United Nations
GIS	General Intelligence Service
HaMoked	Center for the Defense of the Individual
HCC	Humanitarian Coordination Centre
IAF	Israeli air force
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICHR	Independent Commission for Human Rights
ICRC	International Committee of the Red Cross
IDF	Israeli Defense Forces
IED	improvised explosive device
IHL	international humanitarian law
IHRL	international human rights law
ILO	International Labour Organization
IOF	Israeli occupation forces
MADA	Palestinian Center for Development and Media Freedoms
NATO	North Atlantic Treaty Organization
NGO	non-governmental organization
OCHA	Office for the Coordination of Humanitarian Affairs
OHCHR	Office of the United Nations High Commissioner for Human Rights
PALTRADE	Palestine Trade Center
PCATI	Public Committee against Torture in Israel
PCHR	Palestinian Centre for Human Rights
PFLP	Popular Front for the Liberation of Palestine
PHR-Israel	Physicians for Human Rights – Israel
PLO	Palestine Liberation Organization
PRC	Popular Resistance Committee
PRCS	Palestinian Red Crescent Society
TAWTHEQ	Central Commission for Documentation and Pursuit of Israeli War Criminals
UAV	unmanned aviation vehicle
UNCTAD	United Nations Conference on Trade and Development
UNDP	United Nations Development Programme
UNFPA	United Nations Population Fund
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children’s Fund
UNITAR	United Nations Institute for Training and Research

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UNOSAT
UNRWA

Operational Satellite Applications Programme
United Nations Relief and Works Agency for Palestine Refugees in the
Near East

WFP
WHO

World Food Programme
World Health Organization

EXECUTIVE SUMMARY

A. Introduction

1. On 3 April 2009, the President of the Human Rights Council established the United Nations Fact Finding Mission on the Gaza Conflict with the mandate “to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after.”
2. The President appointed Justice Richard Goldstone, former judge of the Constitutional Court of South Africa and former Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, to head the Mission. The other three appointed members were: Professor Christine Chinkin, Professor of International Law at the London School of Economics and Political Science, who was a member of the high-level fact-finding mission to Beit Hanoun (2008); Ms. Hina Jilani, Advocate of the Supreme Court of Pakistan and former Special Representative of the Secretary-General on the situation of human rights defenders, who was a member of the International Commission of Inquiry on Darfur (2004); and Colonel Desmond Travers, a former Officer in Ireland’s Defence Forces and member of the Board of Directors of the Institute for International Criminal Investigations.
3. As is usual practice, the Office of the United Nations High Commissioner for Human Rights (OHCHR) established a secretariat to support the Mission.
4. The Mission interpreted the mandate as requiring it to place the civilian population of the region at the centre of its concerns regarding the violations of international law.
5. The Mission convened for the first time in Geneva between 4 and 8 May 2009. Additionally, the Mission met in Geneva on 20 May, on 4 and 5 July, and between 1 and 4 August 2009. The Mission conducted three field visits: two to the Gaza Strip between 30 May and 6 June, and between 25 June and 1 July 2009; and one visit to Amman on 2 and 3 July 2009. Several staff of the Mission’s secretariat were deployed in Gaza from 22 May to 4 July 2009 to conduct field investigations.
6. Notes verbales were sent to all Member States of the United Nations and United Nations organs and bodies on 7 May 2009. On 8 June 2009, the Mission issued a call for submissions inviting all interested persons and organizations to submit relevant information and documentation to assist in the implementation of its mandate.
7. Public hearings were held in Gaza on 28 and 29 June and in Geneva on 6 and 7 July 2009.
8. The Mission repeatedly sought to obtain the cooperation of the Government of Israel. After numerous attempts had failed, the Mission sought and obtained the assistance of the Government of Egypt to enable it to enter the Gaza Strip through the Rafah crossing.
9. The Mission has enjoyed the support and cooperation of the Palestinian Authority and of the Permanent Observer Mission of Palestine to the United Nations. Due to the lack of cooperation from the Israeli Government, the Mission was unable to meet members of the

Palestinian Authority in the West Bank. The Mission did, however, meet officials of the Palestinian Authority, including a cabinet minister, in Amman. During its visits to the Gaza Strip, the Mission held meetings with senior members of the Gaza authorities and they extended their full cooperation and support to the Mission.

10. Subsequent to the public hearings in Geneva, the Mission was informed that a Palestinian participant, Mr. Muhammad Srour, had been detained by Israeli security forces when returning to the West Bank and became concerned that his detention may have been a consequence of his appearance before the Mission. The Mission is in contact with him and continues to monitor developments.

B. Methodology

11. To implement its mandate, the Mission determined that it was required to consider any actions by all parties that might have constituted violations of international human rights law or international humanitarian law. The mandate also required it to review related actions in the entire Occupied Palestinian Territory and Israel.

12. With regard to temporal scope, the Mission decided to focus primarily on events, actions or circumstances occurring since 19 June 2008, when a ceasefire was agreed between the Government of Israel and Hamas. The Mission has also taken into consideration matters occurring after the end of military operations that constitute continuing human rights and international humanitarian law violations related to or as a consequence of the military operations, up to 31 July 2009.

13. The Mission also analysed the historical context of the events that led to the military operations in Gaza between 27 December 2008 and 18 January 2009 and the links between these operations and overarching Israeli policies vis-à-vis the Occupied Palestinian Territory.

14. The Mission considered that the reference in its mandate to violations committed “in the context” of the December–January military operations required it to include restrictions on human rights and fundamental freedoms relating to Israel's strategies and actions in the context of its military operations.

15. The normative framework for the Mission has been general international law, the Charter of the United Nations, international humanitarian law, international human rights law and international criminal law.

16. This report does not purport to be exhaustive in documenting the very high number of relevant incidents that occurred in the period covered by the Mission’s mandate. Nevertheless, the Mission considers that the report is illustrative of the main patterns of violations. In Gaza, the Mission investigated 36 incidents.

17. The Mission based its work on an independent and impartial analysis of compliance by the parties with their obligations under international human rights and humanitarian law in the context of the recent conflict in Gaza, and on international investigative standards developed by the United Nations.

18. The Mission adopted an inclusive approach to gathering information and seeking views. Information-gathering methods included: (a) the review of reports from different sources; (b) interviews with victims, witnesses and other persons having relevant information; (c) site visits to specific locations in Gaza where incidents had occurred; (d) the analysis of video and photographic images, including satellite imagery; (e) the review of medical reports about injuries to victims; (f) the forensic analysis of weapons and ammunition remnants collected at incident sites; (g) meetings with a variety of interlocutors; (h) invitations to provide information relating to the Mission's investigation requirements; (i) the wide circulation of a public call for written submissions; (j) public hearings in Gaza and in Geneva.

19. The Mission conducted 188 individual interviews. It reviewed more than 300 reports, submissions and other documentation either researched of its own motion, received in reply to its call for submissions and notes verbales or provided during meetings or otherwise, amounting to more than 10,000 pages, over 30 videos and 1,200 photographs.

20. By refusing to cooperate with the Mission, the Government of Israel prevented it from meeting Israeli Government officials, but also from travelling to Israel to meet Israeli victims and to the West Bank to meet Palestinian Authority representatives and Palestinian victims.

21. The Mission conducted field visits, including investigations of incident sites, in the Gaza Strip. This allowed the Mission to observe first-hand the situation on the ground, and speak to many witnesses and other relevant persons.

22. The purpose of the public hearings, which were broadcast live, was to enable victims, witnesses and experts from all sides to the conflict to speak directly to as many people as possible in the region as well as in the international community. The Mission gave priority to the participation of victims and people from the affected communities. The 38 public testimonies covered facts as well as legal and military matters. The Mission had initially intended to hold hearings in Gaza, Israel and the West Bank. However, denial of access to Israel and the West Bank resulted in the decision to hold hearings of participants from Israel and the West Bank in Geneva.

23. In establishing its findings, the Mission sought to rely primarily and whenever possible on information it gathered first-hand. Information produced by others, including reports, affidavits and media reports, was used primarily as corroboration.

24. The Mission's final conclusions on the reliability of the information received were based on its own assessment of the credibility and reliability of the witnesses it met, verifying the sources and the methodology used in the reports and documents produced by others, cross-referencing the relevant material and information, and assessing whether, in all the circumstances, there was sufficient credible and reliable information for the Mission to make a finding in fact.

25. On this basis, the Mission has, to the best of its ability, determined what facts have been established. In many cases it has found that acts entailing individual criminal responsibility have been committed. In all of these cases the Mission has found that there is sufficient information to establish the objective elements of the crimes in question. In almost all of the cases the Mission has also been able to determine whether or not it appears that the acts in question were done

deliberately or recklessly or in the knowledge that the consequence that resulted would result in the ordinary course of events. The Mission has thus referred in many cases to the relevant fault element (*mens rea*). The Mission fully appreciates the importance of the presumption of innocence: the findings in the report do not subvert the operation of that principle. The findings do not attempt to identify the individuals responsible for the commission of offences nor do they pretend to reach the standard of proof applicable in criminal trials.

26. In order to provide the parties concerned with an opportunity to submit additional relevant information and express their position and respond to allegations, the Mission also submitted comprehensive lists of questions to the Government of Israel, the Palestinian Authority and the Gaza authorities in advance of completing its analysis and findings. The Mission received replies from the Palestinian Authority and the Gaza authorities but not from Israel.

C. Facts investigated by the Mission, factual and legal findings

The Occupied Palestinian Territory: the Gaza Strip

1. The blockade

27. The Mission focused (chap. V) on the process of economic and political isolation imposed by Israel on the Gaza Strip, generally referred to as a blockade. The blockade comprises measures such as restrictions on the goods that can be imported into Gaza and the closure of border crossings for people, goods and services, sometimes for days, including cuts in the provision of fuel and electricity. Gaza's economy is further severely affected by the reduction of the fishing zone open to Palestinian fishermen and the establishment of a buffer zone along the border between Gaza and Israel, which reduces the land available for agriculture and industry. In addition to creating an emergency situation, the blockade has significantly weakened the capacities of the population and of the health, water and other public sectors to respond to the emergency created by the military operations.

28. The Mission holds the view that Israel continues to be duty-bound under the Fourth Geneva Convention and to the full extent of the means available to it to ensure the supply of foodstuff, medical and hospital items and other goods to meet the humanitarian needs of the population of the Gaza Strip without qualification.

2. Overview of Israel's military operations in the Gaza Strip and casualties

29. Israel deployed its navy, air force and army in the operation it codenamed "Operation Cast Lead". The military operations in the Gaza Strip included two main phases, the air phase and the air-land phase, and lasted from 27 December 2008 to 18 January 2009. The Israeli offensive began with a week-long air attack, from 27 December until 3 January 2009. The air force continued to play an important role in assisting and covering the ground forces from 3 January to 18 January 2009. The army was responsible for the ground invasion, which began on 3 January 2009, when ground troops entered Gaza from the north and the east. The available information indicates that the Golani, Givati and Paratrooper Brigades and five Armoured Corps Brigades were involved. The navy was used in part to shell the Gaza coast during the operations. Chapter VI also locates the incidents investigated by the Mission, described in chapters VII to XV, in the context of the military operations.

30. Statistics about Palestinians who lost their lives during the military operations vary. Based on extensive field research, non-governmental organizations place the overall number of persons killed between 1,387 and 1,417. The Gaza authorities report 1,444 fatalities. The Government of Israel provides a figure of 1,166. The data provided by non-governmental sources on the percentage of civilians among those killed are generally consistent and raise very serious concerns about the way Israel conducted the military operations in Gaza.

31. According to the Government of Israel, during the military operations there were four Israeli fatalities in southern Israel, of whom three were civilians and one a soldier. They were killed by rocket and mortar attacks by Palestinian armed groups. In addition, nine Israeli soldiers were killed during the fighting inside the Gaza strip, four of whom as a result of friendly fire.

3. Attacks by Israeli forces on government buildings and persons of the Gaza authorities, including police

32. The Israeli armed forces launched numerous attacks against buildings and persons of the Gaza authorities. As far as attacks on buildings are concerned, the Mission examined the Israeli strikes against the Palestinian Legislative Council building and the Gaza main prison (chap. VII). Both buildings were destroyed and can no longer be used. Statements by Israeli Government and armed forces representatives justified the attacks arguing that political and administrative institutions in Gaza are part of the “ Hamas terrorist infrastructure ”. The Mission rejects this position. It finds that there is no evidence that the Legislative Council building and the Gaza main prison made an effective contribution to military action. On the information available to it, the Mission finds that the attacks on these buildings constituted deliberate attacks on civilian objects in violation of the rule of customary international humanitarian law whereby attacks must be strictly limited to military objectives. These facts further indicate the commission of the grave breach of extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly.

33. The Mission examined the attacks against six police facilities, four of them during the first minutes of the military operations on 27 December 2008, resulting in the death of 99 policemen and nine members of the public. Overall, the approximately 240 policemen killed by Israeli forces constitute more than one sixth of the Palestinian casualties. The circumstances of the attacks seem to indicate, and the Government of Israel’s July 2009 report on the military operations confirm, that the policemen were deliberately targeted and killed on the ground that the police, as an institution or a large part of the policemen individually, are, in the Government of Israel’s view, part of the Palestinian military forces in Gaza.

34. To examine whether the attacks against the police were compatible with the principle of distinction between civilian and military objects and persons, the Mission analysed the institutional development of the Gaza police since Hamas took complete control of Gaza in July 2007 and merged the Gaza police with the “ Executive Force ” it had created after its election victory. The Mission finds that, while a great number of the Gaza policemen were recruited among Hamas supporters or members of Palestinian armed groups, the Gaza police were a civilian law-enforcement agency. The Mission also concludes that the policemen killed on 27 December 2008 cannot be said to have been taking a direct part in hostilities and thus did not lose their civilian immunity from direct attack as civilians on this basis. The Mission accepts that there may be individual members of the Gaza police that were at the same time members of

Palestinian armed groups and thus combatants. It concludes, however, that the attacks against the police facilities on the first day of the armed operations failed to strike an acceptable balance between the direct military advantage anticipated (i.e. the killing of those policemen who may have been members of Palestinian armed groups) and the loss of civilian life (i.e. the other policemen killed and members of the public who would inevitably have been present or in the vicinity), and therefore violated international humanitarian law.

4. Obligation on Palestinian armed groups in Gaza to take feasible precautions to protect the civilian population and civilian objects

35. The Mission examined whether and to what extent the Palestinian armed groups violated their obligation to exercise care and take all feasible precautions to protect the civilian population in Gaza from the inherent dangers of the military operations (chap. VIII). The Mission was faced with a certain reluctance by the persons it interviewed in Gaza to discuss the activities of the armed groups. On the basis of the information gathered, the Mission found that Palestinian armed groups were present in urban areas during the military operations and launched rockets from urban areas. It may be that the Palestinian combatants did not at all times adequately distinguish themselves from the civilian population. The Mission found no evidence, however, to suggest that Palestinian armed groups either directed civilians to areas where attacks were being launched or that they forced civilians to remain within the vicinity of the attacks.

36. Although the incidents investigated by the Mission did not establish the use of mosques for military purposes or to shield military activities, it cannot exclude that this might have occurred in other cases. The Mission did not find any evidence to support the allegations that hospital facilities were used by the Gaza authorities or by Palestinian armed groups to shield military activities or that ambulances were used to transport combatants or for other military purposes. On the basis of its own investigations and the statements by United Nations officials, the Mission excludes that Palestinian armed groups engaged in combat activities from United Nations facilities that were used as shelters during the military operations. The Mission cannot, however, discount the possibility that Palestinian armed groups were active in the vicinity of such United Nations facilities and hospitals. While the conduct of hostilities in built-up areas does not, of itself, constitute a violation of international law, Palestinian armed groups, where they launched attacks close to civilian or protected buildings, unnecessarily exposed the civilian population of Gaza to danger.

5. Obligation on Israel to take feasible precautions to protect the civilian population and civilian objects in Gaza

37. The Mission examined how the Israeli armed forces discharged their obligation to take all feasible precautions to protect the civilian population of Gaza, including particularly the obligation to give effective advance warning of attacks (chap. IX). The Mission acknowledges the significant efforts made by Israel to issue warnings through telephone calls, leaflets and radio broadcasts, and accepts that in some cases, particularly when the warnings were sufficiently specific, they encouraged residents to leave an area and get out of harm's way. However, the Mission also notes factors that significantly undermined the effectiveness of the warnings issued. These include the lack of specificity and thus credibility of many pre-recorded phone messages and leaflets. The credibility of instructions to move to city centres for safety was also diminished by the fact that the city centres themselves had been the subject of intense attacks during the air

phase of the military operations. The Mission also examined the practice of dropping lighter explosives on roofs (so-called roof knocking). It concludes that this technique is not effective as a warning and constitutes a form of attack against the civilians inhabiting the building. Finally, the Mission stresses that the fact that a warning was issued does not relieve commanders and their subordinates of taking all other feasible measures to distinguish between civilians and combatants.

38. The Mission also examined the precautions taken by the Israeli armed forces in the context of three specific attacks they launched. On 15 January 2009, the field office compound of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in Gaza City came under shelling with high explosive and white phosphorous munitions. The Mission notes that the attack was extremely dangerous, as the compound offered shelter to between 600 and 700 civilians and contained a huge fuel depot. The Israeli armed forces continued their attack over several hours despite having been fully alerted to the risks they created. The Mission concludes that the Israeli armed forces violated the requirement under customary international law to take all feasible precautions in the choice of means and method of attack with a view to avoiding and in any event minimizing incidental loss of civilian life, injury to civilians and damage to civilian objects.

39. The Mission also finds that, on the same day, the Israeli armed forces directly and intentionally attacked al-Quds hospital in Gaza City and the adjacent ambulance depot with white phosphorous shells. The attack caused fires which took a whole day to extinguish and caused panic among the sick and wounded who had to be evacuated. The Mission finds that no warning was given at any point of an imminent strike. On the basis of its investigation, the Mission rejects the allegation that fire was directed at the Israeli armed forces from within the hospital.

40. The Mission also examined the intense artillery attacks, again including white phosphorous munitions, on al-Wafa hospital in eastern Gaza City, a facility for patients receiving long-term care and suffering from particularly serious injuries. On the basis of the information gathered, the Mission found a violation of the prohibition of attacks on civilian hospitals in both cases. The Mission also highlights that the warnings given by leaflets and pre-recorded phone messages in the case of al-Wafa hospital demonstrate the complete ineffectiveness of certain kinds of routine and generic warnings.

6. Indiscriminate attacks by Israeli forces resulting in the loss of life and injury to civilians

41. The Mission examined the mortar shelling of al-Fakhura junction in Jabaliyah next to a UNRWA school, which, at the time, was sheltering more than 1,300 people (chap. X). The Israeli armed forces launched at least four mortar shells. One landed in the courtyard of a family home, killing 11 people assembled there. Three other shells landed on al-Fakhura Street, killing at least a further 24 people and injuring as many as 40. The Mission examined in detail statements by Israeli Government representatives alleging that the attack was launched in response to a mortar attack from an armed Palestinian group. While the Mission does not exclude that this may have been the case, it considers the credibility of Israel's position damaged by the series of inconsistencies, contradictions and factual inaccuracies in the statements justifying the attack.

42. In drawing its legal conclusions on the attack on al-Fakhura junction, the Mission recognizes that, for all armies, decisions on proportionality, weighing the military advantage to be gained against the risk of killing civilians, will present very genuine dilemmas in certain cases. The Mission does not consider this to be such a case. The firing of at least four mortar shells to attempt to kill a small number of specified individuals in a setting where large numbers of civilians were going about their daily business and 1,368 people were sheltering nearby cannot meet the test of what a reasonable commander would have determined to be an acceptable loss of civilian life for the military advantage sought. The Mission thus considers the attack to have been indiscriminate, in violation of international law, and to have violated the right to life of the Palestinian civilians killed in these incidents.

7. Deliberate attacks against the civilian population

43. The Mission investigated 11 incidents in which the Israeli armed forces launched direct attacks against civilians with lethal outcome (chap. XI). The facts in all but one of the attacks indicate no justifiable military objective. The first two are attacks on houses in the al-Samouni neighbourhood south of Gaza City, including the shelling of a house in which Palestinian civilians had been forced to assemble by the Israeli armed forces. The following group of seven incidents concern the shooting of civilians while they were trying to leave their homes to walk to a safer place, waving white flags and, in some of the cases, following an injunction from the Israeli forces to do so. The facts gathered by the Mission indicate that all the attacks occurred under circumstances in which the Israeli armed forces were in control of the area and had previously entered into contact with or had at least observed the persons they subsequently attacked, so that they must have been aware of their civilian status. In the majority of these incidents, the consequences of the Israeli attacks against civilians were aggravated by their subsequent refusal to allow the evacuation of the wounded or to permit access to ambulances.

44. These incidents indicate that the instructions given to the Israeli armed forces moving into Gaza provided for a low threshold for the use of lethal fire against the civilian population. The Mission found strong corroboration of this trend in the testimonies of Israeli soldiers collected in two publications it reviewed.

45. The Mission further examined an incident in which a mosque was targeted with a missile during early evening prayers, resulting in the death of 15 people, and an attack with flechette munitions on a crowd of family and neighbours at a condolence tent, killing five. The Mission finds that both attacks constitute intentional attacks against the civilian population and civilian objects.

46. From the facts ascertained in all the above cases, the Mission finds that the conduct of the Israeli armed forces constitutes grave breaches of the Fourth Geneva Convention in respect of wilful killings and wilfully causing great suffering to protected persons and, as such, give rise to individual criminal responsibility. It also finds that the direct targeting and arbitrary killing of Palestinian civilians is a violation of the right to life.

47. The last incident concerns the bombing of a house resulting in the killing of 22 family members. Israel's position in this case is that there was an "operational error" and that the intended target was a neighbouring house storing weapons. On the basis of its investigation, the Mission expresses significant doubts about the Israeli authorities' account of the incident. The

Mission concludes that, if a mistake was indeed made, there could not be said to be a case of wilful killing. State responsibility of Israel for an internationally wrongful act would, however, remain.

8. The use of certain weapons

48. Based on its investigation of incidents involving the use of certain weapons such as white phosphorous and flechette missiles, the Mission, while accepting that white phosphorous is not at this stage proscribed under international law, finds that the Israeli armed forces were systematically reckless in determining its use in built-up areas. Moreover, doctors who treated patients with white phosphorous wounds spoke about the severity and sometimes untreatable nature of the burns caused by the substance. The Mission believes that serious consideration should be given to banning the use of white phosphorous in built-up areas. As to flechettes, the Mission notes that they are an area weapon incapable of discriminating between objectives after detonation. They are, therefore, particularly unsuitable for use in urban settings where there is reason to believe civilians may be present.

49. While the Mission is not in a position to state with certainty that so-called dense inert metal explosive (DIME) munitions were used by the Israeli armed forces, it did receive reports from Palestinian and foreign doctors who had operated in Gaza during the military operations of a high percentage of patients with injuries compatible with their impact. DIME weapons and weapons armed with heavy metal are not prohibited under international law as it currently stands, but do raise specific health concerns. Finally, the Mission received allegations that depleted and non-depleted uranium were used by the Israeli armed forces in Gaza. These allegations were not further investigated by the Mission.

9. Attacks on the foundations of civilian life in Gaza: destruction of industrial infrastructure, food production, water installations, sewage treatment plants and housing

50. The Mission investigated several incidents involving the destruction of industrial infrastructure, food production, water installations, sewage treatment plants and housing (chap. XIII). Already at the beginning of the military operations, el-Bader flour mill was the only flour mill in the Gaza Strip still operating. The flour mill was hit by a series of air strikes on 9 January 2009, after several false warnings had been issued on previous days. The Mission finds that its destruction had no military justification. The nature of the strikes, in particular the precise targeting of crucial machinery, suggests that the intention was to disable the factory's productive capacity. From the facts it ascertained, the Mission finds that there has been a violation of the grave breaches provisions of the Fourth Geneva Convention. Unlawful and wanton destruction which is not justified by military necessity amounts to a war crime. The Mission also finds that the destruction of the mill was carried out to deny sustenance to the civilian population, which is a violation of customary international law and may constitute a war crime. The strike on the flour mill furthermore constitutes a violation of the right to adequate food and means of subsistence.

51. The chicken farms of Mr. Sameh Sawafeary in the Zeytoun neighbourhood south of Gaza City reportedly supplied over 10 per cent of the Gaza egg market. Armoured bulldozers of the Israeli armed forces systematically flattened the chicken coops, killing all 31,000 chickens inside, and destroyed the plant and material necessary for the business. The Mission concludes

that this was a deliberate act of wanton destruction not justified by any military necessity and draws the same legal conclusions as in the case of the destruction of the flour mill.

52. The Israeli armed forces also carried out a strike against a wall of one of the raw sewage lagoons of the Gaza wastewater treatment plant, which caused the outflow of more than 200,000 cubic metres of raw sewage onto neighbouring farmland. The circumstances of the strike suggest that it was deliberate and premeditated. The Namar wells complex in Jabaliyah consisted of two water wells, pumping machines, a generator, fuel storage, a reservoir chlorination unit, buildings and related equipment. All were destroyed by multiple air strikes on the first day of the Israeli aerial attack. The Mission considers it unlikely that a target the size of the Namar wells could have been hit by multiple strikes in error. It found no grounds to suggest that there was any military advantage to be had by hitting the wells and noted that there was no suggestion that Palestinian armed groups had used the wells for any purpose. Considering that the right to drinking water is part of the right to adequate food, the Mission makes the same legal findings as in the case of the el-Bader flour mill.

53. During its visits to the Gaza Strip, the Mission witnessed the extent of the destruction of residential housing caused by air strikes, mortar and artillery shelling, missile strikes, the operation of bulldozers and demolition charges. In some cases, residential neighbourhoods were subjected to air-launched bombing and to intensive shelling apparently in the context of the advance of Israeli ground forces. In others, the facts gathered by the Mission strongly suggest that the destruction of housing was carried out in the absence of any link to combat engagements with Palestinian armed groups or any other effective contribution to military action. Combining the results of its own fact-finding on the ground with UNOSAT satellite imagery and the published testimonies of Israeli soldiers, the Mission concludes that, in addition to the extensive destruction of housing for so-called operational necessity during their advance, the Israeli armed forces engaged in another wave of systematic destruction of civilian buildings during the last three days of their presence in Gaza, aware of their imminent withdrawal. The conduct of the Israeli armed forces in this respect violated the principle of distinction between civilian and military objects and amounted to the grave breach of “extensive destruction... of property, not justified by military necessity and carried out unlawfully and wantonly”. The Israeli armed forces furthermore violated the right to adequate housing of the families concerned.

54. The attacks on industrial facilities, food production and water infrastructure investigated by the Mission are part of a broader pattern of destruction, which includes the destruction of the only cement-packaging plant in Gaza (the Atta Abu Jubbah plant), the Abu Eida factories for ready-mix concrete, further chicken farms and the al-Wadiyah Group’s food and drinks factories. The facts ascertained by the Mission indicate that there was a deliberate and systematic policy on the part of the Israeli armed forces to target industrial sites and water installations.

10. The use of Palestinian civilians as human shields

55. The Mission investigated four incidents in which the Israeli armed forces coerced Palestinian civilian men at gunpoint to take part in house searches during the military operations (chap. XIV). The men were blindfolded and handcuffed as they were forced to enter houses ahead of the Israeli soldiers. In one of the incidents, Israeli soldiers repeatedly forced a man to enter a house in which Palestinian combatants were hiding. Published testimonies of Israeli soldiers who took part in the military operations confirm the continuation of this practice, despite

clear orders from Israel's High Court to the armed forces to put an end to it and repeated public assurances from the armed forces that the practice had been discontinued. The Mission concludes that this practice amounts to the use of Palestinian civilians as human shields and is therefore prohibited by international humanitarian law. It puts the right to life of the civilians at risk in an arbitrary and unlawful manner and constitutes cruel and inhuman treatment. The use of human shields also is a war crime. The Palestinian men used as human shields were questioned under threat of death or injury to extract information about Hamas, Palestinian combatants and tunnels. This constitutes a further violation of international humanitarian law.

11. Deprivation of liberty: Gazans detained during the Israeli military operations of 27 December 2008 to 18 January 2009

56. During the military operations, the Israeli armed forces rounded up large numbers of civilians and detained them in houses and open spaces in Gaza and, in the case of many Palestinian men, also took them to detention facilities in Israel. In the cases investigated by the Mission, the facts gathered indicate that none of the civilians was armed or posed any apparent threat to the Israeli soldiers. Chapter XV of the report is based on the Mission's interviews with Palestinian men who were detained, as well as on its review of other relevant material, including interviews with relatives and statements from other victims submitted to it.

57. From the facts gathered, the Mission finds that numerous violations of international humanitarian law and human rights law were committed in the context of these detentions. Civilians, including women and children, were detained in degrading conditions, deprived of food, water and access to sanitary facilities, and exposed to the elements in January without any shelter. The men were handcuffed, blindfolded and repeatedly made to strip, sometimes naked, at different stages of their detention.

58. In the al-Atatra area in north-western Gaza, Israeli troops had dug out sandpits in which Palestinian men, women and children were detained. Israeli tanks and artillery positions were located inside the sandpits and around them and fired from next to the detainees.

59. The Palestinian men who were taken to detention facilities in Israel were subjected to degrading conditions of detention, harsh interrogation, beatings and other physical and mental abuse. Some of them were charged with being unlawful combatants. Those interviewed by the Mission were released after the proceedings against them had apparently been discontinued.

60. In addition to arbitrary deprivation of liberty and violation of due process rights, the cases of the detained Palestinian civilians highlight a common thread of the interaction between Israeli soldiers and Palestinian civilians which also emerged clearly in many cases discussed elsewhere in the report: continuous and systematic abuse, outrages on personal dignity, humiliating and degrading treatment contrary to fundamental principles of international humanitarian law and human rights law. The Mission concludes that this treatment constitutes the infliction of a collective penalty on these civilians and amounts to measures of intimidation and terror. Such acts are grave breaches of the Geneva Conventions and constitute a war crime.

12. Objectives and strategy of Israel's military operations in Gaza

61. The Mission reviewed available information on the planning of the Israeli military operations in Gaza, on the advanced military technology available to the Israeli armed forces and on their training in international humanitarian law (chap. XVI). According to official Government information, the Israeli armed forces have an elaborate legal advice and training system in place, which seeks to ensure knowledge of the relevant legal obligations and support to commanders for compliance in the field. The Israeli armed forces possess very advanced hardware and are also a market leader in the production of some of the most advanced pieces of military technology available, including unmanned aviation vehicles (UAVs). They have a very significant capacity for precision strikes by a variety of methods, including aerial and ground launches. Taking into account the ability to plan, the means to execute plans with the most developed technology available, and statements by the Israeli military that almost no errors occurred, the Mission finds that the incidents and patterns of events considered in the report are the result of deliberate planning and policy decisions.

62. The tactics used by the Israeli armed forces in the Gaza offensive are consistent with previous practices, most recently during the Lebanon war in 2006. A concept known as the Dahiya doctrine emerged then, involving the application of disproportionate force and the causing of great damage and destruction to civilian property and infrastructure, and suffering to civilian populations. The Mission concludes from a review of the facts on the ground that it witnessed for itself that what was prescribed as the best strategy appears to have been precisely what was put into practice.

63. In the framing of Israeli military objectives with regard to the Gaza operations, the concept of Hamas' "supporting infrastructure" is particularly worrying as it appears to transform civilians and civilian objects into legitimate targets. Statements by Israeli political and military leaders prior to and during the military operations in Gaza indicate that the Israeli military conception of what was necessary in a war with Hamas viewed disproportionate destruction and creating maximum disruption in the lives of many people as a legitimate means to achieve not only military but also political goals.

64. Statements by Israeli leaders to the effect that the destruction of civilian objects would be justified as a response to rocket attacks ("destroy 100 homes for every rocket fired") indicate the possibility of resorting to reprisals. The Mission is of the view that reprisals against civilians in armed hostilities are contrary to international humanitarian law.

13. The impact of the military operations and of the blockade on the people of Gaza and their human rights

65. The Mission examined the combined impact of the military operations and of the blockade on the Gaza population and its enjoyment of human rights. The economy, employment opportunities and family livelihoods were already severely affected by the blockade when the Israeli offensive began. Insufficient supply of fuel for electricity generation had a negative impact on industrial activity, on the operation of hospitals, on water supply to households and on sewage treatment. Import restrictions and the ban on all exports from Gaza affected the industrial sector and agricultural production. Unemployment levels and the percentage of the population living in poverty or deep poverty were rising.

66. In this precarious situation, the military operations destroyed a substantial part of the economic infrastructure. As many factories were targeted and destroyed or damaged, poverty, unemployment and food insecurity further increased dramatically. The agricultural sector similarly suffered from the destruction of farmland, water wells and fishing boats during the military operations. The continuation of the blockade impedes the reconstruction of the economic infrastructure that was destroyed.

67. The razing of farmland and the destruction of greenhouses are expected to further worsen food insecurity despite the increased quantities of food items allowed into Gaza since the beginning of the military operations. Dependence on food assistance increases. Levels of stunting and thinness in children and of anaemia prevalence in children and pregnant women were worrying even before the military operations. The hardship caused by the extensive destruction of shelter (the United Nations Development Programme reported 3,354 houses completely destroyed and 11,112 partially damaged) and the resulting displacement particularly affects children and women. The destruction of water and sanitation infrastructure (such as the destruction of the Namar wells and the attack against the water treatment plant described in chapter XIII) aggravated the pre-existing situation. Even before the military operations, 80 per cent of the water supplied in Gaza did not meet the World Health Organization's standards for drinking water. The discharge of untreated or partially treated wastewater into the sea is a further health hazard worsened by the military operations.

68. The military operations and resulting casualties subjected the beleaguered Gaza health sector to additional strain. Hospitals and ambulances were targeted by Israeli attacks. Patients with chronic health conditions could not be given priority in hospitals faced with an influx of patients with life-threatening injuries. Patients injured during the hostilities were often discharged quickly to free beds. The long-term health impact of these early discharges, as well as of weapons containing substances such as tungsten and white phosphorous, remains a source of concern. While the exact number of people who will suffer permanent disabilities is still unknown, the Mission understands that many persons who sustained traumatic injuries during the conflict still face the risk of permanent disability owing to complications and inadequate follow-up and physical rehabilitation.

69. The number of persons suffering from mental health problems is also bound to increase. The Mission investigated a number of incidents in which adults and children witnessed the killing of loved ones. Doctors of the Gaza Community Mental Health Programme gave information to the Mission on psychosomatic disorders, on a widespread state of alienation in the population and on "numbness" as a result of severe loss. They told the Mission that these conditions were in turn likely to increase the readiness to embrace violence and extremism. They also told the Mission that 20 per cent of children in the Gaza Strip suffer from post-traumatic stress disorders.

70. Children's psychological learning difficulties are compounded by the impact of the blockade and the military operations on the education infrastructure. Some 280 schools and kindergartens were destroyed in a situation in which restrictions on the importation of construction materials meant that many school buildings were already in serious need of repair.

71. The Mission's attention was also drawn to the particular manner in which women were affected by the military operations. The cases of women interviewed by the Mission in Gaza

dramatically illustrate the suffering caused by the feeling of inability to provide children with the care and security they need. Women's responsibility for the household and the children often forces them to conceal their own sufferings, resulting in their issues remaining unaddressed. The number of women who are the sole breadwinners increased, but their employment opportunities remain significantly inferior to men's. The military operations and increased poverty add to the potential for conflicts in the family and between widows and their in-laws.

72. The Mission acknowledges that the supply of humanitarian goods, particularly foodstuffs, allowed into Gaza by Israel temporarily increased during the military operations. The level of goods allowed into Gaza before the military operations was, however, insufficient to meet the needs of the population even before hostilities started, and has again decreased since the end of the military operations. From the facts ascertained by it, the Mission believes that Israel has violated its obligation to allow free passage of all consignments of medical and hospital objects, food and clothing (article 23 of the Fourth Geneva Convention). The Mission also finds that Israel violated specific obligations which it has as the occupying Power and which are spelled out in the Fourth Geneva Convention, such as the duty to maintain medical and hospital establishments and services and to agree to relief schemes if the occupied territory is not well supplied.

73. The Mission also concludes that in the destruction by the Israeli armed forces of private residential houses, water wells, water tanks, agricultural land and greenhouses there was a specific purpose of denying sustenance to the population of the Gaza Strip. The Mission finds that Israel violated its duty to respect the right of the Gaza population to an adequate standard of living, including access to adequate food, water and housing. The Mission, moreover, finds violations of specific human rights provisions protecting children, particularly those who are victims of armed conflict, women and the disabled.

74. The conditions of life in Gaza, resulting from deliberate actions of the Israeli armed forces and the declared policies of the Government of Israel – as they were presented by its authorized and legitimate representatives – with regard to the Gaza Strip before, during and after the military operation, cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip in violation of international humanitarian law.

75. Finally, the Mission considered whether the series of acts that deprive Palestinians in the Gaza Strip of their means of sustenance, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their access to courts of law and effective remedies could amount to persecution, a crime against humanity. From the facts available to it, the Mission is of the view that some of the actions of the Government of Israel might justify a competent court finding that crimes against humanity have been committed.

14. The continuing detention of Israeli soldier Gilad Shalit

76. The Mission notes the continued detention of Gilad Shalit, a member of the Israeli armed forces, captured in 2006 by a Palestinian armed group. In reaction to his capture, the Israeli Government ordered a number of attacks against infrastructure in the Gaza Strip and Palestinian Authority offices as well as the arrest of eight Palestinian Government ministers and 26 members of the Palestinian Legislative Council. The Mission heard testimonies indicating that, during the

military operations of December 2008 – January 2009, Israeli soldiers questioned captured Palestinians about the whereabouts of Gilad Shalit. Gilad Shalit's father, Noam Shalit, appeared before the Mission at the public hearing held in Geneva on 6 July 2009.

77. The Mission is of the opinion that, as a soldier who belongs to the Israeli armed forces and who was captured during an enemy incursion into Israel, Gilad Shalit meets the requirements for prisoner-of-war status under the Third Geneva Convention. As such, he should be protected, treated humanely and be allowed external communication as appropriate according to that Convention. The International Committee of the Red Cross (ICRC) should be allowed to visit him without delay. Information about his condition should also be provided promptly to his family.

78. The Mission is concerned by declarations made by various Israeli officials who have indicated the intention of maintaining the blockade of the Gaza Strip until the release of Gilad Shalit. The Mission is of the opinion that this would constitute collective punishment of the civilian population of the Gaza Strip.

15. Internal violence and targeting of Fatah affiliates by security services under the control of the Gaza authorities

79. The Mission obtained information about violence against political opponents by the security services that report to the Gaza authorities. These included the killing of a number of Gaza residents between the beginning of the Israeli military operations and 27 February. Among these were some detainees who had been at al-Saraya detention facility on 28 December and who had fled following the Israeli aerial attack. Not all those killed after escaping detention were Fatah affiliates, detained for political reasons, or charged with collaborating with the enemy. Some of the escapees had been convicted of serious crimes, such as drug-dealing or murder, and had been sentenced to death. The Mission was informed that the movement of many Fatah members was restricted during Israel's military operations in Gaza and that many were put under house arrest. According to the Gaza authorities, arrests were made only after the end of the Israeli military operations and only in relation to criminal acts and to restore public order.

80. The Mission gathered first-hand information on five cases of Fatah affiliates detained, killed or subject to physical abuse by members of the security forces or armed groups in Gaza. In most cases those abducted from their homes or otherwise detained were reportedly not accused of offences related to specific incidents, but rather targeted because of their political affiliation. When charges were laid, these were always linked to suspected political activities. The testimonies of witnesses and the reports provided by international and domestic human rights organizations bear striking similarities and indicate that these attacks were not randomly executed, but constituted part of a pattern of organized violence directed mainly against Fatah affiliates and supporters. The Mission finds that such actions constitute serious violations of human rights and are not consistent with either the Universal Declaration of Human Rights or the Palestinian Basic Law.

The Occupied Palestinian Territory: the West Bank, including East Jerusalem

81. The Mission considered developments in Gaza and the West Bank as closely interrelated, and analysed both to reach an informed understanding of and to report on issues within its mandate.

82. A consequence of Israel's non-cooperation with the Mission was that the Mission was unable to visit the West Bank to investigate alleged violations of international law there. However, the Mission has received many oral and written reports and other relevant materials from Palestinian, Israeli and international human rights organizations and institutions. In addition, the Mission has met representatives of human rights organizations, members of the Palestinian legislature and community leaders. It heard experts, witnesses and victims at the public hearings, interviewed affected individuals and witnesses, and reviewed video and photographic material.

1. Treatment of Palestinians in the West Bank by Israeli security forces, including use of excessive or lethal force during demonstrations

83. Various witnesses and experts informed the Mission of a sharp rise in the use of force by the Israeli security forces against Palestinians in the West Bank from the beginning of the Israeli operations in Gaza (chap. XX). A number of protestors were killed by Israeli forces during Palestinian demonstrations, including in support of the Gaza population under attack, and scores were injured. The level of violence used in the West Bank during the time of the operation in Gaza was sustained also after the operation.

84. Of particular concern to the Mission were allegations of the use of unnecessary, lethal force by Israeli security forces, the use of live ammunitions, and the provision in the Israeli armed forces "open fire regulations" of different rules to deal with disturbances where only Palestinians are present and those where Israelis are present. This raises serious concern with regard to discriminatory policies vis-à-vis Palestinians. Eyewitnesses also reported to the Mission on the use of sniper fire in the context of crowd control. Witnesses spoke of the markedly different atmosphere they encountered in the confrontation with the soldiers and border police during demonstrations in which all checks and balances had been removed. Several witnesses told the Mission that during the operation in Gaza, the sense in the West Bank was one of a "free for all", where anything was permitted.

85. Little if any action is taken by the Israeli authorities to investigate, prosecute and punish violence against Palestinians, including killings, by settlers and members of the security forces, resulting in a situation of impunity. The Mission concludes that Israel has failed to fulfil its obligations to protect the Palestinians from violence by private individuals under both international human rights law and international humanitarian law.

2. Detention of Palestinians in Israeli prisons

86. It is estimated that, since the beginning of the occupation, approximately 700,000 Palestinian men, women and children have been detained by Israel. According to estimates, as at 1 June 2009, there were approximately 8,100 Palestinian "political prisoners" in detention in Israel, including 60 women and 390 children. Most of these detainees are charged or convicted

by the Israeli military court system that operates for Palestinians in the West Bank and under which due process rights for Palestinians are severely limited. Many are held in administrative detention and some under the Israeli “Unlawful Combatants Law”.

87. The Mission focused on a number of issues in relation to Palestinian detainees that in its view are linked to the December-January Israeli military operations in Gaza or their context.

88. Legal measures since Israel’s disengagement from Gaza in 2005 have resulted in differential treatment for Gazan detainees. A 2006 law altered due process guarantees and is applied only to Palestinian suspects, the overwhelming majority of whom are from Gaza, according to Israeli Government sources. The ICRC Family Visits Programme in the Gaza Strip was suspended in 2007, barring all means of communication between Gazan prisoners and the outside world.

89. During the Israeli military operations in Gaza, the number of children detained by Israel was higher than in the same period in 2008. Many children were reportedly arrested on the street and/or during demonstrations in the West Bank. The number of child detainees continued to be high in the months following the end of the operations, accompanied by reports of abuses by Israeli security forces.

90. A feature of Israel’s detention practice vis-à-vis the Palestinians since 2005 has been the arrest of Hamas affiliates. A few months before the elections for the Palestinian Legislative Council in 2005, Israel arrested numerous persons who had been involved in municipal or Legislative Council elections. Following the capture by Palestinian armed groups of Israeli soldier Gilad Shalit in June 2006, the Israeli armed forces arrested some 65 members of the Legislative Council, mayors and ministers, mostly Hamas members. All were held at least two years, generally in inadequate conditions. Further arrests of Hamas leaders were conducted during the military operations in Gaza. The detention of members of the Legislative Council has meant that it has been unable to function and exercise its legislative and oversight function over the Palestinian executive.

91. The Mission finds that these practices have resulted in violations of international human rights and humanitarian law, including the prohibition of arbitrary detention, the right to equal protection under the law and not to be discriminated based on political beliefs and the special protections to which children are entitled. The Mission also finds that the detention of members of the Legislative Council may amount to collective punishment contrary to international humanitarian law.

3. Restrictions on freedom of movement in the West Bank

92. In the West Bank, Israel has long imposed a system of restrictions on movement. Movement is restricted by a combination of physical obstacles, such as roadblocks, checkpoints and the Wall, and administrative measures, such as identity cards, permits, assigned residence, laws on family reunification, and policies on the right to enter from abroad and the right of return for refugees. Palestinians are denied access to areas expropriated for the building of the Wall and its infrastructure, for use by settlements, buffer zones, military bases and military training zones, and the roads built to connect these places. Many of these roads are “Israeli only” and forbidden for Palestinian use. Tens of thousands of Palestinians today are subject to a travel ban imposed

by Israel, preventing them from travelling abroad. A number of witnesses and experts invited by the Mission to meet in Amman and participate in the hearings in Geneva could not meet the Mission owing to this travel ban.

93. The Mission has received reports that, during the Israeli offensive in Gaza, restrictions on movement in the West Bank were tightened. Israel imposed a “closure” on the West Bank for several days. In addition, there were more checkpoints in the West Bank, including in East Jerusalem, for the duration of the operation. Most of these were so-called flying checkpoints. In January 2009, several areas of the West Bank between the Wall and the Green Line were declared “closed military areas”.

94. During and following the operations in Gaza, Israel tightened its hold on the West Bank by increasing expropriations, house demolitions and demolition orders, granting more permits for homes built in settlements and intensifying the exploitation of the natural resources in the West Bank. Following the operations in Gaza, Israel has amended the regulations which determine the ability of persons with “Gaza ID” to move to the West Bank and vice versa, further entrenching the separation between the people of the West Bank and Gaza.

95. Israel’s Ministry of Housing and Planning is planning a further 73,000 settlement homes in the West Bank. The building of 15,000 of these homes has already been approved and, if all the plans are realized, the number of settlers in the Occupied Palestinian Territory will double.

96. The Mission believes that the restrictions on movement and access to which Palestinians in the West Bank are subject, in general, and the tighter restrictions during and, to some extent, after the military operations in Gaza, in particular, are disproportionate to any military objective served. In addition, the Mission is concerned about the steps taken recently to formalize the separation between Gaza and the West Bank, and as such between two parts of the Occupied Palestinian Territory.

4. Internal violence and targeting of Hamas supporters by the Palestinian Authority, restrictions on freedom of expression and assembly

97. The Mission has received allegations of violations relevant to its mandate committed by the Palestinian Authority in the period under inquiry. These include violations related to the treatment of (suspected) Hamas affiliates by the security services, including unlawful arrest and detention. Several Palestinian human rights organizations have reported that practices used by the Palestinian Authority security forces in the West Bank amount to torture and cruel, inhuman and degrading treatment and punishment. There have been a number of deaths in detention to which it is suspected that torture and other ill-treatment may have contributed or which they may have caused. Complaints of such practices have not been investigated.

98. Allegations were also received about the use of excessive force and the suppression of demonstrations by Palestinian security services – particularly those in support of the population of Gaza during the Israeli military operations. On these occasions Palestinian Authority security services have allegedly arrested many individuals and prevented the media from covering the events. The Mission also received allegations of harassment by Palestinian security services of journalists who expressed critical views.

99. The disabling of the Palestinian Legislative Council following the arrest and detention by Israel of several of its members has effectively curtailed parliamentary oversight over the Palestinian Authority executive. The executive has passed decrees and regulations to enable it to continue its day-to-day operations.

100. Other allegations include the arbitrary closure of charities and associations affiliated with Hamas and other Islamic groups or the revocation and non-renewal of their licences, the forcible replacement of board members of Islamic schools and other institutions, and the dismissal of Hamas-affiliated teachers.

101. The Palestinian Authority continues to discharge a large number of civil and military service employees, or suspend their salaries, under the pretext of “non-adherence to the legitimate authority” or “non-obtainment of security approval” on their appointments, which has become a pre-requirement for enrolment in public service. In effect, this measure excludes Hamas supporters or affiliates from public sector employment.

102. The Mission is of the view that the reported measures are inconsistent with the Palestinian Authority’s obligations deriving from the Universal Declaration of Human Rights and the Palestinian Basic Law.

Israel

1. Impact on civilians of rocket and mortar attacks by Palestinian armed groups on southern Israel

103. Palestinian armed groups have launched about 8000 rockets and mortars into southern Israel since 2001 (chap. XXIV). While communities such as Sderot and Nir Am kibbutz have been within the range of rocket and mortar fire since the beginning, the range of rocket fire increased to nearly 40 kilometres from the Gaza border, encompassing towns as far north as Ashdod, during the Israeli military operations in Gaza.

104. Between 18 June 2008 and 18 January 2009, rockets fired by Palestinian armed groups in Gaza have killed three civilians inside Israel and two civilians in Gaza when a rocket landed short of the border on 26 December 2008. Reportedly, over 1000 civilians inside Israel were physically injured as a result of rocket and mortar attacks, 918 of whom were injured during the time of the Israeli military operations in Gaza.

105. The Mission has taken particular note of the high level of psychological trauma suffered by the civilian population inside Israel. Data gathered by an Israeli organization in October 2007 found that 28.4 per cent of adults and 72–94 per cent of children in Sderot suffered from post-traumatic stress disorder. During the military operations in Gaza 1596 people were reportedly treated for stress-related injuries while afterwards over 500 people were treated.

106. Rockets and mortars have damaged houses, schools and cars in southern Israel. On 5 March 2009, a rocket struck a synagogue in Netivot. The rocket and mortar fire has adversely affected the right to education of children and adults living in southern Israel. This is a result of school closures and interruptions to classes by alerts and moving to shelters but also the

diminished ability to learn that is witnessed in individuals experiencing symptoms of psychological trauma.

107. The rocket and mortar fire has also had an adverse impact on the economic and social life of the affected communities. For communities such as Ashdod, Yavne, Beersheba, which experienced rocket strikes for the first time during the Israeli military operations in Gaza, there was a brief interruption to their economic and cultural activities brought about by the temporary displacement of some residents. For towns closer to the Gaza border, which have been under rocket and mortar fire since 2001, the recent escalation has added to the exodus of residents.

108. The Mission has determined that the rockets and, to a lesser extent, the mortars fired by the Palestinian armed groups are incapable of being directed towards specific military objectives and have been fired into areas where civilian populations are based. The Mission has further determined that these attacks constitute indiscriminate attacks upon the civilian population of southern Israel and that, where there is no intended military target and the rockets and mortars are launched into a civilian population, they constitute a deliberate attack against a civilian population. These acts would constitute war crimes and may amount to crimes against humanity. Given the seeming inability of the Palestinian armed groups to direct the rockets and mortars towards specific targets and given that the attacks have caused very little damage to Israeli military assets, the Mission finds that there is significant evidence to suggest that one of the primary purposes of the rocket and mortar attacks is to spread terror among the Israeli civilian population, a violation of international law.

109. Noting that some of the Palestinian armed groups, among them Hamas, have publicly expressed their intention to target civilians in reprisal for the civilian fatalities in Gaza as a result of Israeli military operations, the Mission is of the view that reprisals against civilians in armed hostilities are contrary to international humanitarian law.

110. The Mission notes that the relatively few casualties sustained by civilians inside Israel is due in large part to the precautions put into place by Israel. This includes an early warning system, the provision of public shelters and fortifications of schools and other public buildings at great financial cost – a projected US\$ 460 million between 2005 and 2011 – to the Government of Israel. The Mission is greatly concerned, however, about the lack of an early warning system and a lack of public shelters and fortifications for the Palestinian Israeli communities living in unrecognized and in some of the recognized villages that are within the range of rocket and mortars being fired by Palestinian armed groups in Gaza.

2. Repression of dissent in Israel, the right of access to information and treatment of human rights defenders

111. The Mission received reports that individuals and groups, viewed as sources of criticism of Israel's military operations were subjected to repression or attempted repression by the Government of Israel. Amidst a high level of support for the Israeli military operations in Gaza from the Israeli Jewish population, there were also widespread protests against the military operations inside Israel. Hundreds of thousands – mainly, but not exclusively, Palestinian citizens of Israel – protested. While, in the main, the protests were permitted to take place, there were occasions when, reportedly, protesters had difficulty in obtaining permits – particularly in areas populated mainly by Palestinian Israelis. In Israel and in occupied East Jerusalem 715

people were arrested during the protests. There appear to have been no arrests of counter-protesters and 34 per cent of those arrested were under 18 years of age. The Mission notes that a relatively small proportion of those protesting were arrested. The Mission urges the Government of Israel to ensure that the police authorities respect the rights of all its citizens, without discrimination, including freedom of expression and the right to peaceful assembly, as guaranteed to them by the International Covenant on Civil and Political Rights.

112. The Mission notes with concern the reported instances of physical violence committed by members of the police against protesters, including the beating of protesters and other inappropriate conduct such as subjecting Palestinian citizens of Israel who were arrested to racial abuse and making sexual comments about female members of their families. Article 10 of the Covenant requires that those deprived of their liberty be treated with humanity and respect for the inherent dignity of the human person.

113. Of the protesters brought before the Israeli courts, the Palestinian Israelis were disproportionately held in detention pending trial. The element of discrimination and differential treatment between Palestinian and Jewish citizens of Israel by the judicial authorities, as indicated in the reports received, is a substantial cause for concern.

114. The interviews of political activists by the Israeli General Security Services were cited as the actions contributing most significantly to a climate of repression inside Israel. The Mission is concerned about activists being compelled to attend interviews with Shabak (also known as Shin Bet), without there being any legal obligation on them to do so, and in general at the alleged interrogation of political activists about their political activities.

115. The Mission received reports concerning the investigation by the Government of Israel into New Profile on allegations that it was inciting draft-dodging, a criminal offence, and reports that the Government was seeking to terminate funding from foreign Governments for Breaking the Silence, following its publication of testimonies of Israeli soldiers concerning the conduct of the Israeli armed forces in Gaza in December 2008 and January 2009. The Mission is concerned that the Government of Israel's action with regard to these organizations may have an intimidating effect on other Israeli human rights organizations. The so-called United Nations Declaration on Human Rights Defenders guarantees the right "to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means". If motivated by reaction to the organization's exercise of its freedom of expression, lobbying foreign Governments to terminate funding would be contrary to the spirit of the Declaration.

116. The Government of Israel imposed a ban on media access to Gaza following 5 November 2008. Furthermore, access was denied to human rights organizations and the ban continues for some international and Israeli organizations. The Mission can find no justification for this. The presence of journalists and international human rights monitors aids the investigation and wide public reporting of the conduct of the parties to the conflict, and can inhibit misconduct. The Mission observes that Israel, in its actions against political activists, non-governmental organizations and the media, has attempted to reduce public scrutiny of both its conduct during its military operations in Gaza and the consequences that these operations had for the residents of Gaza, possibly seeking to prevent investigation and public reporting thereon.

D. Accountability

1. Proceedings and responses by Israel to allegations of violations by its armed forces against Palestinians

117. Investigations and, if appropriate, prosecutions of those suspected of serious violations are necessary if respect for human rights and humanitarian law is to be ensured and to prevent the development of a climate of impunity. States have a duty under international law to investigate allegations of violations.

118. The Mission reviewed public information and reports from the Government of Israel concerning actions taken to discharge its obligation to investigate alleged violations (chap. XXVI). It addressed to Israel a number of questions on this issue, but it did not receive a reply.

119. In response to allegations of serious violations of human rights law and international humanitarian law, the Military Advocate General ordered some criminal investigations that were closed two weeks later concluding that allegations “were based on hearsay”. The Israeli armed forces also released the results of five special investigations carried out by high-ranking military officers, which concluded that “throughout the fighting in Gaza, the IDF operated in accordance with international law”, but the investigations reportedly revealed a very small number of errors. On 30 July 2009 the media reported that the Military Advocate General had ordered the military police to launch criminal investigations into 14 cases out of nearly 100 complaints of criminal conduct by soldiers. No details were offered.

120. The Mission reviewed the Israeli internal system of investigation and prosecution according to its national legislation and in the light of practice. The system comprises: (a) disciplinary proceedings; (b) operational debriefings (also known as “operational investigations”); (c) special investigations, performed by a senior officer at the request of the chief of staff; and (d) military police investigations, carried out by the Criminal Investigation Division of the military police. At the heart of the system lies the so-called operational debriefing. The debriefings are reviews of incidents and operations conducted by soldiers from the same unit or line of command together with a superior officer. They are meant to serve operational purposes.

121. International human rights law and humanitarian law require States to investigate and, if appropriate, prosecute allegations of serious violations by military personnel. International law has also established that such investigations should comply with standards of impartiality, independence, promptness and effectiveness. The Mission holds that the Israeli system of investigation does not comply with all those principles. In relation to the “operational debriefing” used by the Israeli armed forces as an investigative tool, the Mission holds the view that a tool designed for the review of performance and to learn lessons can hardly be an effective and impartial investigation mechanism that should be instituted after every military operation where allegations of serious violations have been made. It does not comply with internationally recognized principles of impartiality and promptness in investigations. The fact that proper criminal investigations can start only after the “operational debriefing” is over is a major flaw in the Israeli system of investigation.

122. The Mission concludes that there are serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, independent, prompt and effective way as required by international law. The Mission is also of the view that the Israeli system overall presents inherently discriminatory features that make the pursuit of justice for Palestinian victims very difficult.

2. Proceedings by Palestinian authorities

(a) Proceedings related to actions in the Gaza Strip

123. The Mission found no evidence of any system of public monitoring or accountability for serious violations of international humanitarian law and human rights law set up by the Gaza authorities. The Mission is concerned with the consistent disregard for international humanitarian law with which armed groups in the Gaza Strip conduct their armed activities, through rocket and mortar fire, directed against Israel. Despite some media reports, the Mission remains unconvinced that any genuine and effective initiatives have been taken by the authorities to address the serious issues of violation of international humanitarian law in the conduct of armed activities by militant groups in the Gaza Strip.

124. Notwithstanding statements by the Gaza authorities and any action that they may have taken, of which the Mission is unaware, the Mission also considers that allegations of killings, torture and mistreatment within the Gaza Strip have gone largely without investigation.

(b) Proceedings related to actions in the West Bank

125. With regard to relevant violations identified in the West Bank, it appears that, with few exceptions, there has been a degree of tolerance towards human rights violations against political opponents, which has resulted in a lack of accountability for such actions. The Ministry of Interior has also ignored the High Court's decisions to release a number of detainees or to reopen some associations closed by the administration.

126. In the circumstances, the Mission is unable to consider the measures taken by the Palestinian Authority as meaningful for holding to account perpetrators of serious violations of international law and believes that the responsibility for protecting the rights of the people inherent in the authority assumed by the Palestinian Authority must be fulfilled with greater commitment

3. Universal jurisdiction

127. In the context of increasing unwillingness on the part of Israel to open criminal investigations that comply with international standards, the Mission supports the reliance on universal jurisdiction as an avenue for States to investigate violations of the grave breach provisions of the Geneva Conventions of 1949, prevent impunity and promote international accountability (chap. XXVIII).

4. Reparations

128. International law also establishes that, whenever a violation of an international obligation occurs, an obligation to provide reparation arises. It is the view of the Mission that the current

constitutional structure and legislation in Israel leaves very little room, if any, for Palestinians to seek compensation. The international community needs to provide for an additional or alternative mechanism of compensation for damage or loss incurred by Palestinian civilians during the military operations (chap. XXIX).

E. Conclusions and recommendations

129. The Mission draws general conclusions on its investigations in chapter XXX, which also includes a summary of its legal findings.

130. The Mission then makes recommendations to a number of United Nations bodies, Israel, the responsible Palestinian authorities and the international community on: (a) accountability for serious violations of international humanitarian law; (b) reparations; (c) serious violations of human rights law; (d) the blockade and reconstruction; (e) the use of weapons and military procedures; (f) the protection of human rights organizations and defenders ; (g) follow-up to the Mission's recommendations. The recommendations are detailed in chapter XXXI.

PART ONE: METHODOLOGY, CONTEXT AND APPLICABLE LAW

INTRODUCTION

131. On 3 April 2009, the President of the Human Rights Council established the United Nations Fact Finding Mission on the Gaza Conflict with the mandate “to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after.” The appointment of the Mission followed the adoption on 12 January 2009 of resolution S-9/1 on the grave violations of human rights in the Occupied Palestinian Territory, particularly due to the recent Israeli military attacks against the occupied Gaza Strip, by the United Nations Human Rights Council at the end of its ninth special session.

132. The President appointed Justice Richard Goldstone, former judge of the Constitutional Court of South Africa and former Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda, to head the Mission. The other three appointed members were: Professor Christine Chinkin, Professor of International Law at the London School of Economics and Political Science, who was a member of the high-level fact-finding mission to Beit Hanoun (2008); Ms. Hina Jilani, Advocate of the Supreme Court of Pakistan and former Special Representative of the Secretary-General on the situation of human rights defenders, who was a member of the International Commission of Inquiry on Darfur (2004); and Colonel Desmond Travers, a former Officer in Ireland’s Defence Forces and member of the Board of Directors of the Institute for International Criminal Investigations.

133. As is usual practice, the Office of the United Nations High Commissioner for Human Rights (OHCHR) established a secretariat to support the Mission.

134. Between the adoption of resolution S-9/1 in January and the establishment of the Mission at the beginning of April, a broad cross section of actors, including domestic and international non-governmental organizations (NGOs) and United Nations agencies and bodies, had already conducted numerous investigations and produced reports on the military operations in Gaza, all of which were taken into account by the Mission in its work of fact-finding and analysis.

135. Bearing in mind that the resolution of the Council had called for the urgent dispatch of the Mission and given the 11-week delay in its establishment, the Mission agreed to be bound by a short time frame (about three months) to complete its work and report to the Council at the earliest opportunity.

136. The Mission interpreted the mandate as requiring it to place the civilian population of the region at the centre of its concerns regarding the violations of international law. Accordingly, the Mission has made victims its first priority and it will draw attention to their plight in the context of the events under investigation. The members of the Mission hope that their situation will not be neglected by any political agenda for the region.

137. The Mission considered it crucial for the implementation of its mandate to meet with the widest possible range of stakeholders relevant to the facts under inquiry. During the three months of its work in Geneva, Gaza, Amman and elsewhere, the Mission met representatives of civil

society, including domestic and international NGOs; women's organizations; bar associations; military analysts; medical doctors; mental health experts; representatives of the business/private sector, including agriculture and fishery; representatives of associations of persons with disabilities; journalists and other representatives of domestic and international media outlets; representatives of United Nations organs and bodies as well as other international organizations: the Secretary-General of the United Nations, the United Nations High Commissioner for Human Rights; the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), the Special Coordinator for the Middle East Peace Process, the Head of the United Nations Board of Inquiry into incidents in Gaza; diplomatic representatives of Member States of the United Nations in Geneva and in the Occupied Palestinian Territory; members of the Palestinian Legislative Council from both Gaza and the West Bank; ministers and officials of the Palestinian Authority; senior members of the Gaza authorities;¹ former Government and military officials of the Government of Israel (see annex I).

138. The Mission convened for the first time in Geneva between 4 and 8 May 2009, when it established its methods of work and a three-month programme of activities. It also had initial briefings and consultations with a wide range of stakeholders. The Mission met the diplomatic community in Geneva, including the President of the Human Rights Council, members of the Council and sponsors of resolution S-9/1.

139. Additionally, the Mission met in Geneva on 20 May, on 4 and 5 July, and between 1 and 4 August 2009. The Mission conducted three field visits: two to the Gaza Strip between 30 May and 6 June, and between 25 June and 1 July 2009; and one visit to Amman on 2 and 3 July 2009. Several staff of the Mission's secretariat were present in Gaza from 22 May to 4 July 2009.

140. On 7 May, notes verbales were sent to all United Nations organs and bodies and Member States of the United Nations. Egypt, Lebanon, Romania, the United Nations Children's Fund (UNICEF) on behalf of the 1612 Working Group on Grave Violations against Children established for Israel and the Occupied Palestinian Territory,² the World Health Organization (WHO), and the United Nations Population Fund (UNFPA) replied to the notes verbales. Documentation was also made available by other specialized agencies and other organizations in the United Nations system, including the Food and Agriculture Organization of the United Nations (FAO), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Development Programme (UNDP), UNRWA, and the Operational Satellite Applications Programme (UNOSAT) of the United Nations Institute for Training and Research (UNITAR). On 8 June 2009, the Mission issued a call for submissions inviting all interested persons and organizations to submit relevant information and documentation to assist in the implementation of its mandate. In response, the Mission received 31 submissions from individuals and organizations. Throughout its work, the Mission received or had access to a variety of documents from multiple sources (see chap. I).

¹ The term "Gaza authorities" is used to refer to the de facto Hamas-led authorities established in Gaza since June 2007. See chap. II for details.

² This Working Group was set up following the adoption by the United Nations Security Council of resolution 1612/2005) establishing a monitoring and reporting mechanism to ensure the protection of children affected by armed conflict.

141. Public hearings were held in Gaza on 28 and 29 June and in Geneva on 6 and 7 July 2009.

142. Upon appointment on 3 April 2009, the Head of the Mission held a press conference in Geneva together with the President of the Human Rights Council. The Mission issued a press release on 8 May, at the end of its first official meeting, and on 29 May, before travelling to Gaza. Additionally, the Mission held press conferences in Gaza on 4 June, at the end of its first visit, and on 7 July 2009, at the end of the public hearings in Geneva. The Head of the Mission was interviewed several times by the international media³.

Cooperation with the parties

143. Since its inception, the Mission has requested the cooperation of all relevant authorities to enable it to visit and meet victims in Gaza, the West Bank and Israel.

144. Immediately upon appointment, the Head of the Mission sought to consult the Permanent Representative of Israel to the United Nations Office at Geneva, who unfortunately declined to meet him. Following an exchange of letters between 3 and 7 April, the Permanent Representative of Israel informed the Head of the Mission that his Government would not be able to cooperate with the Mission. On 29 April, an additional invitation to the Permanent Representative of Israel to meet the Mission was also unsuccessful. On 4 May, the Mission wrote to the Prime Minister of Israel, reiterating its request for cooperation, in particular by providing access to Gaza, the West Bank, including East Jerusalem, and Israel. During a meeting on 6 May 2009 with the President of Israel, the United Nations Secretary-General referred to and supported the Mission's request for cooperation from the Government of Israel. In a letter dated 20 May 2009, the Mission attempted again to obtain the cooperation of the Israeli Government, especially in view of its planned visit to the Gaza Strip. In view of the refusal of cooperation from the Government of Israel, in order to be able to fulfil the mandate entrusted by the Human Rights Council within the aforementioned time frame, the Mission sought and obtained the assistance of the Government of Egypt to enable it to enter Gaza through the Rafah crossing. The Mission had additional written exchanges with the Permanent Representative of Israel in Geneva between 2 and 17 July 2009. (See annex II.)

145. Upon appointment, the Head of the Mission consulted the Permanent Observer of Palestine to the United Nations Office at Geneva, who promptly extended the cooperation of the Palestinian Authority to the Mission. The Mission has remained in contact with the Permanent Observer Mission of Palestine, and has enjoyed the support and cooperation of the Palestinian Authority. Due to the lack of cooperation from the Israeli Government, the Mission was unable to meet members of the Palestinian Authority in the West Bank. The Mission did, however, meet officials of the Palestinian Authority, including a cabinet minister, in Amman. A Palestinian minister was prevented from travelling to meet the Mission in Amman (see chap. I). During its visits to the Gaza Strip, the Mission held meetings with senior members of the Gaza authorities and they extended their full cooperation and support to the Mission.

³ The webpage of the Mission can be found at: <http://www2.ohchr.org/english/bodies/hrcouncil/specialsession/9/FactFindingMission.htm>.

Protection of persons cooperating with the Mission

146. In the implementation of its mandate the Mission has called for the protections that are required under the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, better known as the Declaration on Human Rights Defenders, to be accorded to all who gave testimony at the public hearings. The Mission also was guided by Commission on Human Rights resolution 2005/9 which “urges Governments to refrain from all acts of intimidation or reprisal against (a) those who seek to cooperate or have cooperated with representatives of United Nations human rights bodies, or who have provided testimony or information to them”.

147. Subsequent to the public hearings in Geneva, the Mission was informed that a Palestinian participant, Mr. Muhammad Srour, had been detained by Israeli security forces when returning to the West Bank and became concerned that his detention may have been a consequence of his appearance before the Mission. The Mission wrote to the Permanent Representative of Israel in Geneva expressing its concern. In response, the Permanent Representative informed the Mission that the detention of the person concerned was unrelated to his appearance at the public hearing. Mr. Srour was subsequently released on bail. The Mission is in contact with him and continues to monitor developments.

148. The Mission is also concerned about anonymous calls and messages received on private phone numbers and e-mail addresses by some of those who provided information to it or assisted in its work in the Gaza Strip. The contents seemed to imply that the originators of these anonymous calls and messages regarded those who cooperated with the Mission as potentially associated with armed groups. One of the recipients conveyed to the Mission apprehensions about personal safety and a feeling of intimidation. The Mission also wishes to record that there are others who have declined to appear before it or to provide information or, having cooperated with the Mission, have asked that their names should not be disclosed, for fear of reprisal.

Acknowledgments

149. The Mission is deeply grateful to the numerous Palestinians and Israelis, especially victims and witnesses of violations, who have shared with it their stories and views. It is equally grateful to the many Palestinian and Israeli civil society and NGOs, and to the Palestinian Independent Commission for Human Rights. They are at the forefront of the protection and promotion of human rights in the region and carry out their work with courage, professionalism and independence in very difficult circumstances. The Mission is also grateful to all the domestic and international NGOs that have supported its mandate and have provided a vast amount of relevant and well-documented information. Without the support and the assistance of United Nations agencies, programmes and other bodies, and particularly of the United Nations staff in Gaza, the Mission would have not been able to complete its work. Heartfelt thanks go to all of them. The Mission wishes to especially acknowledge the invaluable support received by the dedicated staff of UNRWA. The Mission expresses its gratitude to the United Nations security personnel and interpreters, who have professionally and sensitively accomplished their difficult tasks. In addition to the secretariat of the Mission appointed by OHCHR, a multinational team with a broad range of professional experience, the gratitude of the Mission goes also to the staff of OHCHR in Geneva, the Occupied Palestinian Territory and New York. A particular mention

goes to all those who assisted with the daunting task of organizing at very short notice the public hearings in Gaza and in Geneva. The Mission wishes to formally thank the Government of Egypt and in particular the Permanent Mission of Egypt in Geneva. The Mission wishes to formally thank the Governments of Jordan and of Switzerland for facilitating the issuance of entry visas at short notice. The Mission also wishes to acknowledge the continued support received from the United Nations Secretary-General.

150. Finally, the Mission wishes to thank the people of Gaza for their warm welcome, their humanity and their hospitality in spite of such difficult and painful circumstances.

I. METHODOLOGY

A. Mandate and terms of reference

151. In his letter appointing the members of the Mission, the President of the Council entrusted the Mission with the following mandate: “to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after.”

152. To implement its mandate, the Mission determined that it was required to consider any actions by all parties that might have constituted violations of international human rights law or international humanitarian law. The mandate also required it to review related actions in the entire Occupied Palestinian Territory and Israel.

153. With regard to temporal scope, the Mission’s broad mandate includes violations before, during and after the military operations that were conducted in Gaza between 27 December 2008 and 18 January 2009. The Mission considered that, while the Gaza events must be seen in the context of the overall conflict and situation in the Occupied Palestinian Territory, in view of the limited time and resources available, it would be beyond its abilities to focus on conduct or actions that took place long before the military operation of December–January. The Mission therefore decided to focus primarily on events, actions or circumstances occurring since 19 June 2008, when a ceasefire was agreed between the Government of Israel and Hamas. The Mission has also taken into consideration matters occurring after the end of military operations that constitute continuing human rights and international humanitarian law violations related to or as a consequence of the military operation, up to 31 July 2009.

154. The Mission considered that the reference in its mandate to violations committed in the context of the December–January military operations required it to go beyond violations that took place directly as part of the operations. Thus violations within its mandate include those that are linked to the December–January military operations in terms of time, objectives and targets, and include restrictions on human rights and fundamental freedoms relating to Israel's strategies and actions in the context of its military operations.

155. The normative framework for the Mission has been general international law, the Charter of the United Nations, international humanitarian law, international human rights law and international criminal law.

B. Methods of work

156. The Mission reviewed all allegations raised in connection with issues under its mandate. The review included analysis of material in the public domain, including the many reports produced after the military operations concluded, information provided to the Mission through additional documentation and a series of meetings with experts who had been to the area or studied matters of interest to the Mission.

157. In view of the time frame within which it had to complete its work, the Mission necessarily had to be selective in the choice of issues and incidents for investigation. The report does not purport to be exhaustive in documenting the very high number of relevant incidents that occurred in the period covered by the Mission's mandate and especially during the military operations in Gaza. Nevertheless, the Mission considers that the report is illustrative of the main patterns of violations. The Mission also stresses that the exclusion of issues or incidents from the report in no way reflects on the seriousness of the relevant allegations.

158. The Mission based its work on an independent and impartial analysis of compliance by the parties with their obligations under international human rights and humanitarian law in the context of the recent conflict in Gaza, and on international investigative standards developed by the United Nations.

159. The Mission adopted an inclusive approach to receiving information and views on matters within its mandate. Information-gathering methods included:

(a) The review of reports of international organizations, including the United Nations; reports and other documentation, including affidavits, produced by non-governmental and civil society organizations (Palestinian, Israeli and international); media reports; and writings of academics and analysts on the conflict;

(b) Interviews with victims, witnesses and other persons having relevant information. In keeping with established human rights methodology and in order to ensure both the safety and privacy of the interviewees and the integrity of the information provided, such interviews were conducted in private. The Mission decided not to interview children. The Mission conducted 188 individual interviews. Most interviews were conducted in person. If the Mission was unable to meet the relevant persons, interviews were conducted by telephone. Also in keeping with normal practice for this type of report and to continue to protect their safety and privacy, the names of the victims, witnesses and other sources are generally not explicitly referred to in the report and codes are used instead. The names of individuals who publicly testified at the hearings held by the Mission or who have explicitly agreed to be named (see below) are, however, identified;

(c) Site visits to specific locations in Gaza where incidents had occurred. The Mission investigated 36 incidents in Gaza;

(d) The analysis of video and photographic images, including satellite imagery provided by UNOSAT, and expert analysis of such images;

(e) The review of medical reports about injuries to victims;

- (f) The forensic analysis of weapons and ammunition remnants collected at incident sites;
- (g) Meetings with a variety of interlocutors, including members of the diplomatic community, representatives of the parties concerned, NGOs, professional associations, military analysts, medical doctors, legal experts, scientists, United Nations staff;
- (h) Invitations, through notes verbales, to United Nations Members States and United Nations agencies, departments and bodies to provide information relating to the Mission's investigation requirements;
- (i) The wide circulation of a public call for written submissions from NGOs and other organizations and individuals interested in bringing information to the attention of the Mission. As a result, it received numerous submissions from organizations and individuals from Israel, the Occupied Palestinian Territory and elsewhere in the world;
- (j) Public hearings in Gaza and in Geneva⁴ to hear: (i) victims and witnesses of violations; and (ii) individuals with specialized knowledge and expertise on the context and impact of the hostilities.

160. The Mission reviewed more than 300 reports, submissions and other documentation either researched of its own motion, received in reply to its call for submissions and notes verbales or provided during meetings or otherwise, amounting to more than 10,000 pages, over 30 videos and 1,200 photographs.

161. The methods adopted to gather and verify information and reach conclusions were for the most part guided by best practice methodology developed in the context of United Nations investigations. In the case of Israel and the West Bank, adjustments were required in view of the Mission's inability to access those areas due to lack of cooperation from Israel.

162. The Mission's preferred option would have been to visit all areas covered by its mandate and undertake on-site investigations in all. The Government of Israel, however, refused to cooperate with the Mission at three levels: (a) it refused to meet the Mission and to provide access to Government officials, including military, and documentation; (b) it precluded the Mission from travelling to Israel in order to meet with Israeli victims, witnesses, members of civil society and NGOs; and (c) it prevented the Mission from travelling to the West Bank, including East Jerusalem, to meet members of the Palestinian Authority and Palestinian victims, witnesses, non-governmental or civil society organizations living or located in the West Bank.

163. Accordingly, the Mission conducted field visits, including investigations of incident sites, in the Gaza Strip. This allowed the Mission to observe first-hand the situation on the ground, and speak to many witnesses and other relevant persons. The Mission considered this particularly important to form an understanding of the situation, the context, impact and consequences of the conflict on people, and to assess violations of international law.

⁴ The public hearings are webcast by the United Nations and can be viewed by visiting the webcast archive at: <http://www.un.org/webcast/unhrc/archive.asp?go=090628>.

164. The Mission gathered first-hand information with regard to the situation in Israel and in the West Bank by conducting telephone interviews with victims, community representatives, local authorities, members of NGOs and experts; by hearing testimonies from victims, witnesses and experts from Israel and from the West Bank at the public hearings in Geneva; and by holding meetings and private interviews both in Amman and in Geneva.

165. The Mission's efforts in this regard were partially thwarted because of restrictions on the freedom of movement of some of the people that the Mission wished to interview. The Mission was not able to meet as planned the Palestinian Minister of Justice, Dr. Ali al-Khashan, in Amman, as he was not allowed by Israel to leave the West Bank. The Mission was also unable to meet Ms. Khalida Jarrar, a member of the Palestinian Legislative Council, who is subject to a travel ban by Israel (see chap. XXII). It held a teleconference with her. A Palestinian witness at the Geneva public hearings, Mr. Shawan Jabarin, had to be heard by videoconference as he is also subject to a travel ban by Israel.

A note on the public hearings

166. The purpose of the public hearings, which were broadcast live, was to enable victims, witnesses and experts from all sides to the conflict to speak directly to as many people as possible in the region as well as in the international community. The Mission is of the view that no written word can replace the voice of victims. While not all issues and incidents under investigation by the Mission were addressed during the hearings, the 38 public testimonies covered a wide range of relevant facts as well as legal and military matters. The Mission had initially intended to hold hearings in Gaza, Israel and the West Bank. However, denial of access to Israel and the West Bank resulted in the decision to hold hearings of participants from Israel and the West Bank in Geneva.

167. Participants in the hearings were identified in the course of the Mission's investigations, and had either first-hand experience or information or specialized knowledge of the issues under investigation and analysis. In keeping with the objectives of the hearings, the Mission gave priority to the participation of victims and people from the affected communities. Participants took part in the hearings on a voluntary basis. Some individuals declined to participate for fear of reprisal. The Mission received expressions of gratitude from participants, as well as members of the affected communities, for having provided an opportunity to speak publicly of their experiences.

C. Assessment of information

168. In establishing its findings, the Mission sought to rely primarily and whenever possible on information it gathered first-hand, including through on-site observations, interviews and meetings with relevant persons. Information produced by others, including reports, affidavits and media reports, was used primarily as corroboration.

169. The section of the report on the Gaza Strip is based on first-hand information gathered and verified by the Mission. To assess the situation in Israel and in the West Bank, the Mission had to make comparatively greater use of information produced by others for the reasons explained above. These sections too, however, include first-hand information directly gathered and verified by the Mission.

170. The Mission met or spoke with witnesses, listened to what they had to say and questioned them wherever necessary. Taking into account the demeanour of witnesses, the plausibility of their accounts and the consistency of these accounts with the circumstances observed by it and with other testimonies, the Mission was able to determine the credibility and reliability of those people it heard. Regarding the large amount of documentary information the Mission received or had access to as documents in the public domain, it tried as far as possible to speak with the authors of the documents in order to ascertain the methodologies used and to clarify any doubts or problems.

171. The final conclusions on the reliability of the information received were made taking all of these matters into consideration, cross-referencing the relevant material and information, and assessing whether, in all the circumstances, there was sufficient information of a credible and reliable nature for the Mission to make a finding in fact.

172. On the basis set out above, the Mission has, to the best of its ability, determined what facts have been established. In many cases it has found that acts entailing individual criminal responsibility have been committed. In all of these cases the Mission has found that there is sufficient information to establish the objective elements of the crimes in question. In almost all of the cases the Mission has also been able to determine whether or not it appears that the acts in question were done deliberately or recklessly or in the knowledge that the consequence that resulted would result in the ordinary course of events, that is, the Mission has referred in many cases to the relevant fault element (*mens rea*). The Mission fully appreciates the importance of the presumption of innocence: the findings in the report do not subvert the operation of that principle. The findings do not attempt to identify the individuals responsible for the commission of offences nor do they pretend to reach the standard of proof applicable in criminal trials.

D. Consultation with the parties

173. The Mission received documentation related to its mandate from the Palestinian Authority. During its visits in Gaza, the Mission was provided with significant material and documentation by the Gaza authorities. On 29 July, it received, through UN Watch, a paper⁵ on the military operations in Gaza that sets out the Government of Israel's position on many issues investigated by the Mission.

174. During its meetings in Gaza, Amman and Geneva, the Mission discussed matters within its mandate with Palestinian counterparts. While no cooperation was received from the Government of Israel, the Mission met a number of Israeli citizens formerly in senior Government positions.

175. In order to provide the parties concerned with an opportunity to submit additional relevant information and express their position and respond to allegations, the Mission also submitted comprehensive lists of questions to the Government of Israel, the Palestinian Authority and the

⁵ "The operation in Gaza: Factual and legal aspects", July 2009, published on the website of the Israeli Ministry of Foreign Affairs, available at http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Terrorism+and+Islamic+Fundamentalism-/Operation_in_Gaza-Factual_and_Legal_Aspects.htm.

Gaza authorities in advance of completing its analysis and findings. The Mission received replies from the Palestinian Authority and the Gaza authorities but not from Israel.

II. CONTEXT

176. The Mission is of the view that the events that it was mandated to investigate should not be considered in isolation. They are part of a broader context, and are deeply rooted in the many years of Israeli occupation of the Palestinian Territory and in the political and violent confrontation that have characterized the history of the region. A review of the historical, political and military developments between the Six-Day War in 1967 and the announcement of the “period of calm” (*Tahdiyah*) in June 2008,⁶ and of Israeli policies towards the Occupied Palestinian Territory is necessary to consider and understand the events that fall more directly within the scope of the Mission’s mandate.

A. Historical context

177. The West Bank, including East Jerusalem, and the Gaza Strip were captured by Israel following the Six-Day War of June 1967. The two non-contiguous areas had been administered by Jordan and Egypt, respectively, since the establishment of the “Green Line” along the 1949 Armistice demarcation, separating the newly founded State of Israel and its neighbours. After 1967, the two areas were administered directly by military commanders until 1981 and since then through a “Civil Administration” established by the Israeli armed forces. “Military orders” were used to rule the civil affairs of the Palestinian population superimposing and often revoking pre-existing Jordanian laws in the West Bank and Egyptian laws in the Gaza Strip. East Jerusalem was annexed to the Israeli municipality of the city and in 1980 the Knesset passed a law which declared that “Jerusalem, complete and united, is the capital of Israel”. With Security Council resolution 478 (1980), the United Nations declared this law “null and void”, condemning any attempt to “alter the character and status of Jerusalem”.⁷ No member of the United Nations, apart from Israel, recognizes the annexation of East Jerusalem.

178. After the Likud party won the 1977 Israeli elections, the establishment of settlements within the occupied territories of the West Bank and the Gaza Strip dramatically accelerated, and the expropriation of Palestinian lands and the construction of settlements have continued unabated to this day. Many years of growing tension and violence concerning the unresolved status of the Palestinian territory occupied by Israel ensued. In 1987 a widespread popular uprising – the intifada – was forcefully repressed by the Israeli security forces but lasted until 1993, when the leadership of the Palestine Liberation Organization (PLO) and the Government

⁶ Due to obvious space limitations, the historical context does not make reference to the numerous important events that took place during this period (such as the 1973 War, the Camp David Accords, the peace treaty with Jordan, the 2006 Lebanon War and many others).

⁷ Adopted by 14 votes to none, with 1 abstention (United States of America).

of Israel agreed to recognize each other and signed the “Declaration of Principles on Interim Self-Government Arrangements” also known as the “Oslo I Accord”.⁸

179. In 1994 the Palestinian Authority was established following the Oslo I Accord and in 1995 “the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip”, also known as “Oslo II”,⁹ detailed practical steps to be implemented by the parties in view of the negotiations on the final status of the territory. The assassination of Israeli Prime Minister Yitzhak Rabin by an Israeli extremist in 1995 dealt a lethal blow to the peace process. Successive Israeli Governments and the Palestinian political leadership failed to reach an agreement on the final status at the United States-sponsored Camp David summit in 2000 and during direct talks in Taba (Egypt) in 2001.

180. A second popular uprising erupted in September 2000, after the then opposition leader Ariel Sharon conducted a controversial visit to the Temple Mount/al-Haram al-Sharif in Jerusalem.¹⁰ This second intifada set off an unprecedented cycle of violence.

181. According to independent sources, while the Israeli-Palestinian conflict claimed the lives of 1,549 Palestinians and 421 Israelis between 1987 and 2000,¹¹ between September 2000 and December 2008, 5,500 Palestinians were killed (593 as result of intra-Palestinian violence) as well as 1,062 Israelis and 64 foreigners.¹²

182. According to Israel’s Ministry of Foreign Affairs, 154 suicide bomb attacks against Israeli civilians and military personnel took place between 1993 and 2007. They killed 542 individuals,

⁸ The Agreement contained a specific provision for the establishment of a “strong police force” to “guarantee public order and internal security for the Palestinians of the West Bank and the Gaza Strip”. See <http://www.reliefweb.int/rw/rwb.nsf/db900SID/MHII-62DANP?OpenDocument>.

⁹ The Agreement defined three areas of jurisdiction in Gaza and the West Bank: area “A”, in which Palestinians would have full administrative and security responsibilities; area “B”, in which Palestinians would have administrative responsibilities, but Israelis would retain security control; and area “C”, where Israelis would maintain administrative and security responsibilities. See <http://www.reliefweb.int/rw/rwb.nsf/db900SID/MHII-62DAP5?OpenDocument>.

¹⁰ Situated at the heart of the Old City in East Jerusalem, the site is of religious significance to both Muslims and Jews. The Temple Mount/al-Haram al-Sharif (the Noble Sanctuary) is the location of al-Aqsa and the Dome of the Rock mosques, the third most sacred place in Islam. It is also believed to be the location of the two ancient Jewish temples. The southern section of its western external perimeter is what is known as the Western Wall. Haram al-Sharif is administered by an Islamic trust (Waqf) and religious rituals performed there by non-Muslims are forbidden.

¹¹ See B’Tselem statistics (“Fatalities in the first Intifada”), available at: http://www.btselem.org/English/Statistics/First_Intifada_Tables.asp.

¹² See B’Tselem statistics (“Fatalities”), available at: <http://www.btselem.org/English/Statistics/Casualties.asp>

with a peak in 2002 of 220 individuals killed in 55 suicide attacks.¹³ The last recorded suicide attack took place in February 2008 in the Israeli city of Dimona.¹⁴

183. The firing of rockets and mortars from Gaza into Israel began in 2001.¹⁵ Israeli sources report that as many as 3,455 rockets and 3,742 mortar shells were fired into Israel from Gaza until mid-June 2008.¹⁶

184. After his election as Prime Minister in 2001, the Likud leader Ariel Sharon discontinued any direct contacts with the Palestinian leadership, in effect putting an end to talks on the final status.

185. In June 2002, the beginning of the construction of the separation Wall, which encroached on Palestinian land to encompass most Israeli settlement areas in the West Bank as well as East Jerusalem, left almost half a million Palestinians on the western side of the divide, cutting historical, social, cultural and economic ties with the rest of the Palestinians in the West Bank.¹⁷ In 2004, the International Court of Justice issued an advisory opinion on the legality of the Wall being built by Israel, at the request of the United Nations General Assembly. The Court stated that Israel must cease construction of the barrier, dismantle the parts of the barrier that were built inside the West Bank, revoke the orders issued relating to its construction and compensate the Palestinians who suffered losses as a result of the barrier.¹⁸ Israel disregarded the views of the Court and construction of the Wall continued. In 2004 and 2005, the Israeli Supreme Court, sitting as the High Court of Justice (see sect. D below), ruled that some parts of the route of the Wall violated the principle of “proportionality” in both Israeli and international law, causing harm to an “occupied population” and that the construction of the structure should be done in a way to lessen the prejudicial impact on the rights of the resident Palestinians. The Israeli Court

¹³ See website of the Ministry of Foreign Affairs (“Suicide and other bombing attacks in Israel since the Declaration of Principles (Sept. 1993)”), available at: <http://www.mfa.gov.il/MFA/Terrorism-%20Obstacle%20to%20Peace/Palestinian%20terror%20since%202000/Suicide%20and%20Other%20Bombing%20Attacks%20in%20Israel%20Since>

¹⁴ BBC News, “Israeli killed in suicide bombing”, 4 February 2008, available at: http://news.bbc.co.uk/2/hi/middle_east/7225775.stm

¹⁵ “The operation in Gaza...” states that the firing of rockets and mortars from Gaza started in 2000. The same sources quoted in the report, however, put the beginning of the firing of rockets and mortars in 2001. The report states that between 2000 and 2008 “Israel was bombarded by some 12,000 rockets and mortar shells between 2000 and 2008, including nearly 3,000 rockets and mortar shells in 2008 alone.”

¹⁶ Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center, “Rocket threat from the Gaza Strip, 2000-2007”, December 2007, available at: http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/html/rocket_threat_e.htm; and “Summary of rocket fire and mortar shelling in 2008”, January 2009, available at: http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/ipc_e007.pdf

¹⁷ See B’tselem statistics (Separation barrier statistics), available at: http://www.btselem.org/English/Separation_Barrier/Statistics.asp.

¹⁸ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004.

ordered the rerouting of different portions of the Wall,¹⁹ but considered the structure legal in principle.²⁰

186. In 2002, the so-called Quartet (the United States, the European Union, the Russian Federation and the United Nations) proposed a plan to resolve the Israeli-Palestinian conflict. The plan came to be known as the “road map to peace.”²¹ The road map envisaged that the Palestinians would engage in democratic reforms and renounce violent means and that Israel would accept a Palestinian Government and cease settlement activities. Fulfilment of the road map’s commitments would lead to negotiations on the final status. The road map remains unimplemented. The same year, the League of Arab States adopted a proposal that Saudi Arabia presented at the Beirut Summit in which its members pledged to establish normal relations with Israel in the context of a comprehensive peace that would establish a Palestinian State within the border of 1967.²²

187. On 6 June 2004, the Israeli Cabinet adopted a “disengagement plan” providing for the unilateral removal from the Gaza Strip of Israeli security forces and Israeli civilians living in settlements. The plan was endorsed by the Knesset on 26 October of the same year. With the evacuation of all Israeli residents and associated security personnel from the Gaza Strip completed on 12 September 2005, Israel declared that “there will be no basis for claiming that the Gaza Strip is occupied territory” (on the continued occupation, see chapter IV). Under the disengagement plan, however, the Israeli armed forces continued to maintain control over Gaza’s borders, coastline and airspace, and Israel reserved “its inherent right of self-defence, both preventive and reactive, including where necessary the use of force, in respect of threats emanating from the Gaza Strip.” Israel removed both settlements and military bases protecting the settlers from the Gaza Strip, redeploying on Gaza’s southern border and repositioning its forces to other areas just outside the Gaza Strip. In addition to controlling the borders, coastline and airspace, after the implementation of the disengagement plan, Israel continued to control Gaza’s telecommunications, water, electricity and sewage networks, as well as the population registry, and the flow of people and goods into and out of the territory while the inhabitants of Gaza continued to rely on the Israeli currency.²³

188. After years of disassociation from the Oslo process, Hamas changed its position about the legitimacy of the Palestinian Authority and decided to participate in the elections of January

¹⁹ Many of these rulings have had only a marginal impact on the Palestinian population.

²⁰ The Court opened its deliberation by stating that “since 1967, Israel has been holding the areas of Judea and Samaria [...] in belligerent occupation”, see *Beit Sourik Village Council v. The Government of Israel and Commander of the IDF Forces in the West Bank*, case No. 2056/04, Judgement of 30 June 2004 and *Mara’abe et al. v. The Prime Minister of Israel et al.*, case No. 7957/04, Judgement of 15 September 2005.

²¹ “A performance-based road map to a permanent two-State solution to the Israeli-Palestinian conflict”, available at: <http://www.un.org/news/dh/mideast/roadmap122002.pdf>

²² Available at: <http://www.reliefweb.int/rw/rwb.nsf/AllDocsByUNID/5a7229b652beb9c5c1256b8a0054b62e>

²³ See “Disengagement Plan - General Outline”, 15 April 2004, available at: <http://www.pmo.gov.il/PMOEng/Archive/Press+Releases/2004/Disengagement+Plan/Disengagement+Plan.htm>; and “Overall concept of the Disengagement Plan”, 15 April 2004, available at: <http://www.pmo.gov.il/PMOEng/Archive/Press+Releases/2004/Disengagement+Plan/DisengagementPlan.htm>.

2006. The List of Change and Reform, of which Hamas represented the main component, won the elections for the Palestinian Legislative Council and formed a Government. Shortly thereafter, the international community redirected international aid from the Palestinian Authority to international organizations and humanitarian agencies, isolating the new Palestinian executive in a stated effort to put pressure on it to accept the so-called Quartet Principles. The Quartet had already announced that, to be recognized by the international community, any Palestinian Government should adhere to three “Principles”: (i) recognition of the State of Israel, (ii) recognition of previous agreements and (iii) renunciation of violence.²⁴ Israel also imposed economic sanctions on the Hamas-led Palestinian Authority Government, including by withholding tax revenues it collected on imports and introducing additional restrictions on the movement of goods to and from the Gaza Strip. Israel declared that sanctions would be lifted only when the new Palestinian Government would abide by the Quartet Principles.²⁵

189. In June 2006, a squad drawn from three groups – the Popular Resistance Committees, al-Qassam Brigades and the until then unknown Army of Islam – excavated a tunnel under the Gaza-Israel border and attacked the military base of Kerem Shalom inside Israel, blowing up a tank, killing two soldiers and capturing a third, Corporal Gilad Shalit. In reaction to the capture, the Israeli Government conducted a number of targeted assassinations of alleged militants belonging to Hamas and other groups; arrested Palestinian Authority cabinet ministers, Hamas parliamentarians and other leaders in the West Bank; attacked key civilian infrastructure in the Gaza Strip, such as the main power plant, the main bridge in central Gaza and Palestinian Authority offices; tightened the economic isolation; and carried out major armed thrusts into the Gaza Strip for the first time since August 2005.²⁶

190. After the refusal of the politically defeated Fatah movement to cede the control of Palestinian Authority institutions and specifically security institutions to the new Government, armed clashes erupted between the two political groups both in the Gaza Strip and the West Bank. In February 2007, Palestinian leaders assembled in Mecca signed an agreement sponsored by Saudi Arabia that led to the formation of a coalition Government that was approved by the Palestinian Legislative Council in March.²⁷ The coalition Government was headed by Hamas and included members of other political movements, including Fatah, as well as independents. After only four months, violent clashes erupted again between armed and security forces loyal to Fatah and Hamas. By 14 June 2007, Hamas forces and armed groups had seized all Palestinian

²⁴ See “Briefing to the Security Council on the situation in the Middle East”, by Ms Angela Kane, Assistant Secretary-General for Political Affairs, 31 January 2006, available at: <http://www.unsco.org/Documents/Statements/MSCB/2008/January%2031.pdf>

²⁵ In June 2006, Hamas subscribed to the so-called Prisoners Document, a common political platform shared by Fatah, Hamas, Islamic Jihad, the Popular Front for the Liberation of Palestine (PFLP) and the Democratic Front for the Liberation of Palestine (DFLP). An implicit recognition of the State of Israel could be traced to the statement that “the right to establish their independent state with al-Quds al-Sharif as its capital on all territories occupied in 1967”. See <http://www.miftah.org/Display.cfm?DocId=10371&CategoryId=32>.

²⁶ See International Crisis Group, “Israel/Palestine/Lebanon: Climbing out of the abyss”, Middle East Report N° 57, 25 July 2006.

²⁷ See “Briefing to the Security Council on the situation in the Middle East”, by Mr B. Lynn Pascoe, 25 April 2007, available at: <http://www.unsco.org/Documents/Statements/MSCB/2007/April%202007.pdf>.

Authority security installations and government buildings in the Gaza Strip.²⁸ The President of the Palestinian Authority dismissed the Hamas-led Government (hereinafter called the Gaza authorities), declared a state of emergency and established an emergency Government based in the West Bank, which was largely recognized by the international community.²⁹

191. In November 2007, the United States of America sponsored the organization of a new comprehensive peace conference. At the Conference – held in Annapolis, Maryland, United States of America – the Palestinian President and the Israeli Prime Minister agreed to resume negotiations by the end of 2007. In addition, they agreed to work continuously to reach a two-State solution by the end of 2008.

192. On 19 September 2007, the Government of Israel declared Gaza “hostile territory.”³⁰ This was followed by the imposition of further severe reductions in the transfer of goods and supplies of fuel and electricity to the Strip. Since then, Israel has only sporadically allowed the opening of all the crossings into the Gaza Strip, at times completely closing them.³¹ (See also chapter V.)

193. Israeli military operations in Gaza and the West Bank started well before the so-called disengagement of 2005. “Operation Defensive Shield” in 2002 was the largest military operation in the West Bank since the 1967 Six-Day War. It began with an incursion into Ramallah, placing the then President of the Palestinian Authority, Yasser Arafat, under siege in his offices, and was followed by incursions into the six largest cities in the West Bank and their surrounding localities. During the three weeks of the military incursions in areas that were under the direct control of the Palestinian Authority, 497 Palestinians were killed.³² The siege on the half destroyed Ramallah *Muqataa* compound of President Arafat was lifted only at the end of 2004 when he was flown to Paris to undergo medical treatment. He later died there.

194. “Operation Rainbow” of 2004 targeted the Rafah area of the Gaza Strip and left about 50 Palestinians dead. “Operation Days of Penitence” was carried out between September and October 2004. According to the Israeli Government, it was launched in retaliation for the firing of rockets against the town of Sderot and Israeli settlements inside the Gaza Strip. It targeted the towns of Beit Hanoun and Beit Lahia and the Jabaliyah refugee camp and resulted in the deaths of more than 100 Palestinians and 5 Israelis.

195. From the disengagement until November 2006, the Israeli armed forces fired approximately 15,000 artillery shells and conducted more than 550 air strikes into the Gaza Strip. Israeli military attacks killed approximately 525 people in Gaza. Over the same period, at

²⁸ See International Crisis Group, “After Gaza”, Middle East Report N°68, 2 August 2007. See also Vanity Fair, “The Gaza bombshell”, April 2008, available at: <http://www.vanityfair.com/politics/features/2008/04/gaza200804>

²⁹ For reactions in support of the emergency Government by the United States, the European Union and Arab States, see “After Gaza...”.

³⁰ “Security cabinet declares Gaza hostile territory”, 19 September 2007, and “Behind the headlines: Israel designates Gaza a ‘hostile territory’”, 24 September 2007, available from the website of Israel’s Ministry of Foreign Affairs at www.mfa.gov.il

³¹ A/HRC/7/76.

³² A/ES-10/186.

least 1,700 rockets and mortars were fired into Israel by Palestinian militants, injuring 41 Israelis. The conflict culminated, in 2006, in the Israeli military incursions into Gaza, codenamed “Summer Rains” and “Autumn Clouds”, the latter focusing on the north of the Strip around the town of Beit Hanoun, where shortly after the end of the military operations in November, 19 people, of whom 18 of the same family, were killed by artillery fire in one incident.³³

196. In February 2008, a rocket attack from Gaza hit the Israeli city of Ashkelon causing light injuries. The Israeli armed forces launched an operation codenamed “Hot Winter” during which the air force conducted at least 75 air strikes on different targets within the Gaza Strip. As a result of the military operation, more than 100 Palestinians and 2 Israelis were killed in Gaza.³⁴

197. In June 2008, an informal “period of calm” (*Tahdiyah*) of six months was agreed through Egypt’s mediation. (For more details, see chapter III.)

B. Overview of Israel’s pattern of policies and conduct relevant to the Occupied Palestinian Territory, and links between the situation in Gaza and in the West Bank

198. Since 1967, Israel has built hundreds of settlements in the West Bank, including East Jerusalem, and the Gaza Strip. Such settlements were recognized by its Ministry of Interior as Israeli “communities” subjected to Israeli law. The above-mentioned Advisory Opinion by the International Court of Justice advisory opinion and “a number of United Nations resolutions have all affirmed that Israel’s practice of constructing settlements – in effect, the transfer by an occupying Power of parts of its own civilian population into the territory it occupies – constitutes a breach of the Fourth Geneva Convention”³⁵ (on the position of the Israeli High Court of Justice on the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, see chapter IV). Sixteen settlements in the Gaza Strip and three in the northern West Bank were dismantled in 2005 during the implementation of the so-called Israeli disengagement plan, but the establishment of new settlements continued. In 2007, there were more than 450,000 Israeli citizens living in 149 settlements in the West Bank, including East Jerusalem. According to United Nations sources, almost 40 per cent of the West Bank is now taken up by Israeli infrastructure associated with the settlements, including roads, barriers, buffer zones and military bases. Data released by the Israeli Central Bureau of Statistics showed that construction in these settlements has increased in 2008 by a factor of 1.8 in comparison with the same period in 2007. The number of tenders in East Jerusalem has increased by 3,728 per cent (1,761 housing units, compared with 46 in 2007). Until the end of the 1970s, the Government of Israel claimed that the settlements were established on the grounds of military necessity and security, but it has since abandoned this position.³⁶

³³ A/HRC/9/26.

³⁴ A/HRC/8/17.

³⁵ A/63/519.

³⁶ *Ibid.*

199. It is estimated that 33 per cent of the settlements have been built on private land owned by Palestinians, much of it expropriated by the State of Israel on asserted grounds of military necessity. Following a ruling of the Israeli High Court of Justice in 1979, the Government of Israel changed its policy of land confiscation on the asserted ground of military necessity and started having recourse to civil laws relating to land confiscation in place under Ottoman rule. According to these laws, land may be seized either because no one can prove ownership in accordance with the required standard of evidence or because the area in which it is situated is declared a closed military zone which farmers are prohibited from entering.³⁷

200. “Since 1967, the Israeli authorities have demolished thousands of Palestinian-owned structures in the [Occupied Palestinian Territory], including an estimated 2,000 houses in East Jerusalem.”³⁸ During the first quarter of 2008, the Israeli authorities demolished 124 structures in the West Bank, including East Jerusalem, for lack of permits. Of those, 61 were residential buildings whose demolition caused the displacement of many Palestinians, including children. Demolition of structures and residential buildings has been a feature of the Israeli policy that has displaced Palestinians mainly in the Jordan Valley and in East Jerusalem, but also in other areas of the West Bank. The Israeli authorities justify the majority of these demolitions by claiming that the structures or buildings lack the necessary permits. The relevant Israeli authorities rarely issue building permits for Palestinians, frequently refusing them on the basis that the construction is in violation of the mandatory regional outline plans approved by the British Mandate Government of Palestine in the 1940s.³⁹ Areas in East Jerusalem face the prospect of mass demolitions. Carrying out pending demolition orders would affect a combined total of more than 3,600 persons.⁴⁰ The combined effects of the Israeli policies of expanding and establishing new settlements, the demolition of Palestinian-owned properties, including houses, the restrictive and discriminatory housing policies as well as the Wall have been described as a way of “actively pursuing the illegal annexation” of East Jerusalem.⁴¹

³⁷ Ibid.

³⁸ Office for the Coordination of Humanitarian Affairs (OCHA), “The planning crisis in East Jerusalem: Understanding the phenomenon of ‘illegal’ construction”, Special Focus, April 2009, available at: http://www.ochaopt.org/documents/ocha_opt_planning_crisis_east_jerusalem_april_2009_english.pdf

³⁹ A/63/518.

⁴⁰ OCHA, Special Focus, April 2009.

⁴¹ The Guardian, “Israel annexing East Jerusalem, says EU”, 7 March 2009, available at: <http://www.guardian.co.uk/world/2009/mar/07/israel-palestine-eu-report-jerusalem>

201. The route of the Wall weaves between Palestinian villages and neighbourhoods and has contributed to the fragmentation of the West Bank into a series of enclaves separated from one another (see map⁴² below). The Wall encircles settlements built around Jerusalem and within the West Bank and connects them to Israel. Eighty per cent of Israeli inhabitants of these settlements reside to the west of the Wall. The route of the Wall, which has created a demarcation, is to a great degree determined by the objective of incorporating settlements into the Israeli side and to exclude Palestinians from these areas.⁴³ If completed, 85 per cent of the Wall will be located inside the West Bank, and 9.5 per cent of West Bank territory, including East Jerusalem, will be cut off from the rest of the West Bank. It is estimated that 385,000 Israeli citizens in 80 settlements out of the total of 450,000 Israeli citizens in 149 settlements and 260,000 Palestinians, including in East Jerusalem, will be located between the Wall and the Green Line. In addition, approximately 125,000 Palestinians in 28 communities will be surrounded on three sides and 26,000 Palestinians in eight communities will be surrounded on four sides.⁴⁴ A number of surveys compiled by United Nations agencies⁴⁵ found that many Palestinian communities cut off by the Wall do not enjoy full access to emergency health services, posing severe challenges in medical emergencies and for expectant mothers. In addition the Wall cuts off residents in closed areas from schools and universities, also having an impact on social relations and especially on traditional marriage patterns. The Wall isolates the land and water resources of a large number of Palestinians, having a negative impact on agricultural practices and on rural livelihoods.

202. Despite the claim by Israel that restrictions of movement within the West Bank are imposed on Palestinian residents for security purposes, most of those internal restrictions appear to have been designed to guarantee unobstructed travel to the Israeli inhabitants of the settlements. None of these restrictions applies to Israeli citizens travelling throughout the West Bank.⁴⁶

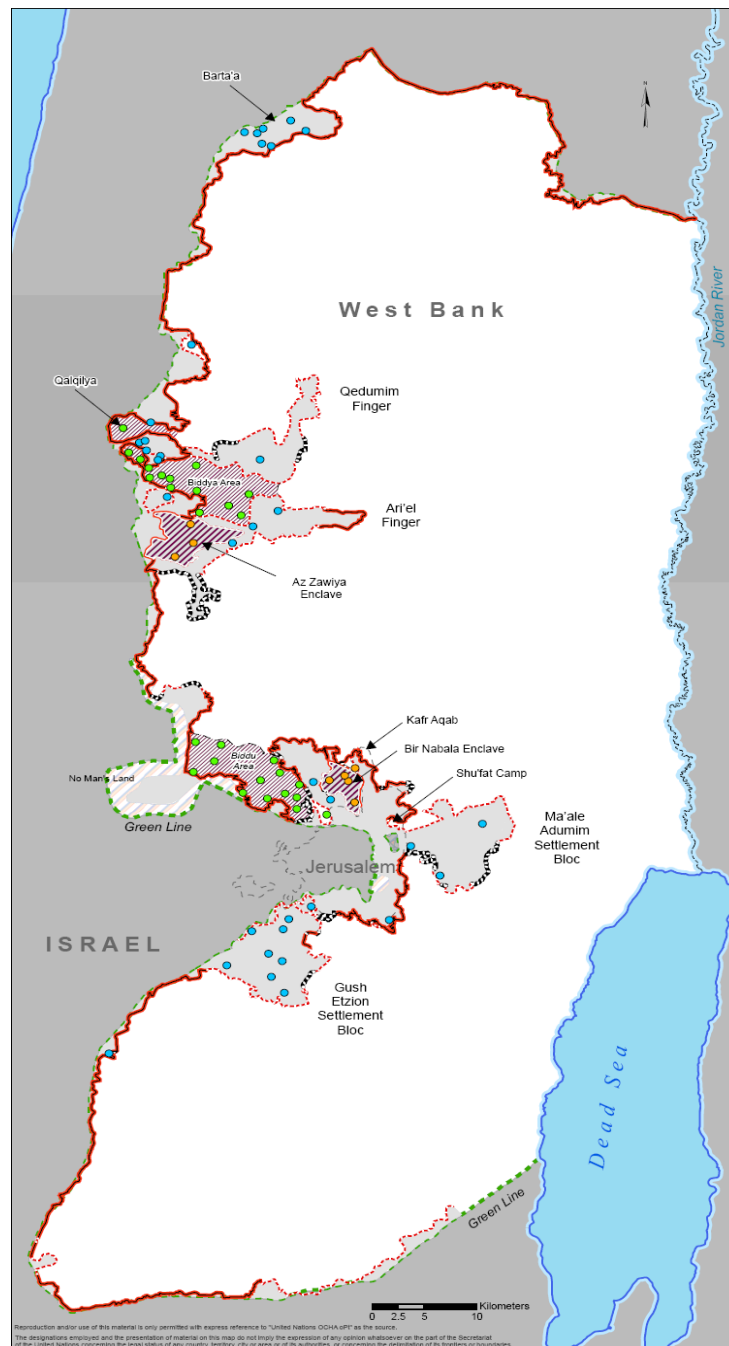
⁴² OCHA, “West Bank barrier route projections”, July 2008, available at: http://www.ochaopt.org/documents/BarrierRouteProjections_July_2008.pdf

⁴³ A/63/519.

⁴⁴ OCHA, “Five years after the International Court of Justice Advisory Opinion: A summary of the humanitarian impact of the barrier”, July 2009 (Updated August 2009), available at: http://www.ochaopt.org/documents/ocha_opt_barrier_report_july_2009_english_low_res.pdf.

⁴⁵ OCHA and UNRWA surveys quoted in OCHA Special Focus, – “Three years later: The humanitarian impact of the barrier since the International Court of Justice Opinion”, 9 July 2007, available at: http://www.ochaopt.org/documents/ICJ4_Special_Focus_July2007.pdf.

⁴⁶ A/63/519.



203. A two-tiered road system has been established throughout the West Bank in which main roads are reserved for the exclusive use of Israeli citizens while Palestinians are confined to a different (and inferior) road network. The Israeli-built roads in the West Bank form a network linking Israeli settlements with one another and to Israel proper. Palestinians are denied free access to approximately 1,500 km of roads within the West Bank.⁴⁷ Travel on these roads by

⁴⁷ Most prohibited roads comprise the major north-south and east-west routes in the West Bank. These are reserved for settlers, Israeli security forces and non-Palestinian international passport holders, including international United Nations staff.

Palestinians is completely forbidden. Partially prohibited roads are those for which a special permit is required, while restricted roads are those on which individuals travelling on such roads who are not from the local area must have a permit.⁴⁸

204. The policy of “closure”, i.e. closures of entire areas and restrictions on the movement for goods and people on the basis of alleged security threats to Israeli citizens, has been a characteristic of the Israeli control over the Gaza Strip and the West Bank since 1996 and has dramatically affected the lives of Palestinians. “Perhaps the most devastating effect of the heightened closure has been a dramatic rise in unemployment levels in the West Bank and Gaza Strip. Because the closure restricts the movement of all people (and goods) in and out of the Gaza Strip and West Bank, as well as movement within the West Bank itself, workers from these territories have been unable to reach their places of employment. According to the Palestinian Ministry of Labour, unemployment in Gaza has increased from 50 per cent to 74 per cent (and from 30 per cent to 50 per cent in the West Bank). Before the heightened closure, 22,000 Gazans (down from 80,000 in 1987) and 26,000 West Bankers had permits to work in Israel.” “Losses from unemployment amount to \$1.04 million daily for the Gaza Strip alone – \$750,000 from lost wages in Israel and \$290,000 from lost wages in local sectors. The Palestinian Bureau of Statistics (PBS) estimates that from February 25 to April 4, the Gaza Strip and West Bank lost \$78.3 million in wages and income.”⁴⁹ In June 2009, more than 40 United Nations and other humanitarian agencies urged Israel to lift its blockade of Gaza, where nearly everyone depends on international humanitarian assistance, and indiscriminate sanctions are affecting the entire population of 1.5 million⁵⁰ (see also chap. V).

205. A number of Israeli policies and measures especially since 1996 have contributed to effectively separating Gaza from the West Bank, despite the commitments contained in the Oslo I Accord by which “the two sides view the West Bank and the Gaza Strip as a single territorial unit, whose integrity will be preserved during the interim period.” The imposition of tight closures and limitations on movement has chiefly contributed to this separation.⁵¹ With the implementation of the “disengagement plan” and after Hamas secured control of the Gaza Strip, the imposition of an almost total closure has meant that direct contact is no longer possible with Palestinians from the West Bank. The arrest by Israel of members of the Palestinian Legislative Council and other Palestinian Authority officials has also resulted in the inability of many institutions to function properly and prevented Palestinians from the two areas to work together. In the past few years a new permit system has been imposed on Palestinians of the Gaza Strip living in the West Bank. Without such a permit they can be declared “illegal aliens”. In addition, the Israeli authorities – who are in control of the population registry – have stopped updating the addresses of Palestinians who have moved from Gaza to the West Bank. The new requirement

⁴⁸ A/63/519.

⁴⁹ Sara Roy, “Economic deterioration in the Gaza Strip”, Middle East Report, No. 200 (Summer 2006), available at: <http://www.merip.org/mer/mer200/roy.html>.

⁵⁰ “UN, aid agencies call for end to Israel’s two-year blockade of Gaza” (17 June 2009), available at: <http://www.un.org/apps/news/story.asp?NewsID=31174&Cr=gaza&Cr1>.

⁵¹ “The total separation of the Gaza Strip from the West Bank is one of the greatest achievements of Israeli politics.” See Amira Hass, “An Israeli achievement” (20 April 2009), available at: <http://www.bitterlemons.org/previous/bl200409ed15.html#isr2>.

for a permit is based on a person's registered address, enabling Israel to bar Palestinians whose registered address is in Gaza from moving to the West Bank. This measure has also retroactively turned many Palestinians who already live in the West Bank into illegal residents. These policies have had a devastating impact on many families that were effectively forced to live apart or, in order to live together, move to the Gaza Strip with no possibility of returning to the West Bank.⁵² Israel has bureaucratically and logistically effectively split and separated not only Palestinians in the occupied territories and their families in Israel, but also Palestinian residents of Jerusalem and those in the rest of the territory and between Gazans and West Bankers/Jerusalemmites.⁵³

206. Despite prohibitions under international humanitarian law (IHL),⁵⁴ Israel has applied its domestic laws throughout the Occupied Palestinian Territory since 1967. Notably, existing planning and construction laws were annulled and replaced with military orders, and related civil powers transferred from local authorities to Israeli institutions, with ultimate discretion resting with military commanders.⁵⁵ The application of Israeli domestic laws has resulted in institutionalized discrimination against Palestinians in the Occupied Palestinian Territory to the benefit of Jewish settlers, both Israeli citizens and others. Exclusive benefits reserved for Jews derive from the two-tiered civil status under Israel's domestic legal regime based on a "Jewish nationality," which entitles "persons of Jewish race or descendency"⁵⁶ to superior rights and privileges, particularly in land use, housing, development, immigration and access to natural resources, as affirmed in key legislation.⁵⁷ Administrative procedures qualify indigenous inhabitants of the Occupied Palestinian Territory as "alien persons" and, thus, prohibited from building on, or renting, large portions of land designated by the Government of Israel as "State land".⁵⁸

207. The two-tiered civil status under Israeli law, favouring "Jewish nationals" (*le'om yehudi*) over persons holding Israeli citizenship (*ezrahut*), has been a subject of concern under the International Covenant on Economic, Social and Cultural Rights, particularly those forms of discrimination carried out through Israel's parastatal agencies (World Zionist Organization/Jewish Agency, Jewish National Fund and their affiliates), which dominate land

⁵² B'Tselem and Hamoked, "Separated entities - Israel divides Palestinian population of West Bank and Gaza Strip", available at: http://www.btselem.org/Download/200809_Separated%20Entities_Eng.pdf.

⁵³ Amira Hass, op. cit.

⁵⁴ The Hague Regulations (art. 43).

⁵⁵ Order regarding the Towns, Villages and Buildings Planning Law (Judea and Samaria) (No. 418), 5731-1971 (QMZM 5732 1000; 5736 1422, 1494; 5741 246; 5742 718, 872; 5743, No. 57, at 50; 5744, No. 66, at 30), para. 8.

⁵⁶ Jewish National Fund, Memorandum of Association, art. 3 (c).

⁵⁷ For those holding "Jewish nationality" (as distinct from Israeli citizenship), special immigration rights and privileges are provided in the Basic Law: Law of Return (1950), as well as development and access to natural resources under the Basic Law: "Israel Lands" (1960).

⁵⁸ An alien person is defined as one who falls outside the following categories: (a) an Israeli citizen; (b) a person who has immigrated (to Israel) under the Basic Law: Law of Return; (c) someone who is entitled to the status of immigrant under the Law of Return, i.e. a Jew by descent or religion; (d) a company controlled by (a), (b) or (c).

use, housing and development.⁵⁹ The Committee on Economic, Social and Cultural Rights also has recognized that Israel's application of a "Jewish nationality" distinct from Israeli citizenship institutionalizes discrimination that disadvantages all Palestinians, in particular, refugees.⁶⁰

208. In 2007, the Committee on the Elimination of Racial Discrimination highlighted another discriminatory policy imposed by the Israeli authorities on Palestinian residents of the Occupied Palestinian Territory as well as those who are Israeli citizens (but denied a legal "nationality" status).⁶¹ The "Citizenship and Entry into Israel Law (Temporary Order)" of 31 May 2003 bars the possibility of granting Israeli citizenship and residence permits in Israel, including through family reunification, to residents of the Occupied Palestinian Territory. The Committee noted that such measures have a disproportionate impact on Arab Israeli citizens who marry Palestinians from the Occupied Palestinian Territory and wish to live together with their families in Israel. While noting the State party's legitimate objective of guaranteeing the safety of its citizens, the Committee expressed concern about the fact that these "temporary" measures have systematically been renewed and have been expanded to citizens of "enemy States".⁶²

209. Since 1967, about 750,000 Palestinians have been detained at some point by the Government of Israel, according to Palestinian human rights organizations. Currently, there are approximately 8,100 Palestinian prisoners in Israeli prisons and detention centres, roughly 550 of whom are administrative detainees.⁶³ Administrative detention is detention without charge or trial, authorized by an administrative order rather than by judicial decree. The conditions of Palestinians in Israeli detention facilities have been the subject of considerable international criticism, including concerns of torture and other ill-treatment. Palestinian detainees can normally be visited only by first-degree relatives (see chapter XXI). However, following Hamas' seizure of full control in the Gaza Strip in June 2007, the Israeli authorities suspended visits from

⁵⁹ In 1998, the Committee on Economic, Social and Cultural Rights observed "with grave concern that the Status Law of 1952 authorizes the World Zionist Organization/Jewish Agency and its subsidiaries, including the Jewish National Fund, to control most of the land in Israel, since these institutions are chartered to benefit Jews exclusively. [...] large-scale and systematic confiscation of Palestinian land and property by the State and the transfer of that property to these agencies constitute an institutionalized form of discrimination because these agencies by definition would deny the use of these properties to non-Jews. Thus, these practices constitute a breach of Israel's obligations under the Covenant." (E/C.12/1/Add.27, para. 11).

⁶⁰ In its 2003 review, the Committee on Economic, Social and Cultural Rights also observed with particular concern that "the status of 'Jewish nationality,' which is a ground for exclusive preferential treatment for persons of Jewish nationality under the Israeli Law of Return, granting them automatic citizenship and financial government benefits, thus resulting in practice in discriminatory treatment against non-Jews, in particular Palestinian refugees." (E/C.12/1/Add.90, para. 18).

⁶¹ The "Or" Commission, a panel appointed by the Israeli Government in 2000, found that Arab citizens suffer discrimination in Israel and levelled criticism at the Government for failing to give fair and equal attention to the needs of Arab citizens of Israel. See its full report at: http://elyon1.court.gov.il/heb/veadot/or/inside_index.htm (in Hebrew).

⁶² CERD/C/ISR/CO/13.

⁶³ Mission's Public hearings, Geneva (7 July 2009). Testimony of Ms. Sahar Francis, Director of Addameer, available at: <http://webcast.un.org/ramgen/ondemand/conferences/unhrc/gaza/gaza090707am1-eng.rm?start=00:00:00&end=00:47:46>

family members travelling from Gaza to Palestinian detainees in Israel, depriving more than 900 detainees of direct contact with their relatives.⁶⁴

C. Relevant political and administrative structures in the Gaza Strip and the West Bank

210. The Palestinian Legislative Council is the legislature of the Palestinian Authority; a unicameral body with 132 members, elected from 16 electoral districts in the West Bank and Gaza. Its initial composition, whose normal cycle is four years, was 88 members. In accordance with the Oslo Accords, the first Palestinian elections took place in 1996 under the supervision of international monitors. In 2000, a second round of planned elections did not take place due to the flaring-up of the second intifada. In January 2006, the second general polls took place. The elections resulted in a majority for the List of Change and Reform.⁶⁵ On 29 June, days after the capture of Gilad Shalit, the Israeli armed forces in the West Bank arrested eight Palestinian Government ministers and 26 members of the Palestinian Legislative Council.⁶⁶ The Council has been unable to operate since, as the continued detention of its members means it cannot achieve a quorum.

211. The Palestinian Basic Law was developed to function as a temporary constitution for the Palestinian Authority until the establishment of an independent State and a permanent constitution for Palestine can be drawn up. The Basic Law was passed by the Palestinian Legislative Council in 1997 and ratified by the President of the Palestinian Authority in 2002. It has been amended twice: in 2003, the political system was changed to introduce a prime minister and, in 2005, it was amended to conform to the new Election Law.⁶⁷ The legal system comprises a body of laws and decrees which include those remaining from previous centuries – Ottoman, British, Jordanian (in the West Bank), Egyptian (in the Gaza Strip) and Israeli – and legislation introduced by presidential decrees and laws passed by the Palestinian Legislative Council.⁶⁸

212. In the jurisdiction of the Palestinian Authority, the court system comprises Magistrate Courts, dealing with misdemeanours; Courts of First Instance, dealing with more serious crimes and appeals against judgements handed down by Magistrate Courts; Appeal Courts, which hear appeals against judgements of the Courts of First Instance; and the High Court, which provides the highest level of appeal. A Supreme Criminal Court was set up in 2006 to try crimes such as murder, abduction, rape, so-called honour crimes and attacks on national security. Military Courts hear cases involving members of the security forces and apply the 1979 PLO Revolutionary Code. The Attorney General and the prosecutors investigate and prosecute crimes, oversee the legality of detentions and investigate complaints by detainees. The Attorney General and the judges are nominated by the Higher Judicial Council, which is headed by the President

⁶⁴ A/63/518.

⁶⁵ The name of the list on which Hamas representatives ran for election.

⁶⁶ See chap. XXI.

⁶⁷ The Palestinian Basic Law: <http://www.palestinianbasiclaw.org>

⁶⁸ Amnesty International, “Occupied Palestinian Territories torn apart by factional strife”, available at: <http://www.amnesty.org/en/library/asset/MDE21/020/2007/en/dom-MDE210202007en.html>.

of the High Court, but appointed by the Palestinian Authority's President.⁶⁹ Since June 2007, the Gaza authorities have restructured the judiciary in violation of Palestinian laws. To replace officials who had left their jobs under instruction of the Palestinian Authority, the Gaza authorities appointed judges and prosecutors generally lacking experience and independence.⁷⁰

213. Before June 2007, there were about 12,600 Palestinian police officers in Gaza and 6,500 in the West Bank under a unified command. Palestinian civil police were operating from 10 district headquarters (including the one in Ramallah, which is also its main central command). After Hamas seized full control of the Gaza Strip, official data about police numbers are available only for the West Bank, where there are 78 police facilities, including district headquarters, general stations and posts, public order compounds, prisons and detention centres, training centres and stations for border police, tourist police, criminal investigation police and traffic police.⁷¹

214. In 2005 various security forces were consolidated into three branches: National Security, Internal Security and General Intelligence, each comprising several forces. General Intelligence includes Military Intelligence and the Military Police, and is under the direct control of the Palestinian Authority's President, as is the Presidential Guard/Force 17. National Security and Internal Security are under the jurisdiction of the Ministers of National Security and the Interior, respectively, but their heads are appointed by the Palestinian Authority's President. In 2006, the then Hamas Interior Minister established the Executive Force, mainly composed of members of al-Qassam Brigades and Hamas supporters.⁷² Since Hamas seized control in June 2007, law and order and other security functions have been performed by Hamas security organizations.⁷³ The Gaza authorities announced a series of new bodies or mechanisms to replace the Palestinian Authority's security forces and judicial institutions that have refused to operate under or alongside the Hamas administration.⁷⁴ In September 2007, the Internal Security Force was established with most of its personnel coming from al-Qassam Brigades. In October 2007, Hamas dissolved the Executive Force and absorbed its personnel into the police. Both the Internal Security Force and the police report to the minister of interior.⁷⁵ (See chapter X.)

215. Most Palestinian political parties have an armed wing or armed groups affiliated to them.⁷⁶ The two largest armed groups are al-Aqsa Brigades, the armed wing of Fatah, and al-

⁶⁹ Ibid.

⁷⁰ Human Rights Watch, *Internal Fight: Palestinian Abuses in Gaza and the West Bank* (July 2008), available at: <http://www.hrw.org/en/reports/2008/07/29/internal-fight-0>.

⁷¹ The European Union's police mission for the Palestinian Territories (2008), available at: <http://www.consilium.europa.eu/uedocs/cmsUpload/EUPOL%20COPPS%20booklet.pdf>.

⁷² See chap. VII.

⁷³ Central Intelligence Agency, *The World Fact Book 2009* (Gaza Strip), available at: <https://www.cia.gov/library/publications/the-world-factbook/geos/gz.html>.

⁷⁴ "Occupied Palestinian Territories torn apart...".

⁷⁵ Internal Fight...

⁷⁶ The armed wings of the Islamic Jihad, the Popular Front for the Liberation of Palestine and the Democratic Front for the Liberation of Palestine. There are also other smaller splinter groups.

Qassam Brigades, the armed wing of Hamas. Al-Aqsa Brigades were established by Fatah activists, including members of the Palestinian Authority's security forces, shortly after the outbreak of the second intifada. Al-Qassam Brigades were established in the early 1990s with the stated aim of conducting armed resistance to Israeli occupation.⁷⁷

D. Relevant political and administrative structures in Israel

216. In Israel, a largely ceremonial President is elected by the 120-seat Knesset for a seven-year, non-renewable term. The Prime Minister is usually the leader of the largest party or coalition in the Knesset, whose members are elected by party-list, proportional representation for four-year terms. The three main parties are the centre-left Labour Party, the centrist Kadima and the right-wing Likud.⁷⁸

217. Following legislative elections, the President assigns a Knesset member – traditionally the leader of the largest party – the task of forming a governing coalition.

218. Israel has no formal constitution; some of the functions of a constitution are fulfilled by the Declaration of Establishment (1948), the Basic Laws of the parliament (Knesset) and the Israeli Citizenship Law.

219. The court system comprises Magistrates' Courts, which are courts of first instance in criminal and civil matters; District Courts, which are courts of first instance with jurisdiction over serious criminal offences which carry the death penalty or more than seven years' imprisonment and act as appellate courts for the judgments of the Magistrates' Court; and the Supreme Court, which is the highest judicial instance of the country.⁷⁹ The Supreme Court hears direct petitions from Israeli citizens. It also hears cases related to Palestinian residents of the West Bank and Gaza Strip sitting as the High Court of Justice.⁸⁰ Palestinian civilians charged with security-related and other criminal offences are, however, commonly tried in the Israeli military court system. Since 1967, more than 200,000 cases have been brought before military courts, where Palestinian civilians have been prosecuted and judged by the military authorities. About half the prisoners currently being held in Israel have been sentenced to prison terms by military courts.⁸¹

⁷⁷ "Occupied Palestinian Territories torn apart...".

⁷⁸ Freedom House. Country report: Israel (2009), available at: <http://www.freedomhouse.org/template.cfm?page=22&country=7630&year=2009>.

⁷⁹ The State of Israel – The Judicial Authority, at: <http://elyon1.court.gov.il/eng/home/index.html>.

⁸⁰ "As the High Court of Justice, the Supreme Court rules as a court of first instance, primarily in matters regarding the legality of decisions of State authorities: Government decisions, those of local authorities and other bodies and persons performing public functions under the law. It rules on matters in which it considers it necessary to grant relief in the interests of justice, and which are not within the jurisdiction of another court or tribunal." See The State of Israel – Judicial Authority (The Supreme Court), at: <http://elyon1.court.gov.il/eng/rashut/maarechet.html>.

⁸¹ See Yesh Din – Volunteers for Human Rights, Backyard Proceedings: The Implementation of Due Process Rights in the Military Courts in the Occupied Territories (December 2007), available at: <http://www.yesh-din.org/site/images/BackyardProceedingsEng.pdf>.

220. The Israeli police is a civilian force mandated to fight crime, control traffic and maintain public safety. The border police (*Magav*) is the military branch of the Israeli police, with combat, counter-terrorism and riot-control units.

221. Branches of the military are the Israeli Defense Forces (IDF), Israeli Naval Forces (INF) and the Israeli Air Force (IAF). The Israeli military is headed by the Chief of General Staff under the Minister of Defense. The structure of the Israeli army comprises four regional commands: (a) the Northern Command; (b) the Central Command; (c) the Southern Command; and (d) the Home Front Command. The Coordinator of Government Activities in the Territories (COGAT) – formerly known as the “Civil Administration” – is a unit in the Israeli Ministry of Defense that administers areas of the West Bank and coordinates with international organizations operating in the West Bank and the Gaza Strip.

222. The Israeli intelligence services are: (a) the Institute for Intelligence and Special Operations (*Mossad*); (b) the Israeli Security Agency (formerly the General Security Services) or the Israeli internal security service (*Shin Bet* or *Shabak*); and (c) the Military Intelligence (*Aman*).

III. EVENTS OCCURRING BETWEEN THE “CEASEFIRE” OF 18 JUNE 2008 BETWEEN ISRAEL AND THE GAZA AUTHORITIES AND THE START OF ISRAEL’S MILITARY OPERATIONS IN GAZA ON 27 DECEMBER 2008

223. As mentioned in chapter I, in order to implement its mandate the Mission decided to focus primarily on events, actions or circumstances that had occurred since 19 June 2008, when a ceasefire was agreed between the Government of Israel and Hamas. Accordingly, both in the context of its mandate and in order to be informed about the environment in which the Israeli military operations in the Gaza Strip took place, the Mission reviewed incidents relevant to the ceasefire that were reported to have taken place between 19 June 2008 and the start of Israel’s military operations in the Gaza Strip. Information about these incidents, which are recorded in chronological order, was gathered primarily from documents in the public domain and may not represent all incidents that occurred during this period.⁸²

224. On 18 June 2008, the Gaza authorities and Israel announced a six-month ceasefire in an agreement brokered by Egypt.⁸³ The ceasefire came into effect on 19 June 2008 at 6 a.m.⁸⁴

⁸² Sources include public statements issued by the Gaza authorities, Palestinian armed groups and Israel, reports of the United Nations, national and international NGOs and the media.

⁸³ The ceasefire was officially termed “a period of calm” (Tahdiyah in Arabic). It has also been referred to as “security calm” and “lull”.

⁸⁴ Prime Minister Olmert’s comments on the calm in the south, Press Release, 18 June 2008, Prime Minister’s Office, available at: <http://www.pmo.gov.il/PMOEng/Archive/Press+Releases/2008/06/spokecalm180608.htm>; Al Aham Weekly, “Calm for now”, 19 June 2008, available at: <http://weekly.ahram.org.eg/2008/902/eg2.htm>; Felesteen Newspaper, “Gaza: Hamas: the Tahdiyah is the fruit of the resilience and resistance of the (resistance) groups and its unity”, 18 June 2009, available at: <http://www.felesteen.ps/file/pdf/2008/06/18/1.pdf>; 19 June 2009; Felesteen Newspaper, Gaza, Tahdiya starts today accompanied with international and popular welcoming, <http://www.felesteen.ps/file/pdf/2008/06/19/1.pdf>. See chap. II.

225. The terms of the ceasefire agreement were not set out in any formal, written document and, according to recent analysis, the Gaza authorities' and Israel's understanding of the terms differed substantially.⁸⁵ According to information reported by OCHA, the agreement included a commitment by the Gaza authorities to halt attacks by Palestinian armed groups against Israel immediately and a commitment by Israel to cease its military operations in Gaza. Israel also reportedly agreed to ease its blockade of Gaza and gradually lift its ban on the import of a large number of commodities.⁸⁶ According to Egyptian sources quoted by the International Crisis Group,⁸⁷ after three weeks the two sides were to commence negotiations for a prisoner exchange and the opening of the Rafah crossing.

226. The agreement was made in respect to the territory of the Gaza Strip only, but Egypt reportedly undertook to work to expand the ceasefire to the West Bank after the initial six-month ceasefire had elapsed.⁸⁸

227. The first incident relevant to the ceasefire reportedly took place on 23 June 2008, when a 67-year-old Palestinian civilian was injured when the Israeli military stationed at the border north-west of Beit Lahia opened fire on a group of Palestinians trying to collect fire wood near the border. Also on 23 June, two mortar shells were reportedly fired from central Gaza. One landed near the Nahal Oz crossing and the other in the Negev desert; no injuries were reported.⁸⁹

228. Between 18 and 24 June 2008, the Karni (al-Mintar) crossing conveyor belt was opened for four days for wheat and animal feed but was closed to all other imports and exports. The Erez crossing was open for six days to allow the movement of diplomats, international humanitarian workers and critical medical cases. OCHA indicated that senior Palestinian businessmen were also allowed to cross. The Sufa crossing was open for five days during the week ending 24 June 2008, while the Kerem Shalom and Rafah crossings remained closed. The Nahal Oz energy pipelines were open on the six scheduled operating days.⁹⁰

⁸⁵ See International Crisis Group, "Ending the war in Gaza", Middle East Briefing No. 26, 5 January 2009, p. 3, available at: http://www.crisisgroup.org/library/documents/middle_east__north_africa/arab_israeli_conflict/b26_ending_the_war_in_gaza.pdf.

⁸⁶ OCHA, Protection of Civilians Weekly Report (18–24 June 2008), available at: http://www.ochaopt.org/documents/Weekly_Briefing_Notes_265_English.pdf; see also "Ending the war...", which also notes that crossing points were to be opened after 72 hours (6 a.m. on 22 June 2008) to allow 30 per cent more goods into Gaza and, on 1 July 2009, all crossings were to be opened to allow for the transfer of goods into Gaza (footnote 1). It is the Mission's understanding that, in relation to the transfer of goods, the agreement did not include materials that could be used to make explosives or projectiles.

⁸⁷ See "Ending the war...".

⁸⁸ "Ending the war...", footnote 1. See also The Jerusalem Post, "End of truce? 3 Kassams hit w. Negev", 24 June 2008, available at <http://www.jpost.com/servlet/Satellite?cid=1214132667653&pagename=JPost%2FJPostArticle%2FShowFull>.

⁸⁹ OCHA, Protection of Civilians Weekly Report (18–24 June 2008).

⁹⁰ Ibid.

229. Shortly after midnight on 24 June 2008, a mortar fired from Gaza landed in the Negev near the Karni checkpoint, causing no injuries or damage.⁹¹ No group claimed responsibility for the attack.⁹²

230. At dawn on 24 June 2008, the Israeli armed forces launched a raid in the West Bank town of Nablus in which an Islamic Jihad activist and another Palestinian man were killed.⁹³ According to statements reportedly made by the Palestinian armed group Islamic Jihad, it responded by firing three Qassam rockets into Israel, which landed in the western Negev desert.⁹⁴ It added: “We cannot keep our hands tied when this is happening to our brothers in the West Bank”, while a Gaza authorities spokesman was quoted as saying that the rocket attack came as a result of “Israeli provocation” but that Hamas, as the Gaza authorities, was “committed to the security calm”.⁹⁵ In Israel, the Foreign Ministry spokesperson termed the rocket attacks “a grave violation of the ceasefire”⁹⁶ and said it would consider reimposing economic sanctions.⁹⁷

231. On 26 June 2008, Israel’s Defense Ministry ordered the reclosure of the Gaza border crossings, save for special humanitarian cases, in response to the rocket attacks two days previously.⁹⁸ The Gaza authorities accused Israel of violating the ceasefire, stating “if the crossings remain closed, the truce will collapse”.⁹⁹

232. Later on 26 June 2008, one rocket was fired from Gaza into Israel for which the Palestinian armed group al-Aqsa Martyrs’ Brigades claimed responsibility.¹⁰⁰ As reported by the Xinhua news agency, the armed group stated that “the truce must include the West Bank and all

⁹¹ Rianovosti, “Mortar attack from Gaza hit Israel”, 24 June 2008, available at: <http://en.rian.ru/world/20080624/111867958.html>; “End of truce?...”.

⁹² “Mortar attack...”.

⁹³ “End of truce?...”; The New York Times, “Rockets hit Israel, breaking Hamas truce”, 25 June 2008, available at <http://www.nytimes.com/2008/06/25/world/middleeast/25mideast.html>

⁹⁴ “End of truce?...”.

⁹⁵ Ibid.

⁹⁶ Ibid.

⁹⁷ BBC News, “Rockets ‘violated Gaza ceasefire’”, 24 June 2008, available at: http://news.bbc.co.uk/2/hi/middle_east/7470530.stm

⁹⁸ Xinhua News, “Israeli FM calls for immediate military response to Qassam attacks”, 26 June 2008.

⁹⁹ Gaza authorities, “The Government: Closing the crossings is an infringement of truce, and we call Egypt to interpose”, press statement (25 June 2008), available at: <http://www.moi.gov.ps/en/?page=633167343250594025&Nid=4702>; see also “Israeli FM calls for immediate military response...”.

¹⁰⁰ OCHA, Protection of Civilians Weekly Report (25 June–1 July 2008), available at: http://www.ochaopt.org/documents/Weekly_Briefing_Notes_266.pdf.

sorts of aggression must stop”.¹⁰¹ The Israeli Foreign Minister commented, “I do not care which organization fired the rocket, Israel must respond militarily and immediately.”¹⁰²

233. On 27 June 2008, the al-Aqsa Martyrs’ Brigades claimed responsibility for firing mortar shells into Israel, one of which landed near Sderot. The head of the Gaza authorities, Ismail Haniyah, called on all the Palestinian factions to adhere to the ceasefire, stating that “the factions and the people accepted the lull in order to secure two interests – an end to aggression and the lifting of the siege”. A spokesman for the Gaza authorities was quoted as saying that it considered the rocket attacks to be “unpatriotic” and that Hamas was considering the possibility of taking action against those perpetrating the attacks against Israel.¹⁰³

234. On 28 June 2008, mortar shells were reportedly fired at the Karni crossing but no group claimed responsibility. On 29 June 2008, the crossings into Gaza were closed,¹⁰⁴ save for the delivery of fuel.

235. On 30 June 2008, Israel reported that a rocket fired from Gaza fell near the kibbutz of Miflasim. No group claimed responsibility and Israel confirmed that as of 1 July 2008 no rocket fragments had been located. Israel closed the crossings which had been reopened the day before. The Gaza authorities rejected the assertion that a rocket had in fact been fired and called the closure of the crossings “unjustified”.¹⁰⁵

236. On several occasions during the last two weeks of June, the Israeli navy fired at Palestinian fishermen off the Gaza coast, forcing them to return to shore.¹⁰⁶

237. During the month of June, the number of truckloads of goods allowed into Gaza represented only 17 per cent of the number that entered Gaza in May 2007, before Hamas seized control of the Gaza Strip. No exports had been allowed out of Gaza by Israel since December 2007.¹⁰⁷

¹⁰¹ Xinhua News, “Israeli FM calls for immediate military response ...”.

¹⁰² Israel Ministry of Foreign Affairs: “FM Livni: Israel will not tolerate violations of the calm”, press release (26 June 2008), available at: <http://www.mfa.gov.il/MFA/About+the+Ministry/MFA+Spokesman/2008/Israel%20will%20not%20tolerate%20violations%20of%20the%20calm%2026-Jun-2008>.

¹⁰³ Ynet News, “Haniyeh: All Palestinian factions should honor truce”, 27 June 2008; <http://www.ynetnews.com/articles/0,7340,L-3561133,00.html>.

¹⁰⁴ Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center, “The six months of the lull arrangement”, December 2008.

¹⁰⁵ The Guardian, “Israel closes Gaza crossing after reported rocket attack”, 1 July 2008, available at: <http://www.guardian.co.uk/world/2008/jul/01/israelandthepalestinians.middleeast>.

¹⁰⁶ OCHA, Protection of Civilians Weekly Report (18–24 June 2008) and Protection of Civilians Weekly Report (25 June–1 July 2008).

¹⁰⁷ OCHA, The Humanitarian Monitor, No. 26 (June 2008), available at http://www.ochaopt.org/documents/HM_June_2008.pdf.

238. On 1 July 2008, a spokesman for the Gaza authorities accused the Israeli armed forces of shooting a 65-year-old Palestinian woman who was living near the border. Israel said that it was investigating the claim.¹⁰⁸

239. On 2 July 2008, Israel reopened the Sufa and Karni crossings to allow passage of goods into Gaza, while 45 medical evacuations were allowed through the Erez crossing.¹⁰⁹

240. Also on 2 July 2008, several thousand Palestinians attempted to break into the Rafah terminal and cross into Egypt. Egyptian security forces responded with water cannons and tear gas to force them back into Gaza.¹¹⁰

241. On 3 July 2008, a rocket launched from Gaza struck north of Sderot and Israel closed the crossings into Gaza for the day on 4 July 2008 in response.¹¹¹

242. On 7 July 2008, a mortar shell fired from Gaza landed near the Karni crossing, on the Gaza side.¹¹² On the same day, Israeli forces began raids on institutions in Nablus that it believed to be linked to Hamas. Over the following four days, a mosque, a newspaper and other offices were raided, and a medical centre and the Nafha Prisoners' Association were closed down.¹¹³

243. On 8 July 2008, two mortars were fired from Gaza,¹¹⁴ one landing at the Sufa crossing and the other inside the Gaza Strip. Israel closed the crossings briefly. Following the firing of another mortar shell into Israel, the crossing was again closed.

244. On 9 July 2008, Israeli forces shot dead a Hamas member near the West Bank city of Jenin. This led Palestinian Authority Prime Minister Salam Fayyad to warn that the Israeli military actions in the West Bank were undermining the Palestinian Authority and its efforts to improve security.¹¹⁵

245. On 10 July 2008, the Israeli armed forces shot and killed a member of al-Aqsa Martyrs' Brigades near the Kissufim crossing. The Israeli armed forces stated that warning shots had been fired. In response, the al-Aqsa Martyrs' Brigades fired two rockets into Israel which landed in an open area. Sources inside Gaza said that the Gaza authorities had arrested those responsible for

¹⁰⁸ "Israel closes Gaza crossings after reported rocket...".

¹⁰⁹ Government of Israel Ministry of Foreign Affairs, "Humanitarian Assistance to Gaza during the period of calm (19 June – Dec 18, 2009)", 26 December 2008, available at http://www.mfa.gov.il/MFA/Government/Communiques/2008/Humanitarian_assistance%20to_Gaza_since_June_19_calm_understanding_18_Nov_2008.

¹¹⁰ OCHA, Protection of Civilians Weekly Report (2–8 July 2008), available at: http://www.ochaopt.org/documents/Weekly_Briefing_Notes_267.pdf.

¹¹¹ "The six months...".

¹¹² OCHA, Protection of Civilians Weekly Report (2–8 July 2008).

¹¹³ PCHR, "PCHR condemns IOF measures against Nablus charities", press release (8 July 2009), available at: <http://www.pchrgaza.org/files/PressR/English/2008/62-2008.html>; BBC News, "Gaza militants fire two rockets", 10 July 2008, available at: http://news.bbc.co.uk/2/hi/middle_east/7500322.stm

¹¹⁴ "The six months...".

¹¹⁵ "Gaza militants fire...".

firing the rockets and the al-Aqsa Martyrs' Brigades stated that its members had been "abducted" by Hamas.¹¹⁶

246. According to Israeli sources, on 12 July 2008 a rocket launched from the Gaza Strip struck an open area in Sha'ar Hanegev and on 13 July 2008 two mortar shells fired fell short inside the Gaza border. This led to Israel closing the Nahal Oz and Sufa crossings. On 15 July 2008, a mortar shell struck territory inside Israel, while three rockets misfired and landed inside the Gaza Strip, in separate incidents on 25, 29 and 31 July 2008.¹¹⁷

247. On 29 July, a 10-year-old boy was shot in the head and killed by the Israeli Border Police during a demonstration against the wall in Ni'lin in the West Bank. During a clash with Israeli Border Police the following day, after the funeral in Ni'lin, a 17 year-old boy was shot in the head and died on 4 August.¹¹⁸

248. During July 2008, the amount of commodities allowed into Gaza by Israel was assessed by OCHA as remaining "far below the actual needs" and was "restricted to certain selected essential humanitarian items". The imports were 46 per cent of those entering Gaza in May 2007, prior to the Hamas' seizing control of the Gaza Strip. As a result of the restriction on imports and total ban on exports, 95 per cent of Gaza's industries remained closed.¹¹⁹

249. In August 2008, according to Israeli sources, three mortars and eight rockets were fired into Israel from the Gaza Strip. They included a rocket which struck Sderot on 11 August 2008,¹²⁰ prompting Israel's closure of the crossings, as well as a rocket fired on 20 August 2008, which once again led to the closure of the border crossings.¹²¹

250. During August, there was a reduction in the number of truckloads carrying goods into Gaza. August imports represented 70 per cent of the July 2008 imports and 23 per cent of the May 2007 level.¹²²

251. In September 2008, three mortars and one rocket were fired into Israel from the Gaza Strip, according to Israeli sources.¹²³

¹¹⁶ Ibid.; Reuters, " Hamas arrests first rocket squads since truce", 10 July 2008, available at: <http://www.reuters.com/article/latestCrisis/idUSL10355564>.

¹¹⁷ "The six months...".

¹¹⁸ Al-Haq, "Right to life of Palestinian children disregarded in Ni'lin as Israel's policy of wilful killing of civilians continues", press release (7 August 2008), available at: <http://www.alhaq.org/etemplate.php?id=387>.

¹¹⁹ OCHA, The Humanitarian Monitor, No. 27 (July 2008), available at: http://www.ochaopt.org/documents/Humanitarian_Monitor_July_2008.pdf.

¹²⁰ "The six months...".

¹²¹ Office of the United Nations High Commissioner for Refugees (UNHCR), "Israel-Occupied Palestine Territories: Rocket attack throws Gaza crossing plan into jeopardy", 20 August 2008, available at: <http://www.unhcr.org/refworld/topic,45a5199f2,4874797e3b,48ae79b81e,0.html>.

¹²² OCHA, The Humanitarian Monitor, No. 28 (August 2008), available at http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_08_2008_english.pdf.

252. During September, the movement of goods and people in and out of Gaza through the crossing increased, with levels of imports at 37 per cent of the May 2007 level. The Sufa crossing closed on 13 September 2008 and goods were redirected through Kerem Shalom, as Israel stated that it intended to have only one goods crossing open at any one time.¹²⁴

253. In October 2008, Israeli sources stated that only one rocket and one mortar were fired into Israel from the Gaza Strip.¹²⁵ There was a 30 per cent decline in imports allowed into Gaza by Israel as compared to September 2008, partly due to the closure of the crossings during the Jewish holidays. Imports were at 26 per cent of the level of May 2007. Tunnels under the Rafah border reportedly proliferated during this period and allowed the entry of otherwise unavailable goods. Collapsing tunnels continued to cause casualties.¹²⁶

254. After two months in which few incidents were reported, the ceasefire began to founder on 4 November 2008 following an incursion by Israeli soldiers into the Gaza Strip, which Israel stated was to close a cross-border tunnel that in Israel's view was intended to be used by Palestinian fighters to kidnap Israeli soldiers. The soldiers attacked a house in the Wadi al-Salqa village, east of Deir al-Balah, which was alleged to be the starting point of the tunnel, killing a member of the al-Qassam Brigades. Several Israeli soldiers were wounded. In response, the al-Qassam Brigades fired more than 30 Qassam rockets into Israel. Israel responded with an air strike that left a further five members of the al-Qassam Brigades dead. Both sides blamed the other for the escalation of violence. Hamas also accused Israel of trying to disrupt talks between Hamas and Fatah that were scheduled for the following week in Cairo.¹²⁷ Israel closed the crossings into the Gaza Strip on 5 November 2008 and they remained closed until 24 November 2008, when they were opened briefly to allow humanitarian supplies to enter.¹²⁸

255. According to the Israeli internal intelligence service (known as *Shin Bet* or *Shabak*), 22 rockets and nine mortars were fired into Israel between 5 and 12 November 2008.¹²⁹ The crossings into the Gaza Strip remained closed during this time. On 14 November 2008, Amnesty

¹²³ "The six months...".

¹²⁴ OCHA, The Humanitarian Monitor, No. 29 (September 2008), available at: http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2008_10_1_english.pdf.

¹²⁵ Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center, "Summary of rocket fire and mortar shelling in 2008", January 2009.

¹²⁶ OCHA, The Humanitarian Monitor, No. 30 (October 2008), available at: http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_oct_2008_10_english.pdf.

¹²⁷ The Guardian, "Gaza truce broken as Israeli raid kills six Hamas gunmen", 5 November 2008, available at: <http://www.guardian.co.uk/world/2008/nov/05/israelandthepalestinians>; The Times, "Six die in Israeli attack over Hamas 'tunnel under border to kidnap soldier'", 6 November 2008, available at http://www.timesonline.co.uk/tol/news/world/middle_east/article5089940.ece. A Hamas spokesman was quoted as saying "The Israelis began this tension and they must pay an expensive price" while an Israeli spokesman stated "this operation was in response to a Hamas intrusion of the quiet".

¹²⁸ JTA, "Israel closes Gaza crossings after attack", 25 November 2008, available at http://jta.org/news/article-print/2008/11/25/1001205/israel-closes-gaza-crossings-after-attack?TB_iframe=true&width=750&height=500.

¹²⁹ Israel Security Agency, "Weekly update, November 5-12, 2008", available at <http://www.shabak.gov.il/SiteCollectionImages/english/TerrorInfo/weekly-update-12-11-08-En.pdf>.

International issued a press release calling on Israel to allow humanitarian aid and medical supplies to enter.¹³⁰

256. On 17 November 2008, Amnesty International issued another press release, noting that on that day Israel had allowed a limited number of trucks carrying humanitarian assistance to enter Gaza. Amnesty International also noted that an additional ten members of Palestinian armed groups had been killed by Israeli air strikes since the killing of six members of Palestinian armed groups by Israel on 4 November 2008.¹³¹

257. Palestinian armed groups fired rockets and mortars into Israel throughout November 2008. According to Israeli sources, 125 rockets were fired into Israel during November 2008 (compared to one in October) and 68 mortar shells were fired (also compared to one in October).¹³² On 14 November 2008, a resident of Sderot was lightly injured by shrapnel.

258. Israel closed the crossings into Gaza for most of November 2008, although 42 trucks of humanitarian aid were permitted to cross on 24 November 2008 and about 60 on 26 November 2008.¹³³ According to OCHA, the number of trucks allowed into Gaza in November 2008 was 81 per cent lower than in October 2008. Shortages forced most of Gaza's bakeries to close and UNRWA suspended food distribution for five days to 750,000 Gazans owing to a lack of food supplies.¹³⁴

259. Rocket and mortar fire by Palestinian armed groups continued unabated throughout December 2008.¹³⁵ According to Israeli sources, 71 rockets and 59 mortars were fired into Israel between 1 and 18 December.¹³⁶ The number of rockets and mortars fired from the Gaza Strip into Israel spiked,¹³⁷ following the killing by the Israeli armed forces of an Islamic Jihad

¹³⁰ Amnesty International, "Israel blocks deliveries to Gaza", 14 November 2008, available at <http://www.amnesty.org/en/news-and-updates/news/israeli-army-blocks-deliveries-gaza-20081114>.

¹³¹ Amnesty International, "Israeli Army relaxes restrictions on humanitarian aid to Gaza", 17 November 2008, available at <http://www.amnesty.org/en/news/news-and-updates/israeli-army-relaxes-restrictions-humanitarian-aid-gaza-20081117>.

¹³² "Summary of rocket fire...".

¹³³ JTA, "Israel closes Gaza crossings after attack..." and "Kassams continue to strike Negev", 27 November 2008, available at http://jta.org/news/article-print/2008/11/27/1001233/kassams-continue-to-strike-negev?TB_iframe=true&width=750&height=500.

¹³⁴ OCHA The Humanitarian Monitor, No. 31 (November 2008), available at: http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2008_11_1_english.pdf.

¹³⁵ See, for example, JTA, "Kassams fired again from Gaza", 3 December 2008, available at: http://jta.org/news/article-print/2008/12/03/1001316/attacks-from-gaza-increase?TB_iframe=true&width=750&height=500; JTA, "Rockets barrage Israel over weekend", 7 December 2008, available at: http://jta.org/news/article-print/2008/12/07/1001377/rockets-barrage-israel-over-weekend?TB_iframe=true&width=750&height=500; JTA, "Three injured in Kassam attack", 17 December 2008, available at: http://jta.org/news/article/2008/12/17/1001621/more-kassams-rain-on-israel#comment_72450; and JTA, "Kassam rocket hits Sderot home", 21 December 2008, available at: <http://jta.org/news/article/2008/12/21/1001713/kassam-rocket-hits-sderot-home>.

¹³⁶ "Summary of rocket fire...".

¹³⁷ Ibid.

commander in the West Bank on 15 December 2008.¹³⁸ One of the rockets launched from the Gaza Strip on 17 December 2008 struck the car park of a shopping centre in Sderot, injuring three people and causing significant damage to property.¹³⁹

260. On 2 December 2008, the Israeli air force killed two Palestinian children and seriously injured two others when one of its aircraft fired a missile at a group of Palestinian children who were sitting in a street near Rafah. An Israeli military spokesman admitted responsibility for the attack and claimed that it was targeting members of Palestinian armed groups. Eyewitnesses informed the Palestinian Centre for Human Rights (PCHR) that the victims were civilians.¹⁴⁰

261. On 5 December 2008, an Israeli aircraft fired a missile at members of what PCHR described as “activists of the Palestinian resistance” in Jabaliyah refugee camp in the northern Gaza Strip, seriously wounding one person.¹⁴¹ On 18 December, an Israeli air strike killed a man in Beit Lahia.¹⁴² The same day, Israeli aircraft attacked a car maintenance workshop in the city of Khan Yunis in the southern Gaza Strip. The workshop was destroyed and a number of nearby houses were damaged.¹⁴³

262. On 18 December 2008, the Gaza authorities declared that the truce was at an end and would not be renewed on the grounds that Israel had not abided by its obligations to end the blockade on Gaza.¹⁴⁴

263. On 21 December 2008, a rocket hit a house in Sderot and a foreign worker was injured as a result of a rocket striking Ashkelon.¹⁴⁵ Israel responded with air strikes into Gaza City, wounding a Palestinian infant in her home.¹⁴⁶ Israel’s Prime Minister and Defense Minister stated that Israel would no longer practise restraint following the rocket attacks.¹⁴⁷

¹³⁸ JTA, “Kassams hit Israel after terrorist killed”, 16 December 2008, available at: http://jta.org/news/article-print/2008/12/16/1001575/kassams-hit-israel-after-terrorist-killed?TB_iframe=true&width=750&height=500.

¹³⁹ “Three injured...”.

¹⁴⁰ PCHR, “Weekly report on Israeli human rights violations in the Occupied Palestinian Territory”, No. 48/2008 (24 November – 3 December 2008), available at: http://www.pchrgaza.org/files/W_report/English/2008/04-12-2008.htm.

¹⁴¹ PCHR, “Weekly report on Israeli human rights violations in the Occupied Palestinian Territory”, No. 49/2008 (4-17 December), available at: http://www.pchrgaza.org/files/W_report/English/2008/18-12-2008.htm. The Mission notes the lack of clarity as to whether these were armed members of the Palestinian armed groups or civilians.

¹⁴² Al-Jazeera, “Israeli missile kills Gaza man”, 18 December 2008, available at: <http://english.aljazeera.net/news/middleeast/2008/12/2008121721428340460.html>.

¹⁴³ PCHR, “Weekly report on Israeli human rights violations in the Occupied Palestinian Territory”, No. 50/2008 (18–23 December 2008), available at: http://www.pchrgaza.org/files/W_report/English/2008/24-12-2008.htm.

¹⁴⁴ Reuters, “ Hamas declares end to ceasefire with Israel in Gaza”, 18 December 2008, available at: <http://www.reuters.com/article/topNews/idUSLI75623220081218>.

¹⁴⁵ “Kassam rocket...”.

¹⁴⁶ “Weekly report...”, No. 50/2008.

¹⁴⁷ “Kassam rocket...”.

264. On 22 December 2008, a 24-hour ceasefire was declared at Egypt's request. Three rockets and one mortar were launched from Gaza that day. Israel opened the border to allow a limited amount of humanitarian aid to enter Gaza.¹⁴⁸

265. By 23 December 2008, rocket and mortar fire was again increasing significantly; 30 rockets and 30 mortars were fired into Israel on 24 December 2008.¹⁴⁹ The Israeli armed forces continued to conduct air strikes on positions inside Gaza and the crossings into Israel remained closed. On 26 December 2008, a rocket launched from Gaza fell short and hit a house in northern Gaza killing two girls, aged 5 and 12.¹⁵⁰

266. The intensified closure regime on the Gaza crossings which began in November continued in December, with imports restricted to very basic food items and limited amounts of fuel, animal feed and medical supplies. According to OCHA, many basic food items were no longer available and negligible amounts of fuel were allowed to enter Gaza. This resulted in the health sector in Gaza deteriorating further into a critical condition, with hospitals continuing to face problems as a result of power cuts, low stocks of fuel to operate back-up generators, lack of spare parts for medical equipment and shortages of consumables and medical supplies.¹⁵¹ On 18 December 2008, UNRWA once again suspended its food distribution programme for the rest of the month, owing to shortages.¹⁵²

267. On 27 December 2008, Israel started its military operations in Gaza.¹⁵³

IV. APPLICABLE LAW

268. The Mission's mandate covers all violations of international human rights law (IHRL) and international humanitarian law (IHL) that might have been committed at any time, whether before, during or after, in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 to 18 January 2009. The Mission has therefore carried out its task within the framework of general international law, in particular IHRL and IHL.

A. Self-determination

269. A fundamental element in the legal framework is the principle of self-determination of peoples, derived from the Charter of the United Nations, Article 1, accepted as constituting

¹⁴⁸ JTA, " Hamas curtails launching rockets for 24 hours", 22 December 2008, available at: http://jta.org/news/article-print/2008/12/22/1001726/hamas-stops-launching-rockets-for-24-hours?TB_iframe=true&width=750&height=500; "Summary of rocket fire..."

¹⁴⁹ "Summary of rocket fire..."

¹⁵⁰ Fox News, "Palestinian rockets kill 2 schoolgirls in Gaza", 26 December 2008, available at <http://www.foxnews.com/story/0,2933,473066,00.html>.

¹⁵¹ OCHA, The Humanitarian Monitor, No. 32 (December 2008), available at: http://www.ochaopt.org/documents/ocha_opt_humanitarian_monitor_2008_12_1_15_english.pdf.

¹⁵² UNRWA, "UNRWA suspends food distribution in Gaza", press release (18 December 2008), available at: http://www.un.org/unrwa/news/releases/pr-2008/gaz_18dec08.html.

¹⁵³ The New York Times, "Israelis say strikes against Hamas will continue", 28 December 2008, available at: http://www.nytimes.com/2008/12/28/world/middleeast/28mideast.html?_r=2&hp.

customary international law, and set out as a right of peoples in the two International Covenants on Human Rights (common article 1 of the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)). The right of the Palestinian people to self-determination has been affirmed by the General Assembly and the International Court of Justice in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.¹⁵⁴ Self-determination has special prominence in the context of the recent events and military hostilities in the region, because they are but one episode in the long occupation of the Palestinian territory. The right to self-determination has an *erga omnes* character whereby all States have the duty to promote its realization. This is also recognized by the United Nations General Assembly, which has declared that peoples who resist forcible action depriving them of their right to self-determination have the right to seek and receive support from third parties.¹⁵⁵ Those who take action amounting to military force must comply with IHL.

B. International humanitarian law

270. All parties to the armed conflict are bound by relevant rules of IHL, whether of conventional or customary character. International humanitarian law comprises principles and rules applicable to the conduct of military hostilities and provides for restraints upon the conduct of military action so as to protect civilians and those that are *hors de combat*. It also applies to situations of belligerent occupation.

271. Israel is a party to the four Geneva Conventions of 12 August 1949, but has not ratified their Additional Protocols I or II on the protection of victims of armed conflict. In addition, Israel is a party to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects, as well as its Protocol I on Non-Detectable Fragments, both of 10 October 1980.

272. Many of the rules contained in the Fourth Hague Convention respecting the Laws and Customs of War on Land and the Regulations annexed to it, and the four Geneva Conventions and their Additional Protocols are now part of customary international law. Israel's High Court of Justice has confirmed that Israel must adhere to those rules and principles reflected in the Fourth Geneva Convention, the Regulations annexed to the Fourth Hague Convention and the customary international law principles reflected in certain provisions of Additional Protocol I to the Geneva Conventions of 1949. The Government of Israel accepts that, although it is not a party to the Additional Protocol I, some of its provisions accurately reflect customary international law.¹⁵⁶ Under the rules of State responsibility, Israel is responsible for any violations of international law attributable to it. Specifically, under the Fourth Geneva

¹⁵⁴ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004, p. 135, paras. 149, 155 and 159.

¹⁵⁵ *Ibid.*, para. 156; Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970).

¹⁵⁶ "The operation in Gaza...", para. 31.

Convention, article 29, “the Party to a conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.”

273. The legal framework applicable to situations of occupation includes provisions contained in the Hague Regulations (especially articles 42–56), the Fourth Geneva Convention (especially articles 47–78) and Additional Protocol I, and customary international law. The successive steps in the development of that legal framework represent attempts by the international community to protect human beings better from the effects of war while giving due account to military necessity.

274. Article 42 of the Hague Regulations, regarded as customary international law,¹⁵⁷ prescribes that “territory is considered occupied when it is actually placed under the authority of the hostile army”. The occupying authority so established shall take all measures in its power “to restore, and ensure, as far as possible, public order and safety” in the occupied area (art. 43). These provisions call for an examination of whether there was exercise of authority by Israel in the Gaza Strip during the period under investigation.

275. While the drafters of the Hague Regulations were as much concerned with protecting the rights of the State whose territory is occupied as with protecting the inhabitants of that territory, the drafters of the Fourth Geneva Convention sought to guarantee the protection of civilians (“protected persons”¹⁵⁸) in times of war regardless of the status of the occupied territories.¹⁵⁹ That the Fourth Geneva Convention contains requirements in many respects more flexible than the Hague Regulations and thus offering greater protections was recognized by the International Criminal Tribunal for the former Yugoslavia in the Naletelic case, where the Trial Chamber applied the test contained in article 6 of the Fourth Geneva Convention: the protections provided for in the Fourth Geneva Convention become operative as soon as the protected persons fall “in the hands” of a hostile army or an occupying Power, this being understood not in its physical sense but in the broader sense of being “in the power” of a hostile army. The Trial Chamber concluded that: “the application of the law of occupation as it effects ‘individuals’ as civilians protected under Geneva Convention IV does not require that the occupying Power have actual authority”.¹⁶⁰

276. Israel has without doubt at all times relevant to the mandate of the Mission exercised effective control over the Gaza Strip. The Mission is of the view that the circumstances of this control establish that the Gaza Strip remains occupied by Israel. The provisions of the Fourth Geneva Convention therefore apply at all relevant times with regard to the obligations of Israel towards the population of the Gaza Strip.

¹⁵⁷ Case concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda), Judgment of 19 December 2005, I.C.J. Reports 2005, para. 172; Legal Consequences..., para. 78.

¹⁵⁸ Under the Fourth Geneva Convention, protected persons are those who, at a given moment and in any manner whatsoever, find themselves in the hands of a party to the conflict or occupying Power of which they are not nationals.

¹⁵⁹ Legal Consequences..., para. 95.

¹⁶⁰ *Prosecutor v. Naletilić*, case No. IT-98-34-T, Decision of 31 March 2003, paras. 219-222.

277. Despite Israel's declared intention to relinquish its position as an occupying Power by evacuating troops and settlers from the Gaza Strip during its 2005 "disengagement",¹⁶¹ the international community continues to regard it as the occupying Power.¹⁶²

278. Given the specific geopolitical configuration of the Gaza Strip, the powers that Israel exercises from the borders enable it to determine the conditions of life within the Gaza Strip. Israel controls the border crossings (including to a significant degree the Rafah crossing to Egypt, under the terms of the Agreement on Movement and Access¹⁶³) and decides what and who gets in or out of the Gaza Strip. It also controls the territorial sea adjacent to the Gaza Strip and has declared a virtual blockade and limits to the fishing zone, thereby regulating economic activity in that zone. It also keeps complete control of the airspace of the Gaza Strip, inter alia, through continuous surveillance by aircraft and unmanned aviation vehicles (UAVs) or drones. It makes military incursions and from time to time hit targets within the Gaza Strip. No-go areas are declared within the Gaza Strip near the border where Israeli settlements used to be and enforced by the Israeli armed forces. Furthermore, Israel regulates the local monetary market based on the Israeli currency (the new sheqel) and controls taxes and custom duties.

279. The ultimate authority over the Occupied Palestinian Territory still lies with Israel. Under the law and practice of occupation, the establishment by the occupying Power of a temporary administration over an occupied territory is not an essential requirement for occupation, although it could be one element among others that indicates the existence of such occupation.¹⁶⁴ In fact, as shown in the case of Denmark during the Second World War, the occupier can leave in place an existing local administration or allow a new one to be installed for as long as it preserves for itself the ultimate authority. Although Israel has transferred to the Palestinian Authority a series of functions within designated zones, it has done so by agreement, through the Oslo Accords and related understandings, keeping for itself "powers and responsibilities not so transferred".¹⁶⁵ When Israel unilaterally evacuated troops and settlements from the Gaza Strip, it left in place a Palestinian local administration. There is no local governing body to which full authority has been transferred. In this regard, the Mission recalls that the International Court of Justice, in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, regards the transfer of powers and responsibilities by Israel under various agreements with the Palestine Liberation Organization (PLO) as having "done nothing" to alter the character of Israel as an occupying Power.¹⁶⁶

¹⁶¹ Disengagement Plan – General Outline, Prime Minister's Office, 15 April 2004, para. 2 (i)(3), available at www.pmo.gov.il/PMOEng/Archive/Press+Releases/2004/Disengagement+Plan.

¹⁶² Security Council resolution 1860 (2009) and Human Rights Council resolution S-9/1.

¹⁶³ This Agreement of November 2005 represents the commitments of the Government of Israel and the Palestinian Authority. Its implementation and further elaboration will be assisted by the Quartet Special Envoy for Disengagement and his staff and/or the United States Security Coordinator and his staff. It is available at [http://unispal.un.org/unispal.nsf/b987b5db9bee37bf85256d0a00549525/c9a5aa5245d910bb852570bb0051711c/\\$FILE/Rafah%20agreement.pdf](http://unispal.un.org/unispal.nsf/b987b5db9bee37bf85256d0a00549525/c9a5aa5245d910bb852570bb0051711c/$FILE/Rafah%20agreement.pdf).

¹⁶⁴ Prosecutor v. Naletilić, para. 217.

¹⁶⁵ Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 1995, art. I (1).

¹⁶⁶ Legal Consequences..., paras. 76–78.

280. Although the essential elements of occupation are present in the Gaza Strip, account must be taken of the fact that inside Gaza there is a *de facto* local administration, which carries out the functions and responsibilities in various areas transferred to the Palestine Authority under the Oslo Accords, to the extent that it is able to do so in the light of the closures and blockade imposed by Israel.

281. The developments that have taken place in the past two decades, in particular through the jurisprudence of international tribunals, have led to the conclusion that the substantive rules applicable to either international or non-international armed conflicts are converging. The Mission nonetheless recognizes that certain differences exist in relation to the regime of enforcement established by treaty law, in particular the regime of “grave breaches” contained in the Geneva Conventions.

282. Military hostilities took place between the Israeli armed forces and the military wing of Hamas (al-Qassam Brigades) and of other Palestinian factions, including the al-Aqsa Martyrs’ Brigades, loosely affiliated with the Fatah movement in control of the Palestine Authority. The Israeli Supreme Court has seen the confrontation between Israeli armed forces and what it calls “terrorist organizations” active in the Occupied Palestinian Territory as an international armed conflict on two grounds: the existing context of the occupation and the cross-border nature of the confrontation.¹⁶⁷ Nonetheless, as the Government of Israel suggests, the classification of the armed conflict in question as international or non-international, may not be too important as “many similar norms and principles govern both types of conflicts”.¹⁶⁸

283. It is common for armed conflicts to present elements of an international as well as of a non-international character. The rules contained in article 3 common to the four Geneva Conventions, regarded as customary international law, are the baseline rules applicable to all conflicts.¹⁶⁹ The concern for the protection of civilians and those *hors de combat* in all kinds of conflicts has led to an increasing convergence in the principles and rules applicable to international and non-international armed conflicts, as was authoritatively held by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia in the *Tadić* case. Indeed, “what is inhumane, and consequently proscribed, in international wars, cannot but be inhumane and inadmissible in civil strife.”¹⁷⁰ This relates not only to the protection of civilians but also to both methods and means of warfare.

284. A convergence between human rights protections and humanitarian law protections is also in operation. The rules contained in article 75 of Additional Protocol I, which reflect customary law, define a series of fundamental guarantees and protections, such as the prohibitions against torture, murder and inhuman conditions of detention, recognized also under human rights law.

¹⁶⁷ The Public Committee against Torture in Israel v. The Government of Israel (Targeted Killings case).

¹⁶⁸ “The operation in Gaza...”, para. 30.

¹⁶⁹ Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986, p.14.

¹⁷⁰ Prosecutor v. Tadić, case No. IT-94-1-AR72, Decision on the defence motion for interlocutory appeal on jurisdiction of 2 October 1995, para. 119. See also para. 96 ff.

These protections apply to all persons in the power of a party to the conflict “who do not benefit from more favourable treatment” under the Geneva Conventions and its Protocols.

285. The foregoing customary and conventional humanitarian rules are relevant to the investigation of the events that occurred in connection with the military operations of December 2008 and January 2009.

C. International criminal law

286. International criminal law has become a necessary instrument for the enforcement of IHL and IHRL. Criminal proceedings and sanctions have a deterrent function and offer a measure of justice for the victims of violations. The international community increasingly looks to criminal justice as an effective mechanism of accountability and justice in the face of abuse and impunity. The Mission regards the rules and definitions of international criminal law as crucial to the fulfilment of its mandate to look at all violations of IHL and IHRL by all parties to the conflict.

287. Crimes under international law are defined in treaties and also in customary international law. Violations of fundamental humanitarian rules applicable in all types of conflict entail individual criminal responsibility under customary law.¹⁷¹ They encompass crimes against humanity, war crimes and genocide. Other crimes not necessarily committed as a war crime or crime against humanity are torture and enforced disappearance.

288. The four Geneva Conventions of 1949 establish a regime of enforcement through the definition of grave breaches of some of their provisions relating to protected persons. Grave breaches are premised on the importance of the value under attack and the seriousness of the act or omission that constitutes the breach. Article 147 of the Fourth Geneva Convention defines grave breaches as:

... those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

289. Article 146 requires States parties to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the listed grave breaches. They are under the obligation “to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts.”

¹⁷¹ Ibid., paras. 128 ff. In paragraph 134, the Appeals Chamber stated: “All of these factors confirm that customary international law imposes criminal liability for serious violations of common article 3, as supplemented by other general principles and rules on the protection of victims of internal armed conflict, and for breaching certain fundamental principles and rules regarding means and methods of combat in civil strife.”

290. These and other crimes are also listed in the Rome Statute of the International Criminal Court, article 8 (2) (a) (“grave breaches”) and 8 (2) (b) (“other serious violations of the laws and customs applicable in international armed conflict”).¹⁷²

291. War crimes are serious breaches of international humanitarian law that apply to armed conflicts and entail individual criminal responsibility under treaty or customary law. War crimes can be committed in the context of armed conflicts of an international character as well as those of a non-international character. This category of crimes includes and/or overlaps with the grave breaches as defined in the four Geneva Conventions.

292. War crimes comprise crimes against protected persons (including wilful killing, torture or other inhuman acts, taking hostages, and collective punishments); crimes against property (including extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly, destroying or seizing property of the enemy, pillaging, and declaring abolished, suspended or inadmissible in a court of law the rights and actions of the nationals of the hostile party); crimes relating to the use of prohibited methods and means of warfare (including directing an attack against civilians or civilian objects, launching an attack directed against legitimate targets if such attack causes excessive incidental civilian casualties or damage to the environment, improper use of the protective emblems, the use of starvation of civilians as a method of warfare, use of human shields and acts of terror). In addition, article 8 (2) (b) (iii) of the Rome Statute defines as a war crime the direct attack against protected personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission.

293. Crimes against humanity are crimes that shock the conscience of humanity. The Statutes of the International Criminal Tribunal for the former Yugoslavia and of the International Criminal Tribunal for Rwanda provided for the prosecution of crimes against humanity. These crimes comprise murder, extermination, enslavement, deportation, imprisonment, torture, rape, persecutions and other inhuman acts when they are part of a widespread or systematic attack against any civilian population.¹⁷³ Although under the Statute of the International Criminal Tribunal for the former Yugoslavia crimes against humanity must be committed in armed conflict, such a requirement is not part of the customary law definition of the crime.

D. International human rights law

294. Israel has ratified several of the most important international human rights treaties, including the International Convention on the Elimination of All Forms of Racial Discrimination, ICCPR, ICESCR, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women.

¹⁷² The possible application of the Rome Statute to the conflict in Gaza is still being discussed. The validity under its article 12 (3) of the Palestinian declaration accepting the International Criminal Court’s jurisdiction is being evaluated by the Office of the Tribunal’s Prosecutor.

¹⁷³ See International Criminal Tribunal for the former Yugoslavia, *Prosecutor v. Kunarac*, case No. IT-96-23, Judgement of 12 June 2002, para. 85.

295. It is now widely accepted that human rights treaties continue to apply in situations of armed conflict. In its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice considered that “the protection offered by human rights conventions does not cease in case of armed conflict, save through the effect of provisions for derogation....”¹⁷⁴

296. In its Advisory Opinion on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice held that, in the context of armed conflict, IHL is *lex specialis* in relation to human rights. It is today commonly understood that human rights law would continue to apply as long as it is not modified or set aside by IHL. In any case, the general rule of human rights law does not lose its effectiveness and will remain in the background to inform the application and interpretation of the relevant humanitarian law rule. For instance, the preamble to Additional Protocol II to the Geneva Conventions recalls the protection of international human rights for the human person, supporting the view that IHL and IHRL are operative in situations of conflict.

297. The human rights treaties ratified by Israel are also binding in relation to Israeli conduct in the Occupied Palestinian Territory. Article 2 of ICCPR obliges each State party to respect and to ensure to all individuals “within its territory and subject to its jurisdiction” the rights recognized within it. In the words of the Human Rights Committee, “a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party”.¹⁷⁵

298. The International Court of Justice has also held that ICCPR applies “in respect of acts done by a State in the exercise of its jurisdiction outside its own territory”.¹⁷⁶ Accordingly, the Human Rights Committee has considered that ICCPR also applies to the benefit of people within the Occupied Palestinian Territory.¹⁷⁷ The Committees established to monitor compliance with the International Covenant on Economic, Social and Cultural Rights, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women by their States parties have equally determined that Israel’s human rights obligations extend to the population of the Occupied Palestinian Territory.¹⁷⁸

299. The Mission also notes that Israel has not derogated from its obligations under article 4 of ICCPR. Israel’s declaration made upon ratification of the Covenant only concerns derogations to article 9 of ICCPR, regarding deprivation of liberty. The state of emergency in Israel has been in force ever since it was proclaimed in 1948. ICESCR does not explicitly allow for derogations in time of public emergency or war.

¹⁷⁴ *Legal Consequences...*, para. 106; see also *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, I.C.J. Reports 1996, p. 226, para. 25.

¹⁷⁵ General comment No. 31 (2004), para. 10.

¹⁷⁶ *Legal Consequences...*, para. 111; see also *Case concerning Armed Activities...*, para. 216.

¹⁷⁷ “Concluding observations of the Human Rights Committee” (CCPR/CO/78/ISR).

¹⁷⁸ See, for instance, “Concluding observations of the Committee on Economic, Social and Cultural Rights” (E/C.12/1/Add.90).

300. Contemporary interpretation of the Hague Regulations has taken a progressive view on the scope of their application. The International Court of Justice, when concluding that Uganda was the occupying Power in the Ituri region in the Democratic Republic of the Congo, also held that Uganda's obligation to "restore, and ensure, as far as possible, public order and safety" included "the duty to secure respect for the applicable rules of international human rights law and international humanitarian law".¹⁷⁹

301. In relation to the application of human rights law during the military operations and to the connected events, the Mission wishes to briefly address four issues of legal significance.

302. The first is the impact of the inauguration in 1995 of limited Palestinian self-government and the evacuation of the Gaza Strip by Israel in 2005 on Israel's international obligations. United Nations human rights treaty bodies have continued to hold Israel responsible for implementing its human rights treaty obligations in the Occupied Palestinian Territory after the establishment of Palestinian self-government bodies.¹⁸⁰ Those bodies have not drawn any distinction between Gaza and the West Bank in this regard, the Occupied Palestinian Territory being regarded as a single unit. In its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice succinctly addressed the question by noting that, under the International Covenant on Economic, Social and Cultural Rights, Israel is "under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities".¹⁸¹ In a recent report about Gaza, nine special procedures of the Human Rights Council considered that the unilateral disengagement from the Gaza Strip does not relieve Israel "from complying with its human rights obligations towards the population of that territory; Israel remains bound to the extent that the measures it adopts affect the enjoyment of human rights of the residents of the Gaza Strip."¹⁸²

303. Israel most recently argued before the Committee against Torture that it no longer had human rights obligations under the Convention with regard to Gaza due to the effect of the 2005 "disengagement". In rejecting the argument, the Committee stated "the State party maintains control and jurisdiction in many aspects on the occupied Palestinian territories."¹⁸³ The Mission agrees that transferring powers and functions to self-governing bodies does not exempt Israel from its obligations to guarantee human rights to people within its jurisdiction or under its effective control. Israel would also have a duty to refrain from actions that obstruct efforts by Palestinian self-governing bodies to guarantee the enjoyment of human rights in the Occupied Palestinian Territory and should facilitate that action.

304. A second issue relates to the human rights obligations of the Palestinian Authority, the de facto authority in the Gaza Strip and other political and military actors. As non-State actors, the

¹⁷⁹ Case concerning Armed Activities..., para. 178.

¹⁸⁰ For instance, in its 2003 concluding observations, the Committee on Economic, Social and Cultural Rights reiterated "its regret at the State party's refusal to report on the occupied territories" (E/C.12/1/Add.90, para. 15).

¹⁸¹ Legal Consequences..., para. 112.

¹⁸² A/HRC/10/22, para. 20.

¹⁸³ "Concluding observations of the Committee against Torture" (CAT/C/ISR/CO/4, para. 11).

question of their human rights obligations must be addressed. It should be noted that the same issue does not arise with regard to IHL obligations, the question being settled some time ago. As the Special Court for Sierra Leone held, “it is well settled that *all* parties to an armed conflict, whether States or non-State actors, are bound by international humanitarian law, even though only States may become parties to international treaties.”¹⁸⁴

305. The relationship between IHL and IHRL is rapidly evolving, in particular in relation to non-State actors’ obligations, with the ultimate goal of enhancing the protection of people and to enable them to enjoy their human rights in all circumstances. In the context of the matter within the Mission’s mandate, it is clear that non-State actors that exercise government-like functions over a territory have a duty to respect human rights.

306. The Mission notes that the Palestinian Authority, through its public undertakings as well as those of the Palestine Liberation Organization (PLO) and the Palestinian Legislative Council, has declared its commitment to respect international human rights law in several instances, including in the context of international agreements. This commitment is also contained in the Palestinian Basic Law.¹⁸⁵

307. The obligations of the Gaza authorities may be viewed through a different lens but leading to the same result. The Gaza authorities also reiterated to the Mission their commitments to respect human rights. Hamas has also made a series of unilateral declarations of respect for human rights. Furthermore, the Palestinian Basic Law with its many human rights provisions also applies in the Gaza Strip.¹⁸⁶

308. A third issue to be addressed here relates to the right to self-determination and its application to the definition of combatant status and its impact on the principle of distinction. Armed conflicts opposing national liberation movements and/or resistance movements against colonialism and occupation are regarded as international armed conflicts by Additional Protocol I, article 1 (4). Under international law, notably Additional Protocol I to the Geneva Conventions, any action of resistance pursuant to the right to self-determination should be exercised with full respect of other human rights and IHL.

¹⁸⁴ See for instance, Prosecutor v. Sam Hinga Norman, case SCSL-2004-14-AR72(E), Decision on preliminary motion based on lack of jurisdiction (child recruitment) (31 May 2004), para. 22.

¹⁸⁵ Legal Consequences..., para. 91; A/HRC/10/22, para. 21; Barcelona Declaration, 27-28 November 1995, available at: <http://www.euromedrights.net/281>. The Palestinian Basic Law can be found at <http://www.palestinianbasiclaw.org/2002-basic-law>. See also “Report of the High Commissioner for Human Rights on the implementation on Human Rights Council resolution 7/1” (A/HRC/8/17, para. 8).

¹⁸⁶ Meeting and correspondence with the Mission. In this respect nine special procedures mandate holders have stated: “non-State actors that exercise government-like functions and control over a territory are obliged to respect human rights norms when their conduct affects the human rights of the individuals under their control” (A/HRC/10/22, para. 21). This view follows the statement in the same line by four other special procedures mandate holders who visited Lebanon in the aftermath of the 2006 war: “Although Hezbollah, a non-State actor, cannot become a party to these human rights treaties, it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights ... It is especially appropriate and feasible to call for an armed group to respect human rights norms when it exercises significant control over territory and population and has an identifiable political structure.” (A/HRC/2/7, para. 19). See also A/HRC/10/22, para. 9.

309. Finally, it is also useful to briefly recall that States not party to an armed conflict have responsibilities and a crucial role to play for the protection of civilians and those *hors de combat* and for the protection of their rights. Under article 1 common to the Geneva Conventions 1949, the “High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.” This provision entails obligations not only in relation to actors and conduct within the jurisdiction of each State but also in relation to the international enforcement of the Conventions. States parties to the Geneva Conventions also have the obligation to facilitate the passage of humanitarian relief and a role to play in the provision of such assistance for the protected population in case of need (articles 23 and 59 of the Fourth Geneva Convention).

310. To conclude, the Mission wishes to emphasize that all parties to an armed conflict have the obligation to respect the enjoyment of human rights by all.



PART TWO: OCCUPIED PALESTINIAN TERRITORY

THE GAZA STRIP

SECTION A: MILITARY OPERATIONS

V. THE BLOCKADE: INTRODUCTION AND OVERVIEW

311. The military operations of 28 December to 19 January 2009 and their impact cannot be fully evaluated without taking account of the context and the prevailing living conditions at the time they began. In material respects, the military hostilities were a culmination of the long process of economic and political isolation imposed on the Gaza Strip by Israel, which is generally described as a blockade. This chapter provides an overview of the blockade, while chapter XVII provides a detailed analysis of the cumulative impact of the blockade and the military operations on the people in Gaza and their human rights.

312. The series of economic and political measures imposed against the Gaza Strip began around February 2006 with the Hamas electoral victory in the legislative elections. This was also accompanied by the withholding of financial support for the Gaza Strip by some donor countries and actions of other countries that amounted to open or tacit support of the Israeli blockade. Hamas took over effective power in the Gaza Strip on 15 June 2007. Shortly thereafter Israel declared the Gaza Strip a “hostile territory,”¹⁸⁷ enacting a series of economic, social and military measures purportedly designed to isolate and strangle Hamas. These have made a deep impact on the population’s living standards.

313. The blockade comprises measures such as the closure of border crossings, sometimes completely for a number of days, for people, goods and services, and for the provision of fuel and electricity. The closure has had severe effects on trade and general business activity, agriculture and industry in the Gaza Strip. Electricity and fuel that are provided from Israel are essential for a broad range of activities from business to education, health services, industry and agriculture. Further limits to the fishing area in the sea adjacent to the Gaza Strip were fixed and enforced by Israel, negatively impacting on fishing activities and the livelihood of the fishing community. Israel also established a buffer zone of variable and uncertain width along the border, together with a sizeable no-go area in the northern part of the Gaza Strip where some Israeli settlements used to be situated. This no-go area is in practice an enlarged buffer zone in the northern part of the Gaza Strip where people cannot go. The creation of the buffer zone has forced the relocation of a number of factories from this area closer to Gaza City, causing serious environmental concerns and potential health hazards for the population. People’s movements have also been drastically restricted, with only a few businesspeople allowed to cross on a very irregular and unpredictable basis.

314. Because of the occupation, which created so many ties of dependence, and for other geographic, political and historical reasons, the availability of goods and services as well as the carrying-on of daily life in the Gaza Strip are highly dependent on Israel and its policies

¹⁸⁷ <http://www.mfa.gov.il/MFA/Government/Communiques/2007/Security+Cabinet+declares+Gaza+hostile+territory+19-Sep-2007.htm>.

regarding the area. Food and other consumable items as well as fuel, electricity, construction materials and other items are traded from or through Israel. Israel also serves as the communication channel for the population of Gaza with the rest of the Occupied Palestinian Territory and the world, including for purposes of education and exchange programmes. There are five crossing points between Israel and the Gaza Strip: Erez (basically dedicated to the transit of people), Nahal Oz (for fuel), Karni (for grains), Kerem Shalom (for goods) and Sufa (for goods). Israeli control of these crossings has always been restrictive for the Gaza population. Since the beginning of the blockade, and particularly during and after the military operation, not only has the measure of restriction increased, but control has been exercised arbitrarily, resulting in uncertainty of access even for those items purportedly allowed entry by Israel.

315. Movement of people through the Erez crossing to Israel and the Rafah crossing to Egypt has been almost completely blocked. Exceptions include unpredictable and irregular permission for emergency medical evacuations, access to diplomats and international humanitarian staff and only limited access to some businesspeople.

316. The movement of goods has been restricted to imports of basic humanitarian supplies through the Kerem Shalom crossing point as well as to a limited quantity of fuel. The quantities of goods allowed into the Gaza Strip have not only been insufficient to meet local demands, they also exclude several items essential for the manufacturing of goods and the processing of food products, as well as many other goods that are needed. This is compounded by the unpredictable way in which crossings are managed. Neither the list of items allowed into the Gaza Strip nor the criteria for their selection are made known to the public.

317. Before the military operation, the blockade had resulted in a significant reduction in the number of trucks allowed through the crossings. The number of trucks is considered a fair measure of the amount of imports into or exports from the Gaza Strip. This number increased slightly during the period of calm between June and November 2008, but declined sharply again in November, due to the resumption of hostilities following the Israeli military incursion. The daily average of truckloads crossing the border in November–December 2008 was between 23 and 30, but it increased after the start of military hostilities to up to five times that number during January 2009.¹⁸⁸ However, at no time was it close to what it had been prior to June 2007 or to the amount actually necessary to meet the needs of the population.

318. The 2005 Agreement of Movement and Access called for a daily flow of some 400 trucks in and out of Gaza by the end of 2006, which was already lower than before the second intifada, but not even that level was ever reached.¹⁸⁹ Information supplied to the Mission reveals that imports into and exports from the Gaza Strip before the closure in 2007 reached a monthly average of 10,400 and 1,380 truckloads, respectively. This declined to about 2,834 truckloads of imports and no exports after the recent military operations. Immediately after the operations, there was only one isolated instance in which exports of flowers were allowed from the Gaza

¹⁸⁸ OCHA, *The Humanitarian Monitor*, No. 33 (January 2009).

¹⁸⁹ International Labour Office, “The situation of workers in the occupied Arab territories”, Report of the Director-General to the International Labour Conference, 98th session, 2009, appendix, para. 24.

Strip in March 2009. Some 134 truckloads of cash crops were exported in total between June 2007 and May 2009.¹⁹⁰

319. In effect, economic activity in the Gaza Strip was severely affected because of the blockade. Since the military operation, the economy has almost come to a standstill. The private sector, particularly the manufacturing industry, has suffered irreparable damage.

320. The blockade and freeze on the movement of goods imposed by Israel have spurred a black market economy in the Gaza Strip that provides basic consumables but is unreliable and unaffordable for the majority of the people. The tunnels built under the Gaza-Egypt border have become a lifeline for the Gaza economy and the people. Increasing amounts of fuel (benzine and diesel) come through those tunnels as well as consumables. While for the Gaza population this is a necessary means of survival in the circumstances, the black market is likely to hold back economic recovery and sustainability, even when the blockade is lifted.

321. The blockade has also included measures relating to access to the sea and airspace. Under the Oslo Accords, the fishing zone limit was set at 20 nautical miles. However, Israel set the limit unilaterally at 6 nautical miles and maintained this limit from October 2006 to January 2009, when it further restricted it to 3 nautical miles. The only airfield in Gaza has been closed and a project to rebuild the small airport was suspended after the seizure of power by Hamas. Israel keeps total control over Gaza's airspace.

322. In mid-December 2008, following an Israeli military incursion into the Gaza Strip and rockets fired into Israel by Hamas, all the crossings were totally closed for eight days.¹⁹¹ Other military or militant activities in areas near the crossings have also led to total closures over certain periods of time. Total and partial closures have significantly contributed to an emergency situation that became a full-fledged humanitarian crisis after the military operations of December 2008–January 2009. During December 2008, UNRWA had to suspend its delivery of food assistance due to the total depletion of its food stocks. Other humanitarian agencies had to reduce or postpone delivery of food and other forms of assistance. The unavailability of banknotes as a result of an Israeli prohibition also prevented humanitarian agencies from implementing “cash for work” or similar programmes over lengthy periods of time.¹⁹²

323. The implementation of the restrictive measures as part of the blockade of the Gaza Strip created not only an emergency situation but also significantly weakened the capacities of the health, water and emergency sectors in Gaza to adequately respond to a worsening situation.¹⁹³ The impact on the local economy further reduced the resilience and coping capacities of the local population and has aggravated the effects of the war on livelihoods and living standards (see below, chap. XVII).

¹⁹⁰ Information submitted by PalTrade, “Gaza private sector status”, 18 June 2009. The Mission also acknowledges the information provided by the Palestinian Authority in its reply to questions from the Mission, 5 August 2009.

¹⁹¹ The Humanitarian Monitor, No. 32.

¹⁹² The Humanitarian Monitor, No. 32, p. 5.

¹⁹³ This impact was noted and analysed in “Report of the high-level fact-finding mission to Beit Hanoun established under Council resolution S-3/1” (A/HRC/9/26, paras. 55 ff).

324. The Mission asked the Government of Israel to provide information in relation to the blockade on the Gaza Strip. It requested information on the criteria applied to determine which goods are or are not allowed to enter the Gaza Strip, the reasons for restricting or preventing cash and bank transfers, the reasons for imposing restrictions on the ability of Gazans to leave the Gaza Strip, including for urgent medical reasons, the reasons for the highly restrictive policy permit applied to international donors, humanitarian and human rights organizations wishing to enter the Gaza Strip, and the reasons and legal basis for establishing a limited fishing zone. No reply was received on any of these questions.

325. The legality of some of the measures imposed by the Government of Israel (the reduction in the supply of electricity and fuel) was the subject of a petition to the Supreme Court of Israel.¹⁹⁴ The petitioners comprised a group of NGOs operating within Israel together with Palestinian citizens and groups who argued that the planned cuts in the supply of fuel and electricity were inconsistent with the obligations of Israel under the Fourth Geneva Convention relating to the protection of civilians.¹⁹⁵ The Court's ruling recognizes that Israel has obligations under humanitarian law vis-à-vis the Gaza Strip under which the intended supply of fuel and electricity was considered "capable of satisfying the essential humanitarian needs of the Gaza Strip at the present". The Court, however, did not indicate what would constitute "essential humanitarian needs" and appears to have left those details for the authorities to determine.

326. The Mission holds the view that Israel continues to be duty-bound under the Fourth Geneva Convention and to the full extent of the means available to it to ensure the supply of foodstuff, medical and hospital items and others to meet the humanitarian needs of the population of the Gaza Strip without qualification. Furthermore, the Mission notes the information it received regarding the lack of compliance by the Government of Israel even with the minimum levels set by the Israeli Court, and in this regard observes that the Government retains wide discretion about the timing and manner of delivering fuel and electricity supplies to the Gaza Strip, and that this discretion appears to have been exercised capriciously and arbitrarily.

VI. OVERVIEW OF MILITARY OPERATIONS CONDUCTED BY ISRAEL IN GAZA BETWEEN 27 DECEMBER 2008 AND 18 JANUARY 2009 AND DATA ON CASUALTIES

327. This chapter provides an overview for the purposes of identifying the key parties in the conduct of the military operations and their dynamics, and to indicate which incidents occurred during those phases which are the subject of detailed analysis in this report. The focus is on the Israeli military operations in Gaza.

¹⁹⁴ Jaber Al-Bassiouni Ahmed et al. v. Prime Minister and Minister of Defense, case No. 9132/07, Judgement of 30 January 2008, available at http://elyon1.court.gov.il/Files_ENG/07/320/091/n25/07091320.n25.pdf.

¹⁹⁵ Petition to stop electricity and fuel cuts to the Gaza Strip, 28 November 2007. The petition, related affidavits, excerpts from the State's answers and excerpts from the Court's decision are all available at: <http://www.gisha.org/index.php?intLanguage=2&intSiteSN=110&intItemId=742>.

A. The parties relevant to the conduct of military activities in Gaza between 27 December 2008 and 18 January 2009

1. The Israeli armed forces

328. The information available shows that Israel deployed its navy, air force and army in the operation it codenamed “Operation Cast Lead”.

329. The navy was used in part to shell the Gaza coast during the military operations.

330. The air force was also used throughout the military operations in a way that appears in its own view to have been innovative. Having been responsible for the vast majority of operational activities in the first week, it continued to play an important role in assisting and covering the ground forces from 3 January to 18 January 2009.¹⁹⁶

331. The army was responsible for the ground invasion, which began on 3 January 2009. The available information indicates that the Golani, Givati and Paratrooper Brigades and five Armoured Corps Brigades were involved. Assaults on three fronts with combined armour and infantry brigades were also augmented by specialist Arabic-language, intelligence and, in particular, combat engineer troops. The engineer troops equipped with armoured D-9 bulldozers were also trained in operations to counter improvised explosive devices (IEDs). Forward elements of these attack formations could rely on direct support from the air force to call air strikes or to direct them, to call in helicopter missile attacks and to direct their own attached missile-mounted UAVs.¹⁹⁷

2. Palestinian armed groups

332. The Palestinian armed factions operating in the Gaza Strip, and claiming responsibility for the majority of the rocket and mortar launchings, are the Hamas’ Izz ad-Din al-Qassam Brigades,¹⁹⁸ the al-Aqsa Martyrs’ Brigades, the Islamic Jihad, the Abu Ali Mustafa Brigades,¹⁹⁹ which are the military wing of the Popular Front for the Liberation of Palestine (PFLP), and al-Naser Salah ad-Din Brigades, which are the military wing of the Popular Resistance Committees (PRC).²⁰⁰ PRC is a coalition of different armed factions that oppose what they perceive as the Palestinian Authority’s and Fatah’s conciliatory approach towards Israel.

¹⁹⁶ See Anthony H. Cordesman, “The ‘Gaza war’: A strategic analysis”, Centre for Strategic and International Studies (2009), p. 41.

¹⁹⁷ Alon Ben-David, “Israeli offensive seeks ‘new security reality’ in Gaza”, *Jane's Defence Weekly*, 8 January 2009; *Jane's 'Sentinel' Services*, “Country Risk Assessments – Israel”, 4 February 2009.

¹⁹⁸ Named after a Syrian who worked with displaced Palestinians in what is now northern Israel, and died in a clash with British troops in 1935, sparking the 1936–39 Palestinian revolt.

¹⁹⁹ The Abu Ali Mustafa Brigades claimed responsibility for launching 177 rockets and 115 mortars on several towns and villages inside Israel during the period of the military operations in Gaza.

See <http://www.kataebabuali.ps/inf2/articles-action-show-id-223.htm>.

²⁰⁰ During the period of the military operations in Gaza, al-Naser Salah ad-Din Brigades claimed responsibility for the launching of 132 rockets and 88 mortars. See <http://www.moqawmh.com/moqa/view.php?view=1&id=300>.

B. The phases of the hostilities

1. Air phase²⁰¹

333. The Israeli armed forces began the military operations with a week-long air attack, from 27 December until 3 January 2009. One study suggests that they had drawn up a list of 603 targets to be hit as they belonged to Hamas suspects or were part of what Israel viewed as the Hamas infrastructure. The study claims that a senior Israeli officer reported that all 603 targets had been hit before the end of the fourth day of the aerial operations in the first week. Officially, the spokesman of the Israeli forces claimed that 526 targets had been hit by 31 December 2008.²⁰²

334. An analysis of the strikes in a report of the Palestinian Centre for Human Rights gives the following breakdown.

335. “IOF [Israeli occupation forces] have launched at least 300 air and sea strikes against the Gaza Strip. These strikes have targeted 37 houses; 67 security and training sites; 20 workshops; 25 public and private institutions; seven mosques; and three educational institutions. The public institutions that have been bombarded are: the compound of ministries, the building of the Palestinian Legislative Council, the building of the cabinet in Gaza City; the buildings of the agricultural control department and the Municipality of Bani Suhaila in Khan Yunis; the buildings of Rafah Municipality and Governorate. The air strikes have targeted also four money exchange shops, a clinic, three fishing harbours, the Islamic University and two schools.”²⁰³

336. Of the incidents addressed in detail in this report, the following occurred during this phase:

- The attack on Arafat City Police Station;
- Attacks on four other police stations, one in Deir al-Balah and three in Gaza City;
- The attack on the Palestinian Legislative Council building and the Ministry of Justice;
- The attack on Gaza main prison in the al-Sarayah complex, Gaza City.

337. Israeli air force activities continued throughout the military operations. In total, it has been suggested that between 2,300 and 3,000 sorties were flown.²⁰⁴

²⁰¹ Although principally recognized as an aerial phase, there was a significant contribution from the Israeli navy not only in the first week.

²⁰² Cordesman, *op. cit.*, p. 30.

²⁰³ PCHR, “Weekly report on Israeli human rights violations in the Occupied Palestinian Territory”, No. 51/2008 (24–31 December 2008), available at: http://www.pchrgaza.org/files/W_report/English/2008/pdf/weekly%20report%2051.pdf.

²⁰⁴ Cordesman, *op. cit.*, p. 41. He cites Lt. Gen. Ashkenazi saying that the air force flew 2,300 successful air strikes but notes other senior officials told him the real number was closer to 3,000.

2. The air-land phase

338. Around 3 January 2009 Israeli ground troops entered Gaza from the north and east. One study suggests that “the war was fought largely by the southern Command using brigade teams that operated with a high degree of independence and freedom to adapt and innovate”.²⁰⁵

339. One of the key initial objectives described by one soldier involved was to divide the Gaza Strip into two parts, i.e. to split and fragment it, with Nitzarim constituting the midpoint.²⁰⁶ The division therefore ran from the Karni crossing point to the coast in a south-westerly direction. After creating the split, the Israeli armed forces concentrated all of their ground forces in the north. Targets in the south were hit from the air, such as in Rafah.

340. At least in the initial phase it appears forces from the Givati Brigade entered from the east and approached Gaza City from the south. It is understood that forces from the Armoured

341. Corps Brigade also operated in this area but probably at a later stage.²⁰⁷ Zeytoun, on the southern outskirts of Gaza, took the brunt of these brigade operations, with incidents of attacks on the civilian population.

342. It appears that those with primary responsibility in the north of Gaza, especially around Beit Lahia and al-Atatra, included forces from the Golani Brigade.

343. The forces focusing on the area between Gaza City and the northern section, especially in Jabaliyah, appear to have been drawn largely from the Paratrooper Brigade.

344. The movement into the south of Gaza City reached at least as far as Zeytoun on 3 January 2009. Some of the troops entering there on that day appear to have been brought in by helicopter rather than arriving by land. Israeli armed forces maintained a presence in Zeytoun until the final withdrawal.²⁰⁸ It is understood that the original forces that entered Zeytoun were at least partially replaced by other troops at some point, but it is not known if any of the original forces remained in the area throughout the period.²⁰⁹

345. In the other brigade areas regular troops were augmented or replaced by reservists who were called up after the initial ground attacks.

²⁰⁵ Ibid., p. 39.

²⁰⁶ Breaking the Silence, *Soldiers' Testimonies from Operation Cast Lead, Gaza 2009*, testimony 20, p. 48, available at: http://www.breakingthesilence.org.il/oferet/ENGLISH_oferet.pdf.

²⁰⁷ *Soldiers' Testimonies* ..., testimony 2, p. 9.

²⁰⁸ See accounts of the attack on the Sawafeary chicken farm attack in chapter XIII and the taking of the Juha house in Zaytoun in chapter IX.

²⁰⁹ *Soldiers' Testimonies* ..., testimony 2, p. 9.

346. Zeytoun was an area of particularly intense action by Israeli forces, yet there are almost no indications of armed resistance in the area at the time.²¹⁰

347. Among the issues of particular concern to the Mission in Zeytoun are the killings of the Samouni family, the mass destruction in the area, including the systematic demolition of the Sawafeary chicken farms, and the air strike that killed 22 members of the al-Daya family.

348. The forces in Zeytoun also appear to have been responsible for the push towards the area around Tal el-Hawa and Rimal in the south-west of Gaza City, about three kilometres from Zeytoun. The Mission has information that indicates that tanks took up positions in and around Tal el-Hawa around 4 and 5 January. Sources indicate that there was a presence there throughout the hostilities, as also evidenced by the artillery fire from around this area on 14 and 15 January on the compound of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and al-Quds hospital, both of which the Mission addresses in detail.

349. The forces responsible for the execution of the Israeli plan in the north-east of the Gaza Strip included the Golani Brigade. Among the areas of special concern in this regard are al-Atatra and Beit Lahia. Various witnesses indicate that in the past there has at times been some armed presence in the area. Information taken from websites apparently belonging to Palestinian armed groups indicates that these were areas of some resistance. The Mission heard from several witnesses about the scale of the destruction that occurred there as a result of artillery fire after the ground phase began on 3 January. Information indicates a sustained attack with aerial and artillery fire from 3 to 8 January. The Mission addresses a number of particular cases that occurred in this context, such as the alleged use of human shields, the alleged widespread mistreatment of civilians, including detentions, and transfers of large numbers to Israeli prisons in unlawful circumstances.

350. In the Jabaliyah area, located between Beit Lahia and Gaza City, the Mission understands that at least for part of the time there was a significant presence of the Paratrooper Brigade.²¹¹ At the beginning of the ground phase it is noted that an Israeli projectile struck the al-Maqadmah mosque, killing at least 15 civilians. A few days later the al-Fakhura Street incident occurred in the same area when a series of mortars fired by the Israeli armed forces killed at least 35 people.

351. Around 15 January the Israeli armed forces began withdrawing from their positions in the main areas described above. As they did so, there appeared to be a practice of systematically demolishing a large number of structures, including houses, water installations, such as tanks on the roofs of houses, and of agricultural land. A renewed aerial phase in Rafah was also conducted in the last few days of the military operations. Whereas the strikes in the first week appear to have been relatively selective, the last few days saw an increase in the number of

²¹⁰ See Jerusalem Center for Public Affairs, “The hidden dimension of Palestinian war casualties in operation ‘cast lead’: Hamas fire on Palestinian areas”, by Lt. Col. (res.) Jonathan Dahoah Halevi.

²¹¹ See, for example, Haartz, “IDF investigation shows errant mortar hit UN building in Gaza”, 11 January 2009, available at: <http://www.haaretz.com/hasen/spages/1054284.html>.

strikes with several hundred targets hit, causing not only very substantial damage to buildings but also, according to some, underground structural damage.²¹²

C. Data on casualties during the Israeli military operations in Gaza from 28 December 2008 to 17 January 2009

1. Palestinian casualties

352. The Mission received statistics on the fatalities of the military operations from the Gaza authorities, specifically from the Central Commission for Documentation and Pursuit of Israeli War Criminals (TAWTHEQ),²¹³ as well as from PCHR,²¹⁴ Al Mezan²¹⁵ and B'Tselem.²¹⁶ The first three also provided lists of all the persons killed in the military operations, with their names, sex, age, address, occupation, and place and date of the fatal attack. Another NGO, Defence for Children International – Palestine Section,²¹⁷ provided a list of all the children killed.

353. The three lists give different numbers. According to TAWTHEQ, 1,444 persons were killed. The two Palestinian NGOs provide a lower number, 1,417 victims according to PCHR and 1,409 according to Al Mezan, while B'Tselem mentions 1,387 victims. The Mission has not cross-checked the three lists. TAWTHEQ, PCHR, Al Mezan and B'Tselem also provide disaggregated data.

354. TAWTHEQ reports that 341 of those killed were children (under 18), 248 members of the police, 11 members of the Internal Security Service and 5 members of the National Security Service. It provides no figures for the number of combatants killed.

355. PCHR divides the overall 1,417 victims into 926 civilians, 255 police²¹⁸ and 236 combatants.²¹⁹ It reports that 313 of the dead were children and 116 women.

356. Al Mezan reports that overall 1,409 persons were killed during the military operations, of whom 237 were combatants (including 13 under-age combatants) and 1,172 non-combatants, including 342 children, 111 women and 136 members of the police.²²⁰ Thus, according to PCHR

²¹² UNOSAT Report.

²¹³ These lists were prepared by the Gaza authorities' Ministry of Justice, TAWTHEQ, The Central Commission for Documentation and Pursuit of Israeli War Criminals and submitted to the Mission.

²¹⁴ The list is available at: <http://www.pchrgaza.org/files/PressR/English/2008/list.pdf>.

²¹⁵ Al Mezan Center for Human Rights, "Cast lead offensive in numbers", available at: <http://www.mezan.org/upload/8941.pdf>. In September 2009 Al Mezan published an updated list of victims with 1,412 names.

²¹⁶ B'Tselem, "B'Tselem publishes complete fatality figures from operation cast lead", press release, 9 September 2009, available at: http://www.btselem.org/English/Press_Releases/20090909.asp.

²¹⁷ The list is available at <http://www.dci-pal.org/english/display.cfm?DocId=917&CategoryId=1>.

²¹⁸ In the PCHR list of victims the police officers are classified as civilians.

²¹⁹ PCHR, "Confirmed figures reveal the true extent of the destruction inflicted upon the Gaza Strip; Israel's offensive resulted in 1,417 dead, including 926 civilians, 255 police officers, and 236 fighters", press release, 12 March 2009, available at: <http://www.pchrgaza.org/files/PressR/English/2008/36-2009.html>

²²⁰ "Cast lead offensive in numbers...", p. 7.

and Al Mezan, fewer than 17 per cent of the Palestinians killed during the military operations were combatants.

357. B'Tselem states that, of the 1,387 Palestinians who were killed, 773 did not take part in the hostilities, including 320 minors and 109 women over the age of 18. Of those killed, 330 took part in the hostilities and 248 were Palestinian police officers, most of whom were killed in aerial bombings of police stations on the first day of the operations. For 36 people B'Tselem could not determine whether they had participated in the hostilities or not.

358. According to Defence for Children International, 348 children were killed during the military operations.²²¹

359. The Israeli armed forces claim that 1,166 Palestinians were killed during the military operations “according to the data gathered by the Research Department of the Israel Defense Intelligence”. They allege that “709 of them are identified as Hamas terror operatives”, 295 are “uninvolved Palestinians”, while the remaining 162 are “men that have not yet been attributed to any organization”.²²² Of the 295 “uninvolved Palestinians”, 89 were children under the age of 16 and 49 women. According to these figures, at least 60 per cent, and possibly as many as three out of four, of those killed were combatants. The Mission notes, however, that the Israeli Government has not published a list of victims or other data supporting its assertions, nor has it, to the Mission’s knowledge, explained the divergence between its statistics and those published by three Palestinian sources, except insofar as the classification of policemen as combatants is concerned.²²³

360. The Mission, not having investigated all incidents involving loss of life in the Gaza Strip, will not make findings regarding the overall number of persons killed nor regarding the percentage of civilians among those killed. The incidents it did investigate, and on which it will make findings based on the information it gathered, involve the death of more than 220 persons, at least 47 of them children and 19 adult women.

361. The Mission notes that the statistics from non-governmental sources are generally consistent. Statistics alleging that fewer than one out of five persons killed in an armed conflict was a combatant, such as those provided by PCHR and Al Mezan as a result of months of field research,²²⁴ raise very serious concerns about the way Israel conducted the military operations in Gaza. The counterclaims published by the Government of Israel fall far short of international law standards.

²²¹ Defence for Children International confirmed the deaths of another five children caused indirectly by the military operations.

²²² IDF spokesperson, “Majority of Palestinians killed in operation cast lead: Terror operatives”, 26 March 2009, available at <http://dover.idf.il/IDF/English/News/today/09/03/2602.htm>; see also *The Jerusalem Post*, “IDF releases cast lead casualty number”, 26 March 2009.

²²³ On the question of whether Gaza policemen were civilians or combatants, see chap. VII.

²²⁴ The Mission notes that the figures from B'Tselem, which distinguish between casualties who took part in the hostilities and those who did not, lead to similar results. If the policemen were added to those who did not take part in hostilities (as Al Mezan and PCHR do in adding the policemen to the civilians killed), the B'Tselem statistics would indicate that approximately one in four Palestinians killed was taking part in hostilities.

362. The Mission also notes that – as the Government of Israel argues at length²²⁵ – there are circumstances under international humanitarian law in which military actions resulting in the loss of civilian life would not be unlawful. These include attacks directed against military objectives that comply with the principles of discrimination and proportionality, but nonetheless kill civilians. They also include the killing of persons who, though not members of an armed group, participate directly in the hostilities. The reportedly exceedingly high percentage of civilians among those killed raises concerns about the precautions taken by Israel in launching attacks as well as the legality of many of the attacks, as elaborated further in this report with regard to the specific incidents investigated by the Mission.

363. The Mission finally notes that it cannot entirely discount the possibility that Palestinian civilians may have been killed as a result of fire by Palestinian armed groups in encounters with the Israeli armed forces, as argued in a submission to the Mission,²²⁶ although it has not encountered any information suggesting that this was the case.²²⁷

2. Israeli casualties

364. The Israeli Ministry of Foreign Affairs reported that, during the military operations from 27 December 2008 to 18 January 2009, there were four Israeli casualties²²⁸ in southern Israel (all adults), of whom three were civilians and one was a soldier.²²⁹ In addition, nine Israeli soldiers were killed during the fighting inside the Gaza Strip, four of whom by friendly fire.²³⁰ B'Tselem²³¹ confirmed these numbers, stating that during the operations Palestinians killed nine Israelis, of whom three civilians, who were reportedly killed by Qassam and Grad rocket fire, and six members of the security forces, while another four soldiers were killed by friendly fire.²³²

²²⁵ “The operation in Gaza...”, paras. 89–141.

²²⁶ “The hidden dimension of Palestinian war casualties...”. This submission is examined in chapter VIII below.

²²⁷ The Mission has, however, investigated cases of alleged extrajudicial executions of Palestinians by Palestinian armed groups during the military operations (see chap. XIX).

²²⁸ http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Israel_strikes_back_against_Hamas_terror_infrastructure_Gaza_27-Dec-2008.htm.

²²⁹ http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Victims_Hamas_rocket_fire_Hamas_ends_calm_Dec-2008.htm.

²³⁰ http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/IDF_soldiers_killed_Operation_Cast_Lead.htm.

²³¹ B'Tselem, “B'Tselem’s investigation of fatalities in Operation Cast Lead”, p. 2, available at: http://www.btselem.org/Download/20090909_Cast_Lead_Fatalities_Eng.pdf.

²³² Al-Qassam Brigades’ website reports that, during the conflict, they killed 102 Israeli soldiers (“The outcome of al-Qassam operations during the Battle of *al-Furqan*” (in Arabic), available at: http://www.alqassam.ps/arabic/special_files/al-furqan/30.pdf). On 19 January 2009, Abu Obeida, a spokesperson for the group, stated that “Israel lost ‘at least 80 soldiers’ in the fighting”. See al-Arabiya News Channel, “ Hamas says only 48 fighters slain in Israel war”, 19 January 2009, available at: <http://www.alarabiya.net/articles/2009/01/19/64513.html>. The large discrepancy in the data confirms the Mission’s observations below in the report about the reliability of the information about the Gaza military operations posted on websites of al-Qassam and other Palestinian armed groups.

VII. ATTACKS ON GOVERNMENT BUILDINGS AND POLICE

A. Deliberate attacks on Gaza government infrastructure

1. Overview of damage to Gaza government buildings

365. In its early recovery and reconstruction plan for Gaza, the Palestinian Authority states that “seven government institutions were either completely or partially levelled (including the Government Palace, the Archives building, the General Personnel Council, and the Presidential Compound), and the Ministries of Interior, Justice and Culture were either partially or entirely destroyed, along with their associated compounds. In addition, 19 municipal facilities were damaged and 11 were totally destroyed, including commercial centres such as markets, slaughterhouses and stores.”²³³

2. The Israeli air strikes on the Gaza main prison and on the Palestinian Legislative Council building

366. The Mission visited two locations where government buildings were destroyed by Israeli air strikes: the Palestinian Legislative Council building and the main prison in the al-Saraya complex in Gaza City. In addition, the Mission visited six police stations, which will be discussed separately below.

367. The Mission visited the remains of the Gaza City main prison and interviewed two senior police officers who were, according to their testimony, eyewitnesses to the attack. The Mission also reviewed reports on the attack from other sources based on the testimony of prisoners. It furthermore addressed questions to the Government of Israel regarding the military advantage pursued in attacking the Palestinian Legislative Council building and the main prison in Gaza City, but received no reply.

368. The main prison was located in a densely built-up area of Gaza City in the al-Saraya complex of buildings occupied by government departments, including the Ministries of Education, Transport and the Interior. The prison itself was an old building, several stories high, reportedly used as a prison by successive authorities in charge of Gaza during the previous and present centuries. It held both common offenders and political detainees.

369. While there were some discrepancies in the different accounts of this incident, the Mission was able to ascertain that the complex was attacked at 11 a.m. on 28 December 2008, on the second day of the air strikes by Israel. At the time of the attack between 200 and 300 prisoners were held in the facility, most of the almost 700 prisoners having been released in the days before the strike.²³⁴ The accounts given by officials regarding the number of fatalities and

²³³ Palestinian National Authority, Palestinian National Early Recovery and Reconstruction Plan for Gaza 2009-2010, March 2009, p. 41.

²³⁴ According to statements by the police to the Mission, around 400 minor offenders had been released by the authorities to reduce overcrowding, so that when the hostilities started about 300 prisoners remained there. According to a NGO report based on the testimony of prisoners, “authorities released about 580 of the prisoners after the bombings started [i.e. on 27 December 2008], but kept in custody roughly 115 alleged collaborators with Israel, about 70 Fatah supporters held on various charges, and some persons convicted of criminal offences who had

injured among the prisoners are contradicted by NGO reports and the Mission heard allegations of extrajudicial executions of escaping prisoners by, or at the behest of, the Gaza authorities, which the Mission deals with in chapter XIX. Police officials told the Mission that one prison guard was killed and several injured by the Israeli strike, as the first missile hit the guards' quarters, and that no prisoners were seriously injured. The guards had opened the prison doors immediately after the first strike. Others reported that "some prisoners were killed in the bombing, while others escaped the destroyed building."²³⁵ A number of prisoners injured in the attack went to al-Shifa hospital in Gaza City for treatment after escaping from the prison.

370. Despite the limited number of casualties that may have occurred, the high probability of more serious loss of life and of injuries in an attack on a populated prison facility could not have been discounted by the Israeli forces. The Mission has taken note of the assessment of the Israeli air force that 99 per cent of the strikes it carried out were accurate.²³⁶ In the light of this claim and in the absence of explanations to the contrary from the Israeli Government, it can only be concluded that the prison was the intended target of the strike. There is no indication from the information gathered on the incident and an inspection of the site that there was any cause for considering the prison building a "military objective".

371. The Palestinian Legislative Council building in central Gaza City was, according to information provided by the Israeli armed forces on their official web site, attacked on 31 December 2008. Mr. Ahmad Bahr, then Acting Speaker of the Palestinian Legislative Council in Gaza, stated to the Mission that it was hit by three missiles launched from fighter planes. The Mission visited the damaged assembly room. It also saw the rubble of the severely damaged three-storey building of the Parliament, which had been completed two years before. It was explained to the Mission that the new building contained a videoconferencing room which allowed the Gazan parliamentarians to hold joint sessions with the members of Parliament based in Ramallah. No casualties as a result of the strike on the Legislative Council building were reported to the Mission.

372. The Mission notes that the Israeli armed forces acknowledged in their "Summary of overnight events" of 1 January 2009 that:

The IAF and Israel Naval Forces struck around 20 Hamas targets throughout the Gaza Strip during late night and early morning hours (Dec. 31).

Among the sites targeted were.

The buildings housing Hamas' Ministry of Justice and Legislative Assembly, both located in the Tel El-Hawwa government complex. Hamas Government sites serve as a critical component of the terrorist groups' infrastructure in Gaza.²³⁷

been sentenced to death." See Human Rights Watch, *Under Cover of War: Hamas Political Violence in Gaza* (April 2009), p. 11.

²³⁵ "Ending the war...", footnote 62.

²³⁶ See also chapter XVI.

²³⁷ <http://dover.idf.il/IDF/English/opcast/op/press/0101.htm>.

373. The Israeli army spokesperson further elaborated: “The attack on strategic government objectives, which constitute part of Hamas’s mechanism of control, is a direct response to the continued firing on communities in southern Israel by the Hamas terrorist organization.”²³⁸

3. The position of the Government of Israel

374. The Mission observes that the Government of Israel is not alleging that any Hamas military activity, such as launching of rockets, storage of weapons or planning of operations, was carried out in the Legislative Council building, the Ministry of Justice or the main prison. The justification of the Government of Israel for the strike on the Palestinian Legislative Council is that it is a “Hamas Government site”, and that such sites “serve as a critical component of the terrorist groups’ infrastructure in Gaza” and “constitute part of Hamas’s mechanism of control”.

375. This explanation posted on the Israeli armed forces’ official website is integrated and elaborated on by numerous statements made by current and former senior Government officials to the media. Major Avital Leibovich, a spokesperson of the Israeli armed forces, reportedly argued “anything affiliated with Hamas is a legitimate target.”²³⁹ The deputy chief of staff, Maj. Gen. Dan Harel, reportedly told a meeting with heads of local authorities in southern Israel that:

This operation is different from previous ones. We have set a high goal which we are aiming for. We are hitting not only terrorists and launchers, but also the whole Hamas government and all its wings. [...] We are hitting government buildings, production factories, security wings and more. We are demanding governmental responsibility from Hamas and are not making distinctions between the various wings. After this operation there will not be one Hamas building left standing in Gaza, and we plan to change the rules of the game.²⁴⁰

376. Israeli armed forces’ spokesman Captain Benjamin Rutland reportedly stated: “Our definition is that anyone who is involved with terrorism within Hamas is a valid target. This ranges from the strictly military institutions and includes the political institutions that provide the logistical funding and human resources for the terrorist arm.”²⁴¹

377. Mr. Matti Steinberg, a former senior adviser to the Israeli General Security Services, argued that “Hamas’s civilian infrastructure is a very, very sensitive target. If you want to put pressure on them, this is how”.²⁴² Less than three months before the hostilities in Gaza began, Col. Gabriel Siboni similarly argued that:

²³⁸ Official statement by an Israeli military spokesman, 1 January 2009, available at: http://dover.idf.il/IDF/News_Channels/art_mivzaim/09/01/0101.htm (in Hebrew).

²³⁹ *The Washington Post*, “All-out war declared on Hamas”, 30 December 2008.

²⁴⁰ *Ynet*, “Deputy chief of staff: worst still ahead”, 29 December 2008.

²⁴¹ BBC News, “Gaza conflict: who is a civilian?”, 5 January 2009, available at: http://news.bbc.co.uk/2/hi/middle_east/7811386.stm.

²⁴² “All-out war...”.

... the IDF will be required to strike hard at Hamas and to refrain from the cat and mouse games of searching for Qassam rocket launchers. The IDF should not be expected to stop the rocket and missile fire against the Israeli home front through attacks on the launchers themselves, but by means of imposing a ceasefire on the enemy.²⁴³

378. The Mission understands all these statements to imply that, in the view of their authors, in order to be effective, military operations have to be directed not only against military targets but also against the non-military infrastructure.

379. The Israeli Government's discussion of the "targeting of Hamas terrorist infrastructure" asserts that, "consistent with the principle of distinction, IDF forces attacked military targets directly connected to Hamas and other terrorist organizations' military activities against Israel." This statement is followed by a list of examples of objectives, such as command posts of al-Qassam Brigades, alleged weapons storage sites and training camps, rocket and mortar launch sites, and tunnels. The list also refers twice to a location identified as the office of Ismail Haniyah, "head of the Hamas administration". This list is followed, however, by a statement reiterating and elaborating the argument that there is really no distinction to be made between military and civilian objectives as far as government and public administration in Gaza are concerned:

While Hamas operates ministries and is in charge of a variety of administrative and traditionally governmental functions in the Gaza Strip, it still remains a terrorist organization. Many of the ostensibly civilian elements of its regime are in reality active components of its terrorist and military efforts. Indeed, Hamas does not separate its civilian and military activities in the manner in which a legitimate government might. Instead, Hamas uses apparatuses under its control, including quasi-governmental institutions, to promote its terrorist activity.²⁴⁴

4. Factual findings

380. From the facts gathered by it, the Mission finds that Israel launched direct attacks against the main prison in Gaza City on 28 December 2008 and against the Palestinian Legislative Council building in Gaza City on 31 December 2008. The attacks substantially damaged the buildings, making them unfit for use. At least one person was killed in the attack on the prison, while there were apparently no casualties in the attack on the Legislative Council building.

381. The factual question of whether these two institutions and their buildings served a military purpose must be considered with regard to the legal definition of military objectives. It is addressed in the following section.

²⁴³ Gabriel Siboni, "Disproportionate force: Israel's concept of response in light of the second Lebanon war", *Institute for National Security Studies Insight*, No. 74 (2 October 2008), available at: <http://www.inss.org.il/publications.php?cat=21&incat=&read=2222>.

²⁴⁴ "The operation in Gaza...", paras. 233-235.

5. Legal analysis

382. In assessing the Israeli strikes against the Legislative Council building and the main prison, the Mission first of all notes that Hamas is an organization with distinct political, military and social welfare components.²⁴⁵

383. Since July 2007 Hamas has been the de facto government authority in Gaza. As recognized by the Israeli Government,²⁴⁶ the Hamas-led authorities in Gaza have been responsible for the civilian administration of Gaza. For instance, they employ civil servants and workers, run schools, hospitals, traffic police and the administration of justice. The fact that these institutions and the buildings housing them have been administered by authorities led by Hamas since July 2007, and no longer by a government composed of both Hamas and Fatah members has, in the view of the Mission, no bearing on the continued civilian character of these institutions. Regarding the prison, the Mission finds the consequences of the attack aptly described in the answer to its questions received from the Gaza authorities: “As a result of this targeting, great numbers of those who were detained pending trial in criminal cases and of those convicted of major crimes such as murder escaped. This has caused disorder and chaos, encouraged ‘family revenge’ cases and people taking the law into their own hands.”²⁴⁷ As far as the Palestinian Legislative Council building is concerned, it served representatives from all Palestinian parties who won seats in the 2006 elections (which were recognized as free and fair by international observers).

384. The Mission met with Gaza-based Legislative Council members belonging to Hamas, to Fatah and to the Popular Front for the Liberation of Palestine.²⁴⁸ While Hamas constitutes the de facto authority in Gaza, the buildings attacked and destroyed served a public purpose that cannot be regarded as “promoting Hamas terrorist activity”.

385. The fundamental rule of international humanitarian law applicable to attacks against buildings and infrastructure is enshrined in article 52 of Additional Protocol I (“General Protection of civilian objects”). This provision is generally recognized as codifying customary law applicable to both international and non-international armed conflicts.²⁴⁹

²⁴⁵ This situation is recognized also by Governments which have listed Hamas’ military component as “terrorist”. The Australian Government’s listing of al-Qassam Brigades as a terrorist organization (last updated 14 September 2007), for instance, explains: “The functions of the Hamas organization, which has distinct civilian and military wings, include legitimate political and social activities. Its welfare and mosque networks act as a base for its recruitment and propaganda activities. Its terrorist operations are conducted by its military wing, the Izz ad-Din al-Qassam Brigades.”

²⁴⁶ “The operation in Gaza...”, para. 235.

²⁴⁷ Reply from the Gaza authorities to the Mission’s list of questions (July 2009).

²⁴⁸ The Mission also spoke with West Bank-based Legislative Council members.

²⁴⁹ International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law*, vol. I, Jean-Marie Henckaerts and Louise Doswald-Beck, eds. (Cambridge University Press, 2005), rules of customary law 7–9. The Israeli Government recognizes this principle. See “The operation in Gaza...”, para. 95.

1. Civilian objects shall not be the object of attack or of reprisals. Civilian objects are all objects which are not military objectives as defined in paragraph 2.
2. Attacks shall be limited strictly to military objectives. In so far as objects are concerned, military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.
3. In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

386. The statement by the Israeli Government concerning the attack on the Legislative Council building and the Ministry of Justice does not suggest any “effective contribution to military action” that the buildings might have been making. No reference is made to any “definite military advantage” that their destruction would offer. Instead, the explanation is that government buildings constitute “part of Hamas’s mechanism of control”, that they “serve as a critical component of the terrorist groups’ infrastructure in Gaza” and that “ostensibly civilian elements of [the Hamas] regime are in reality active components of its terrorist and military efforts.”

387. The Mission observes that there is nothing unique in the fact that in Gaza ministries and prisons are part of the government’s “mechanism of control” and that the legislature’s assembly hall and administrative buildings are a critical component of the government infrastructure. That is not, however, the test applied by international humanitarian law and accepted State practice to distinguish between civilian and military objects. The Mission reviewed, for instance, the tentative list of military objectives drawn up by Major General A.P.V. Rogers, a former Director of the British Army Legal Services, and a proposed list of military objectives drawn up by the International Committee of the Red Cross (ICRC). There is nothing in this comprehensive list of military objectives that comes close to a legislative assembly’s building or a prison. As far as ministries are concerned, both lists limit the definition of military objective to “war ministries”.²⁵⁰

388. The Mission further notes that international humanitarian law also recognizes a category of civilian objects which may nonetheless be targeted in the course of armed conflict to the extent that they have a “dual use”. Examples often made for such dual-use objects, which serve both civilian and military purposes, are civilian infrastructures such as telecommunications, power-generating stations or bridges, *in so far as they are used by the military in addition to their civilian use*. There is no indication, nor any allegation of any such dual use of the Legislative Council building or of the Gaza main prison.

²⁵⁰ “Final report to the Prosecutor by the Committee established to review the NATO bombing campaign against the Federal Republic of Yugoslavia”, paras. 38–39, available at: <http://www.un.org/icty/pressreal/nato061300.htm#IVA64d>.

389. There is an absence of evidence or, indeed, any allegation from the Israeli Government and armed forces that the Legislative Council building, the Ministry of Justice or the Gaza main prison “made an effective contribution to military action.” On the information available to it, the Mission finds that the attacks on these buildings constituted deliberate attacks on civilian objects in violation of the rule of customary international humanitarian law whereby attacks must be strictly limited to military objectives.

390. In the Mission's view these facts further indicate the commission of the grave breach of extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly, as defined in article 147 of the Fourth Geneva Convention.

391. The Mission rejects the analysis of present and former senior Israeli officials that, because of the alleged nature of the Hamas government in Gaza, the distinction between civilian and military parts of the government infrastructure is no longer relevant in relation to Israel's conflict with Hamas. This analysis is accompanied, in the statements of Col. Gabriel Siboni and Mr. Matti Steinberg, by an explicit argument that Israel should “put pressure” on Hamas by targeting civilian infrastructure to attain its war aims.

392. The Mission is of the view that this is a dangerous argument that should be vigorously rejected as incompatible with the cardinal principle of distinction. International humanitarian law prohibits attacks against targets that do not make an effective contribution to military action. Attacks that are not directed against military (or dual use) objectives are violations of the laws of war, no matter how promising the attacker considers them from a strategic or political point of view. As a recent academic contribution to the discussion on whether “new wars” require “new laws” has noted, “if this argument [that attacks against political, financial or psychological targets may prove more effective than those against military or dual-use objectives] was decisive, in some societies – in particular in democracies – it may be hospital maternity wards, kindergartens, religious shrines, or homes for the elderly whose destruction would most affect the willingness of the military or of the government to continue the war.”²⁵¹

B. Deliberate attacks on the Gaza police

393. Information received by the Mission indicates that 248 members of the Gaza police were killed in the course of Israel's military operations.²⁵² In other words, more than one out of every six casualties was a member of the Gaza police.

394. The Mission visited the “Arafat City” police headquarters in Gaza City and five police stations: the Abbas police station (central Gaza City), three police stations in neighbourhoods in the east and south of Gaza City (Zeytoun, al-Shujaeyah and al-Tuffah) and the Deir al-Balah investigative police station. The Mission interviewed the Director of Police, the police spokesman, station commanders at the stations visited and other persons knowledgeable about

²⁵¹ Marco Sassoli, “Targeting: the scope and utility of the concept of “military objectives” for the protection of civilians in contemporary armed conflicts”, *New Wars, New Laws? Applying the Laws of War in 21st Century Conflicts*, D. Wippman and M. Evangelista, eds. (Ardsley, New York; Transnational Publishers; 2005), p. 196.

²⁵² The Central Commission for Documentation and Pursuit of Israeli War Criminals (TAWTHEQ), established by the Gaza authorities' Ministry of Justice.

the Gaza police. The Mission also reviewed allegations about the Gaza internal security forces made by the Israeli Government and also mentioned in a report (in Hebrew) by the Orient Research Group Ltd., an Israeli organization commissioned by the then Israeli Prime Minister Ehud Olmert to produce this report.²⁵³

395. The attacks investigated by the Mission were all directed against facilities used by the police force called *shurta* (police) in official documents of the Gaza authorities and referred to as “civil police” in many English reports.

396. The Arafat City police headquarters and three of the five police stations visited were attacked during the first minutes of the Israeli military operations in Gaza, between 11.20 and 11.35 a.m. on 27 December 2009. According to witnesses, the attacks were carried out primarily with bombs and missiles launched from fighter jets. Missiles launched by naval forces might also have been used.

397. According to the information received by the Mission from TAWTHEQ, 29 other police stations were targeted by the Israeli armed forces in addition to the five police stations visited by the Mission. Twenty-four were targeted on 27 December 2008 (mostly during the first minutes of the attack), the first day of the military operations, nine on the following day and one on 14 January 2009.

1. Information regarding the attacks on the police headquarters and police stations visited by the Mission

398. Arafat City police headquarters occupy a large compound in central Gaza. They are used by the civil police (*shurta*), one of the police forces operating in Gaza, as office space and for training courses. The Mission visited three sites in the compound in which missiles or bombs had struck. In one large yard, three missiles struck the participants of a police training course. Forty-eight policemen were killed on the spot, five more were wounded, two of whom subsequently succumbed to their injuries.

399. While it appears that all the policemen killed in this location were taking part in a training course, there is conflicting information on the details. Most reports by NGOs are to the effect that these were police “cadets” in the midst of a graduation ceremony. The Gaza police spokesperson, however, told the Mission that they were serving policemen, who had been taking a three-week course and who were, at the time of the strike, doing “morning sport exercise”.²⁵⁴ The contents of the training course reportedly were “protocol”, i.e. how to deal with

²⁵³ See Lt. Col. (res.) Jonathan Dahoah-Halevi, “Fatal casualties of the Palestinian security forces – Myth vs. Reality” (Orient Research Group Ltd., 2009). Its author is a former adviser to the Policy Planning Division of the Israel Ministry of Foreign Affairs and current researcher at the Jerusalem Center for Public Affairs and co-founder of the Orient Research Group Ltd. In a letter to the Mission, the author stated that the report had been commissioned “to identify the police officers killed and the extent of their affiliation with Hamas, Palestinian Islamic Jihad and other terrorist organizations.” As to the sources and methodology employed, he explained that he had examined materials in the public domain, including official lists of policemen who were killed published by the Palestinian Police and the Gaza authorities, NGO reports and material published by Palestinian armed groups. “The operation in Gaza...” relies on this report, referring to it as “a recent study” (para. 247).

²⁵⁴ Mission phone interview with Mr. Shahwan, Gaza police spokesperson, 12 July 2009.

representatives of foreign Governments and international delegations, and rescue operations. An obituary of one of the policemen killed, published on the website of al-Qassam Brigades, claims that he was attending “a military refreshing course.”²⁵⁵

400. The police gave the Mission small cube-shaped (4x4x4 mm³ and 2x4x4 mm³) metal fragments allegedly from the missiles fired at this location. Information provided by NGOs that visited the site soon after the strike and collected samples of the munitions fragments confirm that they were found there. Laboratory analysis of the cubes establishes that they are made of tungsten.²⁵⁶

401. In a second location at Arafat City police headquarters, two projectiles fired by Israeli fighter jets left two craters. No one was present in the area at the time of the strike. The third location visited by the Mission was near the north gate of the police headquarters where a projectile, most likely a missile, killed police chief Tawfiq Jabr. Reports indicate that other sites at the police headquarters, not visited by the Mission, were also targeted.

402. A second police training course targeted was reportedly attended by around 50 policemen. Twenty-eight of them were killed in the strike. According to the police spokesperson, the training course was designed to instruct police officers on how to deal with police officers who abused their power as well as on cultural and economic issues relevant to police work.²⁵⁷ Moreover, as the survivors were trying to flee through the western gate of the police city, they were reportedly targeted by two anti-personnel missiles, which caused deaths and injuries. While the Mission did not receive official information from the Gaza authorities on the number of policemen killed at the police headquarters on 27 December 2008, a report by an NGO submitted to the Mission states that 89 policemen died as a result of this attack.

403. Abbas police station in central Gaza City was, according to the station commander, hit by three missiles on 27 December 2008 at 11.35 a.m.²⁵⁸ Officials at the police station had just been informed of the attack on Arafat City police a few minutes earlier and immediate evacuation of the station had begun. Nine policemen were killed, 20 more reportedly injured. There were, according to the station commander, five detainees (common criminal suspects) in the police cells, who were released before the attack. There were members of the public going about their normal business at the police station at the time of the strike, including women and children. TAWTHEQ estimates the material damage caused by the attack at US\$ 80,000.

²⁵⁵ See <http://www.alqassam.ps/arabic/sohdaa5.php?id=1342>.

²⁵⁶ Laboratory analysis was carried out under the supervision of Lt. Col. Lane of Ireland’s Defence Forces, an expert witness of the Mission. In his report to the Mission he notes that “the IDF have deployed newly developed high-precision low-collateral damage missile systems.... In mid-2004 Rafael noted that a new warhead for the Spike had been developed for operations in urban areas.” See also Human Rights Watch, *Precisely Wrong: Gaza Civilians Killed by Israeli Drone-Launched Missiles* (June 2009), where it is stated that the fragments are likely to have been from drone-launched “Spike” missiles produced by the Israeli firm Rafael Advanced Defense Systems (pp. 6-7, 11-12).

²⁵⁷ Mission phone interview with Mr. Shahwan, Gaza Police Spokesperson, 12 July 2009.

²⁵⁸ Interview with station commander, Maj. Iyad Jabr el Horani, 9 June 2009.

404. The police station in the al-Tuffah neighbourhood of Gaza City, a recently completed three-storey building, was struck by three missiles around 11.30 a.m. on 27 December 2009.²⁵⁹ Also according to the station commander, no policemen were killed, as it had been possible to evacuate the police station very rapidly after another target in the neighbourhood had been hit. Many civilian bystanders were, however, allegedly injured. The station was hit again in the course of the hostilities. TAWTHEQ estimates the material damage caused by the attack at US\$ 150,000.

405. The Deir al-Balah investigative police station was attacked between 11.30 and 11.45 a.m. on 27 December 2008. According to a police officer interviewed by the Mission,²⁶⁰ the police station was hit by a missile fired from an F-16. Other witnesses interviewed by the Mission recalled several explosions, the first of them most likely on a plot adjacent to the police station. Police officers who were inside the station at the time of the attack²⁶¹ reported that routine police activities were taking place. Suspects were being interrogated (there were four or five persons held in the station's jail) and residents of the area were filing complaints. One police officer, Ashraf Hamadah Abu Kuwaik, was killed in the strike, and five other officers and one civilian were also injured.

406. The attack on the Deir al-Balah investigative police station cost the lives of six members of the public, who were in the vicinity. As a result of the explosions at the police station and of the debris, walls at the house of the al-Burdini family next to the police station collapsed, killing the 10-year-old Kamelia al-Burdini²⁶² and injuring several other members of the family. At a wholesale fruit and vegetable market next to the police station on Salah ad-Din Street, where between 50 and 100 persons were trading at the time, debris from the police station killed five persons, among them Abd al-Hakim Rajab Muhammad Mansi, 32, and his son, Uday Hakim Mansi, and injured many others.²⁶³

407. The strikes on al-Shujaeyah and Zeytoun police stations, on 28 December 2008 and 14 January 2009, did not result in the deaths of any policemen, as after the 27 December attacks the police stations had been evacuated.²⁶⁴ In the attack on al-Shujaeyah police station, however, two women, a man and a child, standing on the opposite side of the road, were reportedly killed by debris. TAWTHEQ estimates the material damage caused by the attacks on al-Shujaeyah and Zeytoun police stations at US\$ 210,000 and US\$ 900,000, respectively.

²⁵⁹ Interview with Tuffah station commander, Maj. Aymal el-Batniji, 9 June 2009.

²⁶⁰ Interview with First Lieutenant Samih Sabbah, 30 June 2009.

²⁶¹ Interviews with First Lieutenant Samih Sabbah and criminal investigation officer Ahmad Abu Slimya, 30 June 2009.

²⁶² Interview with Refaet al-Burdini, 30 June 2009.

²⁶³ Interview with Muhammad Ibrahim Khalid. The names of two of the persons killed are on the PCHR list of child victims of the hostilities.

²⁶⁴ Interviews with Zeytoun station commander, Maj. Mahmoud Kehael, and Lt. Mahmoud Idallo of al-Shujaeyah station.

2. Conflicting characterizations of the Gaza security forces

(a) The approach of the Government of Israel

408. The position of the Government of Israel is that “due to their military functions, these internal security forces were not accorded the immunity from attack generally granted to civilians.” It alleges that, in May 2006, Hamas formed the Executive Force as a loyal militia, “[drawing] this paramilitary force largely from its military wing, the Izz al-Din al-Qassam Brigades, and armed the members with anti-tank missiles, mortars, machine guns and grenades. The newly recruited commanders and subordinates were not obliged to give up their military wing affiliation, and continued to operate simultaneously in both functions.” It further alleges that after the June 2007 seizure of full control over Gaza, Hamas restructured the Executive Force and subdivided it into several units, including the police, who “assumed many traditional law enforcement functions”. It goes on to say that its members, however, remained members of Hamas’ military wing and their weaponry continued to include machine guns and anti-tank weapons. “[...] the former Executive Force continued to be closely integrated with — although not formally part of — the al-Qassam Brigades. [...] many members of the internal security services also served directly in the al-Qassam Brigades.” Regarding the military operations, the Israeli Government alleges that “Hamas intended to, and did, in fact, employ its internal security forces for military activities during the Gaza Operation.” It further alleges that the “collective role of the Gaza ‘police’ as an integral part of Hamas armed forces is further evidenced by the fact that many Gaza ‘policemen’ were also members of the al-Qassam Brigades.” To support this allegation, an Israeli Government paper shows pictures of four men killed during the military operations. Each of the men is shown in two pictures purportedly downloaded from Palestinian websites, one identifying the man as a policeman, the other as a member of al-Qassam Brigades. Finally, the paper refers to the above-mentioned study of the Orient Research Group Ltd., stating that it found that “more than nine out of every ten alleged ‘civilian police’ were found to be armed terrorist activists and combatants directly engaged in hostilities against Israel.”²⁶⁵

(b) The approach of the Gaza authorities

409. The characterization of the Gaza internal security forces by the Government of Israel differs sharply from the tasks of the police as they are described on the official website of the Gaza Ministry of Interior, in orders to the police issued by the Minister of Interior which the Mission has reviewed, and in the interviews with the Director of Police and the police spokesman conducted by the Mission.

410. The Director of Police, Gen. Jamal al-Jarrah, also known as Abu Obeidah, stated that “the role of the police is to solve problems of the population, combat drug trafficking, arrest criminals.” He reported that they are equipped with Kalashnikov firearms and batons, as the authorities have not been able to obtain other police equipment, such as tear gas and small guns. Gen. Abu Obeidah acknowledged that there were complaints about the “harsh” methods of the

²⁶⁵ “The operation in Gaza...”, paras. 237, 239, 241-242 and 245-247.

Gaza police, but showed pride in their success in reducing lawlessness in the Gaza Strip.²⁶⁶ This assessment was shared by many whom the Mission interviewed in the course of its investigations. The police orders and the Ministry's website similarly describe the police as a law-enforcement agency. As to allegations that the police and al-Qassam Brigades were "interchangeable", the Director of Police asserted that they were "absolutely not true".

411. According to the police spokesperson, during the military operations the mandate of the police was firstly to "protect the internal front", i.e. ensure that the relationship between the civilian population and the authorities stayed "intact". Secondly, the police were to monitor the distribution of humanitarian goods to the civilian population. Thirdly, they were to continue regular law-enforcement duties, with a particular focus on combating looting and speculation on prices.²⁶⁷

3. The Mission's assessment of the role and composition of the police

412. In order to shed some light on where the truth might lie between these two conflicting descriptions of the police, the Mission finds it necessary to examine the development of the security forces linked to Hamas after its election victory in January 2006. When Mr. Said Seyam, a senior Hamas representative,²⁶⁸ took office as the Palestinian Authority's Minister of Interior in April 2006, he found that he had little or no control over the Palestinian Authority's security forces, which were put under the control of the President of the Palestinian Authority and of officials loyal to him.²⁶⁹ On 20 April 2006, he announced the formation of a new security force reporting directly to him. This was the Security Forces Support Unit, also known as the Executive Force (*al-Quwwa al-Tanfiziyya*). The new security force appears to have had a double function as both a law-enforcement agency and, at least potentially, a military force. It was officially charged with enforcing public security and protecting property. At the same time, he appointed Mr. Jamal Abu Samhadana, commander of the Popular Resistance Committees, as the head of the Executive Force²⁷⁰ and announced that it would be composed of 3,000 new recruits

²⁶⁶ Mission meeting with the Gaza authorities' Director of Police, 4 June 2009. On both successes in restoring order and violations of human rights by the Gaza police after June 2007, see also International Crisis Group, "Ruling Palestine I: Gaza under Hamas", Middle East Report No. 73, 19 March 2008, p. 10.

²⁶⁷ Mission meeting with Gaza authorities' police spokesperson, 9 June 2009. According to the International Crisis Group, during the hostilities, "the Qassam Brigades and some civil police members (still referred to locally as the "Executive Forces") patrolled streets in civilian clothes; some wore badges to establish their official status. They continued to arrest lawbreakers, detaining them in ordinary apartments since prisons have been destroyed; this helps explain why thus far there has been no report of looting or increase in crime. Likewise, security personnel maintained order in breadlines that sometimes stretched to hundreds of people and prevented unrest at the overburdened hospitals, where tempers easily flare." "Ending the war...", p. 8).

²⁶⁸ Said Seyam was killed by an Israeli air strike on 15 January 2009 together with several members of his family (TAWTHEQ documents submitted to the Mission; see also International Crisis Group, "Gaza's unfinished business", Middle East Report N°85, 23 April 2009, p. 5.)

²⁶⁹ See, for instance, International Crisis Group, "Palestinians, Israel, and the Quartet: Pulling back from the brink", Middle East Report N°54, 13 June 2006, p. 12.

²⁷⁰ *Ibid.*, pp. 13 and 20; "Fatal casualties...". Abu Samhadana and three other members of the Popular Resistance Committees were killed by an Israeli air strike on 8 or 9 June 2006.

from various Palestinian armed groups, including al-Qassam Brigades.²⁷¹ The newly appointed commander reportedly declared: “[The Executive Force] will be the nucleus of the future Palestinian army. The resistance must continue. We have only one enemy. ... I will continue to carry the rifle and pull the trigger whenever required to defend my people. We are also a force against corruption. We are against thieves, corrupt officials and law breakers.”²⁷²

413. In August 2007, following the June 2007 Hamas seizure of full control over Gaza, the current Director of the Gaza authorities’ civil police, then head of the Executive Force, Gen. Abu Obeidah, described the planned reorganization of the security services in Gaza. Executive Force members were to be integrated into the civil police. He reportedly stated that Hamas was “working hard to retrain Executive Force members to perform police duties” and that the “Force will be in charge of chasing drug dealers and lawless residents”. At the same time, he stated that “members of the Force are religious, and are resistance fighters.”²⁷³

414. In October 2007, the security services operating in Gaza were reorganized. The previous Palestinian Authority’s police agencies in Gaza were merged with the Executive Force.²⁷⁴ The security forces under the control of the Ministry of Interior emerging from this reorganization comprise the Civil Police, the Civil Defence, the Internal Security (an intelligence agency) and the National Security. Their mandates, according to the Gaza authorities’ Ministry of Interior’s website,²⁷⁵ are differentiated.

415. The National Security force is given specific military tasks, such as “the protection of the State from any foreign aggression” and “responsibility for the defence of the Palestinian homeland in the face of external and internal threats”. It is thus plainly a military force whose members are, under international humanitarian law, combatants.²⁷⁶ The functions of the police have been outlined above.

416. On 1 January 2009, during the Israeli military operations in Gaza, the police spokesperson, Mr. Islam Shahwan, informed the media that the police commanders had managed to hold three meetings at secret locations since the beginning of the armed operations. He added that “an action plan has been put forward, and we have conducted an assessment of the situation

²⁷¹ “Palestinians, Israel, and the Quartet...”, p. 13. The “Executive Force consisted in summer of 2007 of some estimated 6,800 members of the armed wings of Hamas and the Popular Resistance Committees”, R. Friedrich and A. Luethold, eds., *Entry-Points to Palestinian Security Sector Reform* (Geneva Centre for the Democratic Control of Armed Forces, 2007), p. 162.

²⁷² “Palestinians, Israel, and the Quartet...”, footnote 105.

²⁷³ International Middle East Media Center, “Interview with the leader of the Hamas-formed Executive Force”, 17 August 2007, available at: <http://www.imemc.org/article/49939>.

²⁷⁴ See, e.g., Xinhua, “Hamas Executive Force merged into police force in Gaza: official”, 2 October: “Ihab al-Ghusein, a spokesman with the Interior Ministry, made the remarks during a news conference in Gaza. Al-Ghusein said the mission of the Executive Force ‘is now over, and it is time to include the force into the official police force that belongs to the ministry of interior.’”

²⁷⁵ See the Arabic-language website of the Gaza Ministry of Interior: <http://www.moi.gov.ps/?page=633734043174687500>.

²⁷⁶ See the Arabic-language website of the National Security Forces: <http://www.nsf.gov.ps>.

and a general alert has been declared by the police and among the security forces in case of any emergency or a ground invasion. Police officers received clear orders from the leadership to face (“يوأجه” in Arabic) the enemy, if the Gaza Strip were to be invaded.”²⁷⁷ Confirming to the Mission that he had been correctly quoted, Mr. Shahwan stated that the instructions given at that meeting were to the effect that in the event of a ground invasion, and particularly if the Israeli armed forces were to enter urban settlements in Gaza, the police was to continue its work of ensuring that basic food stuffs reached the population, of directing the population to safe places, and of upholding public order in the face of the invasion. Mr. Shahwan further stated that not a single policeman had been killed in combat during the armed operations, proving that the instructions had been strictly obeyed by the policemen.

417. The Mission notes that there are no allegations that the police as an organized force took part in combat during the armed operations. On the basis of the information provided by the Gaza authorities and of the above-mentioned study of the Orient Research Group Ltd., it would appear that 75 per cent of its members killed in the course of the military operations died as a result of the air strikes carried out during the first minutes of the Israeli attack. These men had not engaged in combat with the Israeli armed forces.²⁷⁸

418. The Mission also notes that while the then commander of the Executive Forces and now Director of Police did reportedly say in August 2007 that members of the Executive Force were “resistance fighters”, he stressed in the same interview the authorities’ intention to develop it into a law enforcement force. The Mission notes that a situation in which a recently constituted civilian police force integrates former members of armed groups would not be unique to Gaza. That prior membership in itself would not be sufficient to establish that the police in Gaza is a part of al-Qassam Brigades or other armed groups.

419. Except for the statements of the police spokesperson, the Israel Government has presented no other basis on which a presumption can be made against the overall civilian nature of the police in Gaza. It is true that the police and the security forces created by Hamas in Gaza may have their origins in the Executive Force. However, while the Mission would not rule out the possibility that there might be individuals in the police force who retain their links to the armed groups, it believes that the assertion on the part of the Government of Israel that “an overwhelming majority of the police forces were also members of the Hamas military wing or

²⁷⁷ His statements are reported in the Arabic original on a website of the Egyptian Muslim Brotherhood, at <http://www.ikhwanonline.com/Article.asp?ArtID=43756&SecID=450>. The journalist states that in spite of the Israeli air attacks against police stations, the police continued to do law enforcement work and to direct the traffic: “members of the Criminal Investigation and the Internal Security caught a quantity of drugs in some of the targeted areas, and at the entrances of some of the crossroads and cities within the Strip, where one can observe members of the police in civilian clothes monitoring the traffic”.

²⁷⁸ In “Fatal casualties...”, the Orient Research Group Ltd, however, identifies 31 policemen who it alleges were killed in combat in Gaza during the period from 3 to 18 January. In a few cases the information is rather specific, such as “killed on 4 January in Jabalya after launching rockets” or “killed on 6 January while fighting the IDF in Deir al-Balah”. In other cases it is more generic, such as “killed while fighting the IDF”. The Mission accepts that this might indicate that some individual members of the Gaza police were at the same time members of armed groups. The Mission is also mindful, as explained below, that the claims of armed groups that a person killed during the armed operations was one of their members have to be treated with care.

activists of Hamas or other terrorist organizations”,²⁷⁹ appears to be an overstatement that has led to prejudicial presumptions against the nature of the police force that may not be justified.

420. In his meeting with the Mission, the Director of Police was very open in acknowledging that many of his men were Hamas supporters, but insisted at the same time there are others who supported other Palestinian factions.²⁸⁰ Police station commanders interviewed by the Mission stated that most of their men (70 per cent according to the estimates of one station commander, 95 per cent in another station) had joined the police after June 2007.²⁸¹ The Mission understands that most, if not all, of the post-June 2007 recruits into the civil police, will have been recruited from the Executive Force, which was strongly loyal to Hamas.

421. The Mission also notes, however, that in senior positions in the police, the representation of non-Hamas men appears to have been broader. The Director of Police killed on 27 December 2008, Mr. Tawfiq Jabr, was generally known as not being affiliated with Hamas. Several of the station commanders interviewed by the Mission were also not Hamas affiliates but men who had joined the Palestinian Authority’s police after the Oslo Accords allowed the Palestinians to constitute their own law-enforcement agencies. They had thus served in the Palestinian police in Gaza for more than 10 years before Hamas seized control of it in June 2007.

422. The Mission further notes that the study conducted by the Orient Research Group Ltd. names policemen killed during the attack, whom it identifies as members of Hamas, al-Qassam Brigades, other armed Palestinian groups or “terror operatives” whose affiliation is not known. In 78 out of 178 cases the policemen are alleged to be members of al-Qassam Brigades on the sole basis that they were allegedly Hamas members.

423. Furthermore, it appears from the response to the Mission from the Orient Research Group Ltd. describing its methodology that its information on police members’ alleged affiliation with armed groups was based to a large extent on the websites of the armed groups. In this respect, the Mission is mindful of a recent report by a Palestinian human rights NGO drawing attention to the “issue of the ‘adoption’ of killed persons by resistance groups; i.e. declaration by a political or armed group that the person killed was one of their members. Often, when persons, including children, are killed by actions of the Israeli armed forces, political and/or armed groups ‘adopt’ them as ‘martyrs’ placing their photographs on their websites and commending their contribution to resisting occupation. This does not mean that those persons killed were involved in resistance activities in any way. The families accept this ‘adoption’ of deceased family members for various reasons including the willingness of resistance groups to provide financial support to the families and pay for funeral costs of the persons killed.” As the NGO concludes, “these cases require in-depth investigation on a case-by-case basis in order to determine every person’s status according to his actual affiliation”.²⁸²

²⁷⁹ “The operation in Gaza...”, para. 247.

²⁸⁰ Mission meeting with Director of Police, 4 June 2009.

²⁸¹ Mission interviews with Gaza City police station commanders, 9 June 2009.

²⁸² Al Mezan Center for Human Rights, “Cast lead offensive in numbers”, p. 5.

4. Factual findings

424. From the facts gathered by it, the Mission estimates that 99 policemen and nine members of the public were killed in the attacks on the police headquarters and the five police stations inspected by the Mission. The Gaza authorities state that overall 248 policemen were killed by the Israeli armed forces during the military operations. The study by the Orient Research Group Ltd. identifies 345 men allegedly belonging to the Gaza internal security forces killed by Israeli attacks during the military operations. It identifies 240 of the 345 alleged members of the internal security forces as members of the police. This is very close to the number provided by the Gaza authorities.²⁸³

425. The facts gathered by the Mission indicate that the policemen were the intended targets of the attacks. The Israeli Government²⁸⁴ is quite clear on this, and has not suggested that the attacks on the police were not intended. The type of ammunition used at the Arafat City police headquarters is designed to kill or incapacitate people in the area of impact and has little or no effect on buildings or other infrastructure. In other locations at the civil police headquarters in Gaza City the munitions used were such that the damage to infrastructure was minimal compared to the cost in lives among the policemen. With regard to the other police stations visited by the Mission, damage to the buildings was extensive but the number of policemen killed was limited, with the exception of Abbas police station in central Gaza City, where nine policemen were killed. There is no question that the approximately 100 policemen who died in the attacks on the stations visited by the Mission were deliberately targeted and killed by the Israeli armed forces.

426. The attacks on the police headquarters and five police stations visited by the Mission were carried out during the first minutes of the surprise air bombing campaign launched by the Israeli armed forces against Gaza shortly before 11.30 a.m. on 27 December.

427. From the facts gathered by it, the Mission finds that there is insufficient information to conclude that the Gaza police as a whole had been “incorporated” into the armed forces of the Gaza authorities. The statement by the police spokesperson on 1 January 2009 (after the attacks of 27 December 2008 had been carried out) cannot, on its own, justify the assertion that the police were part and parcel of the armed forces.

428. The Mission could not verify the allegations of membership of armed groups of policemen. In half the cases, moreover, the allegations appear to be based merely on an equation of membership in Hamas (in itself alleged on the basis of unverifiable information) with membership in al-Qassam Brigades, which in the view of the Mission is not justified. Finally, even according to the study referred to by the Israeli Government, 34 policemen without any affiliation to Hamas or a Palestinian armed group were killed in the armed operations, the great majority of them in the bombardment of police stations on the first day of the military operations.

²⁸³ ”Fatal casualties...” assigns the remaining victims to national security (5), civil defence (11) and internal security (2), with the remaining 85 identified as belonging to security forces without being able to state which one.

²⁸⁴ “The operation in Gaza...”, pp. 89-95.

429. An “obituary” published on a website of al-Qassam Brigades states that one of the training courses at the police headquarters in Gaza on 27 December 2008 was a “military refresher course”. That is, however, contradicted by the police spokesperson and a number of the reports received by the Mission from NGOs. It is also not suggested by the Israeli Government that that was a reason for attacking it. As a distinct probability, the Mission finds that the policemen killed there were neither engaged in any military activity at the time of the attacks nor carrying out preparations for combat. At the other police stations, the police were engaged in a range of routine tasks, including questioning detainees and handling issues for members of the public who were present in police facilities in the middle of an ordinary day.

5. Legal analysis

(a) The applicable rules of international humanitarian law

430. The general rule of international humanitarian law is that members of law-enforcement agencies are considered part of the civilian population, unless they have been incorporated into the armed forces of a party to the conflict.²⁸⁵ This principle is accepted by the Israeli Government.²⁸⁶ The obligation to distinguish at all times between the civilian population and combatants and to direct attacks only against military objectives²⁸⁷ (the principle of distinction) therefore generally prohibits attacks against members of the law-enforcement agencies. In its Advisory Opinion of 8 July 1996 on the *Legality of the Threat or Use of Nuclear Weapons*, the International Court of Justice recognized the principle of distinction as an “intransgressible” principle of customary international law.

431. There are three situations in which direct attacks against members of police forces would not constitute a violation of the principle of distinction. First, if the law-enforcement agency or the unit to which the policeman belongs has been “incorporated” into the armed forces, thus conferring combatant status upon its members. Second, if individual members of the law-enforcement agency are at the same time members of an armed group, they would be combatants.²⁸⁸ Thirdly, individual members of the law-enforcement agency, like any civilians,

²⁸⁵ Article 43 (3) of Additional Protocol I provides: “Whenever a party to a conflict incorporates a paramilitary or armed law enforcement agency into its armed forces it shall so notify the other parties to the conflict.”

²⁸⁶ “The operation in Gaza...” (para. 238) states that “whereas members of a civilian police force that is solely a civilian police force, who have no combat function are not considered combatants under the Law of Armed Conflict, international law recognizes that this principle does not apply where police are part of the armed forces of a party.”

²⁸⁷ Article 48 of Additional Protocol I expresses the principle in the following terms:

In order to ensure respect for and protection of the civilian population and civilian objects, the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives.

²⁸⁸ The ICRC Commentary to Additional Protocol I argues that “any interpretation which would allow combatants as meant in article 43 to “demobilize” at will in order to return to their status as civilians and to take up their status as combatants once again, as the situation changes or as military operations may require, would have the effect of cancelling any progress that this article has achieved. ... [Article 44] does not allow this combatant to have the status of a combatant while he is in action, and the status of a civilian at other times” (pp. 515-516).

may not be targeted “unless and for such time as they take a direct part in hostilities.”²⁸⁹ Finally, as with civilians generally, policemen might be indirectly injured or killed in an attack which is directed at a military objective, as long as the attack complies with the principle of proportionality.

(b) Conclusion

432. The Mission will now draw conclusions with regard to each of these grounds potentially justifying the attacks against the police.

433. First, as already noted above, the Mission finds that there is insufficient information to conclude that the Gaza police as a whole had been “incorporated” into the armed forces of the Gaza authorities. Accordingly, the policemen killed cannot be considered to have been combatants by virtue of their membership in the police.

434. Second, the Mission finds that the policemen killed on 27 December 2008 cannot be said to have been taking a direct part in hostilities. Thus, they did not lose their civilian immunity from direct attack as civilians on this ground.²⁹⁰

435. Third, the Mission examined whether the attacks on the police stations could be justified on the basis that there were, allegedly, members of Palestinian armed groups among the policemen. The question would thus be one of proportionality. The principle of proportionality is reflected in Additional Protocol I, which prohibits launching attacks “which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated.”²⁹¹

²⁸⁹ Pursuant to article 51 (3) of Additional Protocol I, civilians enjoy immunity from attack “unless and for such time as they take a direct part in hostilities.” According to ICRC, this rule also reflects customary international law: “Civilians are protected against attack unless and for such time as they take a direct part in hostilities” (rule 6). *Customary International Humanitarian Law*.... The Mission is aware that Israel is not a party to Additional Protocol I and reportedly does not accept the qualifying phrase “and for such time” as reflective of customary law (see Y. Dinstein, “The ICRC customary international humanitarian law study”, *Israel Yearbook on Human Rights*, vol. 36 (2006), p. 11). In its report on the military operations, the Government of Israel refers to a definition of direct participation in hostilities by Israel’s High Court of Justice as “involving all persons that perform the function of combatants, including “a civilian bearing arms (openly or concealed) who is on his way to the place where he will use them against the army, at such place, or on his way back from it,” as well as “a person who collected intelligence on the army, whether on issues regarding the hostilities ... or beyond those issues...; a person who transports unlawful combatants to or from the place where the hostilities are taking place; a person who operates weapons which unlawful combatants use, or supervises their operation, or provides service to them, be the distance from the battlefield as it may.” (“The operation in Gaza...”, para. 120).

The Mission is of the view that, for the purposes of the legal analysis of the attacks on the police stations considered here, it is not decisive whether the rule binding Israel is that “civilians are protected against attack unless and for such time as they take a direct part in hostilities” or only “unless they take direct part in hostilities”.

²⁹⁰ This finding does not apply to those policemen who were members of al-Qassam Brigades, who were therefore combatants and not civilians.

²⁹¹ Israel recognizes that “customary international law bars military attacks that are anticipated to harm civilians excessively in relation to the expected military advantage.” “The operation in Gaza...”, para. 120.

436. The Mission has earlier accepted that there may be individual members of the Gaza police that were at the same time members of al-Qassam Brigades or other Palestinian armed groups and thus combatants. Even if the Israeli armed forces had reliable information that some individual members of the police were also members of armed groups, this did not deprive the whole police force of its status as a civilian law-enforcement agency.²⁹²

437. From the facts available to it, the Mission finds that the deliberate killing of 99 members of the police at the police headquarters and three police stations²⁹³ during the first minutes of the military operations, while they were engaged in civilian tasks inside civilian police facilities, constitutes an attack which failed to strike an acceptable balance between the direct military advantage anticipated (i.e. the killing of those policemen who may have been members of Palestinian armed groups) and the loss of civilian life (i.e. the other policemen killed and members of the public who would inevitably have been present or in the vicinity). The attacks on the Arafat City police headquarters and the Abbas Street police station, al-Tuffah police station and the Deir al-Balah investigative police station constituted disproportionate attacks in violation of customary international humanitarian law.

438. From the facts available to it, the Mission further believes that there has been a violation of the inherent right to life of those members of the police killed in the attacks of 27 December 2007 who were not members of armed groups by depriving them arbitrarily of their life in violation of article 6 of the International Covenant on Civil and Political Rights.

VIII. OBLIGATION ON PALESTINIAN ARMED GROUPS IN GAZA TO TAKE FEASIBLE PRECAUTIONS TO PROTECT THE CIVILIAN POPULATION

439. An assessment of the events occurring during the military operations in Gaza in December 2008 - January 2009 requires an investigation of the tactics used both by the Israeli armed forces and by the Palestinian armed groups in the context of their obligations under international humanitarian law to take constant care to minimize the risk of harm to the civilian population and to civilian objects. The Mission examines the extent to which the Israeli armed forces took all feasible precautions in chapter IX, as well as in the examination of individual incidents. In this chapter, the Mission examines allegations that the conduct of the Palestinian armed groups placed the civilian population of Gaza and civilian objects at risk of attack.

440. In its efforts to gather more direct information on the subject, during its investigations in Gaza and in interviews with victims and witnesses of incidents and other informed individuals, the Mission raised questions regarding the conduct of Palestinian armed groups during the hostilities in Gaza. The Mission notes that those interviewed in Gaza appeared reluctant to speak about the presence of or conduct of hostilities by the Palestinian armed groups. Whatever the

²⁹² “The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character” (Additional Protocol I, art. 50 (3)).

²⁹³ These are the policemen killed at the police headquarters and police stations visited by the Mission. The overall number of policemen killed on 27 December 2008 is around 180, according to the Orient Research Group Ltd. See “Fatal casualties...”.

reasons for their reluctance, the Mission does not discount that the interviewees' reluctance may have stemmed from a fear of reprisals.²⁹⁴

441. The Mission also addressed questions regarding the tactics used by Palestinian armed groups to the Gaza authorities. They responded that they had nothing to do, directly or indirectly, with al-Qassam Brigades or other armed groups and had no knowledge of their tactics.²⁹⁵ To gather first-hand information on the matter, the Mission requested a meeting with representatives of armed groups. However, the groups were not agreeable to such a meeting. The Mission, consequently, had little option but to rely upon indirect sources to a greater extent than for other parts of its investigation.

442. In forming an opinion on the subject, the Mission did use information it had gathered in the course of investigating certain incidents during the December-January military operations. However, the Mission mostly reviewed the allegations made in reports by the Government of Israel, by private individuals and organizations,²⁹⁶ and by NGOs.²⁹⁷

443. The Mission focused on allegations that Palestinian fighters had launched attacks from within civilian areas and from protected sites (such as schools, mosques and medical units); used civilian and protected sites as bases for military activity; misused medical facilities and ambulances; stored weapons in mosques; failed to distinguish themselves from the civilian population and, in so doing, used the Gazan civilian population as a shield against Israeli attack. The Mission further sought information concerning allegations that Palestinian armed groups had booby-trapped civilian property.²⁹⁸

444. The significance of these allegations is twofold. First, the alleged conduct might constitute a violation by the Palestinian armed groups of their obligation of care to prevent harm to the civilian population or the prohibition against the deliberate use of civilians to shield from military activity. Second, the Government of Israel and others argue that certain attacks by Israeli armed forces on civilian objects or protected sites were justified by the unlawful use that Palestinian armed groups made of them. In the words of a report by the Israeli armed forces on its shelling of a United Nations compound in which at least 600 Palestinian civilians had taken refuge, such attacks were “the unfortunate result of the type of warfare that Hamas forced upon

²⁹⁴ See chap. XX.

²⁹⁵ Response of the Gaza authorities to the Mission.

²⁹⁶ Submissions to the Mission by the Jerusalem Center for Public Affairs, B'nai Brith International, Take A Pen, the National Lawyers Guild, Mr. Maurice Ostroff, Ms. Yvonne Green and Mr. Peter Wertheim on behalf of a group of Australian lawyers.

²⁹⁷ For example, Amnesty International, *Israel/Gaza: Operation “Cast Lead”: 22 days of death and destruction*, (London, 2009); International Crisis Group, “Gaza’s unfinished business”, Middle East Report, No. 85, 23 April 2009; Human Rights Watch, *Rockets from Gaza: Harm to Civilians from Palestinian Armed Groups’ Rocket Attacks*, (August 2009).

²⁹⁸ “The operation in Gaza...”, pp. 55-76. The Mission understands the criticisms made by the Government of Israel to Hamas’ tactics to apply also to other Palestinian armed groups.

the IDF, involving combat in the Gaza Strip's urban spaces and adjacent to facilities associated with international organizations.”²⁹⁹

445. The Mission will address the justifications put forward by the Government of Israel for attacks on protected sites that it alleged were being used by Palestinian armed groups and that are investigated in this report.

A. Launching attacks from within civilian areas and from within or in the immediate vicinity of protected sites

446. The Mission investigated two incidents in which the Government of Israel alleged that Palestinian combatants had fired on the Israeli armed forces from within a United Nations protected site or its immediate vicinity in densely populated urban areas. In the case of the shelling in al-Fakhura Street by the Israeli armed forces on 6 January 2009 (chap. X), the Mission accepted, on the basis of information in the reports it had seen, the possibility of mortar attacks from Palestinian combatants in the vicinity of the school.

447. In the incident at the UNRWA compound in the neighbourhood of Rimal, in the centre of Gaza City, senior international UNRWA staff indicate that they were unaware of any sustained fire at the relevant time from anywhere in the nearby areas (chap. IX). In that case the Mission was unable to make a finding as to whether any combat activity was being conducted by Palestinian armed groups against the Israeli armed forces in that area at that time.

448. The Mission spoke with two witnesses who testified to the launching of rockets from urban areas. One witness stated seeing rockets being launched from a narrow street and from a square in Gaza City without providing further details as to when this occurred.³⁰⁰ A second witness told the Mission that rockets may have been fired from within the Sheikh Radwan neighbourhood north of Gaza City during the military operations in Gaza.³⁰¹

449. The Mission found corroboration of these witness accounts in a number of reports from international NGOs. In reports issued following Israel's military operations in Gaza, Amnesty International, the International Crisis Group and Human Rights Watch each determined that the rocket units of the Palestinian armed groups operated from within populated areas.³⁰² Human Rights Watch and the International Crisis Group gathered reports from civilians about instances in which armed groups had launched or had attempted to launch rockets near residential areas. Human Rights Watch quoted a resident of northern Gaza as stating that, on 1 January 2009, residents of the area prevented Palestinian fighters, who they believed were preparing to launch

²⁹⁹ <http://dover.idf.il/IDF/English/opcast/postop/press/2202.htm>. According to the Israeli Government, “when a party to an armed conflict uses civilian and protected spaces for military purposes, those spaces become legitimate targets for the opposing side, thereby placing civilian lives and infrastructure in great danger” (“The operation in Gaza...”, para. 153).

³⁰⁰ Mission interview with RA/01, June 2009.

³⁰¹ Mission interview with RA/02, June 2009.

³⁰² Israel/Gaza: Operation “Cast Lead”: 22 days..., pp.74–75; “Gaza’s unfinished business...”, p. 3; Rockets from Gaza..., p. 21.

rockets, from entering a garden next to the building in which they lived.³⁰³ The International Crisis Group interviewed a resident of Beit Lahia who stated that fighters used his land to fire rockets, which he did not dare to resist, as his father had previously been shot in the leg by a member of such an armed group when he had tried to prevent them from using his land as a rocket launching site.³⁰⁴ Amnesty International conducted interviews with residents of Gaza who stated that they had observed Palestinian fighters firing a rocket from a courtyard of a Government school in Gaza City at a time when the schools were closed. In another area of Gaza City, another resident reportedly showed an Amnesty International researcher a place from which a rocket had been launched, 50 metres from a residential building.³⁰⁵ Amnesty International also reported, however, that it had seen no evidence that rockets had been launched from residential houses or buildings while civilians were still in them.

450. Both the International Crisis Group and Human Rights Watch found that the practice of firing close to or within populated areas became more prevalent as the Israeli armed forces took control of the more open or outlying areas.³⁰⁶

451. The Mission reviewed the pictures allegedly showing the launching of rockets “from within or near residential buildings, including schools, mosques and hospitals” in the Israeli Government’s paper³⁰⁷ and in several of the submissions it received.³⁰⁸ The Mission notes that it is not reasonably possible to determine whether those photographs show what is alleged. As the Israeli Government concedes,³⁰⁹ many of them refer not to the December 2008-January 2009 period, but to previous alleged instances of firing of rockets from Gaza.³¹⁰

452. In view of the information communicated to it and the material it was able to review, the Mission believes that there are indications that Palestinian armed groups launched rockets from urban areas. In those instances in which Palestinian armed groups did indeed fire rockets or mortars from urban areas the question remains whether this was done with the specific intent of shielding the combatants from counter-attack. The Mission has not been able to obtain any direct evidence on this question; nor do reports from other observers provide a clear answer.

453. According to the International Crisis Group, for instance, a fighter for Islamic Jihad stated in an interview that “the most important thing is achieving our military goals. We stay away from the houses if we can, but that’s often impossible”, which suggests the absence of intent. The same NGO also reports an interview with three Palestinian combatants in January 2009 in

³⁰³ *Rockets from Gaza...*, p. 22.

³⁰⁴ “Gaza’s unfinished business...”, p. 3, footnote 29.

³⁰⁵ *Israel/Gaza: Operation “Cast Lead”: 22 days...*, p. 74.

³⁰⁶ *Rockets from Gaza...*, p. 21; “Gaza’s unfinished business...”, p. 3.

³⁰⁷ “The operation in Gaza...”, para. 155.

³⁰⁸ See, for instance, submission to the Mission by Mr. Maurice Ostroff.

³⁰⁹ “The operation in Gaza...”, para. 155.

³¹⁰ The following video, referred to in a submission to the Mission by B’nai B’rith International, appears to show the launching of rockets from within an urban area, allegedly from within a school, on 8 January 2009:

<http://www.youtube.com/watch?v=UN9WzUc7iB0>

which the fighters reportedly stated that rockets and mortars were launched in close proximity to homes and alleyways “in the hope that nearby civilians would deter Israel from responding”.³¹¹

454. The Mission now turns to the related but distinct question of whether and to what extent Palestinian armed groups made use of residential housing and of protected sites, such as schools, hospitals, mosques and United Nations facilities, in their engagements with Israeli ground forces.

455. The Mission also examined the question of the presence and activities of members of Palestinian armed groups in chapter XI. As already mentioned, Palestinian witnesses were generally reluctant to speak to the Mission about the activity of Palestinian armed groups in their neighbourhoods. For the present purposes, it suffices to say that, in some of the cases, there was evidence of the presence of Palestinian armed groups in residential areas.³¹²

456. The Mission received a submission from a colonel of the reserve of the Israeli armed forces that seeks to illuminate the “combat principles” of Palestinian armed groups. His report is based on material published by Palestinian armed groups on their websites. The report describes alleged tactics such as “seizing houses as military positions for the purpose of staging ambushes against IDF forces” and “deploying explosive charges of various types (IEDs, penetrating, bounding, anti personnel etc.) in the vicinity of residences and detonating them”, “booby-trapping houses ... and detonating the charges”, and “conducting fighting and sniper fire at IDF forces operating in the built-up areas”.³¹³

457. This submission provides useful information. It tends to show, for instance, that ground engagements between Israeli forces and Palestinian armed groups were most intense in areas of mixed urban-rural character on the outskirts of Gaza City, Jabaliyah and Beit Lahia.

458. The Mission notes, however, that the one incident described in the submission which it has investigated itself illustrates the unreliability of some of the sources the report relies on. In this incident, the source claimed that three Palestinian combatants had laid an ambush in a house in Izbet Abd Rabbo, hurled explosives at the Israeli armed forces and managed to drag a wounded Israeli soldier into the house. From the facts it has itself gathered, the Mission can exclude that in this incident the Palestinian combatants managed to capture an Israeli soldier. This example suggests that some websites of Palestinian armed groups might magnify the extent to which Palestinians successfully attacked Israeli forces in urban areas.

459. Other sources reviewed by the Mission confirm scepticism about the intensity of attacks on the Israeli armed forces by Palestinian armed groups in built-up areas. The Mission notes that a thread running through many of the Israeli soldiers’ testimonies collected by the Israeli NGO Breaking the Silence is that they had no encounters with Palestinian combatants.³¹⁴ According to another NGO report, “ Hamas fighters plainly were frustrated by their inability to engage in street

³¹¹ “Gaza’s unfinished business...”, p. 3.

³¹² See the case of Majdi Abd Rabbo in chapter XIV.

³¹³ “The hidden dimension of Palestinian war casualties...”, pp. 1-2 and 20.

³¹⁴ *Soldiers’ Testimonies...* , testimony 34, p. 76, and Rabin Academy testimonies.

battles”.³¹⁵ Generally, the Mission received relatively few reports of actual crossfire between the Israeli armed forces and Palestinian armed groups. This would also appear to be reflected in the low number of Israeli soldiers killed or injured during the ground offensive.³¹⁶ The Mission also notes that in none of the incidents it investigated was there any indication that civilians were killed in crossfire between Palestinian armed groups and the Israeli armed forces.

460. While the Mission is unable to form an opinion on the exact nature or the intensity of combat activities carried out by the armed groups in urban residential areas that would have placed the civilian population and civilian objects at risk of attack, their presence in these areas as combatants is established from the information that has come to the attention of the Mission.

B. Booby-trapping of civilian houses

461. In chapter XIV the Mission will report on different incidents in which witnesses have described the circumstances in which they had been used by the Israeli armed forces during house searches and forced at gunpoint to enter houses ahead of the Israeli soldiers. These witnesses testified that they had been used in this way to enter several houses. None of them encountered a booby trap or other improvised explosive devices during the house searches. The Mission is also mindful of other incidents it has investigated that involved entry into civilian houses by Israeli soldiers in different areas in Gaza. None of these incidents showed the use of booby traps.

462. The Mission, however, recalls the allegations levelled in the reports that it has reviewed. The Government of Israel alleges that Hamas planted booby traps in “homes, roads, schools and even entire neighbourhoods”. It adds, “in essence, the Hamas strategy was to transform the urban areas of the Gaza Strip into a massive death trap for IDF forces, in gross disregard for the safety of the civilian population.”³¹⁷ The Mission notes that the existence of booby-trapped houses is mentioned in testimonies of Israeli soldiers collected by *Breaking the Silence*. One soldier recounts witnessing the detonation of a powerful explosion inside a house as a bulldozer approached it. A second soldier stated “many explosive charges were found, they also blew up, no one was hurt. Tank Corps or Corps of Engineers units blew them up. Usually they did not explode because most of the ones we found were wired and had to be detonated, but whoever was supposed to detonate them had run off. It was live, however, ready...”.³¹⁸ Also the reports published by Palestinian armed groups, on which the submission to the Mission on the tactics of Palestinian combatants by the Jerusalem Centre for Public Affairs is based, suggest that booby-

³¹⁵ According to the International Crisis Group, Hamas “tried to draw Israeli troops into densely populated urban areas, especially Hamas strongholds that had been prepared for counter-attack. A fighter described battles as a lethal ‘game of hide and seek’ in which Israel sought to lure fighters into open space, while Hamas attempted to bring Israeli troops onto their preferred terrain. The soldiers refused the bait, Hamas fighters plainly were frustrated by their inability to engage in street battles.” (“Gaza’s unfinished business...”, p. 3).

³¹⁶ Israeli armed forces reportedly lost 10 soldiers in combat between 27 December 2008 and 18 January 2009, with dozens of soldiers wounded. Four of the Israeli dead appear to have been killed by friendly fire (Cordesman, op. cit., p. 57).

³¹⁷ “The operation in Gaza...”, paras 181.

³¹⁸ *Soldiers’ testimonies*..., testimony 20, p. 48, and testimony 23, p. 54.

trapped civilian houses were a frequently used tactic.³¹⁹ According to the Israeli Government, “because roads and buildings were often mined, IDF forces had to target them to protect themselves”.³²⁰

463. While, in the light of the above reports, the Mission does not discount the use of booby traps by the Palestinian armed groups, it has no basis to conclude that civilian lives were put at risk, as none of the reports record the presence of civilians in or near the houses in which booby traps are alleged to have been set.

C. Use of mosques to launch attacks against the Israeli armed forces or to store weapons

464. The Israeli Government alleges that “ Hamas abused the protection accorded to places of worship, making a practice of storing weapons in mosques”. This assertion is supported by pictures of Israeli soldiers in a room amid weaponry, including anti-tank weapons, which are alleged to have been taken upon discovery of a weapons cache in a Jabaliyah mosque during the military operations.³²¹ The Mission notes that Israeli soldiers speaking at the Rabin Academy “Fighters’ Talk” recount coming under fire from Palestinian combatants positioned in a mosque.³²²

465. Although the Mission was not able to investigate the allegation of the use of mosques generally by Palestinian groups for storing weapons, it did investigate the incident of a missile attack by the Israeli armed forces against al-Maqadmah mosque on the outskirts of Jabaliyah camp, in which at least 15 people were killed and 40 injured on 3 January 2009 (see chap. XI). The Mission found no evidence that this mosque was used for the storage of weapons or any military activity by Palestinian armed groups. As far as this mosque is concerned, therefore, the Mission found no basis for such an allegation. However, the Mission is unable to make a determination regarding the allegation in general nor with respect to any other mosque that was attacked by the Israeli armed forces during the military operations.

D. Misuse of medical facilities and ambulances

1. Use of hospitals for military purposes

466. The Government of Israel alleges that

Hamas systematically used medical facilities, vehicles and uniforms as cover for terrorist operations, in clear violation of the Law of Armed Conflict. This included the extensive use of ambulances bearing the protective emblems of the Red Cross and

³¹⁹ See “The hidden dimension of Palestinian war casualties...”.

³²⁰ “The operation in Gaza...”, paras 184. On the destruction of civilian houses by the Israeli armed forces, see chap. XIII.

³²¹ “The operation in Gaza...”, para. 164. The Mission notes that there is no mention of which mosque in Jabaliyah the pictures allegedly refer to nor of the date on which the weapons cache was found and the pictures taken.

³²² “Fighters’ Talk” testimonies, pp. 4-5.

Crescent ... and the use of hospitals and medical infrastructure as headquarters, situation rooms, command centres and hiding places.³²³

467. As described in detail in chapter IX, the Mission investigated the attacks against al-Quds hospital in Tal el-Hawa, one of the hospitals which were allegedly used for military purposes by Palestinian armed groups. This hospital was directly hit by white phosphorous shells and at least one high explosive shell on 15 January 2009. The Mission conducted extensive interviews with al-Quds hospital staff and others who were in the area at the time of the attack and concluded that it was unlikely that there was any armed presence in any of the hospital buildings at that time. The Mission also investigated the attacks against al-Wafa Hospital in eastern Gaza City. As in the case of al-Quds hospital, after hearing credible testimony from doctors at that hospital, the Mission excluded the possibility that there were combatants inside the hospital at the time of the attack. However, the Mission did not make any findings with respect to the possible presence of Palestinian combatants in the surroundings of the hospital.

468. In its report, the Government of Israel states that Hamas used two units and a ground-floor wing of al-Shifa hospital, the largest in the Gaza Strip, as a military base.³²⁴ As its sources, it cites an interview with a “Hamas activist” captured by Israel and an Italian newspaper article,³²⁵ which in turn bases this assertion on a single anonymous source. The Mission did not investigate the case of al-Shifa hospital and is not in a position to make any finding with regard to these allegations.

469. On the basis of the investigations it has conducted, the Mission did not find any evidence to support the allegations made by the Israeli Government.

2. Ambulances

470. The Government of Israel alleges that “Hamas made particular use of ambulances, which frequently served as an escape route out of a heated battle with IDF forces.”³²⁶

471. The Mission investigated cases in which ambulances were denied access to wounded Palestinians. Three cases in particular are described in chapter XI: the attempts of the Palestinian Red Crescent Society (PRCS) to evacuate the wounded from the al-Samouni neighbourhood south of Gaza City after the attack on the house of Ateya al-Samouni and after the shelling of the house of Wa’el al-Samouni; the attempt of an ambulance driver to rescue the daughters of Khalid and Kawthar Abd Rabbo in Izbat Abd Rabbo; and the attempt of an ambulance driver to evacuate Rouhiyah al-Najjar after she had been hit by an Israeli sniper. In all three cases the Mission found, on the facts it gathered, that the Israeli armed forces must have known that there were no combatants among the people to be rescued or in the immediate vicinity.

³²³ “The operation in Gaza...”, para. 171.

³²⁴ Ibid., para. 172. “Ismail Haniyeh, the head of Hamas in the Gaza Strip, located his Southern Command centre in one of the Shifa Hospital units, while the senior leaders of Hamas stationed themselves in another unit.”

³²⁵ *Corriere della Serra*, “Così i ragazzini di Hamas ci hanno utilizzato come bersagli”, 21 January 2009.

³²⁶ “The operation in Gaza...”, para. 176.

472. The Mission is aware of an interview reportedly given by an ambulance driver to an Australian newspaper, in which he describes how Palestinian combatants unsuccessfully tried to force him to evacuate them from a house in which they were apparently trapped. The same driver reportedly told the journalist that “ Hamas made several attempts to hijack the ambulance fleet of al-Quds Hospital”. He also describes how the PRCS ambulance teams managed to avert this misuse of ambulances. According to this report, relied on by the Israeli Government, the attempts of Palestinian combatants to exploit ambulances as shield for military operations were not successful in the face of the courageous resistance of the PRCS staff members.³²⁷

473. This is consistent with the statements of representatives of the Palestinian Red Crescent Society in Gaza who, in interviews with the Mission, denied that their ambulances were used at any time by Palestinian combatants. Finally, in a submission to the Mission, Magen David Adom stated that “there was no use of PRCS ambulances for the transport of weapons or ammunition ... [and] there was no misuse of the emblem by PRCS.”³²⁸

474. While it is not possible to say that no attempts were ever made by any armed groups to use ambulances during the military operations, the Mission has substantial material from the investigations it conducted and the enquiries it made to convince it that, if any ambulances were used by Palestinian armed groups, it would have been the exception, not the rule. None of the ambulance drivers that were directly interviewed by the Mission reported any attempt by the armed groups to use the ambulances for any ulterior purpose. Moreover, of the ambulance staff members and their volunteer assistants that were killed or injured in the course of their duties, none was a member of any armed groups, so far as the Mission is aware.

E. Forcing civilians to remain in an area for the specific purpose of sheltering that area or forces in that area from attack

475. As discussed in more detail in other parts of the report, the Mission asked numerous witnesses in Gaza why they had stayed in their homes in spite of the shelling, bombing and Israeli ground invasion. They stated that they had decided to stay put either because they had experienced previous incursions and, based on past experience, did not think they would be at risk as long as they remained indoors³²⁹ or because they had no safe place to go.³³⁰ In addition, some witnesses stated that they had chosen to stay because they wished to watch over their homes and property.³³¹ The Mission did not find any evidence of civilians being forced to remain in their houses by Palestinian armed groups.

³²⁷ Ibid., para. 177-179.

³²⁸ Communication by Magen David Adom to the Mission, 9 August 2009. Magen David Adom is Israel’s national [emergency medical, disaster, ambulance and blood bank](#) service. It is a member of the [International Federation of Red Cross and Red Crescent Societies](#) and has a long-standing cooperation with the Palestinian Red Crescent Society. That no PRCS ambulances had been used to transport weapons or fighters was also stated forcefully by a Magen David Adom representative to representatives of the Mission in Geneva on 22 July 2009.

³²⁹ Mission interview with Khaled Abd Rabbo.

³³⁰ See chap. IX.

³³¹ Interview with Abbas Ahmad Ibrahim Halawa, 3 June 2009 (see chap. XIV on the case of Abbas Ahmad Ibrahim Halawa).

476. The Mission's attention has been drawn to a well-known incident in which women and children followed calls to gather on the roof of the house of a Palestinian man who had been informed by the Israeli authorities that his house would be targeted. This incident has been documented in video footage in the public domain³³² and is referred to in submissions received by the Mission as evidence of the use of human shields. The Mission notes, however, that the incident occurred in 2007. No such incidents are alleged by the Israeli Government with regard to the military operations that began on 27 December 2008. The Mission received no reports of such incidents from other sources. On the contrary, in one case investigated by the Mission,³³³ a Hamas official received a phone call from the Israeli armed forces to the effect that his house would soon be targeted. He evacuated the house with his family and alerted the neighbours to the imminent threat so that they, too, were able to leave their homes before the missile did indeed strike.

477. The Mission is also aware of the public statement by Mr. Fathi Hammad, a Hamas member of the Palestinian Legislative Council, on 29 February 2009, which is adduced as evidence of Hamas' use of human shields. Mr. Hammad reportedly stated that

... the Palestinian people has developed its [methods] of death seeking. For the Palestinian people, death became an industry, at which women excel and so do all people on this land: the elderly excel, the mujahideen excel and the children excel. Accordingly, [Hamas] created a human shield of women, children, the elderly and the mujahideen, against the Zionist bombing machine.³³⁴

478. Although the Mission finds this statement morally repugnant, it does not consider it to constitute evidence that Hamas forced Palestinian civilians to shield military objectives against attack. The Government of Israel has not identified any such cases.

F. Mingling with the civilian population to shield combatants against attack

479. When military operations take place in areas in which civilians are present, the importance of military dress and distinctive signs to distinguish combatants from civilians is all the greater. The Mission notes that only one of the incidents it investigated clearly involved the presence of Palestinian combatants. In that incident, the witness told the Mission that three fighters trapped in his neighbour's house were "wearing military camouflage and headbands of the al-Qassam Brigades".³³⁵

480. Reports on the military operations by NGOs suggest that in general members of Palestinian armed groups did not wear military uniforms. One report states that after the destruction caused by the Israeli air strikes at the start of the military operations, members of al-

³³² See <http://switch3.castup.net/cunet/gm.asp?ai=58&ar=StandingOnRoof-V&ak=null>.

³³³ See the case of Mr. Abu Askar in chapter X.

³³⁴ "The operation in Gaza...", para. 186. A video recording of this speech is available at <http://www.youtube.com/watch?v=ArJbn-IUCh4>.

³³⁵ See the case of Mr. Majdi Abd Rabbo in chapter XIV.

Qassam Brigades abandoned military dress and patrolled streets “in civilian clothes”.³³⁶ A second report states that members of the Palestinian armed groups “also mixed with the civilian population, although this would be difficult to avoid in the small and overcrowded Gaza Strip, and there is no evidence that they did so with the intent of shielding themselves”.³³⁷

481. Finally, on this issue, it is relevant to mention that the Israeli Government has produced no visual or other evidence to support its allegation that Palestinian combatants “mingle routinely with civilians in order to cover their movements”.³³⁸

G. Factual findings

482. On the basis of the information it gathered, the Mission finds that there are indications that Palestinian armed groups launched rockets from urban areas. The Mission has not been able to obtain any direct evidence that this was done with the specific intent of shielding the rocket launchers from counterstrikes by the Israeli armed forces. The Mission also notes, however, that Palestinian armed groups do not appear to have given Gaza residents sufficient warning of their intention to launch rockets from their neighbourhoods to allow them to leave and protect themselves against Israeli strikes at the rocket launching sites. The Mission notes that, in any event, given the densely populated character of the northern half of the Gaza Strip, once Israeli forces gained control of the more open or outlying areas during the first days of the ground invasion, most -- if not all -- locations still accessible to Palestinian armed groups were in urban areas.

483. The Mission finds that the presence of Palestinian armed fighters in urban residential areas during the military operations is established. On the basis of the information it gathered, the Mission is unable to form an opinion on the exact nature or the intensity of their combat activities in urban residential areas that would have placed the civilian population and civilian objects at risk of attack. While reports reviewed by the Mission credibly indicate that members of Palestinian armed groups were not always dressed in a way that distinguished them from civilians, the Mission found no evidence that Palestinian combatants mingled with the civilian population with the intention of shielding themselves from attack.³³⁹

484. From the information it gathered, the Mission does not discount the use of booby traps by the Palestinian armed groups. The Mission has no basis to conclude that civilian lives were put at risk, since none of the reports records the presence of civilians in or near the houses that were allegedly booby-trapped.

³³⁶ “Gaza’s unfinished business...”, p. 8. This report also appears to suggest that members of al-Qassam Brigades were at least in part engaged in law enforcement and internal security functions rather than in combat with the Israeli armed forces.

³³⁷ *Israel/Gaza: Operation “Cast Lead”: 22 days...*

³³⁸ “The operation in Gaza...”, para. 186.

³³⁹ It has also been reported that specialist Israeli troops operated in Gaza during the military operations in civilian attire to liaise with informants and as *francs-tireurs*; Jane’s Sentinel Services, Country Risk Assessments – Israel, 30 January 2009.

485. On the basis of its own investigations and statements by United Nations officials, the Mission excludes that Palestinian armed groups engaged in combat activities from United Nations facilities that were used as shelters during the military operations. The Mission cannot discount the possibility that Palestinian armed groups were active in the vicinity of such facilities.

486. The Mission is unable to make any determination on the general allegation that Palestinian armed groups used mosques for military purposes. It notes that, in the one incident it investigated of an Israeli attack on a mosque, it found no indication that the mosque was so used.

487. On the basis of the investigations it has conducted, the Mission did not find any evidence to support the allegations that hospital facilities were used by the Gaza authorities or by Palestinian armed groups to shield military activities and that ambulances were used to transport combatants or for other military purposes.

488. On the basis of the information it gathered, the Mission found no indication that the civilian population was forced by Hamas or Palestinian armed groups to remain in areas under attack from the Israeli armed forces.

H. Legal findings

489. Customary international humanitarian law establishes that all “parties to the conflict must take all feasible precautions to protect the civilian population and civilian objects under their control against the effects of attacks.”³⁴⁰

490. Each party to the conflict must, to the extent feasible, avoid locating military objectives within or near densely populated areas.³⁴¹ Each party to the conflict must, to the extent feasible, remove civilian persons and objects under its control from the vicinity of military objectives.³⁴²

491. These rules of customary international law are reflected in article 57 (1) of Additional Protocol I: “In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.” The following paragraphs of article 57 set forth the specific precautions to be taken by a party launching an attack.³⁴³

492. In addition to the general duty to take constant care to spare the civilian population in the conduct of military operations, international humanitarian law establishes a specific prohibition against the use of civilians as human shields. Article 28 of the Fourth Geneva Convention specifically addresses this issue: “The presence of a protected person may not be used to render certain points or areas immune from military operations”. This is reinforced by article 51 (7) of Additional Protocol I:

³⁴⁰ *Customary International Humanitarian Law...*, rule 22.

³⁴¹ *Ibid.*, rule 23.

³⁴² *Ibid.*, rule 24.

³⁴³ See chap. IX.

The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.

These provisions reflect rules of customary law.³⁴⁴

493. The Mission finds it useful to clarify what is meant, from a legal perspective, by using civilians or a civilian population as a human shield. Parties to a conflict are not permitted to use a civilian population or individual civilians in order to render certain points or areas immune from military operations. It is not in dispute that both Palestinian armed groups and Israeli forces were fighting within an area populated by civilians. Fighting within civilian areas is not, by itself, sufficient for a finding that a party is using the civilian population living in the area of the fighting as a human shield. As the words of article 57 (1) show (“shall not be used to render”, “in order to attempt to shield”), an intention to use the civilian population in order to shield an area from military attack is required.

494. From the information available to it, the Mission found no evidence to suggest that Palestinian armed groups either directed civilians to areas where attacks were being launched or forced civilians to remain within the vicinity of the attacks.

495. The reports received by the Mission suggest that it is likely that the Palestinian armed groups did not at all times adequately distinguish themselves from the civilian population among whom the hostilities were being conducted. Their failure to distinguish themselves from the civilian population by distinctive signs is not a violation of international law in itself, but would have denied them some of the legal privileges afforded to combatants. What international law demands, however, is that those engaged in combat take all feasible precautions to protect civilians in the conduct of their hostilities. The Mission found no evidence that members of Palestinian armed groups engaged in combat in civilian dress. It can, therefore, not find a violation of the obligation not to endanger the civilian population in this respect.

496. The conduct of hostilities in built-up areas does not, of itself, constitute a violation of international law. However, launching attacks - whether of rockets and mortars at the population of southern Israel or at the Israeli armed forces inside Gaza - close to civilian or protected buildings constitutes a failure to take all feasible precautions. In cases where this occurred, the Palestinian armed groups would have unnecessarily exposed the civilian population of Gaza to the inherent dangers of the military operations taking place around them. This would have constituted a violation of the customary rules of international humanitarian law referred to above. It would also have constituted a violation of the right to life and physical integrity of the civilians thereby endangered.

497. Although the situations investigated by the Mission did not establish the use of mosques for military purposes or to shield military activities, the Mission cannot exclude that this might

³⁴⁴ *Customary International Humanitarian Law...*, rule 97.

have occurred in other cases. As far as hospitals and United Nations facilities are concerned, the Mission found that it could not exclude that Palestinian armed groups engaged in combat activities in the vicinity of these protected sites. The Mission wishes to emphasize that the launching of attacks from or in the vicinity of civilian buildings and protected areas are serious violations of the obligation on the armed groups to take constant care to protect civilians from the inherent dangers created by military operations.

498. The Mission asked the Gaza authorities to provide information on the sites from where the Palestinian armed groups had launched attacks against Israel and against the Israeli armed forces in Gaza. The Mission similarly asked whether, to their knowledge, civilian buildings and mosques had been used to store weapons. In their response, the Gaza authorities stated that they had no information on the activities of the Palestinian armed groups or about the storage of weapons in mosques and civilian buildings. The Mission does not find this response to be entirely plausible. The Mission notes, more importantly, that, whether the answer reflects the reality or not, the Gaza authorities are obliged under international law to control the activities of armed groups operating on the territory under their control.³⁴⁵ If they failed to take the necessary measures to prevent the Palestinian armed groups from endangering the civilian population by conducting hostilities in a manner incompatible with international humanitarian law, they would bear responsibility for the damage done to the civilians living in Gaza.

IX. OBLIGATION ON ISRAEL TO TAKE FEASIBLE PRECAUTIONS TO PROTECT CIVILIAN POPULATION AND CIVILIAN OBJECTS IN GAZA

499. This chapter focuses on incidents where the Mission considered compliance by Israel with its obligations under the Fourth Geneva Convention and customary rules of international law in relation to taking feasible precautions. In particular, it considers whether everything feasible was done to verify that objectives to be attacked were neither civilians nor civilian objects and were not subject to special protection, whether all feasible precautions were taken in respect of the choice of weapons used and whether the military advantage sought was excessive in relation to the expected loss of civilian life or civilian objects. Before entering into specific incidents, it considers the obligation to provide warnings in relation to attacks.

A. Warnings

500. The Israeli Government has stated that it took the following steps to warn the civilian population of Gaza:³⁴⁶

- The Israeli armed forces made 20,000 calls on 27 December and 10,000 on 29 December 2008;
- 300,000 warning notes were dropped over the whole of the Gaza Strip on 28 December;
- 80,000 leaflets were dropped in Rafah on 29 December;

³⁴⁵ See chap. IV.

³⁴⁶ http://www.mfa.gov.il/MFA/Government/Communiques/2009/IDF_warns_Gaza_population_7-Jan-2009.htm.

- In the context of the beginning of ground operations on 3 January, 300,000 leaflets were dropped in the entire Gaza Strip, especially in the northern and eastern parts;
- On 5 January, 300,000 leaflets were dropped in Gaza City, Khan Yunis and Rafah;
- In total some 165,000 telephone calls were made throughout the military operations;³⁴⁷
- In total some 2,500,000 leaflets were dropped.³⁴⁸

501. In addition to these measures, the Israeli Ministry of Foreign Affairs explains that the telephone calls were both direct calls and pre-recorded messages, that it made radio broadcasts, and that it developed a practice of dropping apparently light explosives on rooftops (referred to by some as “roof-knocking”).³⁴⁹

502. The Mission has reviewed the text of several of the leaflets dropped by the Israeli armed forces and listened to all of the messages recorded on the website of the Israeli Ministry of Foreign Affairs.³⁵⁰ It accepts that Israel dropped leaflets, made phone calls, left recorded messages and dropped smaller explosives on roofs as stated by the Israeli Government.

1. Telephone calls

503. The Mission received first-hand information about some of these methods in its interviews with witnesses in Gaza. In the report on the attack at al-Fakhura Street junction (see chap. X), the Mission notes the credible account of Mr. Abu Askar of the telephone warning he received as a result of which he was able to evacuate up to 40 people from his and other houses. He received that call at around 1.45 a.m. and Israeli forces destroyed his house with a missile strike seven minutes later.

504. The Mission is also aware of circumstances in which telephone warnings may have caused fear and confusion. Al-Bader Flour Mills Co. (see chap. XIII) received two recorded messages indicating the mill was to be destroyed, but neither of these was acted upon. Five days later the mill was struck in the early hours of the morning with no warning whatsoever. The owners of the business and their staff suffered anxiety by having to evacuate the premises on two occasions as a result of receiving such messages when no strikes took place.

³⁴⁷ “The operation in Gaza...”, para. 264.

³⁴⁸ Ibid.

³⁴⁹ http://www.mfa.gov.il/MFA/Government/Communiques/2009/IDF_warns_Gaza_population_7-Jan-2009.htm. With regard to roof-knocking, see, for instance, Cordesman, op. cit., p. 13 (the Israeli armed forces “developed small 10-20 kilogram bombs that could be used as both warning shots – sometimes referred to as knocking on the roof”...).

³⁵⁰ http://www.mfa.gov.il/MFA/Government/Communiques/2009/IDF_warns_Gaza_population_7-Jan-2009.htm.

505. Israel's Ministry of Foreign Affairs states that more than 165,000 telephone calls were made issuing warnings. The Mission has received information that there were at least two types of telephone calls. One was a direct and specific warning, as was received by Mr. Abu Askar. The other was a more generic, recorded message, such as the type received by al-Bader Flour Mills. The Mission does not know and, as far as it can determine, Israel has not indicated what proportion of the 30,000 telephone calls was pre-recorded and more generic and what proportion was specific.

2. Roof-knocking

506. The Israeli Government describes that in certain circumstances its armed forces fired "warning shots from light weapons that hit the roofs of the designated targets"—a practice referred to as roof-knocking. The Israeli Government indicates that this practice was used when it appeared that people had remained in their houses despite being given some previous warning.³⁵¹ It is not clear whether this was the only circumstance in which this method was employed. The Mission heard that in the al-Daya incident (see chap. XI) the Israeli Government claims to have made such a warning shot, albeit to the wrong house.³⁵² The Mission also saw in the Sawafeary house (see chap. XIII) that a missile had penetrated the rear of the house on the wall near the ceiling, gone through an internal wall and exited through the wall at the front of the house near the windows. At the time (around 10 p.m. on 3 January 2009) there were several family members in the house, who happened to be lying down. The Mission cannot say what size of weapon was used on this occasion, although it was sufficiently powerful to penetrate three walls, or whether it was intended as a warning.

3. Radio broadcasts and leaflet dropping

507. The radio broadcasts that the Mission listened to appeared to be generic. For example, on 3 January 2009 a radio broadcast made the following points:

- Gaza residents are welcome to receive food and medical supplies, delivered via the Rafah, Karni and Kerem Shalom passages, at the UNRWA centres throughout the Gaza Strip;
- Israel calls on the population to move to city centres for its own safety.³⁵³

This warning preceded the ground phase of the military operations. Its language clearly indicates that UNRWA centres should be regarded as places of safety and civilians may collect food from them.

³⁵¹ "The operation in Gaza...", para. 264.

³⁵² Note that a witness has indicated that an elderly man was killed when struck by a missile some 10 minutes before the al-Daya house was struck. The Mission has also noted significant doubts on the version of events presented by the Israeli Government on this case, including on the issue of the warning shot.

³⁵³ http://www.mfa.gov.il/MFA/Government/Communiques/2009/IDF_warns_Gaza_population_7-Jan-2009.htm.

508. Leaflets dropped appear to fall into a number of categories. One leaflet did not deal with attacks on a particular place but on the storage of weapons and ammunition:

To the residents of the Gaza Strip;

- The IDF will act against any movements and elements conducting terrorist activities against the residents of the State of Israel;
- The IDF will hit and destroy any building or site containing ammunition and weapons;
- As of the publication of this announcement, anyone having ammunition and/or weapons in his home is risking his life and must leave the place for the safety of his own life and that of his family;
- You have been warned.³⁵⁴

509. In some areas specific warnings were sometimes given. One example of a sufficiently specific warning is that issued to the residents of Rafah:

Because your houses are used by Hamas for military equipment smuggling and storing, the Israeli Defense Forces (IDF) will attack the areas between Sea Street and till the Egyptian border...

All the Residents of the following neighbourhoods: Block O – al-Barazil neighbourhood – al-Shu'ara'- Keshta- al-Salam neighbourhood should evacuate their houses till beyond Sea Street. The evacuation enters into force from now till tomorrow at 8 a.m.

For your safety and for the safety of your children, apply this notice.³⁵⁵

4. Factual findings

510. Whether a warning is deemed to be effective is a complex matter depending on the facts and circumstances prevailing at the time, the availability of the means for providing the warning and the evaluation of the costs to the purported military advantage.

511. Israel was in a strong position to prepare and issue effective warnings. The preparations for its military operations were “extensive and thorough.”³⁵⁶ Israel had intimate knowledge and

³⁵⁴ Ibid.

³⁵⁵ “No safe place”, report of the Independent Fact Finding Committee on Gaza presented to the League of Arab States (30 April 2009), p. 241. Note a similarly specific kind of warning issued to the residents of al-Shujaeyah (“The operation in Gaza...”, footnote 225).

³⁵⁶ Prime Minister Olmert, press conference on 27 December 2008, available at: http://www.mfa.gov.il/MFA/Government/Speeches+by+Israeli+leaders/2008/PM_Olmert_press_briefing_IDF_operation_Gaza_Strip_27-Dec-2008.htm.

sophisticated up-to-date intelligence in its planning. It had the means to use the landlines and mobile telephone networks. It had complete domination of Gaza's airspace. In terms of the practical capabilities of issuing warnings, it is perhaps difficult to imagine more propitious circumstances.

512. The Mission accepts that the element of surprise that was sought in the initial strikes might well have provided a degree of justification for not giving any advance notice of the time the strikes would take place or the buildings that would be struck.³⁵⁷

(a) The question of whether civilians could be expected to respond to the warnings to leave their homes

513. The Mission recognizes that leaflets dropped from the air can have some direct benefit in assisting the civilian population to get out of harm's way. The effectiveness will depend on three considerations: the clarity of the message, the credibility of the threat and the possibility of those receiving the warning taking action to escape the threat.

514. The Mission has already cited one kind of leaflet which referred to the likelihood of attacks on locations storing weapons and ammunitions. At the beginning of the land-air phase of the operations, the Israeli armed forces also dropped leaflets and made broadcasts advising people to move towards city centres.

515. There had been an intense aerial campaign from 27 December 2008 until 3 January 2009 that had seen hundreds of buildings destroyed in built-up areas of city centres. Civilians not living in city centres were being asked to leave their homes to go to places that as far as they could reasonably assess were already in much more danger than they were in their own homes. In order for the warning to be effective there had to be an objective basis to believe that they would be safer elsewhere. The Mission does not consider that such an objective evaluation could reasonably have been made by civilians in the Gaza Strip.

516. During its meetings with people in Gaza the Mission was told on several occasions of the sense that there was "nowhere to go". The nature of the attacks in the first week had caused deep shock. The widespread attacks created a dilemma not only about where to go but about whether it was safe to leave at all.

517. Even if in the minds of the Israeli armed forces it would have been safer, from 3 January onwards, for civilians to go to city centres, nothing that had happened in the preceding week could lead those civilians to the same conclusion given the widespread destruction of areas and buildings. The events that occurred in those locations after 3 January appear to support the view that going to the city centres offered little guarantee of safety.

³⁵⁷ The recognition of a legitimate element of surprise does not necessarily mean that the Mission accepts the targets chosen were legally justifiable in the circumstances. That matter is dealt with in different parts of this report.

(b) Events in the city centre after the warning to go there was issued

518. On 3 January 2009 the attack on al-Maqadmah mosque took place in a built-up area in central Jabaliyah. Three days after the 3 January warning was given to move to central locations and attend United Nations centres there was the Israeli mortar attack immediately outside a large United Nations shelter killing at least 35 people in Jabaliyah at al-Fakhura Street.³⁵⁸

519. Following the attack in al-Fakhura Street, the Director of Operations in Gaza of UNRWA, John Ging, stated in a press conference on 7 January 2009: “There is nowhere safe in Gaza. Everyone here is terrorized and traumatized.”³⁵⁹

520. On 15 January the UNRWA compound in Tal el-Hawa (Gaza City) was seriously damaged when it was struck by white phosphorous. Between 600 and 700 civilians were sheltering there at the time and were put in grave danger. The same day the nearby al-Quds hospital was struck directly by a number of missiles, including white phosphorous shells, again putting staff and patients in great danger (see sect. C below).

521. The day after the UNRWA compound was hit, John Ging repeated that what had happened there had happened throughout Gaza. He said that the United Nations and the civilian population were “all in the same boat” and that nobody could be said to be safe in Gaza.³⁶⁰

(c) The inference that those who did not go to the city centres must be combatants

522. The warning to go to city centres came at the start of the ground invasion. In the Mission’s view it was unreasonable to assume, in the circumstances, that civilians would indeed leave their homes. As a consequence, the conclusion that allegedly formed part of the logic of soldiers on the ground that those who had stayed put had to be combatants was wholly unwarranted.³⁶¹ There are many reasons why people may not have responded. In several cases the Mission heard from witnesses about people who were physically disabled, too frail or deaf so that it was difficult or impossible to respond to the warning. In other cases, as outlined above, civilians who

³⁵⁸ The Mission concludes elsewhere that this attack was indiscriminate in nature (see chap. X).

³⁵⁹ *The Daily Mail*, “Gaza’s darkest day: 40 die as Israel bombs ‘safe haven’ UN school”, 7 January 2009.

³⁶⁰ Press conference on humanitarian situation in Gaza (16 January 2009), available at http://www.un.org/News/briefings/docs/2009/090116_Gaza.doc.htm. See also “No safe place”, p. 74.

³⁶¹ See, for example, statements made by soldiers in a seminar in Tel Aviv: “At first we were told to break into a house... Go upstairs and shoot every person we see... The upper echelons said this was allowed because anyone remaining in this area, inside Gaza City, is incriminated, a terrorist, who did not escape.”

Transcript of seminar from Channel 10 News on file with Mission. See also *Breaking the Silence, Soldiers’ Testimonies from Operation Cast Lead, Gaza 2009*, available at: http://www.breakingthesilence.org.il/oferet/ENGLISH_oferet.pdf. Throughout the report soldiers indicate that the rules of engagement employed meant that no consideration was given to the idea that there may be “innocents” and that in the case of any doubt whatsoever soldiers were to shoot. (“That too was mentioned, that if we see something suspect and shoot, better to hit an innocent that hesitate to target an enemy”, p. 50; “if anything arouses our suspicion, we mustn’t hesitate because the enemy hides among civilians”, p. 51.) Note also the discussion on “wet entry” and “dry entry” (pp. 14-15. This discussion indicates that, in approaching a house, missiles, tank fire, grenades and machine gun fire would be used. This method of approach is borne out in the case of the Juha family. Family members were fired upon when congregating in a room downstairs in their house in Zeytoun. See chap. XI.

could have responded may have had legitimate reasons not to do so. The issuance of warning is one measure that should be taken wherever possible. The fact that a warning was issued does not, however, relieve a commander or his subordinates from taking all other feasible measures to distinguish between civilians and combatants.³⁶²

523. Israeli armed forces had created the circumstances in which civilians could not reasonably believe the city centres were safe. An effective warning had to make clear why, even in those circumstances, it was better for civilians to leave than to stay in their homes.

5. Israel's review

524. According to press reports,³⁶³ military sources, including representatives from the military prosecution's international law department, have agreed that more specific information, such as more accurate timetables for strikes to be carried out and escape routes, should be given in warnings. The press report goes on to say: "Fliers distributed by the IDF from now on will also be more detailed in order to make it clear to civilians that their lives are in danger and give them a chance to flee. It was also determined in the hearing that the military made multiple efforts to prevent civilian casualties in January's offensive."

525. The Mission cannot confirm if such press reports are accurate but notes two things. Firstly, any improvements in practice in this regard are to be welcomed. Secondly, the changes, if reported correctly, appear to address the matters that have been touched on in this section. Those were matters that could not be considered in any way as unforeseeable in the circumstances at the time the warnings were in fact issued. While improvements are welcome in this case, it would also appear to indicate that circumstances almost certainly permitted much better warnings to be given than was the case.

6. Legal findings

526. Chapter IV of Additional Protocol I to the Geneva Conventions addresses the issue of precautionary measures that must be taken. Article 57 (1) states that "in the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects."

527. Article 57 (2) (c) requires that "effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit."

528. The Mission regards both these provisions to be norms of customary international law.³⁶⁴ In addition, Israel appears to consider itself bound by the obligation to provide effective warnings under customary law.

³⁶² Note in particular the testimony of Prof. Michael Newton to the Mission at the Geneva public hearings on 7 July 2009. See <http://www.un.org/webcast/unhrc/archive.asp?go=090707>.

³⁶³ See *Ynetnews*, "IDF to give better warnings before attacks", 29 September 2007.

³⁶⁴ According to ICRC, article 57 (1) codifies the principle of precautions in attack and article 57 (2) (c) is a rule of customary international law applicable to international and non-international armed conflict. *Customary International Humanitarian Law...*, pp. 51 and 62.

529. The determination of whether the circumstances permit a warning must be made in the context of a good-faith attempt to adhere to the underlying duty to minimize death and injury to civilians or damage to civilian objects. The key limitation on the application of the rule is if the military advantage of surprise would be undermined by giving a warning. The same calculation of proportionality has to be made here as in other circumstances. The question is whether the injury or damage done to civilians or civilian objects by not giving a warning is excessive in relation to the advantage to be gained by the element of surprise for the particular operation. There may be other circumstances when a warning is simply not possible.

530. Article 57 (2) (c) requires the warning to be effective. The Mission understands by this that it must reach those who are likely to be in danger from the planned attack, it must give them sufficient time to react to the warning, it must clearly explain what they should do to avoid harm and it must be a credible warning. The warning also has to be clear so that the civilians are not in doubt that it is indeed addressed to them. As far as possible, warnings should state the location to be affected and where the civilians should seek safety. A credible warning means that civilians should be in no doubt that it is intended to be acted upon, as a false alarm or hoax may undermine future warnings, putting civilians at risk.

(a) Pre-recorded generic telephone calls

531. As regards the generic nature of some pre-recorded phone messages, the Mission finds that these lacked credibility and clarity, and generated fear and uncertainty. In substance, there is little difference between telephone messages and leaflets that are not specific. The Mission takes the view that pre-recorded messages with generic information may not be considered generally effective.

(b) Warning shots delivered to roofs

532. The Mission is doubtful whether roof-knocking should be understood as a warning as such.³⁶⁵ In the context of a large-scale military operation including aerial attacks, civilians cannot be expected to know whether a small explosion is a warning of an impending attack or part of an actual attack. In relation to the incident at the Sawafeary house recounted above, the Mission cannot say for certain if this missile was meant to warn or to kill. It notes that, if this was meant as a warning shot, it has to be deemed reckless in the extreme.

533. The legal requirement is for an effective warning to be given. This means that it should not require civilians to guess the meaning of the warning. The technique of using small explosives to frighten civilians into evacuation, even if the intent is to warn, may cause terror and confuse the affected civilians.

534. The Mission does not have sufficient information to assess the accuracy of the Israeli Government's claim that the warning shot method was used only when previous warnings (leaflets, broadcasts or telephone calls) had not been acted upon. However, in many circumstances it is not clear why another call could not be made if it had already been possible to

³⁶⁵ The Mission notes and agrees with a similar position set out by Diakonia in its report on Operation Cast Lead of 30 June 2009, p. 9.

call the inhabitants of a house. The Mission notes that these warnings all took place in situations where the view appears to have been reached that those in the house are civilians or predominantly civilians. If the choice is between making another call or firing a light missile that carries with it a significant risk of killing those civilians, the Mission is not convinced that it would not have been feasible to make another call to confirm that a strike was about to be made.

535. Finally, apart from the issue of fear and ambiguity, there is the question of danger. The idea that an attack, however limited in itself, can be understood as an effective warning in the meaning of article 57 (2) (c) is rejected by the Mission.

(c) Leaflets

536. The leaflets and radio broadcasts that told people to leave their homes and head towards city centres were in most cases lacking in specificity and clarity: people could not be certain that the warnings were directed at them in particular, since they were being issued as far as they could tell to almost everyone, and they could not tell when they should leave since there was rarely an indication of when attacks would take place. Furthermore, in the circumstances created by the Israeli armed forces, people could not reasonably be expected to flee to what appeared to be even less safe places on the basis of such non-specific warnings. Therefore, the Mission does not consider such warnings to have been the most effective possible in the circumstances and, indeed, doubts that many were effective at all.

7. Conclusions

537. While noting the statements of the significant efforts made by the Israeli armed forces to issue warnings, the sole question for the Mission to consider at this point is whether the different kinds of warnings issued can be considered as sufficiently effective in the circumstances to constitute compliance with article 57 (2) (c).

538. The Mission accepts that the warnings issued by the Israeli armed forces in some cases encouraged numbers of people to flee and get out of harm's way in respect of the ground invasion, but this is not sufficient to consider them as generally effective.

539. The Mission considers that some of the leaflets with specific warnings, such as those that Israel indicates were issued in Rafah and al-Shujaeyah, may be regarded as effective. However, the Mission does not consider that general messages telling people to leave wherever they were and go to city centres, in the particular circumstances of this military campaign, meet the threshold of effectiveness.

540. The Mission regards some specific telephone calls to have provided effective warnings but treats with caution the figure of 165,000 calls made. Without sufficient information to know how many of these were specific, it cannot say to what extent such efforts might be regarded as effective.

541. The Mission does not consider the technique of firing missiles into or on top of buildings as capable of being described as a warning, much less an effective warning. It is a dangerous practice and in essence constitutes a form of attack rather than a warning.

542. The Mission is also mindful of several incidents it has investigated where civilians were killed or otherwise harmed and met with humiliation and degrading treatment by Israeli soldiers, while fleeing from locations about which some form of warning was issued. The effectiveness of the warnings has to be assessed in the light of the overall circumstances that prevailed and the subjective view of conditions that the civilians concerned would take in deciding upon their response to the warning.

B. UNRWA compound, Gaza City

543. The field office compound of UNRWA is situated in the southern Rimal area of Gaza City. On the morning of 15 January 2009 it came under sustained shelling from the Israeli armed forces. At least three high explosive shells and seven white phosphorous container shells struck the workshop and warehouse area of the compound causing massive damage as a result of ensuing fires. Five of the shells exploded in the compound including all three high explosive shells. Two complete container shells of white phosphorous were retrieved. Five additional white phosphorous shells were retrieved but not in their complete form. These five shells deposited large amounts of the phosphorus wedges contained in the shells into the compound, if not in fact all of the wedges. At least three shells hit the Gaza Training Centre and caused light injuries to one staff member. At the time of the attack there were between 600 and 700 civilians sheltering in the compound. The remaining shells hit the area in and around the fuel depot and workshop.

544. The Mission has inspected the site and interviewed several of the people who were present at the time. It has also had access to detailed written materials produced by the UNRWA office in relation to its inquiries into the incident. It has furthermore addressed questions to the Government of Israel regarding the use of white phosphorous munitions to strike within the UNRWA compound and the direct military advantage pursued by their use under the circumstances, but has received no reply.

545. The Mission will not here repeat all of the details of the attack that are recounted accurately in a number of other reports.³⁶⁶ It will, however, join with others in noting the bravery of two staff members in particular in dealing with the white phosphorous in close proximity to thousands of litres of fuel stored in tankers. Had the fuel depot exploded, it would have caused untold deaths and damage. The swift and courageous actions of these two people at huge personal risk may have prevented a disaster of gigantic proportions and their efforts should be so recognized.

546. In this particular case, the Mission's interest lay in what was known by the Israeli armed forces at the time, what steps were feasible to reduce the massive risk to civilian life and why were these steps not taken.

³⁶⁶ For instance, Secretary-General's summary of the Report of the United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19 January 2009 and reports by Human Rights Watch (*Rain of Fire: Israel's Unlawful Use of White Phosphorous in Gaza* (March 2009), pp. 41 ff) and Amnesty International (*Israel/Gaza: Operation "Cast Lead": 22 days of death and destruction* (London, 2009), p. 31).

1. The immediate context

547. Shelling had been ongoing since the night of 14 January. The areas of Tal el-Hawa and southern Rimal had come under attack. There had been shelling close to the UNRWA compound at various points during the night. In the morning of 15 January staff in the UNRWA compound were instructed to remain inside as much as possible.

2. The risks

548. The UNRWA compound contained, among other things, a substantial fuel depot. The depot has an underground storage facility, which at the time had about 120,000 litres of fuel. Fuel tankers parked above ground had around 49,000 litres of fuel in them. In addition to the obvious and immediate risk of fire in these circumstances, the compound also stored large quantities of medical supplies, food, clothing and blankets in the warehouses.

549. Conservative estimates suggest that between 600 and 700 civilians were taking shelter in the compound at that time.

550. The principal and immediate risk was, therefore, of what might have been a catastrophic fire caused by the ignition of the fuel in the direct vicinity of the site where hundreds of civilians had sought shelter directly in response to the Israeli warnings of 3 January 2009.

3. The strikes

551. The Mission considers the witnesses it interviewed about this incident to be reliable and credible. After careful analysis of the information it received, the Mission finds that the following can be established with a high degree of certainty:

552. Three high explosive shells hit the compound. Two landed on the Gaza Training Centre and one landed in the car park. Complete or substantial parts of seven white phosphorous container shells landed in the compound. The wedges in these container shells were either discharged totally or very substantially in the compound. One shell, which was seen directly by a senior international staff member with many years' of active military service, detonated on impact or only a very short distance from the ground.

553. One high explosive shell struck the Gaza Training Centre's yard and was witnessed by at least two guards and left a crater.

554. Two high explosive shells landed on the roof of the education building. There are two large holes in the roof and shrapnel all around.

555. A white phosphorous container shell struck the Project and Logistics Division Building.

556. One white phosphorous container shell hit the back of a vehicle in the spare parts store, coming through a wall on the south side at a high point. This is believed to have caused the fire to start in the workshop area.

557. One white phosphorous container shell or a substantial part thereof came through a wire fence at the top of the southern boundary of the compound near the spare parts and workshop area, causing damage to a vehicle there.
558. One white phosphorous container shell landed in the workshop embedding itself in the concrete.
559. One white phosphorous container shell or a substantial part thereof came through the roof of the painting bay.
560. One white phosphorous container shell or a substantial part thereof struck a manhole cover near small warehouses storing food.
561. One white phosphorous container shell struck near a generator on concrete ground.
562. Seven of the ten strikes occurred in an area smaller than a standard football pitch. The whole area, including the three other strikes on or near the Gaza Training Centre, would be no more than two football pitches.
563. The precise moment when each of the strikes occurred cannot be stated with certainty but all occurred between 8 a.m. and 12 noon.

4. Communications and responses

564. For the purposes of liaison with the Israeli authorities, the counterpart of the United Nations Department of Safety and Security (DSS) is the Coordinator of Government Activities in the Territories (COGAT). This is a unit within the Israeli Ministry of Defense. In Gaza the day-to-day liaison and coordination activity with COGAT is carried out by the Coordination and Liaison Administration (CLA), located on the Israeli side of the Erez crossing. CLA is the military unit responsible for the coordination of access to and from Gaza in connection with the facilitation of civilian and humanitarian needs. DSS at the time routinely liaised with COGAT through CLA.
565. From 27 December until 2 January DSS communicated with COGAT/CLA by telephone and by e-mail. The Mission is in possession of the names of the Israeli officers with whom such contact was established and maintained. In the second phase of the conflict, COGAT intervention increased and new personnel added to their capacity. Two new contacts were added to those already established.
566. The most comprehensive list of relevant data was forwarded to COGAT/CLA on 3 April 2008, including all United Nations installations. As of 29 December 2008 COGAT/CLA had been provided with an updated list of the coordinates of all United Nations offices, international residences and pre-identified possible emergency shelters. Throughout the military operations DSS was in almost daily communication, providing detailed information on coordinates of relevant emergency shelters and distributions centres. The Mission has been shown the relevant log of all such communications.
567. On the day in question DSS made at least seven phone calls to COGAT/CLA counterparts between 8.14 a.m. and 1.45 p.m. These conversations addressed, for instance, the proximity of

Israeli fire, the damage done to UNRWA installations, requests that fire be redirected or withdrawn, and coordination for the removal of fuel tankers.

568. Despite calls beginning at 8.14 a.m., it does not appear that COGAT/CLA was able to confirm that contact had been established with the relevant brigade until 11.06 a.m.

569. Other information available to the Mission shows that the Deputy Director of Operations of UNRWA, who was in Jerusalem at the time was engaged in frequent calls to senior Israeli officials. He had received a call at 9 a.m. from John Ging, the Director of Operations at UNRWA, advising him of the shelling near the compound and had been asked to demand that the shelling be stopped by calling the Israeli armed forces' Humanitarian Coordination Centre (HCC) in Tel Aviv. He made a total of 26 calls to the head of HCC or to his assistant as well as to members of COGAT/CLA. He was assured on a number of occasions by the head of HCC that shelling had stopped, but it was clear when he relayed this message back to Gaza that shelling was continuing. The Deputy Director had warned of the immediate risk to the fuel depot and those seeking shelter.

5. Weapons used

570. Analysis of the shells used in the strikes that hit the UNRWA compound indicates clearly that at least seven shells were white phosphorous shells, three of which were complete and four of which were very substantial components of the shells. Military experts indicate that in all probability these shells were fired from a 155 mm Howitzer.

571. Three other missiles were determined clearly by UNRWA military experts to have been high explosive missiles.

6. The Israeli response

572. On 15 January the Israeli Defence Minister, Ehud Barak, said the attack had been a "grave error" and apologized, according to the United Nations Secretary-General, who had spoken with him earlier in a meeting in Tel Aviv. The same day the Israeli Prime Minister said that it was "absolutely true that we were attacked from that place, but the consequences are very sad and we apologize for it". The Israeli Welfare and Social Services Minister made subsequent statements suggesting there had been gunfire directed at Israeli troops from adjacent premises. He said it was shrapnel from the return fire that entered the UNRWA compound causing the blaze.³⁶⁷

573. On 22 April the summary of the conclusions of the Israeli armed forces' investigations reported as follows:

... the IDF deployed a smoke screen in order to protect a tank force operating in the neighbourhood from Hamas anti-tank crews who had positioned themselves adjacent to the UNRWA headquarters. The smoke screen was intended to block the terrorists' field of view. Information received by the IDF shows that the smoke screen did assist in protecting the force and prevented precise anti-tank fire against

³⁶⁷ <http://www.jpost.com/servlet/Satellite?cid=1232292898771&pagename=JPArticle%2FShowFull>.

IDF forces. The smoke projectiles were fired at an area a considerable distance from the UNRWA headquarters, and were not intended to cause damage to either person or property. However, it appears that fragments of the smoke projectiles did hit a warehouse located in the headquarters, causing it to catch fire.

During the incident, claims were also made that an explosive shell or shrapnel hit the UNRWA headquarters. The investigation showed that these were shells, or shell fragments that were fired at military targets within the battle zone.

The damage caused to the UNRWA headquarters during the fighting in the Tel El-Hawwa neighbourhood is the unfortunate result of the type of warfare that Hamas forced upon the IDF, involving combat in the Gaza Strip's urban spaces and adjacent to facilities associated with international organizations. These results could not be predicted.

Nevertheless, it is clear that the forces did not intend, at any stage, to hit a UN facility. Following UN complaints that an explosive shell had hit the headquarters, the forces were ordered to cease firing explosive shells in the region in question. Following the receipt of reports about the fire in the warehouse, all firing in the area was stopped. The entry of fire-fighting trucks to the area was coordinated with the IDF in order to assist in extinguishing the fire.³⁶⁸

574. In its report of July 2009 on the military operations, the Israeli Government explains that the “primary rationale” for firing white phosphorous was to “produce a smokescreen to protect Israeli forces from the Hamas anti-tank crews operating adjacent to the UNRWA headquarters”. The report goes on to assert:

The IDF sought to maintain a safety distance of several hundred metres from sensitive sites, including the UNRWA compound. Despite the maintenance of a safety distance, some felt wedges and other components of the projectiles apparently landed in the compound after the release of felt wedges in the air. The IDF neither anticipated nor intended this outcome.³⁶⁹

575. The Mission has a number of observations about the conclusions of the Israeli Government. First, it does not share the circumspect or indeed understated representation of the nature and extent of the strikes in the compound. There were ten strikes: three high explosive shells landed and exploded in the compound; seven white phosphorous container shells discharged completely or very substantially in the confines of a very limited space around particularly vulnerable areas of the UNRWA compound. This is not a matter of a limited number of wedges falling inside the compound or shrapnel or parts of shells landing in the compound as the shells exploded elsewhere. It is important to emphasize that we are dealing with shells exploding or discharging inside the compound in areas where hazardous material was stored.

³⁶⁸ <http://dover.idf.il/IDF/English/opcast/postop/press/2202.htm>.

³⁶⁹ “The operation in Gaza...”, paras. 344 and 346.

576. Secondly, the claim that this result was neither intended nor anticipated has to be reviewed carefully. In the first place the Mission affirms the result to be reviewed is not fragments and wedges landing in the compound but ten shells landing and exploding inside the compound. It is difficult to accept that the consequences were not appreciated and foreseen by the Israeli armed forces.

577. Those in the Israeli army who deploy white phosphorous, or indeed any artillery shells, are expertly trained to factor in the relevant complexities of targeting, including wind force and the earth's curvature. They have to know the area they are firing at, possible obstacles in hitting the target and the other environmental factors necessary to ensure an effective strike. It is also clear that, having determined that it was necessary to establish a safety distance, the presence of the UNRWA installations was a factor present in the minds of those carrying out the shelling.

578. The question then becomes how specialists expertly trained in the complex issue of artillery deployment and aware of the presence of an extremely sensitive site can strike that site ten times while apparently trying to avoid it.

579. The Mission's scepticism that the result was not anticipated is confirmed by the fact that from around 8 a.m. on 15 January UNRWA officials began a series of calls to a number of officials explaining precisely what was going on. These calls were made to the appropriate people at COGAT/CLA as a result of prearranged coordination and further reinforced by the numerous calls by the Deputy Director of UNRWA to senior Israeli military officials in Tel Aviv.

580. In particular, the Israeli military officials were informed that shells had indeed struck inside the compound by the series of phone calls made by UNRWA officials.

581. The Mission is in possession of information that indicates a senior UNRWA official called the head of HCC in Tel Aviv and a number of his immediate subordinates several times. In particular a call was made at 10.31 a.m. by the official to the Israeli armed forces to explain that white phosphorous had landed in the compound and had set fire to the warehouse. He was told "by Tel Aviv" that the firing had stopped. To be clear, this means that by 10.30 a.m. at the latest channels of communication had been opened between Tel Aviv and those on the ground in Gaza City responsible for the firing of the shells, albeit not necessarily directly, but sufficient to be receiving reports of what was going on from Israeli troops on the ground.

582. At 10.30 a.m. staff at the UNRWA compound noted five white phosphorous container shells had discharged in the confines of the compound. At 10.40 a.m. the UNRWA official was again in direct communication with Tel Aviv explaining specifically that "the targeting is taking place in the vicinity of the workshop" and requiring that the Israeli armed forces desist immediately. In particular, he pointed out that what was required was a cessation of the firing for a sustained period of time to allow staff to bring the fire under control.

583. At 11.17 a.m. the same senior UNRWA official was informed in a phone call from UNRWA staff in the compound that a further two rounds had impacted "within the last ten minutes".

584. At 11.53 a.m., in a further telephone call, the senior UNRWA official indicated to the COGAT/CLA contact person that the firing had been unforgivable and unacceptable. He noted that efforts had been made since 09.30 a.m. to get the firing to stop and that UNRWA had been told in several calls that the firing had been ordered to be stopped at higher levels, yet it continued. The UNRWA official noted that it was incomprehensible that, with the amount of surveillance and geographic positioning system (GPS) information, the most vulnerable part of the compound had been repeatedly struck.

585. In all the circumstances the Mission rejects the Israeli armed forces' assertion to the effect that it was not anticipated that the shells would land in the compound. The Israeli armed forces were told what was happening. It no longer had to anticipate it. The Israeli armed forces' responses in Tel Aviv and in COGAT/CLA indicate quite clearly that they understood the nature and scale of what was happening. Their responses in particular indicate that orders had been given to stop the firing.

7. Factual and legal findings

586. The Mission considers that Israeli armed forces had all of the information necessary to appreciate the danger they were creating as a result of their firing at the UNRWA installations, in particular the fuel depot, and to the civilians gathered there. Orders were said to have been issued to cease firing in the vicinity of the UNWRA premises.

587. The Israeli Government's report cites with approval a passage from the report to the Prosecutor of the International Criminal Tribunal for the former Yugoslavia in relation to the bombing of the Federal Republic of Yugoslavia by the North Atlantic Treaty Organization (NATO) in 1998. The Mission has also considered that report. On the issue of intent it states:

Attacks which are not directed against military objectives (particularly attacks directed against the civilian population) and attacks which cause disproportionate civilian casualties or civilian property damage may constitute the actus reus for the offence of unlawful attack under article 3 of the ICTY Statute. The mens rea for the offence is intention or recklessness, not simple negligence. In determining whether or not the mens rea requirement has been met, it should be borne in mind that commanders deciding on an attack have duties:

- (a) To do everything practicable to verify that the objectives to be attacked are military objectives;
- (b) To take all practicable precautions in the choice of methods and means of warfare with a view to avoiding or in any event to minimizing incidental civilian casualties or civilian property damage; and
- (c) To refrain from launching attacks which may be expected to cause disproportionate civilian casualties or civilian property damage.³⁷⁰

³⁷⁰ "Final report to the Prosecutor...", para. 28.

588. The Mission agrees that this passage correctly reflects both the nature of the intent required and the relevant duties of a commander.

589. Even if the Israeli armed forces were under fire from anti-tank missiles from Palestinian armed groups at the time, all of the information referred to above indicates that the commanders in question did not take all feasible precautions in the choice of methods and means of warfare with a view to avoiding or, in any event, to minimizing incidental civilian casualties or civilian property damage.

590. The Mission is not attempting to second-guess with hindsight the decisions of commanders. The fact is that the events in question continued over a period of some three hours. In these circumstances the Israeli armed forces were not confronted by surprise fire to which they had to respond with whatever materiel was available to them at the time. If they were faced with anti-tank missiles, that was hardly something of which they had been unaware for an appreciable time.

591. Statements made to the Mission by senior UNRWA international staff indicate that they were unaware of any sustained fire at the relevant time from anywhere in the nearby areas. The Mission notes that official statements made on 15 January by Israel's Prime Minister had indicated with complete certainty that firing by Palestinian armed groups had occurred from within the UNRWA compound.³⁷¹ This was later contradicted and corrected to state that the armed groups occupied positions near to but outside the compound.³⁷² The Mission considers it important to record that the initial allegation was incorrect and this appears now to be accepted as such by the Israeli.

592. The Mission concludes that the Israeli commanders knew of the location of the UNRWA premises and indeed of the layout of the compound in terms of the most vulnerable areas and especially the fuel depot before the shelling took place around 8 a.m.

593. Even if the Israeli Government's position regarding the position of Palestinian armed groups is taken at face value, the Mission concludes that, given the evident threat of substantial damage to several hundred civilian lives and to civilian property in using white phosphorous in that particular line of fire, the advantage gained from using white phosphorous to screen Israeli armed forces' tanks from anti-tank fire from armed opposition groups could not be deemed proportionate.

594. Having been fully alerted not to the risks but to the actual consequences of the course of action, Israeli armed forces continued with precisely the same conduct as a result of which further shells hit the compound. Such conduct, in the Mission's view, reflects a reckless disregard for the consequences of the choice of the means adopted in combating the anti-tank fire

³⁷¹ Israel's Prime Minister, Ehud Olmert, told the United Nations Secretary-General that troops shelled the building in response to Hamas gunfire coming from within, but nonetheless said it should not have happened. Israeli troops "were attacked from there and the response was harsh", Olmert said. "It is absolutely true that we were attacked from that place, but the consequences are very sad and we apologize for it", he added. See <http://www.guardian.co.uk/world/2009/jan/15/israel-gaza-offensive-truce-talks>. The same quotation is reported in multiple sources.

³⁷² "The operation in Gaza...", para. 347.

the Israeli authorities claim they were facing. The decision to continue using the same means in the face of such knowledge compounds that recklessness. It deprived the UNRWA staff of the ability to contain the fires that had been caused and led to millions of dollars worth of damage that could have been avoided. It also put in danger some 700 lives, including staff and sheltering civilians.

595. The Mission, therefore, concludes on the basis of the information it received and in the absence of any credible refuting evidence that Israeli armed forces violated the customary international law requirement to take all feasible precautions in the choice of means and method of attack with a view to avoiding and in any event minimizing incidental loss of civilian life, injury to civilians and damage to civilian objects as reflected in article 57 (2) (a) (ii) of Additional Protocol I to the Geneva Conventions.

C. Al-Quds hospital, Tal el-Hawa, Gaza City

596. Al-Quds hospital belongs to the Palestinian Red Crescent Society (PRCS). It consists of three buildings facing west towards the sea and occupying the corner of Jami'at ad-Duwal al-Arabiyah Street and al-Abraj Street in the area of Tal el-Hawa. The building nearest the corner is seven storeys high. Its principal purposes were administrative and cultural rather than medical. It stored a huge quantity of PRCS archives. The middle building contains the accident and emergency treatment area as well as other offices. The building furthest from the corner is the main medical building with operating theatres in the basement. About 200 metres eastwards on al-Abraj Street is the Palestinian Red Crescent ambulance depot. These buildings all suffered significant damage in the course of an Israeli bombardment on 15 January 2009, which included the use of white phosphorous. The attacks endangered the lives of the staff and more than 50 patients in the hospital. There was no warning given for any of the attacks.

597. The Mission met staff from the hospital on six separate occasions, three of them on site visits. Two extended site visits included inspections not only of the hospital premises, but also of the ambulance depot, of the damage done to apartment buildings on that street and of the area opposite the hospital to assess the damage done by fighting in that area. Three long interviews were carried out with one doctor individually, another was carried out with two doctors together and there were two group meetings with four and five doctors, respectively. The Mission also received a considerable body of photographs and digital video footage of the events of the day in question. It furthermore addressed questions to the Government of Israel regarding the use of white phosphorous munitions against al-Quds hospital and the direct military advantage pursued by their use under the circumstances, but received no reply.

598. The doctors with whom the Mission spoke all occupied senior positions but also witnessed the events that occurred throughout that day. The Mission was impressed with their objectivity and the genuine distress several of them showed at being unable to help or protect the sick and wounded who had come to the hospital. Throughout that day many of the staff, including the doctors, took exceptional risks to stop fire spreading, including by removing white phosphorous wedges from near diesel tanks. One doctor in particular showed remarkable courage. He left the hospital to drive an ambulance through artillery shelling as he sought to bring an eight-year-old girl to al-Shifa hospital for treatment which he was no longer able to provide in al-Quds. Having taken the girl there, he drove back to the hospital in the same conditions to continue assisting the efforts to fight the fires.

1. The facts

599. When the Israeli air offensive began on 27 December a government building opposite the al-Quds administrative building on al-Abraj Street was almost totally destroyed. The building had previously served as a criminal detention centre and is still referred to locally by that designation although it had recently been used for other purposes, including customs administration. The same building was reportedly struck on a number of other occasions after 27 December. When the Mission visited in June 2009, the site was completely demolished.

600. Diagonally opposite al-Quds Hospital on Jami'at ad-Duwal al-Arabiyyah Street was another building rented to the Government and used primarily for public registry functions. Today only the ground floor of the building remains. Witnesses indicate that the upper floors had been destroyed, probably by artillery fire, around 6 and 7 January.

601. Three senior doctors at the hospital and two residents from al-Abraj Street indicated that at some point between 3 and 6 January several tanks were stationed several hundred metres east of al-Quds hospital, visible from the ambulance depot. Throughout the days of 5, 6, 7 and 8 January there was significant artillery fire on a number of civilian apartment buildings on al-Abraj Street. On 8 January 2009 the seventh-floor apartment of Dr. Jaber Abu al-Naja was struck. His wife and son-in-law were killed immediately as they sat on the balcony of the apartment eating pastries. His wife was cut in half by the explosion and his son-in-law was thrown from the balcony on to the street below. His daughter, Ihsan, was seriously injured and taken to al-Quds hospital for treatment. Dr. Jaber Abu al-Naja is the former Ambassador of the PLO to Senegal and a well-known Fatah politician.³⁷³

602. By 15 January the area immediately to the south of al-Quds hospital (the customs building and the registry building) had been totally or very substantially destroyed. The area to the east on al-Abraj Street had been significantly attacked by artillery fire.

603. By this time a large number of civilians (several hundreds) had also gathered in the hospital buildings seeking safety.

604. During the night of 14 January Israeli armed forces began an extended barrage of artillery fire over the area. It continued into the morning of 15 January. Between 8 and 9 a.m. doctors in the main building were in the principal meeting room when shells landed on either side of the building. They saw white phosphorous wedges burning near a container of diesel and efforts were successfully made to move those away. The initial explosions had blown out the office windows. At about the same time it became apparent that the administrative building on the corner had also been hit. The hospital building next to it has a large timber-built component. The risk of fire spreading was immense and a witness described how hospital staff, including senior doctors, all sought to break, by hand, the wooden bridge way that linked the administrative building to the hospital building to prevent the fire from spreading.

605. Shortly after the initial explosions and fire were observed, a tank shell directly penetrated the rear of the middle hospital building. That part of the building is made of corrugated iron and

³⁷³ Interview with Dr. Jaber Abu al-Naja, 4 July 2009.

the entry point of the shell is easily detectable. The shell then penetrated the inner concrete wall of the hospital where the pharmacy was located. The pharmacy was completely destroyed as a result. An eyewitness described that, through the holes made in the corrugated iron, he observed a tank on a road between two buildings about 400 metres eastwards. Although he could not say whether it was this tank that had struck the hospital directly, it was in a direct line in relation to the entry point of the shell.

606. Throughout the day the hospital was unable to procure the assistance of civil defence forces or other fire-fighting support. As a result, the staff of the hospital were almost entirely consumed with the task of saving the buildings and ensuring the safety of patients.

607. It was not until around 4 p.m. that it was possible to coordinate an evacuation of hospital patients with the assistance of ICRC, which made clear upon arrival that it would be able to carry out this procedure only once. Those not evacuated at this point were relocated to the operating theatres of the hospital.

608. At around 8 p.m. another fire broke out causing serious damage to the main hospital building. As a result of this fire it was decided to carry out a total evacuation of the remaining patients as well as a number of local residents who had sought refuge in the hospital. It was at this stage that one of the senior doctors took an eight-year-old girl who had been struck by a bullet in the jaw and was critically ill to al-Shifa hospital, where she later died. At that point he says he felt that there was very heavy fire in the area and that there appeared to be some attempts to aim directly at or near to the ambulance.

609. Meanwhile, 200 metres to the east in al-Abraj Street the PRCS ambulance depot had also been severely damaged. One of its principal buildings was entirely destroyed. The Mission also saw the remnants of three PRCS ambulances that had been parked at the entrance to the depot. Two had been crushed by tanks but not burned out. The other ambulance showed signs of having been struck directly in the front below the windscreen by a missile of some description and having been burned out.

610. The devastation caused to both the hospital buildings, including the loss of all archives in the administrative building, and the ambulance depot was immense, as was the risk to the safety of the patients.

611. The Mission examined a number of the shells retrieved by the hospital staff and reviewed footage taken at the time as well as still photographs.

2. The Israeli position

612. The Israeli authorities did not specifically mention the incident at al-Quds hospital in the conclusions of their investigations on 22 April 2009.³⁷⁴

³⁷⁴ Annex B addresses some allegations regarding the use of ambulances, but not the attack on the hospital. See <http://dover.idf.il/IDF/English/Press+Releases/09/4/2202.htm>.

613. In its report of July 2009 (para. 173) the Israeli Government quotes part of an article from *Newsweek* magazine:

One of the most notorious incidents during the war was the Jan. 15 shelling of the Palestinian Red Crescent Society buildings in the downtown Tal-al Hawa part of Gaza City, followed by a shell hitting their Al Quds Hospital next door; the subsequent fire forced all 500 patients to be evacuated. Asked if there were any militants firing from the hospital or the Red Crescent buildings, hospital director general Dr. Khalid Judah chose his words carefully. 'I am not able to say if anyone was using the PRCS buildings [the two Palestine Red Crescent Society buildings adjacent to the hospital], but I know for a fact that no one was using the hospital.' In the Tal-al Hawa neighborhood nearby, however, Talal Safadi, an official in the leftist Palestinian People's Party, said that resistance fighters were firing from positions all around the hospital. He shrugged that off, having a bigger beef with Hamas. 'They failed to win the battle.' Or as his fellow PPP official, Walid al Awad, put it: 'It was a mistake to give Israel the excuse to come in.'³⁷⁵

While the Israeli Government does not comment further on the specific attack, it would appear to invoke these comments to justify the strikes on the hospital and surrounding area.

614. The Mission understands that the Israeli Government may consider relying on journalists' reporting as likely to be treated as more impartial than reliance on its own intelligence information. The Mission is nonetheless struck by the lack of any suggestion in Israel's report of July 2009 that there were members of armed groups present in the hospital at the time.

3. Factual findings

615. The Mission finds that on the morning of 15 January the hospital building and the administrative building were struck by a number of shells containing white phosphorous and by at least one high explosive shell. The fires these caused led to panic and chaos among the sick and wounded, necessitated two evacuations in extremely perilous conditions, caused huge financial losses as a result of the damage and put the lives of several hundred civilians including medical staff at very great risk.

616. The Mission also notes that, as a result of the conditions the attack created, the hospital was unable to provide the necessary care for an eight-year-old girl. Despite heroic attempts to save her, she died later in another hospital. The girl had been shot by an Israeli sniper. The Mission finds the Israeli armed forces responsible for her death.

617. On the issue of armed groups being present in the hospital buildings, the Mission does not agree that anything in the extract cited above from *Newsweek* magazine justifies the conclusion that the hospital premises were being used by armed groups. The fact that Dr. Judah spoke with certainty about matters within his knowledge cannot be presumed to mean that he believed other

³⁷⁵ "Hamas and its discontents", 20 January 2009.

parts of the hospital premises were being used by armed groups. That may be journalistic gloss and is tantamount to putting words in the mouth of Dr. Judah. The comments attributed to Mr. Safadi that “resistance fighters were firing from positions all around the hospital” can mean either that people were inside the hospital firing or were in positions outside but near to the hospital. The journalist did not clarify precisely what was meant.

618. The Mission, having carried out over eight hours of interviews with senior and junior staff, and having sought to verify the matter with others, including journalists who were in the area at that time, has concluded that it is unlikely there was any armed presence in any of the hospital buildings at the time of the attack.

619. The Mission finds that no warning was given at any point of an imminent strike and at no time has the Israeli Government suggested such a warning was given.³⁷⁶

620. Reviewing the scene at the time of the strikes on al-Quds hospital, it is important to bear in mind that a great deal of destruction had already occurred and that buildings with an apparent connection to the local government had been attacked and largely destroyed. As such, Israeli tanks had a relatively clear view of the area immediately to the south of the hospital. The Mission also notes that as a result of the attacks on al-Abraj Street by tanks for several days, the scope for resistance, if any, from that particular quarter had been significantly reduced.

621. The Mission is aware of reports that there was significant resistance from Palestinian armed groups in the Tal el-Hawa area on the night of 14 January.³⁷⁷ Information available alleges that on the night of 14 January Israeli troops had entered buildings on al-Abraj Street, used human shields to check if there was any presence of enemy combatants or explosive devices and found none. Reports do not specify the nature, scale or precise location of resistance in Tal el-Hawa. The Mission notes that in the buildings directly opposite al-Quds hospital on Jami’at ad-Duwal al-Arabiyah Street there is very little sign of damage to any of the buildings on that side of the street, and certainly nothing that compares to the damage to the buildings on al-Abraj Street.

622. The Mission takes into account the damage that had already occurred between 27 December and 8 January on al-Abraj and Jami’at ad-Duwal al-Arabiyah Streets, and the lack of apparent damage to the buildings directly opposite the hospital on Jami’at ad-Duwal al-Arabiyah Street. It also takes account of the sighting of at least one tank whose direct line of fire, bearing in mind that it was surrounded by tall buildings on both sides, was the hospital itself. It also notes the credible sightings of Israeli aircraft in the area at various points throughout the day. It further notes the extensive damage to the ambulance depot at the same time as the strikes

³⁷⁶ In its conclusions of its investigations published on 22 April, the Israeli armed forces highlight the fact, in connection with its investigation into allegations of attacks on medical services, that they gave warnings. One related to an ambulance and another to a clinic. There is no mention of al-Quds hospital. See <http://dover.idf.il/IDF/English/Press+Releases/09/4/2202.htm>.

³⁷⁷ The Mission has noted a witness account in relation to Israeli armed forces’ use of human shields on al-Abraj Street on the night of 14 January, thus indicating that there was indeed a very active Israeli presence on the ground. See Al Mezan Center for Human Rights, “Hiding behind civilians: April 2009 update report”, p. 8.

on the hospital occurred and the apparently unexplainable crushing of ambulances parked outside the depot.

623. In the light of all these considerations, the Mission finds that there are reasonable grounds to believe that the hospital and the ambulance depot, as well as the ambulances themselves, were the object of a direct attack by the Israeli armed forces in the area at the time and that the hospital could not be described in any respect at that time as a military objective.

4. Legal findings

624. Article 18 of the Fourth Geneva Convention provides that civilian hospitals may in no circumstances be the object of attack but shall at all times be respected and protected by the parties to the conflict.

625. Article 19 provides that the protection to which civilian hospitals are entitled shall cease “only after due warning has been given, naming, in all appropriate cases, a reasonable time limit and after such warning has remained unheeded.”

626. Even in the unlikely event that there was any armed group present on hospital premises, there is no suggestion even by the Israeli authorities that a warning was given to the hospital of an intention to strike it. As such the Mission finds on the information before it that Israeli armed forces violated articles 18 and 19 of the Fourth Geneva Convention.

627. On considering the information before it, the Mission takes the view that there was intent to strike the hospital, as evidenced in particular by the high explosive artillery shell that penetrated the rear of the hospital and destroyed the pharmacy.

628. Even if it is suggested that there was no intent to directly strike the hospital but that Palestinian armed groups had taken up positions near al-Quds hospital, the Israeli armed forces would still have been bound to ensure that risk of death, injury or damage to the people in the hospital or the hospital itself would not be excessive in relation to the military advantage anticipated in attacking the hospital.

629. Taking into account the weapons used, and in particular the use of white phosphorous in and around a hospital that the Israeli armed forces knew was not only dealing with scores of injured and wounded but also giving shelter to several hundred civilians, the Mission finds, based on all the information available to it, that in directly striking the hospital and the ambulance depot the Israeli armed forces in these circumstances violated article 18 of the Fourth Geneva Convention and violated customary international law in relation to proportionality.

D. Attacks on al-Wafa hospital, 5 and 16 January 2009

630. The Mission interviewed three senior doctors of al-Wafa hospital. One was Dr. Khamis el-Essi, its Director. The two other doctors do not wish to be identified. The Mission has also reviewed information in the public domain in relation to the various alleged attacks on the hospital.

631. Al-Wafa hospital is located at the eastern part of al-Shujaeyah (east Gaza City), very close to the Israel-Gaza eastern border. It was founded in 1996 and provides long-term care to

those suffering from head and spinal injuries. Many patients are elderly. It can accommodate over 50 patients.

632. The hospital consists of three buildings. From south to north these are the administrative building (three floors), the hospital buildings (rooms of patients and surgeries, seven floors) and the building for the elderly (reception and rehabilitation, three floors).

1. The facts

633. The hospital was the object of a significant attack on 16 April 2008. Tanks fired in and around the hospital area, damaging a large number of patient rooms and causing significant destruction of the building for rehabilitative care for the elderly. Hospital staff indicate there was no armed presence inside the hospital at that time but cannot say whether there may have been a presence outside.

634. During the military operations, the hospital was attacked again. Despite media reports that a warning had been given, hospital staff deny that any specific warning was received. Leaflets had been dropped in the area with general indications that support of Hamas would be punished. The hospital had also received a number of telephone warnings with recorded messages but with no specific indication that the hospital itself would be the object of an attack, much less with an indication of when that would occur. One doctor indicated that the hospital had received around four such messages each day since 27 December 2008.

635. On 5 January, the hospital was attacked with intensive artillery fire, including white phosphorous shells. Senior doctors indicate that generic recorded telephone warnings were actually received during the shelling. The latest warning the hospital received on 5 January was at 4.30 p.m. Following this, at around 12.30-1 a.m. on 6 January, white phosphorous shells landed in the area surrounding the administrative building and on its roof.

636. The white phosphorous caused damage to the administrative building only, destroying the roof.

637. All three witnesses of the senior medical staff confirm absolutely that there was no presence of any armed resistance inside the hospital. They are not able to confirm or deny the presence of such elements outside of the hospital.

638. The hospital was attacked again with artillery fire on 16 January 2009 at 2 a.m. No specific warning was given. Again a general recorded message had been received saying that people located in the border areas should leave and threatening punitive measures to those who stayed. Again doctors confirm there was no armed presence inside the hospital but cannot say what was occurring outside it.

639. The attack damaged the building for elderly patients on the ground and third floors as well as the roof. It damaged the third and fourth floors of the central hospital building.

640. Doctors estimate that the tanks were as close as 70 metres from the hospital.

641. The damage to the hospital (as a result of the two attacks) is estimated at US\$ 550,000.

642. As to why the hospital was the subject of these attacks, doctors speculate that its location close to the border is one possible reason. Another relates to the rumour that Israel believes that Muhammad al-Deif, a well-known Hamas militant, is treated inside the hospital.

643. According to one witness in the hospital, Israeli armed forces tried to assassinate Mr. al-Deif on 12 July 2006. Although he survived the assassination attempt, he was badly hurt and, according to some rumours, his legs were amputated and he became blind. It seems that Israel believes that he receives some rehabilitation and medical treatment at al-Wafa hospital.

644. On 5 February 2003, for instance, Israeli snipers shot and killed two staff nurses who were on duty inside the hospital (Abd al-Karim Lubad and Omar Hassan, both aged 21).³⁷⁸

2. Factual findings

645. The Mission notes that the three witnesses interviewed are senior doctors in the hospital. The Mission found them to be credible and reliable. They clarified a number of apparently inaccurate statements that have appeared in press reports, especially regarding the nature of the warnings given.

646. The Mission considers that the warnings given cannot be considered as a warning within the meaning of article 19 of the Fourth Geneva Convention. It was not specific and no indication was given about when the attack would take place or how much time there was to evacuate the hospital.

647. As to the reasons for the multiple attacks on the hospital in 2003, 2008 and 2009, the Mission is not in a position to comment.

3. Legal findings

648. The Mission finds that the choice of deploying white phosphorous shells in and around such a building, where patients receiving long-term care and suffering from particularly serious injuries were especially vulnerable, was not acceptable in the circumstances. The Mission is particularly concerned about the attack on the hospital on 16 January from such close proximity. Even if there was some degree of armed resistance in the area (which the Mission cannot confirm), commanders in deploying such weaponry must take into account all the facts and circumstances.

649. The Mission considers the use of white phosphorous in such an area as reckless and not justifiable in relation to any military advantage sought in the particular circumstances.

650. The Mission considers that the general protection given to hospitals indicates the need for particular consideration to be given to the use of such especially hazardous materials. The failure to provide sufficient warning indicates in the Mission's view a wilful failure to consider seriously the consequences of using such weapons in those circumstances.

³⁷⁸ See <http://www.hrea.org/lists/hr-health-professionals/markup/msg00099.html>.

651. The Mission notes that the case of al-Wafa hospital demonstrates the complete ineffectiveness of certain kinds of warnings. The information the Mission has received points towards a kind of repetition and routine warning system taking no account at all of the realities of the hospital.

652. As such the Mission considers that, from all the information available to it, the Israeli armed forces violated articles 18 and 19 of the Fourth Geneva Convention as well as customary international law as reflected in Additional Protocol I, articles 57 (2) (b) and (c).

X. INDISCRIMINATE ATTACKS BY ISRAELI ARMED FORCES RESULTING IN THE LOSS OF LIFE AND INJURY TO CIVILIANS

A. The shelling in al-Fakhura Street by Israeli armed forces

653. In the afternoon of 6 January at least four mortar bombs fired by Israeli armed forces exploded near the al-Fakhura junction in the al-Fakhura area of the Jabaliyah camp in northern Gaza.³⁷⁹

654. The Mission interviewed Mr. Muhammed Fouad Abu Askar on three occasions. His brother and two sons were killed in the attack.³⁸⁰ It also met surviving members of the al-Deeb family on two occasions.³⁸¹ The Mission interviewed four men who had lost family members in the attack, the Director of the UNRWA premises that were being used as a shelter for civilians and a number of journalists who covered the story. In addition, the Mission has seen a number of statements provided to organizations in Gaza in the form of affidavits. The Mission has also considered to the degree possible the information available from Israeli sources on the circumstances of the strike.

B. The facts surrounding the Israeli armed forces' mortar shelling

655. On 5 January 2009 UNRWA had opened the elementary school on al-Fakhura Street to provide shelter to civilians fleeing the areas where the Israeli armed forces had entered.

656. The Mission spoke on two occasions with the Director of the shelter about its management. He said that about 90 per cent of those in the shelter had come from outside of Jabaliyah camp, largely from the al-Atatra area. He explained that the shelter was guarded by

³⁷⁹ Interviewees' statements vary, asserting between four and six shells landed. The Mission saw for itself what it assessed to be the effects of mortars that landed. The crater in the orchard beside the al-Deeb house may have been caused by a mortar, but given the nature of the surroundings it is less easy to tell in terms of shrapnel patterns. The Mission does not reject the possibility that more landed but was not able to inspect those sites or to come to a firm view confirming the additional shells.

³⁸⁰ Mr. Abu Askar is a Hamas member. He also provided testimony at the public hearings in Gaza. He was detained on the charge of being a member of Hamas in 1992. He is the Director-General for Religious Affairs (a voluntary position) and is on the Dialogue Committee, organizing the pilgrimage to Mecca (Saudi Arabia). He is in charge of the Hamas Follow-Up Committee in North Gaza related to the settlement of disputes between Hamas and other groups in the Occupied Palestinian Territory. He has a master's degree in education and is currently pursuing a PhD in the Syrian Arab Republic. He denies any involvement in armed militant activities.

³⁸¹ Two of the members of the family also presented their testimony at the public hearings in Gaza.

security staff at its entry points and that all people coming in were registered by name and searched to ensure no weapons were being taken into the premises.

657. UNRWA has confirmed to the Mission that the Israeli armed forces were fully aware that the school was being used as a shelter from 5 January 2005. UNRWA materials indicate that there were 1,368 people in the shelter at the time.

658. About 16 hours prior to the shelling on the afternoon of 6 January 2009, Israeli armed forces had already carried out at least one strike, destroying the house of Mr. Abu Askar. At around 1.45 a.m. on 6 January 2009, Mr. Abu Askar received a personal telephone call from the Israeli armed forces advising him that he should evacuate the house and everyone in it because it was going to be destroyed by an air strike. The building housed not only his immediate family but a large number of his extended family, about 40 in all. Mr. Abu Askar responded quickly, evacuating not only his own extended family but also advising neighbours of the imminent strike. The survivors of the al-Deeb family confirm they were advised at this time by Mr. Abu Askar of the call he had received.

659. The house was struck by a missile from an F-16 according to Mr. Abu Askar about seven minutes after the call was received. Several hours later, at around 6 a.m., he returned to the site of the house with members of his family hoping to retrieve some items of furniture. There he noticed that a number of other houses in the area also appeared to have been hit at some time in the intervening four hours. In the course of that day Mr. Abu Askar and members of his family took various steps to prepare the move of the family to rented accommodation nearby.

660. Mr. Abu Askar was in the street at around 4 p.m., when several mortars landed. He believes that there were about 150 people in the street at the time. The Director of the shelter confirmed that the street outside the school was generally busy. It had become busier than usual due to the large influx of people into the school looking for shelter. Some relatives were coming to the school to visit those who had recently arrived and new people were arriving to seek shelter, including with belongings on donkey carts.

661. Witnesses indicate that all of the explosions were over within around two minutes. One shell landed directly in the courtyard outside the al-Deeb house, where most of the family was gathered. Surviving family members interviewed by the Mission explained that nine members of the family were killed immediately. Ziyad Samir al-Deeb lost both legs as a result of the blast.³⁸² Surviving family members and neighbours carried the dead and injured one after another to hospital. Ambulances came, but most casualties were transported in private cars. Alaa Deeb, a daughter of Mo'in Deeb, was taken to al-Shifa hospital and thereafter to Egypt, where she died of her injuries. In total, 11 members of the family died, including four women and four girls.

662. Apart from the shell that landed in the al-Deeb courtyard, three other shells landed in the street outside. The total spread of the four mortars was a little over 100 metres. The Mission cannot specify in which order the mortars fell, but proceeding southwards from the al-Deeb house along al-Fakhura Street, the Mission saw the impact of another mortar, 45 metres away, a third was seen a further 50 metres south and a fourth a further 10 metres south.

³⁸² Ziyad al-Deeb testified before the Mission at the public hearings in Gaza along with his uncle.

663. The three other shells that the Mission could identify as having landed at different places on al-Fakhura Street killed at least 24 people. The witnesses estimate that up to another 40 were injured by the blasts.³⁸³ The Mission has not been able to verify those figures, but having inspected the site and viewed the footage, it does not consider these numbers to be exaggerated.

664. Among those killed immediately were two sons of Mr. Abu Askar, Imad, aged 13, and Khaled Abu Askar, aged 19. Mr. Abu Askar's brother Arafat was also killed.

665. The Director of the UNRWA school shelter confirmed to the Mission that the blasts had damaged the part of the school building facing onto al-Fakhura Street. Up to nine people were injured. One boy of 16, who was sheltering in the school but was in the street at the time, was killed. No one inside the school was killed. He confirmed that no shell had directly hit the United Nations premises either inside or outside.

666. Witnesses have described the scene of chaos and carnage caused by the bombs. They indicate that people were ferried to hospitals in private cars because of the difficulties in reaching ambulance services at the time, although some ambulances did arrive.

C. The Israeli position

667. Contradictory accounts emerge from official Israeli statements. The initial position accepted that Israeli forces had struck inside the UNRWA school, claiming to be in response to Hamas fire. A later response accepted that Hamas had not been in the UNRWA school but had allegedly fired from 80 metres away from the school. Finally, the Israeli Government claimed that in fact Hamas operatives were launching mortars at Israeli armed forces for around one hour, firing every few minutes until the Israeli armed forces identified them and returned fire, killing a number of them.

668. On 6 January the Israeli armed forces posted the following statement on their website:

An initial inquiry by forces on operating in the area of the incident indicates that a number of mortar shells were fired at IDF forces from within the Jebaliya school. In response to the incoming enemy fire, the forces returned mortar fire to the source.

This is not the first time that Hamas has fired mortars and rockets from schools, in such a way deliberately using civilians as human shields in their acts of terror against Israel. This was already proven several months ago by footage from an unmanned plane showing rockets and mortars being fired from the yard of an UNRWA school.

Again, we emphasize that this announcement is based on an initial inquiry.

After an investigation that took place over the past hour it has been found that among the dead at the Jebaliya school were Hamas terror operatives and a mortar

³⁸³ A number of reports put the total figure of deaths at 42 or 43, including the al-Deeb family deaths. The Mission has not been able to contact all the relatives of those reported to have died.

battery squad who were firing on IDF forces in the area. Hamas operatives Immad Abu Iskar and Hassan Abu Iskar were among terrorists identified killed.³⁸⁴

669. Further statements from spokespersons for the Prime Minister,³⁸⁵ the Foreign Ministry and the Israeli armed forces all adhered to the position set out in the statement cited above. In two interviews the Prime Minister's spokesman, Mr. Regev, emphasized that he considered Hamas were mounting a cover-up in relation to the fact the senior operatives had been killed by the Israeli armed forces in its strike and in particular that two persons, Imad and Hassan Abu Askar, were "well-known members of the Hamas military machine – part of the rocket network".³⁸⁶

670. The position set out on 6 January was repeated again in comments to the press on 12 January by an Israeli armed forces' spokesman.³⁸⁷

671. On 15 and 19 February 2009 *The Jerusalem Post* published reports quoting Colonel Moshe Levi of CLA. He indicated that the stories of 40 or more dying as a result of the attack were the result of distortions and that in fact the Israeli armed forces had killed 12 people, including nine Hamas operatives and three non-combatants. The report of 19 February lists 7 of the 12 he said were killed. He also pointed out that the Israeli surveillance footage showed only "few stretchers were brought in to evacuate people".

672. On 22 April 2009 the Israeli armed forces published the results of their preliminary investigations, stating a completely different position from that previously expressed:

³⁸⁴ http://www.mfa.gov.il/MFA/Government/Communiques/2009/Initial_inquiry_school_incident_6-Jan-2009.htm.

³⁸⁵ On 7 January in a television interview on the British Broadcasting Corporation's programme *Newsnight*, Mr. Regev indicated that he believed that the Israeli armed forces had attacked the school because they had come under fire, that the school was occupied by Hamas operatives and that those Hamas operatives had committed a war crime by using the premises for the purpose of launching mortars. See <http://www.youtube.com/watch?gl=GB&hl=en-GB&v=9wv0giW1elo&feature=Playlist&p=9277810AA376DF8D&playnext=1&index=5>.

In another interview he indicated the Israeli armed forces' patrol returned fire having received mortar fire, that he assumed the school had been taken by force by Hamas "with guns" and held the people in the school as "hostages". See <https://www.csionline.org/resources/news/9/462-strike-on-gaza-school-kills-40?tmpl=component&print=1&page>.

On the same day Major Avital Leibovich, spokeswoman of the Israeli armed forces, in an interview with Channel 4 news said that Hamas had fired from "the vicinity of the school" but later asserted that the two Hamas militants were inside the school firing at the Israeli armed forces. See <http://link.brightcove.com/services/player/bcpid1184614595?bctid=6539745001>

On the same day Israeli armed forces' spokesman Captain Benjamin Rutland made a presentation posted on YouTube. He indicated that it had transpired later that the mortar fire had come from within a United Nations school, that this was a crime on the part of Hamas and that civilians had been killed. He noted, however, that Hamas terror operatives had been killed including the well-known Abu Askar brothers. Another Israeli armed forces spokesperson confirmed on 12 January that it was adhering to the same positions as had been expressed on 6 and 7 January. See <http://dover.idf.il/IDF/English/News/today/09/4/2201.htm>.

³⁸⁶ See <https://www.csionline.org/resources/news/9/462-strike-on-gaza-school-kills-40?tmpl=component&print=1&page>

³⁸⁷ The statement of Captain Ishai David in *The Jerusalem Post* on 12 January 2009.

Regarding the UNRWA school in Jabaliya, the Fahoura school, the investigation concluded that the IDF used minimal and proportionate retaliatory fire, using the most precise weapons available to them. Hamas made this necessary, as it fired mortar shells at Israeli forces 80 metres from the school. Additionally, it was concluded that all of the shells fired by IDF forces landed outside of the school grounds.³⁸⁸

673. In July 2009 the Israeli Government stated:

Soon after the source of fire was detected, a scouting unit was dispatched to confirm the location. Approximately 50 minutes after the mortar attack had begun, two independent sources cross-verified the location of the mortars. Only subsequent to this, and after verification of a safety margin of at least 50 metres between the target (i.e. the identified source of the mortar fire) and the UNRWA school, did the force respond to the ongoing barrage, by using the most accurate weapon available to it – 120-mm mortars.³⁸⁹

D. Other reports

674. The Mission carried out nine interviews with people who were present in al-Fakhura Street, in the al-Deeb yard or in the UNRWA school. No witness stated that he had heard any firing prior to the Israeli armed forces' mortars landing. On the other hand, the Mission is aware of at least two reports that indicate local residents had heard such fire in the area.³⁹⁰

675. The Mission notes that the statement of the Israeli armed forces on 22 April did not indicate where the Hamas fire came from, only stating it was 80 metres away. The Mission finds it difficult to understand how the Israeli armed forces could have come to this view without having the information at the same time that Hamas operatives had been firing mortars for almost one hour. It regards these new allegations as lacking credibility. However, the Mission accepts, for the purposes of this report, that some firing may have occurred that gave rise to the Israeli armed forces' response.

676. It seems clear to the Mission that Israel's Government developed a position justifying the striking of an UNRWA school as a result of the immediate outcry generated by initial erroneous reports that the school had been hit. That effort included a number of statements, in particular those by Mr. Regev and Major Leibovich, which turned out to be erroneous.

677. The Mission notes the comment of Colonel Moshe Levi in *The Jerusalem Post* on 15 February 2009 casting doubt on the numbers of dead noting that Israeli surveillance saw only

³⁸⁸ <http://dover.idf.il/IDF/English/News/today/09/4/2201.htm>.

³⁸⁹ "The operation in Gaza...", para. 338.

³⁹⁰ One report comes from the Associated Press, whose sources insisted on anonymity. The other is by a correspondent of the British Channel 4 News programme who reports that locals told him "militants had been firing rockets" at the Israeli armed forces and were running down the street to get away. See Jonathan Miller, "Why UN 'reversal' over Gaza school should be treated with caution". Channel 4, 5 February 2009, available at: http://www.channel4.com/news/articles/world/middle_east/why+un+reversal+over+gaza+school+should+be+treated+with+caution/2924657.

a few stretchers being used to lift the dead and injured. If Israel had that capacity of surveillance in the immediate aftermath of the shelling, it must have been able to see that the shells had hit on the street outside the school and not inside the school. Furthermore, if such surveillance was recorded, in the face of serious allegations levelled against the Israeli armed forces by several sources after the military operation in Gaza, the Government could have made this footage public in order to establish the truth of its claims regarding this incident.

678. Finally, the Mission comes to the repeated assertion of the Israeli authorities as to the identities of those killed in the strikes. The most detailed attempt to name these come in Col. Levi's statement of the 12 dead, including nine militants and three non-combatants. On 19 February *The Jerusalem Post* published seven of the names given to them by CLA. The Mission notes that CLA did not provide any information to explain where the information on the dead came from. None of the seven names corresponds with any the Mission has so far established died in the attack.

679. The position assumed by Colonel Levi of CLA is problematic in the light of the relatively uncomplicated case of the al-Deeb family, of whom nine members died immediately and two died later. Four of these were women and four were children. Given these figures alone, and the relative ease with which the victims could be identified, the Mission considers the CLA assertions as to the total numbers and identities of those killed in the Israeli armed forces' mortar strikes to be unreliable. Even if the Israeli authorities were to be correct in saying that nine combatants were killed, they are, in the considered view of the Mission, incorrect in stating that only three non-combatants were killed.

680. A further assertion made several times by Israeli spokespersons on 6 and 7 January and confirmed again on 12 January was that the strikes had not only managed to hit the militant rocket launchers but had also killed two senior Hamas militants, namely Imad Abu Askar and Hassan Abu Askar.³⁹¹ Again, for the most part these early assertions indicated that both had been killed in the UNRWA school. It is noticeable that the Israeli armed forces' summary of their own preliminary investigations does not repeat this claim.

681. What is now clear is that, if any Hamas operatives were killed by the Israeli strike, they were not killed in the school premises. It is difficult for the Mission to understand how the Israeli authorities could establish with such certainty within a matter of hours the identities of two of the Hamas operatives it had killed but could not establish within a week that the alleged firing had not come from the school and that the Israeli armed forces had not hit the school.

682. The Mission is satisfied that three Abu Askar family members were killed: Imad, aged 13, his brother Khaled, aged 19, and their uncle, Arafat, aged 33. Mr. Mark Regev indicated that Imad Abu Askar was a well-known member of Hamas's militant operation and of some significance in the rocket-launching operations. Major Leibovich and Captain Rutland also named Imad as one of the two operatives killed.

³⁹¹ In her interview with Channel 4 News, Major Leibovich in fact appears to say "Amr Abu Askar" after some hesitation but in the light of the other statements the Mission considers this to have been an error on her part and that in all likelihood she intended to say "Imad".

683. The Mission does not deny the possibility of children being recruited by Palestinian armed groups. However, in the case of Imad Abu Askar, the Mission is satisfied that he was not a Hamas operative. Apart from his father's vehement and, in the Mission's view, credible rejection of any such claim, two other factors appear relevant. Firstly, since it has become clear that Imad was a 13-year-old boy it is noticeable that Israel has not commented further on the allegation of his alleged Hamas activity in general or the allegation in particular that on the day in question he had launched mortars at Israel.

684. Secondly, the Israeli armed forces directly called Mr. Abu Askar early in the morning of 6 January notifying him that his house would be attacked imminently. If Imad Abu Askar was as notorious and important as alleged, despite his young age, the Mission presumes that the Israeli authorities would have known where he lived and, in particular, that he lived in the very house they were about to destroy. It is extremely doubtful that the Israeli armed forces, having identified the house where alleged Hamas militants of some significance lived, would warn them so that they may escape and then bomb the house.

685. There is no indication that anyone of the name of Hassan Abu Askar was killed in the attacks as far as the Mission can determine. The Mission notes that the two Hamas operatives Israeli reports refer to were at least on one occasion referred to as brothers. Mr. Abu Askar confirms that there is no one of such a name in his family.

686. It would appear that shortly after the attack the Israeli armed forces received some information that two Abu Askar brothers had been killed. That much is indeed true. However, the use made of that information appears to the Mission to have been knowingly distorted. The brothers were Imad and Khaled, not Imad and Hassan as asserted. One was a 13-year-old boy, the other was a recently married 19-year-old. The certainty and specificity with which the Israeli authorities spoke at the time make it very difficult for them to suggest now that they had simply mixed up the names.

E. Factual findings

687. The facts gathered by the Mission indicate that on 6 January 2006 at around 1.45 a.m. the Israeli forces called Mr. Abu Askar's house, alerted him to the imminent strike on his house and proceeded to destroy it with an aerial strike about seven minutes later. As a result of the warning, Mr. Abu Askar was able to save himself and his family. The Mission finds that the Israeli forces did not seek to kill Mr. Abu Askar or the members of his family with this strike.

688. The Mission also finds that at around 4 p.m. Israeli forces launched at least four mortar shells. One landed in the al-Deeb courtyard, killing nine people immediately and two later on.

689. Three other shells landed on al-Fakhura Street, which was busy at the time, killing at least a further 24 people and injuring as many as 40.

690. The Mission notes that the attack may have been in response to a mortar attack from an armed Palestinian group but considers the credibility of Israel's position damaged by the series of inconsistencies and factual inaccuracies.

F. Legal findings

691. Elements of article 50 of Additional Protocol I reflect customary international law and provide the following:

2. The civilian population comprises all persons who are civilians.
3. The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

692. Article 57 is relevant in relation to the following provisions:

1. In the conduct of military operations, constant care shall be taken to spare the civilian population, civilians and civilian objects.
2. With respect to attacks, the following precautions shall be taken:
 - (a) Those who plan or decide upon an attack shall:
 - (i) Do everything feasible to verify that the objectives to be attacked are neither civilians nor civilian objects and are not subject to special protection but are military objectives within the meaning of paragraph 2 of article 52 and that it is not prohibited by the provisions of this Protocol to attack them;
 - (ii) Take all feasible precautions in the choice of means and methods of attack with a view to avoiding, and in any event to minimizing, incidental loss of civilian life, injury to civilians and damage to civilian objects;
 - (iii) Refrain from deciding to launch any attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;
 - (b) An attack shall be cancelled or suspended if it becomes apparent that the objective is not a military one or is subject to special protection or that the attack may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated;
 - (c) Effective advance warning shall be given of attacks which may affect the civilian population, unless circumstances do not permit.

693. The Mission considers there are two key issues to be considered in the present case: the issue of proportionality in relation to the military advantage to be gained and the choice of weapons used.

694. A detailed discussion of the difficulties of assessing military advantage is presented in the analysis of the Committee established to review the NATO bombing campaign against the Federal Republic of Yugoslavia in 1998.³⁹² According to that Committee, the following are some of the relevant questions to be asked:

- (a) What are the relative values to be assigned to the military advantage gained and the injury to non-combatants and or the damage to civilian objects?
- (b) What do you include or exclude in totalling your sums?
- (c) What is the standard of measurement in time or space? And
- (d) To what extent is a military commander obligated to expose his own forces to danger in order to limit civilian casualties or damage to civilian objects?

695. The Committee reflected further:

The answers to these questions are not simple. It may be necessary to resolve them on a case-by-case basis, and the answers may differ depending on the background and values of the decision maker. It is unlikely that a human rights lawyer and an experienced combat commander would assign the same relative values to military advantage and to injury to non-combatants. Further, it is unlikely that military commanders with different doctrinal backgrounds and differing degrees of combat experience or national military histories would always agree in close cases. It is suggested that the determination of relative values must be that of the "reasonable military commander". Although there will be room for argument in close cases, there will be many cases where reasonable military commanders will agree that the injury to non-combatants or the damage to civilian objects was clearly disproportionate to the military advantage gained.

696. Accepting that these views are helpful to inform the present discussion, the Mission finds the following:

- (a) The military advantage to be gained was to stop the alleged firing of mortars that posed a risk to the lives of Israeli armed forces;
- (b) Even if there were people firing mortars near al-Fakhura Street, the calculation of the military advantage had to be assessed bearing in mind the chances of success in killing the targets as against the risk of firing into a street full of civilians and very near a shelter with 1,368 civilians and of which the Israeli authorities had been informed.

697. The Mission recognizes that for all armies proportionality decisions will present very genuine dilemmas in certain cases. The Mission does not consider this to be such a case.

³⁹² "Final report to the Prosecutor...", paras. 47-50.

698. The Mission does not say that the Israeli armed forces had to accept the risk to themselves at all cost, but in addressing that risk it appears to the Mission that they had ample opportunity to make a choice of weapons that would have significantly limited the risk to civilians in the area. According to the position the Government has itself taken, Israeli forces had a full 50 minutes to respond to this threat – or at least they took a full 50 minutes to respond to it. Given the mobilization speeds of helicopters and fighter jets in the context of the military operations in Gaza, the Mission finds it difficult to believe that mortars were the most accurate weapons available at the time. The time in question is almost 1 hour. The decision is difficult to justify.

699. The choice of weapon – mortars – appears to have been a reckless one. Mortars are area weapons. They kill or maim whoever is within the impact zone after detonation and they are incapable of distinguishing between combatants and civilians. A decision to deploy them in a location filled with civilians is a decision that a commander knows will result in the death and injuries of some of those civilians.

700. Even if the version of events presented now by Israel is to be believed, the Mission does not consider that the choice of deploying mortar weapons in a busy street with around 150 civilians in it (not to mention those within the school) can be justified. The Mission does not consider that in these circumstances it was a choice that any reasonable commander would have made.

701. From the facts available to it, the Mission believes that there has been a violation of:

- Additional Protocol I, articles 57 (2) (a) (ii) and (iii) as set out above;
- The inherent right to life of the Palestinian civilians killed in the above incidents by depriving them arbitrarily of their life in violation of article 6 of the International Covenant on Civil and Political Rights.

702. The Mission views as being unreliable the versions given by the Israeli authorities. The confusion as to what was hit, the erroneous allegations of who was specifically hit and where the armed groups were firing from, the indication that Israeli surveillance watched the scene but nonetheless could not detect where the strikes occurred, all combine to give the impression of either profound confusion or obfuscation.

703. Whatever the truth, the Mission is of the view that the deployment of at least four mortar shells to attempt to kill a small number of specified individuals in a setting where large numbers of civilians were going about their daily business and 1,368 people were sheltering nearby cannot meet the test of what a reasonable commander would have determined to be an acceptable loss of civilian life for the military advantage sought.

XI. DELIBERATE ATTACKS AGAINST THE CIVILIAN POPULATION

704. According to the Israeli Government, the Israeli armed forces' rules of engagement for the military operation in Gaza emphasized the principle of distinction as one of four "guiding principles that applied in an integrated and cumulative manner: military necessity, distinction, proportionality and humanity". It defines the principle of distinction in the following terms: "Strikes shall be directed against military objectives and combatants only. It is absolutely

prohibited to intentionally strike civilians or civilian objects (in contrast to incidental proportional harm).”³⁹³

705. The Mission investigated 11 incidents in which serious allegations of direct attacks with lethal outcome were made against civilians. There appears to have been no justifiable military objective pursued in any of them. The first two incidents concern alleged attacks by Israeli armed forces against houses in the al-Samouni neighbourhood of Gaza during the initial phase of the ground invasion. The following group of seven incidents concern the alleged shooting of civilians who were trying to leave their homes to walk to a safer place, waving white flags and, in some of the cases, following an injunction from the Israeli armed forces to do so. In the last of these seven cases, a house was allegedly shelled with white phosphorous, killing five and injuring others. Two further members of the family were allegedly shot by Israeli troops as they tried to evacuate the wounded to a hospital. In the following incident, a mosque was targeted during the early evening prayer, resulting in the death of 15. In many of the incidents, the Israeli armed forces allegedly obstructed emergency medical help to the wounded. A further incident concerns the bombing of a family house, killing 22 family members. In the last of the incidents described, a crowd of family and neighbours at a condolence tent was attacked with flechettes.

A. Attacks on the houses of Ateya al-Samouni and Wa’el al-Samouni in Zeytoun, resulting in the death of 23 members of the al-Samouni family

706. To investigate the attacks on the houses of Ateya and Wa’el al-Samouni, which killed 23 members of the extended al-Samouni family, the Mission visited the site of the incidents.³⁹⁴ It interviewed five members of the al-Samouni family and several of their neighbours on site.³⁹⁵ Two members of the extended al-Samouni family, who were eyewitnesses to the incident, Messrs. Wa’el and Saleh al-Samouni, testified at the public hearing in Gaza. The Mission also interviewed PRCS ambulance drivers who went to the area on 4, 7 and 18 January 2009, and obtained copies of PRCS records. The Mission finally reviewed material on this incident submitted to it by TAWTHEQ as well as by NGOs.

707. The so-called al-Samouni area is part of Zeytoun, south of Gaza City, bordered to the east by al-Sekka Street, which in that part of Gaza runs parallel and very close to Salah ad-Din Street. It is inhabited by members of the extended al-Samouni family, which gives its name to the area, as well as by other families, such as the Arafats and the Hajjis. Al-Samouni area is more rural than urban, houses used to stand next to small olive and fig groves, chicken coops and other small plots of agricultural land. A small mosque stood in the centre of the neighbourhood. These no longer existed at the time of the Mission’s visit in June 2009. The Mission saw very few

³⁹³ “The operation in Gaza...”, para. 222.

³⁹⁴ Graffiti left by Israeli soldiers in the house of Talal al-Samouni, which were photographed by the Mission, included (a) in Hebrew, under the Star of David: “The Jewish people are alive” and, above a capital “T” [referring to the army (*Tsahal*)], “This [the letter T] was written with blood”; (b) on a drawing of a grave, in English and Arabic, “Arabs 1948-2008”; and (c) in English: “You can run but you can not hide”, “Die you all”, “1 is down, 999,999 to go”, “Arabs need to die” and “Make war not peace”.

³⁹⁵ Testimony to the Mission by Saleh al-Samouni, Talal al-Samouni, Wa’el Faris al-Samouni, Muhammad Asaad al-Samouni, Ms. Massouda Sobhia al-Samouni, Mr. Faraj Ata al-Samouni, Mrs. Abir Muhammad Hajji and Mr. Fawzi Arafat, 3 June 2009.

buildings left and a few tents standing amidst the rubble of collapsed houses and bulldozed land.³⁹⁶

708. The Israeli ground offensive from the east reached al-Samouni neighbourhood around 4 a.m. on 4 January 2009. In addition to the ground forces moving in from the east, there were, in all likelihood, heliborne³⁹⁷ troops that landed on the roofs of several houses in the area. Residents told the Mission that there was shooting in the neighbourhood in the night of 3 to 4 January and again the following night, but denied having seen any Palestinian fighters.

1. The killing of Ateya al-Samouni and his son Ahmad

709. During the morning of 4 January 2009, Israeli soldiers entered many of the houses in al-Samouni area. One of the first, around 5 a.m., was the house of Ateya Helmi al-Samouni, a 45-year-old man. Faraj, his 22-year-old son, had already met Israeli soldiers some minutes earlier as he stepped outside the house to warn his neighbours that their roof was burning. The soldiers entered Ateya al-Samouni's house by force, throwing some explosive device, possibly a grenade. In the midst of the smoke, fire and loud noise, Ateya al-Samouni stepped forward, his arms raised, and declared that he was the owner of the house. The soldiers shot him while he was still holding his ID and an Israeli driving licence in his hands. The soldiers then opened gunfire inside the room in which all the approximately 20 family members were gathered. Several were injured, Ahmad, a boy of four, particularly seriously. Soldiers with night vision equipment entered the room and closely inspected each of those present. The soldiers then moved to the next room and set fire to it. The smoke from that room soon started to suffocate the family. A witness speaking to the Mission recalled seeing "white stuff" coming out of the mouth of his 17-month-old nephew and helping him to breathe.

710. At about 6.30 a.m. the soldiers ordered the family to leave the house. They had to leave Ateya's body behind but were carrying Ahmad, who was still breathing. The family tried to enter the house of an uncle next door, but were not allowed to do so by the soldiers. The soldiers told them to take the road and leave the area, but a few metres further a different group of soldiers stopped them and ordered the men to undress completely. Faraj al-Samouni, who was carrying the severely injured Ahmad, pleaded with them to be allowed to take the injured to Gaza. The soldiers allegedly replied using abusive language. They also said "You are bad Arabs". "You go to Nitzarim".

711. Faraj al-Samouni, his mother and others entered the house of an uncle in the neighbourhood. From there, they called PRCS. As described below, at around 4 p.m. that day a PRCS ambulance managed to come in the vicinity of the house where Ahmad was lying wounded, but was prevented by the Israeli armed forces from rescuing him. Ahmad died at

³⁹⁶ The UNOSAT report (p. 21) counts "114 ... destroyed or severely damaged buildings, ... 27 damaged greenhouse complexes, and 17 impact craters along roads or in cultivated fields" in the area of al-Samouni Street. A soldier stationed in Zeytoun during the military operations recalled that he observed through his binoculars "increasing devastation. Houses that disappear with time, farm land ploughed over time." (*Soldiers' testimonies...*, testimony 37, p. 82).

³⁹⁷ One witness told the Mission that on 5 January 2009, walking on Salah ad-Din Street towards Gaza, he saw by the roadside parachutes Israeli troops had used to land in the area.

around 2 a.m. during the night of 4 to 5 January.³⁹⁸ The following morning those present in the house, about 45 persons, decided to leave. They made themselves white flags and walked in the direction of Salah ad-Din Street. A group of soldiers on the street told them to go back to the house, but the witness said that they walked on in the direction of Gaza. The soldiers shot at their feet, without injuring anyone, however. Two kilometres further north on Salah ad-Din Street, they found ambulances which took the injured to al-Shifa hospital in Gaza.

2. The attack on the house of Wa'el al-Samouni

712. In other cases, the entry of soldiers was less violent than in Ateya al-Samouni's home. In one instance, the soldiers landed on the roof and descended the stairs to the ground floor, separated men from women, searched and handcuffed the men.³⁹⁹ In another case they broke into a house by knocking a hole in the wall with a sledgehammer.⁴⁰⁰ At the house of Saleh al-Samouni, the Israeli soldiers knocked on the door and ordered those inside to open it. All the persons inside the house stepped out one by one and Saleh's father identified each of the family members in Hebrew for the soldiers. According to Saleh al-Samouni, they asked to be allowed to go to Gaza City, but the soldiers refused and instead ordered them to go to Wa'el al-Samouni's house across the street.

713. The Israeli soldiers also ordered those in other houses to move to Wa'el al-Samouni's house. As a result, around 100 members of the extended al-Samouni family, the majority women and children, were assembled in that house by noon on 4 January. There was hardly any water and no milk for the babies. Around 5 p.m. on 4 January, one of the women went outside to fetch firewood. There was some flour in the house and she made bread, one piece for each of those present.

714. In the morning of 5 January 2009, around 6.30 – 7 a.m., Wa'el al-Samouni, Saleh al-Samouni, Hamdi Maher al-Samouni, Muhammad Ibrahim al-Samouni and Iyad al-Samouni, stepped outside the house to collect firewood. Rashad Helmi al-Samouni remained standing next to the door of the house. Saleh al-Samouni has pointed out to the Mission that from where the Israeli soldiers were positioned on the roofs of the houses they could see the men clearly. Suddenly, a projectile struck next to the five men, close to the door of Wa'el's house and killed Muhammad Ibrahim al-Samouni and, probably, Hamdi Maher al-Samouni.⁴⁰¹ The other men managed to retreat to the house. Within about five minutes, two or three more projectiles had struck the house directly. Saleh and Wa'el al-Samouni stated at the public hearing that these were missiles launched from Apache helicopters. The Mission has not been able to determine the type of munition used.

³⁹⁸ Faraj al-Samouni also told the Mission that, at the time of Ahmad's death, another relative gave birth to a baby in the same house. The following day the mother, who had to be transported in a wheelchair because she had broken her leg doing household chores, and the baby were among the group that managed to evacuate to Gaza City. Mother and child are in good health.

³⁹⁹ Testimony of Muhammad Asaad al-Samouni, 3 June 2009.

⁴⁰⁰ Testimony of Saleh al-Samouni, 3 June 2009.

⁴⁰¹ The Mission notes that while all testimonies agree that Muhammad Ibrahim al-Samouni died on the spot, there are some discrepancies as to whether Hamdi Maher al-Samouni was killed by the first strike or died subsequently inside the house.

715. Saleh al-Samouni stated that overall 21 family members were killed and 19 injured in the attack on Wa'el al-Samouni's house. The dead include Saleh al-Samouni's father, Talal Helmi al-Samouni, his mother, Rahma Muhammad al-Samouni, and his two-year-old daughter Azza. Three of his sons, aged five, three and less than one year (Mahmoud, Omar and Ahmad), were injured, but survived. Of Wa'el's immediate family, a daughter and a son (Rezqa, 14, and Fares, 12) were killed, while two smaller children (Abdullah and Muhammad) were injured.⁴⁰² The photographs of all the dead victims were shown to the Mission at the home of the al-Samouni family and displayed at the public hearing in Gaza.

716. After the shelling of Wa'el al-Samouni's house, most of those inside decided to leave immediately and walk to Gaza City, leaving behind the dead and some of the wounded. The women waved their scarves. Soldiers, however, ordered the al-Samounis to return to the house. When family members replied that there were many injured among them, the soldiers' reaction was, according to Saleh al-Samouni, "go back to death". They decided not to follow this injunction and walked in the direction of Gaza City. Once in Gaza, they went to PRCS and told them about the injured that had remained behind.

3. The attempts of PRCS and ICRC to rescue the civilians in the al-Samouni area

717. PRCS had made its first attempt to evacuate the injured from the al-Samouni area on 4 January 2009 around 4 p.m. after receiving a call from the family of Ateya al-Samouni. PRCS had called ICRC, asking it to coordinate its entry into the area with the Israeli armed forces. A PRCS ambulance from al-Quds hospital managed to reach the al-Samouni area. The ambulance had turned west off Salah ad-Din Street when, at one of the first houses in the area, Israeli soldiers on the ground and on the roof of one of the houses directed their guns at it and ordered it to stop. The driver and the nurse were ordered to get out of the vehicle, raise their hands, take off their clothes and lie on the ground. Israeli soldiers then searched them and the vehicle for 5 to 10 minutes. Having found nothing, the soldiers ordered the ambulance team to return to Gaza City, in spite of their pleas to be allowed to pick up some wounded. In his statement to the Mission, the ambulance driver recalled seeing women and children huddling under the staircase in a house, but not being allowed to take them with him.⁴⁰³

718. As soon as the first evacuees from the al-Samouni family arrived in Gaza City on 5 January, PRCS and ICRC requested permission from the Israeli armed forces to go into the al Samouni neighbourhood to evacuate the wounded. These requests were denied. On 6 January around 6.45 p.m., one ICRC car and four PRCS ambulances drove towards the al-Samouni area

⁴⁰² The names of the other 15 members of the extended al-Samouni family killed in the attack on Wa'el al-Samouni's house are: Rabab Izaat (female, aged 37); Tawfiq Rashad (male, aged 22); Layla Nabeeh (female, aged 44); Ismaeil Ibrahim (male, aged 16); Ishaq Ibrahim (male, aged 14); Maha Muhammad (female, aged 20); Muhammad Hilmi Talal (the six-year-old son of Maha); Hanan Khamis Sa'di (female, aged 36); Huda Naiel (female, aged 17); Rezqa Muhammad Mahmoud (female, aged 56); Safaa Sobhi (female, aged 24); al-Moa'tasim Bilah Muhammad (male, aged six months); Hamdi Maher (male, aged 24); Rashad Helmi (male, aged 42); Nassar Ibrahim Hilmi (male, aged 6).

⁴⁰³ Mission interview with PRCS driver W2, 10 June 2009.

in spite of the lack of coordination with the Israeli armed forces, but were not allowed to enter the area and evacuate the wounded.

719. On 7 January 2009, the Israeli armed forces finally authorized ICRC and PRCS to go to the al-Samouni area during the “temporary ceasefire” declared from 1 to 4 p.m. on that day.⁴⁰⁴ Three PRCS ambulances, an ICRC car and another car used to transport bodies drove down Salah ad-Din Street from Gaza City until, 1.5 km north of the al-Samouni area, they found it closed by sand mounds. ICRC tried to coordinate with the Israeli armed forces to have the road opened, but they refused and asked the ambulance staff to walk the remaining 1.5 km.

720. Once in the al-Samouni neighbourhood, PRCS looked for survivors in the houses. An ambulance driver who was part of the team told the Mission that in Wa’el al-Samouni’s house they found 15 dead bodies and two seriously injured children.⁴⁰⁵ One of the children had a deep wound in the shoulder, which was infected and giving off a foul odour. The children were dehydrated and scared of the PRCS staff member. In a house close by, they found 11 persons in one room, including a dead woman.

721. The rescue teams had only three hours for the entire operation and the evacuees were physically weak and emotionally very unstable. The road had been damaged by the impact of shells and the movement of Israeli armed forces, including tanks and bulldozers. The rescuers put all the elderly on a cart and pulled it themselves for 1.5 kilometres to the place where they had been forced to leave the ambulances. The dead bodies lying in the street or under the rubble, among them women and children, as well as the dead they had found in the houses had to be left behind. On the way back to the cars, PRCS staff entered one house where they found a man with two broken legs. While they were carrying the man out of the house, the Israeli armed forces started firing at the house, probably to warn that the three-hour “temporary ceasefire” were about to expire. PRCS was not able to return to the area until 18 January.

722. On 18 January 2009, members of the al-Samouni family were finally able to return to their neighbourhood. They found that Wa’el al-Samouni’s house, as most other houses in the neighbourhood and the small mosque, had been demolished. The Israeli armed forces had destroyed the building on top of the bodies of those who died in the attack. Pictures taken on 18 January show feet and legs sticking out from under the rubble and sand, and rescuers pulling out the bodies of women, men and children. A witness described to the Mission family members taking away the corpses on horse carts, a young man sitting in shock beside the ruins of his house and, above all, the extremely strong smell of death.⁴⁰⁶

4. Factual findings

723. The Mission found the foregoing witnesses to be credible and reliable. It has no reason to doubt their testimony.

⁴⁰⁴ Mission interview with PRCS driver W1, 10 June 2009.

⁴⁰⁵ Ibid.

⁴⁰⁶ Mission interview with witness W2, 7 June 2009.

724. With regard to the context in which the attacks on the houses of Ateya al-Samouni and Wa'el al-Samouni took place, the Mission notes that there is some indication that there might have been a presence of Palestinian combatants in the al-Samouni neighbourhood during the first hours of the Israeli ground attack. A witness told the Mission that when he heard the first shots in the vicinity of his house in the night of 3 to 4 January, he at first thought it was Palestinian fighters. An NGO report submitted to the Mission states that a Palestinian combatant, reportedly a member of the Islamic Jihad, was killed in the al-Samouni area around midnight between 3 and 4 January.⁴⁰⁷

725. The Mission considers, however, that the testimonies of the witnesses strongly suggest that already before daybreak on 4 January 2009 the Israeli armed forces were in full control of the al-Samouni neighbourhood. The Israeli soldiers had taken up position on the roofs of the houses in the area. According to several witnesses, the soldiers on the street spoke to residents who had ventured out of their houses.⁴⁰⁸ In some cases (for instance, at the house of Saleh al-Samouni and at the house Iyad al-Samouni was in, see below), they entered the houses non-violently after knocking on the door. According to Saleh al-Samouni, the prolonged identification of all the persons present in his house (his father identifying each family member in Hebrew for the soldiers) took place outside. The soldiers appear to have been confident that they were not at immediate risk of being attacked.

726. The Mission also reviewed the submission it received from an Israeli researcher, arguing generally that statements from Palestinian residents claiming that no fighting took place in their neighbourhood are disproved by the accounts Palestinian armed groups give of the armed operations. The Mission notes that, as far as the al-Samouni neighbourhood is concerned, this report would appear to support the statements of the witnesses that there was no combat.⁴⁰⁹

727. Regarding the attack on Ateya al-Samouni's house, the Mission finds that the account given to it by Faraj al-Samouni is corroborated by the soldiers' testimonies published by the Israeli NGO Breaking the Silence. The assault on Ateya al-Samouni's house appears to be the procedure of the Israeli armed forces referred to as a "wet entry". A "wet entry" is, according to the soldier's explanation, "missiles, tank fire, machine-gun fire into the house, grenades. Shoot as we enter a room. The idea was that when we enter a house, no one there could fire at us." This procedure was, according to the soldier, thoroughly practised during recent Israeli armed forces manoeuvres.⁴¹⁰

728. The Mission notes that considering the generally calm circumstances that appear to have prevailed in the al-Samouni neighbourhood at the time (as evidenced by the way the soldiers

⁴⁰⁷ Al Mezan's table of children killed during the military operations in Gaza.

⁴⁰⁸ Testimonies of Saleh al-Samouni and Faraj al-Samouni.

⁴⁰⁹ "The hidden dimension of Palestinian war casualties...". Only 4 of the more than 100 entries in the submission refer to combat action in Zeytoun, the much larger part of Gaza City of which al-Samouni neighbourhood is a part. The incidents in Zeytoun that are mentioned reportedly occurred on 6, 7, 11 and 13 January 2009, and consist of Palestinian combatants opening fire against Israeli troops with rocket-propelled grenades, a mortar (in one case) and detonating an explosive device.

⁴¹⁰ *Soldiers' Testimonies*..., testimony 4, p. 14; see also testimony 37, p. 82.

entered other houses after knocking on the door) and the fact that the soldiers had already spoken to Faraj al-Samouni, one of the persons in Ateya al-Samouni's house, the Mission cannot see any circumstance justifying the violent entry into the house.

729. With regard to the attack on the five men who stepped out of Wa'el al-Samouni's house to fetch firewood in the early morning of 5 January 2009 and to the subsequent shelling of the house, the Mission notes that the members of the other families who had been moved by the Israeli forces into Wa'el al-Samouni's house had been searched by Israeli soldiers, as recounted by Saleh al-Samouni. Everything indicates that the Israeli forces knew that there were about 100 civilians in the house. Indeed, the families had asked to be allowed to leave the area towards a safer place, but had been ordered to stay in Wa'el al-Samouni's house. The house must have been under constant observation by the Israeli soldiers, who had complete control over the area at the time.

730. The Mission was not able to determine whether the attack was carried out by missiles launched from Apache helicopters, as Saleh and Wa'el al-Samouni told the Mission at the public hearing in Gaza, or by other munitions. Nevertheless, the fact that a first projectile struck next to the five men soon after they had left the house (at a time at which there was no combat in the area) and two or three projectiles struck the house after the survivors had retreated into the house, indicates that the weaponry used allowed a high degree of precision with a short response time and that the five men and then the house were the intended targets of the attack.

731. The Mission notes that, four days later, the Israeli armed forces denied that the attack on the house of Wa'el al-Samouni had taken place. On 9 January 2009, an Israeli army spokesman, Jacob Dallal, reportedly told the Reuters news agency that "the IDF did not mass people into any specific building. [...] Furthermore, we checked with regard to IDF fire on the 5th. The IDF did not target any building in or near Zeitun on the 5th."⁴¹¹ The Mission is not aware of any subsequent statement from the Israeli Government which would contradict this blanket denial or suggest that the allegations have been the subject of further investigation.

732. With regard to the obstruction of emergency medical access to the wounded in the al-Samouni neighbourhood, the Mission notes that four-year-old Ahmad al-Samouni was still alive at 4 p.m. on 4 January 2009, when the PRCS ambulance called by his relatives managed to arrive within what the Mission estimates to be 100 to 200 metres from the house where he was. In fact, he died about 10 hours later, which suggests that he might have had a good chance of survival. Israeli soldiers stopped the ambulance and thoroughly searched the driver, nurse and vehicle.⁴¹² Although they did not find anything indicating that the ambulance staff was not on a genuine emergency mission to evacuate a wounded civilian, they forced the ambulance to return to Gaza City without the injured Ahmad.

733. On 5 and 6 January 2009, following the arrival in Gaza City hospitals of survivors of the attack on Wa'el al-Samouni's house, PRCS and ICRC requested permission from the Israeli

⁴¹¹ http://www.javno.com/en-world/gaza-boy-recounts-house-of-death_222451.

⁴¹² In addition to searching the ambulance driver and the nurse, the Israeli soldiers also appear to have intended to humiliate them by forcing them to lie down on the street in their underwear for 5 to 10 minutes, in the cold of an early January late afternoon.

armed forces to go into the al-Samouni neighbourhood to evacuate the wounded. These requests were denied. According to the information available to PRCS, the Israeli armed forces told ICRC that there were combat operations going on in the area. A PRCS ambulance driver who was part of the PRCS convoy which went to the area in spite of the refusal of the Israeli armed forces to grant permission, reported that there were no clashes at the time.⁴¹³ PRCS and ICRC were not able to evacuate the wounded from the area until 7 January in the afternoon.

734. The information before it leads the Mission to believe that the Israeli armed forces arbitrarily prevented the evacuation of the wounded from the al-Samouni area, thereby causing at least one additional death, worsening of the injuries in others, and severe psychological trauma in at least some of the victims, particularly children.

735. These findings are corroborated by the press release ICRC issued on 8 January 2008:

The ICRC had requested safe passage for ambulances to access this neighbourhood [the al-Samouni area in Zeytoun] since 3 January but it only received permission to do so from the Israel Defense Forces during the afternoon of 7 January.

The ICRC/PRCS team found four small children next to their dead mothers in one of the houses. They were too weak to stand up on their own. One man was also found alive, too weak to stand up. In all there were at least 12 corpses lying on mattresses.

In another house, the ICRC/PRCS rescue team found 15 other survivors of this attack including several wounded. In yet another house, they found an additional three corpses. Israeli soldiers posted at a military position some 80 metres away from this house ordered the rescue team to leave the area which they refused to do. There were several other positions of the Israel Defense Forces nearby as well as two tanks.⁴¹⁴

B. Killing of civilians attempting to leave their homes to walk to safer areas

1. The shooting of Iyad al-Samouni

736. The Mission received testimony on the death of Iyad al-Samouni from Muhammad Asaad al-Samouni and Fawzi Arafat, as well as from a PRCS staff member. In the night of 3 to 4 January 2009, Iyad al-Samouni, his wife and five children were, together with about 40 other members of their extended family in Asaad al-Samouni's house, very close to the houses of Wa'el al-Samouni and Ateya al-Samouni (the scenes of the incidents described above). At 1 a.m. on 4 January 2009 they heard noise on the roof. At around 5 a.m. Israeli soldiers walked down the stairs from the roof, knocked on the door and entered the house. They asked for Hamas fighters. The residents replied that there were none. The soldiers then separated women, children and the elderly from the men. The men were forced into a separate room, blindfolded and handcuffed with plastic handcuffs. They were allowed to go to the toilet only after one of the men urinated on himself. The soldiers stationed themselves in the house.

⁴¹³ PRCS records at al-Quds hospital.

⁴¹⁴ <http://www.icrc.org/web/eng/siteeng0.nsf/html/palestine-news-080109>.

737. In the morning of 5 January 2009, after the shelling of Wa'el al-Samouni's house, two of the survivors took refuge in Asaad al-Samouni's house. From the testimonies received, the Mission is not able to state whether the Israeli soldiers then ordered the al-Samouni family members in the house to leave and walk to Gaza City, or whether it was the families who pleaded with the soldiers to be allowed to leave having heard the appalling news of what had happened to their relatives in Wa'el al-Samouni's house. In any event, the persons assembled in Asaad al-Samouni's house walked out of the house and down al-Samouni Street to take Salah ad-Din Street in the direction of Gaza City. They had been instructed by the soldiers to walk directly to Gaza City without stopping or diverting from the direct route. The men were still handcuffed and the soldiers had told them that they would be shot if they attempted to remove the handcuffs.

738. On Salah ad-Din Street, just a few metres north of al-Samouni Street and in front of the Juha family house,⁴¹⁵ a single or several of the Israeli soldiers positioned on the roofs of the houses opened fire. Iyad was struck in the leg and fell to the ground.⁴¹⁶ Muhammad Asaad al-Samouni, who was walking immediately behind him, moved to help him, but an Israeli soldier on a rooftop ordered him to walk on. When he saw the red point of a laser beam on his body and understood that an Israeli soldier had taken aim at him, he desisted. The Israeli soldiers also fired warning shots at Muhammad Asaad al-Samouni's father to prevent him from assisting Iyad to get back on his feet. Iyad al-Samouni's wife and children were prevented from helping him by further warning shots. Fawzi Arafat, who was part of another group walking from the al-Samouni neighbourhood to Gaza, told the Mission that he saw Iyad al-Samouni lying on the ground, his hands shackled with white plastic handcuffs, blood pouring from the wounds in his legs, begging for help. Fawzi Arafat stated that he yelled at an Israeli soldier "we want to evacuate the wounded man". The soldier, however, pointed his gun at Iyad's wife and children and ordered them to move on without him.

739. Iyad al-Samouni's family and relatives were forced to abandon him and continue to walk towards Gaza City. At al-Shifa hospital they reported his case and those of the other dead and wounded left behind. Representatives of PRCS told them that the Israeli armed forces were not permitting them to access the area.

740. A PRCS staff member⁴¹⁷ told the Mission that three days later, on 8 January 2009, PRCS was granted permission by the Israeli armed forces through ICRC to evacuate Iyad al-Samouni. The PRCS staff member found him on the ground in Salah ad-Din Street in the place described by his relatives. He was still handcuffed. He had been shot in both legs and had bled to death.

⁴¹⁵ This is the home of the family of Mu'een Juha, see the case of the shooting of Ibrahim Juha discussed below in the chapter.

⁴¹⁶ According to the researchers of a Palestinian NGO who investigated this case, the mobile phone in the pocket of the cousin walking in front of Iyad al-Samouni rang and Iyad al-Samouni tried to take the phone out of his pocket (the cousin's hands were tied as well, so he could not reach into his pocket himself), whereupon the Israeli soldier opened fire. This detail was not mentioned to the Mission in its interviews.

⁴¹⁷ Mission interview with PRCS driver W4, 10 June 2009.

2. Factual findings

741. The Mission found the witnesses it heard in relation to the shooting of Iyad al-Samouni to be credible and reliable. It has no reason to doubt the veracity of the main elements of their testimony, which is corroborated by the testimony of the PRCS ambulance driver.

742. The Mission finds that Iyad al-Samouni was part of a large group of civilians who were leaving their homes and walking towards Gaza City in an area under the complete control of the Israeli armed forces. His hands were tied with white plastic handcuffs. The soldier who opened fire on him should have known, on the basis of the plastic handcuffs if not of coordination with his fellow soldiers stationed in Asaad al-Samouni's house a few hundred metres away, that he had been searched and detained by the Israeli armed forces. In opening fire on Iyad al-Samouni, the Israeli armed forces shot deliberately at a civilian who posed no threat to them.

743. While the fire directed at Iyad al-Samouni could have been intended to incapacitate rather than to kill, by threatening his family members and friends with lethal fire, the Israeli armed forces ensured that he did not receive lifesaving medical help. They deliberately let him bleed to death.

744. The Mission found that the witnesses who spoke about the death of Iyad al-Samouni appeared to be profoundly traumatized by the recollection of his pleading for help from his wife, children and relatives. They also recalled the helplessness of his family, who were under a very credible threat of being shot themselves if they came to his help, and who were compelled to abandon him on the road to bleed to death.

3. The death of Muhammad Hajji in the attack on his family's house and the shooting of Shahd Hajji and Ola Masood Arafat

745. The Mission interviewed Mrs. Abir Hajji in private and received her testimony at the public hearing in Gaza.

746. In the night of 4 to 5 January 2009, the family of Muhammad Hajji and his wife Abir⁴¹⁸ was at home in the al-Samouni neighbourhood. In the hope of being safer from the shooting, they had put their mattresses on the floor. At around 1.30 a.m., Abir Hajji heard a very loud explosion, which shook the house and shattered the windows. Some minutes later, Abir Hajji was in a different room from the rest of the family, looking for her mobile phone to use as a torch, when she heard a second explosion, this time apparently inside the house. The children screamed, shouted "Dad!", but her husband did not reply. In the pitch-darkness she found her husband and felt that he was injured on one side of his head, in the area of the eye and the ear. Her daughters Noor, aged 6, and Nagham, aged 13, were injured.

747. She called her neighbour and brother-in-law, Nasser Hajji, who examined his brother and told her that he was dead. As they were preparing to move to Nasser Hajji's house, Israeli soldiers broke into the house shooting. The soldiers asked Nasser Hajji whether he "was

⁴¹⁸ Muhammad and Abir Hajji had five children, four daughters, Ghada (aged 16), Nagham (aged 13), Noor al-Huda (aged 6) and Shahd (aged 3), and a son, Amin (aged 11).

Hamas”, which he denied assuring them that nobody in the area was a member of either Hamas or Fatah. Mrs. Hajji remembers the soldiers laughing and insisting that Nasser Hajji “was Hamas”. The laughing added to her pain, as the soldiers had seen her dead husband and the children. Nasser Hajji was ordered to undress and then pull his brother’s body to another room, where the soldiers threw mattresses and blankets on the body (the body was still lying in the same position when Abir Hajji returned to her home two weeks later). Her children asked her whether they would be killed as well. She told them to say the *Shehada*, the prayer recited in the face of death. Mrs. Hajji also recalled that the soldiers were breaking the tiles on the floor of the house and digging in the earth below. Asked about this at the public hearing, she expressed the opinion that this was to obtain sand for the sandbags they subsequently placed on the roof of the house.⁴¹⁹

748. After some time, during which they were sitting on the ground as ordered by the Israeli soldiers, Mrs. Hajji, her children and Nasser Hajji were taken to Nasser’s house. There they found four households of the extended Hajji family. The young men had been handcuffed and four of them also blindfolded. About 60 Israeli soldiers were in the house. Mrs. Hajji recalled them carrying around food and drinks and relaxing in the couches. One of her daughters asked to be allowed to eat something. The soldiers first denied her request, but then allowed her to go into the kitchen and get a small piece of bread.

749. After the midday prayers on 5 January 2009, the Israeli soldiers separated the men from the women and children. The latter were ordered to walk to Rafah. The Hajjis protested, asking to be allowed to go to Gaza City, where they had relatives, but the soldiers told them that they would be shot if they tried to walk to Gaza City. Nasser Hajji and his 18-year-old son were allowed to walk with the women and children, while the other men stayed behind.⁴²⁰

750. The group of Hajji family members walked down the alley to al-Sekka Street. There they were joined by members of the Arafat family, who also live in the al-Samouni neighbourhood, carrying white flags. On al-Sekka Street, one of the Israeli soldiers standing on a rooftop ordered the families to turn south and walk towards Rafah. The families begged to be allowed to walk to Gaza City instead. Without warning, the Israeli soldiers opened fire, “shooting at random” according to Abir Hajji. Ola Masood Arafat, a 28-year-old woman, was struck by a bullet and died on the spot. Mrs. Hajji was wounded in her right arm. Her three-year-old daughter Shahd was shot in the chest. Abir Hajji, who was still carrying Shahd, her other children, her mother-in-law and others managed to take refuge in a house. There they found out that Shahd was still alive.

751. Later on, they left the house and walked together with other families to Salah ad-Din Street and then south on that road. When they reached the Gaza wadi, a motorist took Abir Hajji and her daughter Shahd to a hospital in Deir al-Balah. Shahd died of her wound very soon after

⁴¹⁹ *Soldiers’ Testimonies...* suggests that breaking the tiles in civilian homes was a standard practice with two purposes: to fill sandbags (“Take for example the house we were in – it was abandoned and you go about it as if you own it. You break floor tiles to make sandbags, you break stuff to prepare an outpost”, testimony 46, p. 100,) and to search for tunnels (“You’re also told to wreck the floor tiles to check for tunnels”, testimony 23, p. 54)

⁴²⁰ Abir Hajji learned after the armed operations that they had been detained in that house for another three days and then released.

arriving at the hospital. Abir Hajji, who was two months pregnant at the time, also suffered a miscarriage.

4. Factual findings

752. The Mission found Mrs. Hajji to be a credible and reliable witness. It has no reason to doubt the veracity of her testimony. The Mission also notes that according to the testimony of four other witnesses (those it heard in the case of Ibrahim Juha below), a very similar incident occurred in the immediate vicinity on the same day.

753. With regard to the death of Muhammad Hajji, the Mission notes that Mrs. Hajji's testimony does not provide sufficient information to establish exactly what happened. On the basis of the information before it, the Mission can neither make a statement as to what type of weapon killed him, nor as to whether he was the intended target of a direct attack. The circumstances of his death suggest, however, that he was killed by fire from the Israeli armed forces while at home in a room with his children.

754. As to the fatal shooting of Shahd Hajji and Ola Masood Arafat, Mrs. Hajji's testimony as well as that of Mr. Mu'een Juha and Mrs. Juha, the parents of Ibrahim Juha, of Mr. Sameh Sawafeary and of Mr. Rajab Darwish Mughrabi (see the case of Ibrahim Juha below) all establish that there were no combat operations in the area at the time of the incident. Indeed, the Israeli armed forces would not have ordered the members of the extended Hajji, Arafat, Juha and Sawafeary families to walk to Rafah, thereby asking hundreds of civilians to come out of their houses and fill the streets, if there had been any fighting in the neighbourhood at the time. The Israeli armed forces opened fire on a group of persons they had interacted with during the preceding 12 hours and therefore knew to be civilians. In doing so they killed Ola Masood Arafat and three-year-old Shahd Hajji and injured her mother, who was holding her in her arms.

5. The shooting of Ibrahim Juha

755. The Mission interviewed three eyewitnesses to the shooting of Ibrahim Juha and a further witness of the events surrounding the shooting.⁴²¹ The events preceding and following the shooting of Ibrahim Juha are described in greater detail in chapter XIII below in connection with the destruction of the Sawafeary chicken farms.

756. The Juha family lives in a house on al-Sekka Street a few meters north of where al-Samouni Street goes off Salah ad-Din Street to the west. The house was struck by several missiles during the night of 3 to 4 January 2009, which had caused significant destruction. In the early morning of 4 January, Israeli soldiers entered the house and fired into the room where the Juha family, consisting of Mr. Juha, his two wives, his mother and 13 children, was assembled. Photographs of the scene taken by Mr. Juha show that numerous rounds were discharged. The family was made to assemble in the upper part of the house. They were then ordered to leave the house and walk towards Rafah.

⁴²¹ Mr. Mu'een Juha and Mrs. Juha, the parents of Ibrahim, Mr. Sameh Sawafeary and Mr. Mughrabi.

757. The Juha family and their neighbours, the Sawafeary family, walked down al-Sekka Street for 100 metres in the direction of Rafah. When they reached the house of another neighbour, Mr. Abu Zur, they were invited into that house and decided to stay there. The three families spent 4 January in the house. On the morning of 5 January the house was the subject of intense firing from Israeli troops in the vicinity. After some time Israeli soldiers approached the house and ordered everyone to come out. The men were separated from the women. From the group of men four were separated and required to strip to their underwear. They were held in a house opposite the Abu Zur house, belonging to Mr. Subhi al-Samouni. The remaining group was told once again to leave the area and walk towards Rafah. Mr. Juha recounts that walking down al Sekka Street the group came to a point where a large crater blocked the way ahead and the surrounding rubble provided a difficult obstacle for some members of his family, including his ageing mother, who had fainted shortly before outside the Abu Zur house.

758. In the face of these obstacles the group of three families walked east towards Salah ad-Din Street. There they entered the house of another family, the Mughrabis. With the arrival of the Juha, Sawafeary and Abu Zur families, there were now more than 70 persons assembled in the house.

759. Mr. Juha told the Mission that, after taking a little rest in the Mughrabi house, he came to the view that it was impossible for them all to stay there, given their substantial numbers and the earlier experience of the intense firing at the Abu Zur house. He decided that they should seek to go back into the street and move to another place. Mr. Mughrabi strongly advised against this.

760. The Juha, Abu Zur and Sawafeary families went back into the street in the afternoon of 5 January. Mr. Juha had his mother in front of him propped up on a two-wheeled trolley as she was unable to walk. Mr. Sawafeary was near to him at the front of the group. Behind him, towards the middle of the group, was his 15-year-old son, Ibrahim, carrying a white flag. Mr. Juha believes he heard two shots. One of the shots hit his son in the chest. The group immediately sought cover once again in the Mughrabi house. They tried to care for Ibrahim in the workshop at the front of the house. His mother tried to sew the wound with a needle and thread and sterilize the materials with eau de cologne. Ibrahim died some six hours after he was shot.

761. The group of over 70 persons remained in the house until 8 January in the afternoon, when ICRC and PRCS representatives came to the neighbourhood and they managed to leave the area and walk to Gaza City.

6. Factual findings

762. The Mission found the witnesses of the shooting of Ibrahim Juha to be credible and reliable. It has no reason to doubt the veracity of their testimony.

763. The testimonies of Mr. Mu'een Juha and Mrs. Juha, Mr. Sameh Sawafeary and Mr. Rajab Darwish Mughrabi, as well as of Mrs. Abir Hajji, all establish that there were no combat operations in the area at the time of the incident. The Israeli armed forces had attacked Mr. Juha's house and that of Mr. Abu Zur, where the Juhas and other families had taken refuge, forcing them to leave the area. It was the Israeli armed forces that ordered these families to take the road to Rafah. In sum, the Israeli armed forces deliberately opened fire on a group of persons

they had interacted with during the preceding 24 hours and therefore knew to be civilians, killing the child Ibrahim Juha.

7. The killing of Majda and Rayya Hajaj

764. The Mission visited Juhr ad-Dik village twice and interviewed three eyewitnesses of the killing of Majda and Rayya Hajaj⁴²² and two other members of the family, sons of Rayya Hajaj (and brothers of Majda). The Mission also measured the distances between the reported location of the victims at the time of the shooting and the tanks. The Mission further obtained copies of the PRCS records on its attempts to obtain approval from the Israeli armed forces to dispatch ambulances to Juhr ad-Dik. Finally, the Mission saw the agricultural land destroyed by tanks and bulldozers, the rubble remaining of the house of Saleh Hajaj, and the devastation and graffiti⁴²³ left by the Israeli soldiers in Youssef Hajaj's house.

765. Juhr ad-Dik is a village in an agricultural area south-east of Gaza City, about 1.5 kilometres from the border with Israel (the so-called Green Line). On 3 January 2009, an Israeli tank force entered Juhr ad-Dik. Part of the tank force moved on towards Salah ad-Din Street and Zeytoun; the remaining force occupied Juhr ad-Dik.⁴²⁴

766. On 4 January 2009, at about 6 a.m., shells hit the house of Youssef Hajaj's family, where he, his wife and children, the wife and children of his brother Majd (who was not with his family), their sister Majda, aged 37, and mother Rayya, aged 65, were taking shelter. A daughter of Youssef, 13-year-old Manar, was injured. Between 9 and 10 a.m., the Hajaj family decided to move to the house of their neighbour Muhammad al-Safdi. Around 11 a.m., Youssef Hajaj received a phone call from his brother Majd, informing him that the Israeli armed forces had announced on local radio stations (al-Aqsa and al-Hurriya) that people living along the border between Israel and Gaza should evacuate their houses to remain safe. Having prepared two make-shift white flags, which were carried by Majda Hajaj and Ahmad Muhammad al-Safdi, 25 years old, who was also holding his two-year-old son in his arms, 26 members of the two families (more than half of them children)⁴²⁵ left the al-Safdi house. They started walking down the road westwards, where a group of Israeli tanks was standing at a distance of 320 metres.⁴²⁶ They walked very slowly, covering 200 metres in about 10 minutes. The group was some 120 metres away from the Israeli tanks when, without warning, they were fired on from the direction of the tanks. Majda Hajaj and her mother, Rayya, were hit. Majda died of her injuries instantly. Rayya tried to flee, but fell to the ground after a few metres.

⁴²² Mission interviews of Ms. Farhaneh Hajaj, Ms. Siham Hajaj, Mr. Muhammad al-Safdi, Mr. Youssef Hajaj and Mr. Saleh Hajaj.

⁴²³ Graffiti photographed by the Mission in the Hajaj house included, in Hebrew, names and dates, such as "Yahir Ben Eliezer Commander mon. [for month] March 2006" and "Yohanana Boutboul Commander mon. [for month] November 2005" and, in English, the phrase "Death will find you soon".

⁴²⁴ Testimony to the Mission by Youssef and Saleh Hajaj, 3 June 2009.

⁴²⁵ The overall number of persons leaving the house of the al-Safdi family was also indicated to the Mission as 28. The Mission was told that 17 children led the procession.

⁴²⁶ This and the other distances mentioned in the summary of the case were measured with GPS instruments.

767. The others scrambled back to the al-Safdi family house, and managed to take shelter behind a shack next to it and later inside the house. Members of the Hajjaj family called PRCS for help with the evacuation of Majda and Rayya Hajaj's bodies. PRCS in turn contacted ICRC. The Israeli armed forces denied ICRC access to Juhr ad-Dik on the ground that the area had been declared a military zone.⁴²⁷ The two families spent the remainder of the day and the night sheltering under the staircase in the al-Safdi house, while the Israeli armed forces continued to direct shell and machine-gun fire at the house. The following day they walked to Gaza City by a different, circuitous route. The Hajjaj family found the bodies of Majda and Rayya Hajaj under the rubble when they were able to return to Juhr ad-Dik on the evening of 18 January 2009.

8. Factual findings

768. The Mission found the witnesses interviewed to be credible and reliable. It has no reason to doubt the veracity of their testimony.

769. The Mission finds that Majda and Rayya Hajaj were part of a group of civilians moving with white flags through an area in which there was, at the time, no combat. Moreover, the Israeli armed forces had, according to witnesses interviewed by the Mission, called over local radio on the civilian population of Juhr ad-Dik to evacuate their homes and walk towards Gaza City. In the light of these reported circumstances, and particularly considering that the civilians were at a distance of more than 100 metres from them, the Israeli soldiers could not have perceived an imminent threat from the movement of people in that area, as they would have expected the civilians to respond to the call for evacuation. The Mission, therefore, finds the shooting and killing of Majda and Rayya Hajjaj a deliberate act on the part of the Israeli soldiers.

9. The shooting of Amal, Souad, Samar and Hajja Souad Abd Rabbo

770. The Mission visited the site of the shooting of Amal, Souad, Samar and Hajja Souad Abd Rabbo and interviewed an eyewitness, Mr. Khalid Abd Rabbo, on site. Khalid and Kawthar Abd Rabbo gave their testimony at the public hearing in Gaza on 28 June 2009. The Mission also reviewed sworn statements from two additional witnesses it was not able to interview in person.⁴²⁸

771. The family of Khalid Abd Rabbo and his wife Kawthar lived on the ground floor of a four-storey building in the eastern part of Izbat Abd Rabbo, a neighbourhood east of Jabaliyah inhabited primarily by members of their extended family. Khalid Abd Rabbo's parents and brothers with their families lived on the upper floors of the house. The residents of Izbat Abd Rabbo started hearing the sound of shooting and of the Israeli ground incursion in the evening of 3 January 2009. Khalid Abd Rabbo's family decided to stay inside the house, all gathered on the ground floor, as they had done safely during previous Israeli incursions into the neighbourhood.

772. In the late morning of 7 January 2009, Israeli tanks moved onto the small piece of agricultural land in front of the house. Shortly after 12.30 p.m., the inhabitants of that part of Izbat Abd Rabbo heard megaphone messages telling all residents to leave. According to one

⁴²⁷ PRCS records confirm the ICRC requests to the Israeli armed forces to be allowed access to Juhr ad-Dik.

⁴²⁸ Affidavits of W5 and W6.

witness's recollection, there had also been a radio message broadcast by the Israeli armed forces around 12.30 announcing that there would be a temporary cessation of shooting between 1 and 4 p.m. that day, during which time residents of the area were asked to walk to central Jabaliyah.

773. At about 12.50 p.m., Khalid Abd Rabbo, his wife Kawthar, their three daughters, Souad (aged 9), Samar (aged 5) and Amal (aged 3), and his mother, Hajja Souad Abd Rabbo, stepped out of the house, all of them carrying white flags. Less than 10 metres from the door was a tank, turned towards their house. Two soldiers were sitting on top of it having a snack (one was eating chips, the other chocolate, according to one of the witnesses). The family stood still, waiting for orders from the soldiers as to what they should do, but none was given. Without warning, a third soldier emerged from inside the tank and started shooting at the three girls and then also at their grandmother. Several bullets hit Souad in the chest, Amal in the stomach and Samar in the back. Hajja Souad was hit in the lower back and in the left arm.

774. Khalid and Kawthar Abd Rabbo carried their three daughters and mother back inside the house. There, they and the family members who had stayed inside tried to call for help by mobile phone. They also shouted for help and a neighbour, Sameeh Atwa Rasheed al-Sheikh, who was an ambulance driver and had his ambulance parked next to his house, decided to come to their help. He put on his ambulance crew clothes and asked his son to put on a fluorescent jacket. They had driven a few metres from their house to the immediate vicinity of the Abd Rabbo house when Israeli soldiers near the Abed Rabbo house ordered them to halt and get out of the vehicle. Sameeh al-Sheikh protested that he had heard cries for help from the Abd Rabbo family and intended to bring the wounded to hospital. The soldiers ordered him and his son to undress and then re-dress. They then ordered them to abandon the ambulance and to walk towards Jabaliyah, which they complied with. When the families returned to Izbat Abd Rabbo on 18 January, they found the ambulance was in the same place but had been crushed, probably by a tank.

775. Inside the Abed Rabbo house, Amal and Souad died of their wounds. The family decided that they had to make an attempt to walk to Jabalya and take Samar, the dead bodies of Amal and Souad, and their grandmother to hospital. Khaled and Kawthar Abd Rabbo, and other family members and neighbours carried the girls on their shoulders. Hajja Souad was carried by family and neighbours on a bed. Samar was transferred to al-Shifa hospital and then, through Egypt, to Belgium, where she still is in hospital. According to her parents, Samar suffered a spinal injury and will remain paraplegic for the rest of her life.

776. When Khalid Abd Rabbo returned to his home on 18 January 2009, his house, as most houses in that part of Izbat Abd Rabbo, had been demolished. He drew the Mission's attention to an anti-tank mine under the rubble of a neighbour's house.⁴²⁹

10. Factual findings

777. The Mission found Khalid and Kawthar Abd Rabbo to be credible and reliable witnesses. It has no reason to doubt the veracity of the main elements of their testimony. The Mission also

⁴²⁹ The UNOSAT report (p. 14) counts 341 buildings in Izbat Abd Rabbo destroyed or severely damaged as a result of the military operations.

reviewed several sworn statements they and other eyewitnesses gave to NGOs about the incident and found them to be consistent with the account it received.

778. The Mission notes that, in general, Izbat Abd Rabbo and the nearby areas of Jabal al-Kashef and Jabal al-Rayes appear to have been among the locations in Gaza which saw the most intense combat during the military operations.⁴³⁰ The testimony of Khalid and Kawthar Abd Rabbo, however, shows that the Israeli armed forces were not engaged in combat or fearing an attack at the time of the incident. Two soldiers were sitting on the tank in front of the Abd Rabbo family house and having a snack. They clearly did not perceive any danger from the house, its occupants or the surroundings. Moreover, when the family, consisting of a man, a young and an elderly woman, and three small girls, some of them waving white flags, stepped out of the house, they stood still for several minutes waiting for instructions from the soldiers. The Israeli soldiers could, therefore, not reasonably have perceived any threat from the group. Indeed, the fact that the gunfire was directed at the three girls and, subsequently, at the elderly woman, and not at the young adult couple, can be seen as further corroborating the finding that there was no reasonable ground for the soldier shooting to assume that any of the members of the group were directly participating in the hostilities. The Mission finds that the soldier deliberately directed lethal fire at Souad, Samar and Amal Abd Rabbo and at their grandmother, Hajja Souad Abd Rabbo.

779. The Mission further finds that, by preventing Sameeh al-Sheikh from taking the wounded to the nearest hospital in his ambulance, the Israeli armed forces deliberately further aggravated the consequences of the shooting. The Mission recalls that the soldiers had forced Sameeh al-Sheikh and his son to get out of the ambulance, undress and then re-dress. They therefore knew that they did not constitute a threat. Instead of allowing them to take the gravely wounded Samar Abd Rabbo to hospital, the soldiers forced Sameeh al-Sheikh and his son to abandon the ambulance and to walk towards Jabaliyah.

11. The shooting of Rouhiyah al-Najjar

780. The Mission visited the site of the shooting of Rouhiyah al-Najjar in Khuza'a. It interviewed two eyewitnesses of the shooting and six other witnesses to the events, including Yasmine al-Najjar, Nasser al-Najjar, Rouhiyah al-Najjar's husband, and their daughter Hiba.

781. The Israeli armed forces launched the attack against Khuza'a, a small town about half a kilometre from the border (Green Line) with Israel east of Khan Yunis, around 10 p.m. on 12 January 2009. During the night, they used white phosphorous munitions, causing fires to break out in the al-Najjar neighbourhood on the eastern fringe of Khuza'a. Families in the neighbourhood, including the family of Nasser al-Najjar, his first wife Rouhiyah and their daughter Hiba, spent much of the night trying to extinguish fires in their houses. Israeli armed forces, possibly heliborne troops, had taken position on the roofs of some houses in the neighbourhood and observed the residents as they attempted to fight the fires. Around 3 a.m. residents also began to hear the noise of approaching tanks and bulldozers, with which they were well familiar, as in 2008 there had been several Israeli incursions into the farmland to the north

⁴³⁰ "The hidden dimension of Palestinian war casualties..." suggests that these areas were among those in which Palestinian combatants most frequently engaged the Israeli armed forces.

and east of Khuza'a, in the course of which bulldozers flattened fields, groves, chicken coops and greenhouses.

782. In the early morning hours, some of the residents, including Rouhiyah al-Najjar, climbed on the roofs of their houses and hoisted improvised white flags. Using megaphones, the Israeli armed forces asked the men of the neighbourhood to come out of the houses and walk towards the tanks. There the men were separated into two groups which were then held in different houses under the control of the soldiers.

783. At some point between 7 and 7.45 a.m., Rouhiyah al-Najjar and the women in her immediate neighbourhood decided to leave their homes and walk with their children to the town centre. The group of women was headed by Rouhiyah al-Najjar and her 23-year-old neighbour and relative Yasmine al-Najjar, both carrying white flags. Rouhiyah's daughter Hiba was right behind her. Other women were holding up babies in their arms, shouting "God is great!" and "We have children!" The group of women and children started moving down a straight alley, about six or seven metres wide, flanked on both sides by houses. At the other end of the alley, a little more than 200 metres away,⁴³¹ was the house of Faris al-Najjar, which had been occupied by numerous Israeli soldiers (around 60 according to one witness). The soldiers had made a hole in the wall of the first floor of the house, giving them a good view down the alley into which the group of women and children were advancing. When Rouhiyah al-Najjar was about 200 metres from Faris al-Najjar's house, a shot fired from that house hit her in the temple (she had just turned her head towards her neighbour next to her to encourage her). Rouhiyah al-Najjar fell to the ground; Yasmine was struck in her leg. This single shot was followed by concentrated gunfire, which forced the group of women and children to scramble back into the houses of Osama al-Najjar and Shawki al-Najjar, though it did not cause further injury. Because of the fire from the Israeli soldiers, they did not dare to leave the house and look after Rouhiyah al-Najjar. They stayed inside until around noon the same day, when they made a second, successful attempt to leave the neighbourhood and walk to a safer part of Khuza'a.

784. An ambulance driver from Khan Yunis hospital, Marwan Abu Reda, received a phone call from Khuza'a asking for emergency help for Rouhiyah al-Najjar at around 7.45 a.m. He immediately drove to Khuza'a and arrived in the neighbourhood shortly after 8 a.m., i.e. within no more than an hour from the shooting. He was already in the alley where Rouhiyah al-Najjar was lying on the ground⁴³² when soldiers opened fire from houses or rooftops, forcing him to make a U-turn and take the ambulance to a nearby alley. He called PRCS and asked it to seek access to the injured woman, through ICRC and in coordination with the Israeli armed forces, without success. Marwan Abu Reda was not able to pick up Rouhiyah al-Najjar's (by then lifeless) body until the evening of that day. He confirmed to the Mission that she had received a bullet in the temple.

⁴³¹ The Mission did not measure the distance; this is an estimate.

⁴³² The Mission does not have information which would allow it to state whether Rouhiyah al-Najjar was still alive when the ambulance arrived.

12. Factual findings

785. The Mission has no reason to doubt the veracity of the main elements of the testimony of the witnesses it heard with regard to the shooting of Rouhiyah al-Najjar.

786. The Mission's site inspection and the testimony of several witnesses appear to establish that the group of women and children led by Rouhiyah al-Najjar had slowly walked for at least 20 metres before the shot that killed Rouhiyah was fired. During that time, Israeli soldiers standing on the roofs of the houses in the neighbourhood had ample time to observe the group. The fact that, after shooting Rouhiyah and Yasmine al-Najjar, the soldiers directed warning fire at the group without injuring anyone, but forcing them to retreat to a house, is further indication that the soldiers had not observed any threat to them from the group.⁴³³ Indeed, a few hours later the same group was allowed to walk past the soldiers to a safer area of Khuza'a. The Mission accordingly finds that Rouhiyah al-Najjar was deliberately shot by an Israeli soldier who had no reason to assume that she was a combatant or otherwise taking part in hostilities.

787. The Mission also observes that, while it is unclear whether the ambulance from Khan Yunis hospital could have saved Rouhiyah al-Najjar's life, the Israeli forces prevented the evacuation of the wounded woman without any justification.

13. The Abu Halima family case

788. The Mission interviewed three members of the Abu Halima family who were eyewitnesses to the events described below.⁴³⁴ The Mission also spoke to the doctor who treated some of the family members.⁴³⁵ The Mission reviewed a report by Physicians for Human Rights – Israel and Palestinian Medical Relief Society which includes analysis by doctors who observed the wounds of the surviving victims at the beginning of March 2009 and also has medical reports confirming the injuries they suffered.⁴³⁶ Finally, the Mission reviewed information received from TAWTHEQ.

789. On 3 and 4 January 2009, the initial days of the ground invasion, there was heavy aerial bombardment and shelling by tanks of the open areas around Siyafa village, in al-Atatra neighbourhood west of Beit Lahia. Most residents are farmers and, although the Israeli armed

⁴³³ The Mission was not given any testimony about the presence of Palestinian combatants in Khuza'a at the time of this incident. In fact, Khuza'a municipal officials expressly denied that there was any combatant activity in Khuza'a at the time of the Israeli ground invasion, arguing that, Khuza'a and the surrounding fields being such an open area, there was no place for fighters to take cover. These statements are contradicted by reports indicating that "about one dozen fighters had directly engaged the IDF in Khuza'a. But these engagements appear to have been minimal, with the fighters mostly retreating whenever the Israeli forces advanced." (Human Rights Watch, *Rain of Fire: Israel's Unlawful Use of White Phosphorous in Gaza* (March 2009), pp. 53-54).

⁴³⁴ Mission interviews with Sabah Abu Halima (aged 45), Muhammad Sa'ad Abu Halima (aged 24), Omar Sa'ad Abu Halima (aged 18), 15 June 2009.

⁴³⁵ Mission interview with Dr. Nafeez, the burns expert from al-Shifa hospital, 12 June 2009.

⁴³⁶ Physicians for Human Rights-Israel and Palestinian Medical Relief Society, "Final report: Independent fact-finding mission into violations of human rights in the Gaza Strip during the period 27.12.08-18.01.09", pp. 51-55, available at: http://www.phr.org.il/phr/files/articlefile_1241949935203.pdf.

forces had dropped leaflets warning civilians to leave the area, most had chosen to stay. Based on their previous experiences of ground invasions, they reportedly believed that they were not in danger.

790. On 4 January 2009, the bombardment reportedly increased as Israeli troops moved into and took control of al-Atatra neighbourhood. The Abu Halima family was sheltering in the home of Muhammad Sa'ad Abu Halima and Sabah Abu Halima in Sifaya village. The house has two floors; the ground floor is used for storage and the living quarters are on the upper floor. According to Sabah Abu Halima,⁴³⁷ 16 members of her immediate family were sheltering on the upper floor.

791. In the afternoon, after hearing that a shell had hit the adjacent house of Sabah Abu Halima's brother-in-law, most of the family moved from the bedroom into a hallway in the middle of the upper floor, where they thought they would be better protected. At around 4.30 p.m., a white phosphorous shell came through the ceiling into the room where they were sheltering.

792. According to family members who survived,⁴³⁸ there was intense fire and white smoke in the room, the walls of which were glowing red. Five members of the family died immediately or within a short period: Muhammad Sa'ad Abu Halima (aged 45) and four of his children, sons Abd al-Rahim Sa'ad (aged 14), Zaid (aged 12) and Hamza (aged 8), and daughter Shahid (aged 18 months). Muhammad Sa'ad and Abd al-Rahim Sa'ad were decapitated, the others burnt to death. Five members of the family escaped and suffered various degrees of burns: Sabah Abu Halima, her sons Youssef (aged 16) and Ali (aged 4), daughter-in-law Ghada (aged 21), and Ghada's daughter Farah (aged 2).⁴³⁹

793. Family members tried to call an ambulance, but the Israeli armed forces had declared the area a closed military zone and ambulances were not permitted to enter. Two cousins put Sabah Abu Halima in the back of a tractor trailer and drove her to Kamal Idwan hospital in Beit Lahia. The driver reported that he reached the hospital despite coming under fire from Israeli soldiers posted inside the Omar Bin Khattab school for girls on the road to al-Atatra.⁴⁴⁰ One cousin remained with Sabah Abu Halima, while the other returned to help the rest of the family.

794. The remaining survivors and the injured were placed on a second tractor trailer to take them to Kamal Idwan hospital. The remains of Shahid Abu Halima were also taken. The tractor was driven by a cousin, Muhammad Hekmat Abu Halima (aged 16). Another cousin, Matar Abu Halima (aged 17), his brother Ali (aged 11) and his mother, Nabila, accompanied them.

⁴³⁷ Statement by Sabah Abu Halima to the Mission on 15 June 2009.

⁴³⁸ Statements by Sabah Abu Halima, Muhammad Sa'ad Abu Halima and Omar Sa'ad Abu Halima to the Mission on 15 June 2009.

⁴³⁹ Given the seriousness of their injuries, Sabah, Farah and Ghada Abu Halima were transferred to Egypt for treatment. Ghada died there in late March 2009.

⁴⁴⁰ www.dci-pal.org/English/Doc/Press/Case-Study_Cast-Lead_Abu-Halima_Family_FINAL.pdf.

795. When they reached the crossroads next to the Omar Bin Khattab school in al-Atatra, Israeli soldiers positioned on the roof of a nearby house, some ten metres away, ordered them to stop. Muhammad Hekmat, Matar, Ali, Nabila and Matar got down and stood beside the tractor. One or more soldiers opened fire, hitting Muhammad Hekmat Abu Halima in the chest and Matar Abu Halima in the abdomen.⁴⁴¹ Both died as a result of their injuries. Ali, Omar and Nabila Abu Halima fled. Omar was shot in the arm, but they eventually reached Kamal Idwan hospital.

796. The remaining family members were ordered to abandon the tractors and walk. They were not permitted to take the bodies of the two dead boys, or the remains of Shahid Abu Halima, which were recovered four days later, on 8 January. Ghada Abu Halima, who had burns on 45 per cent of her body, had great difficulty walking. After some 500 metres, a vehicle picked up several members of the family, including Ghada and Farah, and took them to al-Shifa hospital in Gaza City.

797. Dr. Nafiz Abu Shaban, Chief of Plastic Surgery at al-Shifa hospital, confirmed that Sabah, Ghada and Farah Abu Halima were admitted there with serious burns and were transferred to Egypt for treatment. The doctor believed that the burns were caused by contact with white phosphorous.⁴⁴²

14. Factual findings

798. The Mission found Sabah Abu Halima, Muhammad Sa'ad Abu Halima and Omar Sa'ad Abu Halima to be credible and reliable witnesses. It has no reason to doubt the veracity of the main elements of their testimonies, which were corroborated by the testimony of Dr. Nafiz Abu Shaban of al-Shifa hospital.

799. With regard to the white phosphorous shelling of the Abu Halima family house, the Mission notes that the house is located in a village in a rural area. The shelling occurred on 4 January 2009 at a time when Israeli ground forces were apparently advancing into al-Atatra. Moreover, the Israeli armed forces had dropped leaflets warning civilians to leave. Under the circumstances, the Mission cannot make any determination as to whether the shelling of the Abu Halima house was a direct attack against a civilian objective, an indiscriminate attack or a justifiable part of the broader military operation.

800. With regard to the shooting of Muhammad Hekmat Abu Halima and Matar Abu Halima, the Mission notes that the Israeli soldiers had ordered the tractor on which they were transporting the wounded to stop and had ordered the two cousins (aged 16 and 17) to come down. They had complied with those instructions and were standing next to the tractor, when the Israeli soldiers standing on the roof of a nearby house opened fire on them. The soldiers cannot have been mistaken about the circumstance that these were two civilians taking gravely wounded persons to a hospital. The shooting of Muhammad Hekmat Abu Halima and Matar Abu Halima was a direct

⁴⁴¹ According to statements given by Omar and Nabila Abu Halima to the NGO Defence for Children International (ibid.). Information provided to the Mission by Omar Abu Halima on 15 June 2009 was less detailed but consistent with this information.

⁴⁴² Mission interview, 12 June 2009.

lethal attack on two under-age civilians. The fact that they were hit in the chest and the abdomen, respectively, indicates that the intention was to kill them.

801. The Mission further notes that in this case the Israeli armed forces denied the ambulances access to the area to evacuate the wounded and then opened fire on the relatives of the wounded who were trying to take them to the nearest hospital.

**C. Information concerning the instructions given to the Israeli armed forces
with regard to the opening of fire against civilians**

802. The Mission found in the above incidents that the Israeli armed forces repeatedly opened fire on civilians who were not taking part in the hostilities and who posed no threat to them. These incidents indicate that the instructions given to the Israeli armed forces moving into Gaza provided for a low threshold for the use of lethal fire against the civilian population. The Mission found strong corroboration of this trend emerging from its fact-finding in the testimonies of Israeli soldiers collected by the Israeli NGO Breaking the Silence⁴⁴³ and in the Protocol of the Rabin Academy's "Fighters' Talk". These testimonies suggest in particular that the instructions given to the soldiers conveyed two "policies". Both are an expression of the aim to eliminate as far as possible any risk to the lives of the Israeli soldiers.

803. The first policy could be summarized, in the words of one of the soldiers: "if we see something suspect and shoot, better hit an innocent than hesitate to target an enemy." Another soldier attributed the following instructions to his battalion commander: "If you are not sure – shoot. If there is doubt then there is no doubt." The first soldier summarized the briefing from the battalion commander as follows "the enemy was hiding behind civilian population. [...] if we suspect someone, we should not give him the benefit of the doubt. Eventually, this could be an enemy, even if it's some old woman approaching the house. It could be an old woman carrying an explosive charge." A third soldier explained "you don't only shoot when threatened. The assumption is that you constantly feel threatened, so anything there threatens you, and you shoot. No one actually said 'shoot regardless' or 'shoot anything that moves.' But we were not ordered to open fire only if there was a real threat."⁴⁴⁴

804. The Mission notes that some soldiers stated that they agreed with the instructions to "shoot in case of doubt." One of them explained "this is the difference between urban warfare and a limited confrontation. In urban warfare, anyone is your enemy. No innocents." Another told of his profound discomfort with the policy and of how he and his comrades had attempted to question their commander about it after a clearly harmless man was shot.⁴⁴⁵ While they disagreed about the legitimacy and morality of the policy, they had little doubt about the terms of the instructions: each soldier and commander on the ground had to exercise judgement,⁴⁴⁶ but the policy was to shoot in case of doubt.

⁴⁴³ *Soldiers' Testimonies*....

⁴⁴⁴ *Ibid.*, testimony 21, pp. 50–51, testimony 7, p. 20, and testimony 9, p. 24.

⁴⁴⁵ *Ibid.*, testimony 7, p. 20, and testimony 14, pp. 38-39.

⁴⁴⁶ *Ibid.*, testimony 13, p. 37.

805. The second policy clearly emerging from the soldiers' testimonies is explained by one of the soldiers as follows: "One of the things in this procedure [the outpost procedure, which is being applied in areas held by the Israeli armed forces after the Gaza ground invasion] is setting red lines. It means that whoever crosses this limit is shot, no questions asked. [...] Shoot to kill."⁴⁴⁷ In one incident highly relevant to the cases investigated by the Mission because of factual similarities, a soldier recounted an event he witnessed.⁴⁴⁸ A family is ordered to leave their house. For reasons that remain unclear, probably a misunderstanding, the mother and two children turn left instead of right after having walked between 100 and 200 metres from their house. They thereby cross a "red line" established by the Israeli unit (of whose existence the mother and children could have no knowledge). An Israeli marksman on the roof of the house they had just left opens fire on the woman and her two children, killing them. As the soldier speaking at the Rabin Academy's "Fighters' Talk" a month later observes, "from our perspective, he [the marksman] did his job according to the orders he was given".

806. "Incessant" alerts about suicide bombers⁴⁴⁹ meant that even civilians clearly identified by the soldiers as carrying no arms were perceived as a threat as soon as they came within a certain distance from the soldiers – a threat to be eliminated, also without warning fire, as a second might be enough for the "suicide bomber" to get close enough to harm the soldiers.

807. The Mission notes that many of the persons interviewed in Gaza described incidents in which they were, individually, as part of a group or in a vehicle, exposed to intense gunfire from Israeli soldiers – but without being hit or injured. This was the case, for instance, of an ambulance drivers attempting to drive into an area which the Israeli armed forces had decided he should not enter.⁴⁵⁰ In the Khuza'a case, after the lethal shooting of Rouhiyah al-Najjar and wounding of Yasmine al-Najjar, the other women and children were exposed to fire from the Israeli soldiers, which forced them to retreat to the houses they had been trying to leave.⁴⁵¹ These incidents suggest that the Israeli armed forces made ample use of gunfire to "communicate" with the civilian population, to issue injunctions to civilians not to walk or not to drive any further in a certain direction or to immediately retreat to a building they were about to leave. The terrifying effect this sort of non-verbal communication had on those at the receiving end is evident, as is the likelihood of lethal consequences.

808. The Mission also read testimony from soldiers who recounted cases in which, although a civilian had come within a distance from them which would have required opening fire under the rules imparted to them, they decided not to shoot because they did not consider the civilian a threat to them.

⁴⁴⁷ Ibid., testimony 12, p. 32, also testimony 21, p. 52; and the of "Ram" in the Rabin Academy Fighters' Talk, pp. 6-7.

⁴⁴⁸ Testimony of "Ram" in the Rabin Academy Fighters' Talk, pp. 6-7. The Mission notes that "Ram" clearly states that he was an eyewitness to the incident.

⁴⁴⁹ For instance, *Soldiers' Testimonies...*, testimony 13, p. 37, and testimony 22, p. 53.

⁴⁵⁰ Interview with Marwan Abu Reda, 11 June 2009. For a description of warning shots in front of moving vehicles, see *Soldiers' Testimonies...*, testimony 12, p. 33.

⁴⁵¹ This would appear to have been the case also in the shooting of Majda and Rayya Hajaj in Juhr ad-Dik.

D. Legal findings with regard to the cases investigated by the Mission

809. The fundamental principles applicable to these incidents, which are cornerstones of both treaty-based and customary international humanitarian law, are that “the parties to the conflict shall at all times distinguish between the civilian population and combatants”⁴⁵² and that “the civilian population as such, as well as individual civilians, shall not be the object of attack”.⁴⁵³ The Israeli Government refers to the principle of distinction as “the first core principle of the Law of Armed Conflict.” It further states that “the IDF’s emphasis on compliance with the Law of Armed Conflict was also directly incorporated into the rules of engagement for the Gaza Operation.” The principle of distinction was reportedly incorporated in the following terms: “Strikes shall be directed against military objectives and combatants only. It is absolutely prohibited to intentionally strike civilians or civilian objects (in contrast to incidental proportional harm).”⁴⁵⁴

810. In reviewing the above incidents the Mission found in every case that the Israeli armed forces had carried out direct intentional strikes against civilians. The only exception is the shelling of the Abu Halima family home, where the Mission does not have sufficient information on the military situation prevailing at the time to reach a conclusion.

811. The Mission found that, on the basis of the facts it was able to ascertain, in none of the cases reviewed were there any grounds which could have reasonably induced the Israeli armed forces to assume that the civilians attacked were in fact taking a direct part in the hostilities and had thus lost their immunity against direct attacks.⁴⁵⁵

812. The Mission therefore finds that the Israeli armed forces have violated the prohibition under customary international law and reflected in article 51 (2) of Additional Protocol I that the civilian population as such will not be the object of attacks. This finding applies to the attacks on the houses of Ateya and Wa’el al-Samouni, the shooting of Iyad al-Samouni, of Shahd Hajji and Ola Masood Arafat, of Ibrahim Juha, of Rayya and Majda Hajaj, of Amal, Souad, Samar, and Hajja Souad Abd Rabbo, of Rouhiyah al-Najjar, and of Muhammad Hekmat Abu Halima and Matar Abu Halima. In these incidents, 34 Palestinian civilians lost their lives owing to Israeli fire intentionally directed at them. Numerous others were injured, some very severely and with permanent consequences.

813. Not only are civilians not to be the object of attacks, they are also “entitled in all circumstances, to respect for their persons ... protected especially against all acts of violence or threats thereof” (Fourth Geneva Convention, art. 27). Fundamental guarantees set out in article 75 of Additional Protocol I include the absolute prohibition “at any time and in any place” of “violence to the life, health, or physical or mental well-being of persons”. According to the facts presented to the Mission, these provisions have been violated.

⁴⁵² Additional Protocol I, art. 48.

⁴⁵³ Additional Protocol I, art. 51 (2).

⁴⁵⁴ “The operation in Gaza...”, paras. 94 and 222.

⁴⁵⁵ Pursuant to article 51 (3) of Protocol Additional I, civilians enjoy immunity from attack “unless and for such time as they take a direct part in hostilities.” On the status of this rule in customary law, see chap. VII.

814. The State of Israel would be responsible under international law for these internationally wrongful actions carried out by its agents

815. From the facts ascertained, the Mission finds that the conduct of the Israeli armed forces in these cases would constitute grave breaches of the Fourth Geneva Convention in respect of wilful killings and wilfully causing great suffering to protected persons⁴⁵⁶ and as such give rise to individual criminal responsibility.

816. The Mission also finds that the direct targeting and arbitrary killing of Palestinian civilians is a violation by the Israeli armed forces of the right to life as provided in article 6 of the International Covenant on Civil and Political Rights.

817. In most of the cases examined above, the Mission finds that the Israeli armed forces denied the medical emergency services access to the wounded civilians. This was the case with regard to all the incidents occurring in the al-Samouni neighbourhood, particularly after the shooting of Ahmad al-Samouni, where the PRCS ambulance was forced to return to Gaza City having come within 100 metres of the gravely wounded boy. Ambulances were also arbitrarily prevented from reaching the wounded after the attack on Wa'el al-Samouni's house, most dramatically after the shooting of Amal, Souad, Samar, and Hajja Souad Abd Rabbo and of Rouhiyah al-Najjar. In the case of the shooting of Muhammad Hekmat Abu Halima and Matar Abu Halima, it is the rescuers who were executed, preventing them from taking their severely burned relatives to hospital. In the case of Iyad al-Samouni, finally, the relatives who wanted to assist him were threatened with being shot themselves.

818. The Mission recalls that article 10 (2) of Additional Protocol I provides that "In all circumstances [the wounded] shall be treated humanely and shall receive, to the fullest extent practicable and with the least possible delay, the medical care and attention required by their condition. ..." This provision enjoys customary international law status. The Mission is mindful that "the obligation to protect and care for the wounded ... is an obligation of means." It applies whenever circumstances permit. However, "each party to the conflict must use its best efforts to provide protection and care for the wounded, ... , including permitting humanitarian organizations to provide for their protection and care."⁴⁵⁷

819. The facts ascertained by the Mission establish that in the incidents investigated the Israeli armed forces did not use their best efforts to provide humanitarian organizations access to the wounded. On the contrary, the facts indicate that, while the circumstances permitted giving access, the Israeli armed forces arbitrarily withheld it.

820. On this basis, the Mission finds a violation of the obligation under customary international law to treat the wounded humanely.

⁴⁵⁶ Article 147 of the Fourth Geneva Convention defines the "wilful killing" of protected persons as a grave breach of the Convention. The same qualification is applied to acts which "wilfully caus[e] great suffering or serious injury to body or health".

⁴⁵⁷ *Customary International Humanitarian Law...*, rule 110 and p. 402.

821. The conduct of the Israeli armed forces amounted to violations of the right to life where it resulted in death, and to a violation of the right to physical integrity, and to cruel and inhuman treatment in other cases, which constitutes a violation of articles 6 and 7 of the International Covenant on Civil and Political Rights.

E. The attack on the al-Maqadmah mosque, 3 January 2009

1. The facts gathered by the Mission

822. The al-Maqadmah mosque is situated near the north-west outskirts of Jabaliyah camp, close to Beit Lahia. It is located less than 100 metres from the Kamal Idwan hospital, in the al-Alami housing project. At least 15 people were killed and around 40 injured – many seriously – when the Israeli armed forces struck the entrance of the mosque with a missile.

823. The Mission heard five eyewitnesses who had been in the mosque at the time it was struck. Two of them had been facing the door as the explosion occurred. Three of them had been kneeling facing the opposite direction and had been seriously injured. The Mission also heard from a number of relatives of those who died in the attack and has seen a number of sworn statements signed by them testifying to the facts they witnessed.⁴⁵⁸ The Mission also heard again from three witnesses it had interviewed earlier at the public hearings in Gaza. Finally, the Mission reviewed information received from TAWTHEQ.

824. On the evening of 3 January 2009, between 5 and 6 p.m., a large number of people had gathered in the mosque for evening prayers. Witnesses indicate that between 200 and 300 men had gathered on the first floor.⁴⁵⁹ A number of women had also congregated in the basement at that time. Witnesses explained that in time of fear or emergency it was the tradition to combine sunset and evening prayers.⁴⁶⁰ In addition, the Mission heard that, while some time normally elapses between the muezzin calling the faithful to prayer and the prayers beginning, at this time it was the practice to begin prayers almost immediately.

825. The witnesses indicated that prayers had ended and the sermon was just beginning. At that point there was an explosion in the doorway to the mosque. One of the two wooden doors was blown off its hinges and all the way across the prayer area to the opposite wall.

826. As a result of the explosion at least 15 people died. Almost all were inside the mosque at the time. One of the casualties was a boy who had been sitting at the entrance. His leg was blown off by the missile strike and found afterwards on the roof of the mosque. A large number, around 40, suffered injuries. Many were taken to the Kamal Idwan hospital for treatment.

⁴⁵⁸ Note, for example, the affidavit of Ismail al-Salawi, brother of the sheikh at the mosque. He recounts how he was on his way to the mosque when his 13-year-old daughter ran towards him screaming that it had been bombed. He rushed in to find a scene of bloody chaos. As an immediate result of the strike his grandson Muhammad (13 years old), his nephews Hani (8 years old) and Omar (27 years old) were killed. See also a similar explanation of events by Ayisha Ibrahim, whose husband, Abdul Rahman (46), and son Ra'id were killed in the attack.

⁴⁵⁹ Sheikh al-Salawi, interviewed on 3 June 2009 and 4 July 2009.

⁴⁶⁰ See, for example, Sheikh al-Salawi at the public hearing in Gaza on 27 July 2009, available at <http://www.realnetworks.com>

827. On visiting the mosque, the Mission was able to observe the damage done to it. Its immediate entrance is on a raised level from the external pavement and is reached via a ramp. There are a number of stairs below the doorway, now covered by the raised entrance at the end of the ramp. The stairs underneath the ramp were damaged and the concrete had been pierced. There was a scorch mark on the ground and stairs.

828. The Mission has also viewed a number of photographs taken shortly after the strike and considers them to be reliable. They showed that something had penetrated the concrete (about three inches thick) immediately outside of the mosque doorway and then hit the pavement at the bottom of the stairs below the concrete covering. The ramp and entrance level structure had a wall about one metre high built on its outer side. The part of the wall opposite the mosque door was blown away.

829. The Mission observed that the interior walls of the mosque and part of the exterior wall around the doorway appeared to have suffered significant damage as a result of a spray of small metal cubes. A good number of these were lodged in the wall even at the time of the Mission's visit to the site in June 2009. Several of these were retrieved and the Mission could see how deeply embedded they were in the concrete walls.

830. Apart from the aforementioned visit to the mosque, the Mission has interviewed its sheikh on three occasions, its imam twice, its muezzin, several members of the sheikh's family, several of those injured in the blast and a number of the relatives who lost family members and who assisted in the immediate aftermath of the attack. It has seen medical certificates that bear out the nature of those injuries related by the young men it interviewed. The Mission questioned all of the witnesses and sought to clarify any doubts it may have had.

2. The position of the Israeli Government and the Israeli armed forces

831. The Israeli armed forces' response to the allegations states:

... relating to a strike against the "Maqadme" mosque in Beit-Lahiya on January 3rd, 2009, it was discovered that as opposed to the claims, the mosque was not attacked at all. Furthermore, it was found that the supposed uninvolved civilians who were the casualties of the attack were in fact Hamas operatives killed while fighting against the IDF.⁴⁶¹

832. Apart from the apparent contradictions it contains, the Mission notes that the statement does not indicate in any way the nature of the inquiry, the source of its information or the reliability and credibility of such sources.

833. In July 2009 the Israeli Government repeated the same position.⁴⁶²

⁴⁶¹ "Conclusions of investigations into central claims and issues in Operation Cast Lead", 22 April 2009, annex C. The document was approved and authorized by the Chief of the General Staff Lt. Gen. Gabi Ashkenazi. It is available at: <http://dover.idf.il/IDF/English/opcast/postop/press/2201.htm>

⁴⁶² "The operation in Gaza...".

3. Factual findings

834. The Mission has established that the Israeli armed forces fired a missile that struck near the doorway of the mosque. The penetration pattern witnessed on the concrete ramp and stairs underneath is consistent with that which would be expected of a shrapnel fragmentation sleeve fitted onto an air-to-ground missile. Shrapnel cubes that the Mission retrieved from the rear inside wall of the mosque are consistent with what would be expected to be discharged by a missile of this nature.⁴⁶³

835. The strike killed at least 15 people attending the mosque for prayers and very seriously injured several others.

836. The Mission is not in a position to say from which kind of aircraft or air-launch platform the missile was fired. It believes the testimony of the witnesses regarding the circumstances of the attack, finding it plausible and consistent not only with the other witnesses, but also with the physical evidence at the scene. The Mission also notes that a number of local organizations sent representatives to the site of the attack very shortly after it occurred and they witnessed the scene for themselves. The Mission has also spoken with them and notes that their accounts are consistent with the testimony provided by the witnesses it heard.

837. There has been no suggestion that the al-Maqadmah mosque was being used at that time to launch rockets, store weapons or shelter combatants.⁴⁶⁴ Since it does not appear from the testimonies of the incident or the inspection of the site that any other damage was done in the area at that time, the Mission concludes that what occurred was an isolated strike and not in connection with an ongoing battle or exchange of fire.

4. Legal findings

838. In the absence of any explanation as to the circumstances that led to the missile strike on al-Maqadmah mosque and taking into account the credible and reliable accounts the Mission heard from multiple witnesses, as well as the matters it could review for itself by visiting the site, the Mission concludes that the mosque was intentionally targeted by the Israeli armed forces. The Mission also takes into account the precision and sophistication of the Israeli armed forces' munitions in making this finding.

839. The Mission's finding is strengthened in the face of the unsatisfactory and demonstrably false position of the Israeli Government.

840. It follows that this was an attack on the civilian population as such and not on a military objective.

⁴⁶³ The Mission considers it possible in analysing the information available that the missile in question may have been a modified high-explosive anti-tank missile, sometimes referred to as either augmented high-explosive anti-tank (AHEAT) or high-explosive dual-purpose (HEDP).

⁴⁶⁴ See, for example, statements made by Israel in "The operation in Gaza...", para. 234.

841. Based on the facts ascertained, the Mission finds that the Israeli armed forces have violated the prohibition under customary international law that the civilian population as such will not be the object of attacks as reflected in article 51 (2) of Additional Protocol I.

842. Based on those facts, the violations also constitute a grave breach of the Fourth Geneva Convention in respect of wilful killings and wilfully causing great suffering to protected persons.

843. The Mission also finds that the State of Israel would be responsible for the arbitrary deprivation of the right to life, in relation to article 6 of the International Covenant on Civil and Political Rights, of those killed.

F. The attack on the al-Daya family house, 6 January 2009

1. The facts gathered by the Mission

844. On 6 January 2009, the al-Daya Family house located on al-Rai'i Street in Zeytoun, south-east of Gaza City, was struck by a projectile fired from an F-16 aircraft which killed 22 members of the family. Twelve of those killed were children under 10.

845. In June 2009, the Mission visited the site of the incident where it interviewed two of the four surviving members from the al-Daya family and a number of local residents.⁴⁶⁵ Further inquiries and interviews were conducted in late July with neighbours of the al-Daya family.

846. The al-Daya house was a four-storey building with seven apartments owned by Fayez Musbah al-Daya. Each apartment was occupied by one of his seven sons, some married and living with their own families, and two unmarried daughters.

847. The Israeli armed forces reached Zeytoun on 3 January. Witnesses interviewed by the Mission said that the Israeli armed forces dropped leaflets in the area instructing people not to support Hamas and to provide the Israeli armed forces with information, at a given number, on military activities in the neighbourhood, including details of weapon facilities.⁴⁶⁶

848. Witnesses mentioned that a rumour had circulated that the Israeli forces were going to bomb a house in the neighbourhood, which led several families to leave their homes.⁴⁶⁷ A few families chose to stay, including the remaining members of the al-Daya family and five other families.⁴⁶⁸

849. On the morning of 6 January, at around 5.35 a.m. a missile was reportedly fired in the vicinity of the al-Daya house, close to the Hassan al-Banna mosque, which killed an elderly man. Witnesses stated that the strike occurred shortly after the morning prayers had ended and when the man was on his way home. The same witnesses confirmed that the death of the man in

⁴⁶⁵ Muhammad Fayez al-Daya, Rida Fayez al-Daya, Aimer al-Daya and Hafez al-Daya.

⁴⁶⁶ Mission interviews with Muhammad Salam al-Ra'i, Deeb al-Ra'i, Faraj al-Ra'i and Rida al-Daya, July 2009.

⁴⁶⁷ Those who left included the eldest son of the al-Daya family, Nafez al-Daya, his wife and seven children.

⁴⁶⁸ The families of Zuher al-Ra'i (an estimated 16 people), Faraj al-Ra'i (an estimated 15 people), Jumaa al-Ra'i (an estimated 7 people), Mahmoud al-Hindi (an estimated 4 people) and Shawqi Sa'd.

question was caused not by a bullet but by a small missile. Approximately 10 minutes later, at around 5.45 a.m. the al-Daya family house was hit by a projectile from an F-16 aircraft.

850. Twenty-two members of the al-Daya family inside the house were killed.⁴⁶⁹

851. The Mission interviewed a number of neighbours. Each one of them said they had not received any warning call from the Israeli forces prior to the strike on the al-Daya house and confirmed that no other house in the street was struck after the al-Daya house had been hit.

852. Owing to the location of the house and the narrow street access it took several hours before neighbours were able to dig through the rubble. One brother, Radwan al-Daya, was pulled out of the debris alive and taken to the hospital with the help of a PRCS worker who lived near the al-Daya house. He died three days later having suffered severe asphyxiation. Several bodies were recovered only after the withdrawal of the Israeli armed forces.

2. The Israeli position

853. On 22 April 2009 the Israeli armed forces issued the following statement:

[...] The Al-Daia family residence in the Zeitoun neighbourhood in the city of Gaza (January 6th, 2009) – the incident in question was a result of an operational error with unfortunate consequences. The investigation concluded that the IDF intended to attack a weapons storage facility that was located in the building next to the Al-Daia family residence. It appears that following an error, the structure that was planned to be attacked was the Al-Daia residence rather than the building containing the weapons.⁴⁷⁰

854. In July 2009 the Israeli Government stated the following:

The IDF has concluded that this tragic event was the result of an operational error. An investigation determined that the IDF intended to strike a weapons' storage facility located in a building next to this residence. However, the IDF erroneously targeted the Al-Daia residence, rather than the weapons storehouse. Although the IDF did provide warning shots to the roof of the Al-Daia residence, other warnings (such as the warning phone call) were made to the building *actually* containing the weapons, not the Al-Daia residence.

The IDF is examining how the unfortunate operational error occurred, in order to reinforce safeguards and to prevent its recurrence. Israel deeply regrets the tragic outcome. This is the kind of mistake that can occur during intensive fighting in a crowded environment, against an enemy that uses civilian neighbourhoods as cover for its operations. IDF forces did not intentionally target civilians. This lack of unlawful intent

⁴⁶⁹ These included the wife of Muhammad al-Daya (one of the surviving family members), their three daughters and one son, all under seven, who were crushed under the rubble of the house. Most of them were asleep at the time of the attack. Others killed included Fayez al-Daya and his wife; Iyad al-Daya and his wife Rawda, their three daughters and three sons, all under 10; Ramez al-Daya, his wife Safa, and their six-month-old daughter and two-year-old son; two sisters, Raghdah and Sabrine, and Radwan al-Daya.

⁴⁷⁰ "Conclusions of investigations...", annex C.

has been a critical factor, in past incidents involving operational mistakes by other armies (such as NATO's erroneous bombing of the Chinese Embassy in the former Yugoslavia), in determining that no violation of the Law of Armed Conflict occurred. Similarly, although its attack on the Al-Daia residence was a tragic error, it did not constitute a violation of the laws of war.⁴⁷¹

3. Factual findings

855. Israel's position is that the al-Daya house was destroyed as a result of an "operational error" made at some point in the planning of the operation. It says the target that should have been hit was a neighbouring house storing weapons. The Mission has interviewed the residents of the neighbouring houses and visited the site. No neighbouring house was attacked at any time after the al-Daya house was destroyed. The Mission finds it difficult to understand how a target apparently important enough to be targeted for such definitive destruction in the first place, as a result of what it apparently contained, could then remain free from attack for the remaining 12 days of the land operation.

856. The Mission is unable to verify claims that a warning was given by means of firing a small missile to the roof as the house was destroyed and the residents killed. Local witnesses have reported that a small missile did appear to strike an elderly man in the neighbourhood about 10 minutes before the al-Daya house was destroyed but the Mission is not in a position to say whether this is likely to have been an errant warning shot.

857. The Israeli authorities have not indicated with any precision which house they called but the claim that a warning call was made to the house that allegedly contained weapons has been denied by all local residents. No such call was received by anyone in the houses neighbouring the al-Daya house.

858. In these circumstances there are significant doubts about the Israeli authorities' account of the incident and what has been offered to date does not in the view of the Mission constitute an explanation.

859. Besides the main difficulties mentioned above, there are a number of issues that could have been easily clarified but were not. The precise nature of the operational error remains unclear, as does the time it occurred and who was responsible for it. Similarly, it would appear that the warnings system failed at various points: the Government of Israel reports that a warning was given on the basis that it believed there was a house storing weapons. Given the power of the projectile that destroyed the four-storey al-Daya building, the Mission wonders what the consequences would have been if the projectile had in fact struck a weapons store, yet there is no suggestion by the Israeli authorities of a warning having been given to neighbouring houses that secondary explosions were possible. Not only does it appear that the wrong warnings were given to the wrong people, but if the existence of the storage facility is to be believed at all, it would also appear that the apparently feasible step of warning locals of entirely foreseeable danger was not taken either.

⁴⁷¹ "The operation in Gaza...", paras. 386-387.

860. The Mission finds the version of events offered so far by Israel to be unsatisfactory. The details given are not sufficient to clarify the nature of the very serious error that has been made, if it was an error. In so far as any explanation has been given, it appears to lack coherence and raises more questions than it answers.

4. Legal findings

861. In the absence of information necessary to determine the precise circumstances of the incident, the Mission can make no findings on possible violations of international humanitarian law or international criminal law. If indeed a mistake was made and the intention was to destroy a house nearby rather than to kill the al-Daya family, there could not be said to be a case of wilful killing as the requisite degree of criminal intent would not have been established on the part of the individuals responsible.⁴⁷²

862. However, the issue of State responsibility remains. The International Law Commission's articles on the responsibility of States for internationally wrongful acts⁴⁷³ are silent on whether such a mistake relieves a State of its international responsibility for the commission of an internationally wrongful act and the requirement of fault in international law is controversial. In a commentary on the articles, Crawford and Olleson consider that "if a State deliberately carries out some specific act, there is less room for it to argue that the harmful consequences were unintended and should be disregarded. Everything depends on the specific context and on the content and interpretation of the obligation said to have been breached".⁴⁷⁴

863. The obligation breached in this case is the duty to ensure the general protection of the civilian population against the dangers arising from military operations, as reflected in article 51 (1) of Additional Protocol I.

864. The firing of the projectile was a deliberate act in so far as it was planned, by Israel's admission, to strike the al-Daya house. The fact that target selection had gone wrong at the planning stage does not strip the act of its deliberate character. The consequences may have been unintended; the act was deliberate. Taken together with further facts (such as the failure to deliver an effective warning) and the nature of the "intransgressible obligation" to protect civilian life, the Mission considers that, even if a fault element is required, the available information demonstrates a substantial failure of due diligence on the part of Israel. As such, the Mission considers Israel to be liable for the consequences of this wrongful act.

865. The Mission finds that Israel's lack of due diligence in this case also constitutes a violation of the right to life as set out in article 6 of the International Covenant on Civil and Political Rights, to which Israel is a party. The right to life includes the negative obligation to respect life and the positive obligation to protect life. The Human Rights Committee has stated that States parties should take measures not only to prevent and punish deprivation by criminal

⁴⁷² See, for example, article 32 of the Rome Statute.

⁴⁷³ Annexed to General Assembly resolution 56/83.

⁴⁷⁴ J. Crawford and S. Olleson, "The nature and forms of international responsibility", in *International Law*, M. Evans, ed. (Oxford, Oxford University Press, 2003).

acts, but also to prevent arbitrary killing by their own security forces.⁴⁷⁵ No exception is made for acts during war.

866. The right to life also includes a procedural component that requires adequate investigation of any alleged violation “promptly, thoroughly and effectively through independent and impartial bodies” for “failure by a State party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant.”⁴⁷⁶ The investigation of the Israeli armed forces referred to above lacks transparency and credibility. The failure of Israel to comply with the procedural requirement adds to the frustration and anger felt by survivors, who have received no credible explanation for what occurred.

G. Attack on the Abd al-Dayem condolence tents

1. The facts gathered by the Mission

867. On 4 January 2009 the Israeli armed forces struck an ambulance in the Beit Lahia area with a flechette missile as it was attending a number of wounded persons who had been hit in an earlier attack. Those wounded in the first attack had also been hit by a flechette missile. As a result of the attack on the ambulance, one of the first-aid volunteers in the ambulance crew, Arafa Abd al-Dayem, suffered severe injuries. He died later the same afternoon.

868. The following day, as is the custom, the family set up condolence tents where family and friends would pay their respects and comfort the grieving relatives. The family home is in Izbat Beit Hanoun, a built-up area in the north-east corner of the Gaza strip. It is located between Jabaliyah and Beit Hanoun, about 3 kilometres from the border with Israel both to the north and to the east. Although the Israeli armed forces had entered Gaza at the time of the incident, in this area they remained on the Israeli side of the “Green Line” border. Two tents were set up – one for male visitors and one for female visitors. They were positioned at about ten metres from each other. The male tent was outside the house of Mohammed Deeb Abd al-Dayem, the father of the ambulance driver.

869. The tents were struck three times in two hours, again with flechette missiles.

870. The Mission spoke to several of the witnesses who had attended and survived the attacks on the condolence tents. The Mission noted the great pride Arafa Abd al-Dayem’s father had in his son and the deep sense of loss he clearly felt.

871. As regards the attacks on the condolence tents, witnesses stated that at around 7.30 a.m. on 5 January, the house of Mohammed Deeb Abd al-Dayem, was hit by a shell. The shell struck the fourth floor of the five-storey building causing the roof to collapse.⁴⁷⁷ Three men at the gathering, including the father of the deceased, were slightly wounded and taken to the Kamal

⁴⁷⁵ General comment No. 6 (1982), para. 3.

⁴⁷⁶ Human Rights Committee, general comment No. 31 (2004), para. 15. See also Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, para. 3 (b).

⁴⁷⁷ Testimony of IK/12 and IK/13 to the Mission on 30 June 2009.

Idwan hospital in Beit Lahia for treatment. They returned to the house at around 8.15 a.m. where a decision was taken by the mourners to end the condolence ceremony for fear of further attacks.

872. The witness stated that at around 8.30 a.m. when the people were leaving the house of Mohammed Deeb Abd al-Dayem and moving towards the women's condolence tent, two flechette missiles struck within a few metres of the tent and less than half a minute apart. Around 20 to 30 persons assembled there were injured. The injured include a 13-year-old boy who received a flechette injury to the right side of his head and a 33-year-old man who sustained injuries to the chest and head, his body punctuated with little holes according to a witness who saw his corpse being prepared for burial. A 22-year-old man was wounded in the abdomen, the chest and the head. A 16-year-old boy sustained injuries to the head and the neck. A 26-year-old man sustained injuries to his chest, head and left leg. These five persons died of their injuries. Another 17 persons present at the scene, including 14 men, two children (aged 17 and 11) and one woman were injured.

873. IK/12, who survived the attack, still has several flechettes embedded in his body, including in his chest, and is unable to move freely without pain.

874. Witnesses described that their sense of loss was aggravated by the fact that they could not access the injured or dead in hospitals as movement was restricted owing to continued shelling in and around the neighbourhood. Only two families out of the five families of the dead were able to conduct the burial according to their traditional customs and practices.

2. The Israeli position

875. The Israeli Government does not appear to have made any public comment on the allegations surrounding the Abd al-Dayem case, despite information about it being in the public domain for some time.⁴⁷⁸ It has, however, recalled that the Israeli High Court of Justice has rejected the argument that flechette munitions are by their nature indiscriminate and maintains that subject to the general requirements of the rules of armed conflict their use is legal.⁴⁷⁹

3. Factual findings

876. The Mission visited the area and the house of the Abd al-Dayem family. It spoke with the father of Arafa Abd al-Dayem, who had died as a result of the injuries received while working as a first-aid volunteer, and with several of the witnesses who had attended the condolence ceremonies.

877. The account of the incidents was consistent and plausible. The fact that it was mainly men who were killed near the women's tent is explained by the fact that the strikes occurred precisely when the men were making their way across the road.

⁴⁷⁸ The incident is mentioned in Amnesty International, *Fuelling Conflict: Foreign Arms Supplies to Usrael/Gaza* (February 2009).

⁴⁷⁹ See "The operation in Gaza...", paras. 431-435.

878. The Mission can see nothing at all that points to the house of Mohammed Deeb Abd al-Dayem, or the condolence tents constituting a military objective. The repeated nature of the strikes indicates that there was a deliberate attempt to kill members of the group or the entire group, but no information about the purpose of the strikes has been forthcoming from the Israeli authorities.

879. The Mission inspected the sites of the attacks and was left in no doubt that they had been entirely deliberate. There was a tent at each side of the wide road. The particular area is relatively open.

4. Legal findings

880. While international humanitarian law does not explicitly prohibit the use of flechettes in all circumstances, the principles of proportionality and precautions necessary in attack render their use illegal. Flechettes are 4-cm-long metal darts used as anti-personnel weapons that penetrate straight through human bone and can cause serious, often fatal, injuries.⁴⁸⁰ Discharged from tank shells and aircraft or UAV-launched missiles, they are fired in salvo and are therefore an area anti-personnel weapon. They are, therefore, by their nature lacking in discrimination.

881. The Mission notes that, during the condolence ceremony, flechette shells were fired in the vicinity of a large group of civilians, killing 5 and injuring more than 20. To consider the attacks indiscriminate would imply that there was a military objective underlying the attacks in the first place. The Mission has no information on which to base such a conclusion and notes the silence of the Israeli authorities on the incident.

882. The Mission therefore considers that the families participating in the condolence ceremony were civilians and taking no active part in hostilities. The attacks on the condolence tent on the morning of 4 January were entirely unjustified and unnecessary. The attacks seemed designed to kill and maim the victims directly and otherwise to terrify the people in the area rather than to pursue any genuine military objective.

883. The Mission finds that the attack on the Abd al-Dayem family condolence tents constitutes an intentional attack against the civilian population and civilian objects, wilful killing and the wilful infliction of suffering. In particular, the Mission believes that any party using a flechette missile in circumstances that are totally or predominantly civilian cannot fail to anticipate the severe and unnecessary suffering of the civilians affected.

884. Based on the facts ascertained, the Mission therefore finds there to have been violations of customary international law in respect of a deliberate attack on civilians. It considers the attack was not only an attack intended to kill but also to spread terror among the civilian population, given the nature of the weapon used. (See art. 51 (2) of Additional Protocol I.)

⁴⁸⁰ Amnesty International, *Israel/Gaza: Operation "Cast Lead": 22 days of death and destruction* (London, 2009) and B'Tselem, "Flechette shells: an illegal weapon", available at: <http://www.btselem.org/english/firearms/flechette.asp>.

885. The Mission also finds the attack to constitute a grave breach of the Fourth Geneva Convention with respect to article 147 regarding wilful killings and wilfully causing great suffering.

XII. THE USE OF CERTAIN WEAPONS

886. In the course of its inquiries, the Mission was made aware of the use of certain weapons by the Israeli armed forces. This chapter does not intend to present a comprehensive analysis of all the aspects raised on the kinds of weaponry used during the military operations. It is rather a summary of the Mission's views on a number of issues that arise from the foregoing chapters in relation to the obligation to take all feasible precautions in the choice of the means and methods of warfare. Many of the issues brought to the Mission's attention had already received scrutiny in the press or as a result of analysis carried out by a number of organizations.⁴⁸¹ Among these issues was the use of white phosphorous, the use of flechette missiles, the use of so-called dense inert metal explosive (DIME) munitions, and the use of depleted uranium.

A. White phosphorous

887. White phosphorous was used throughout the ground phase of the operations. The Israeli Government has set out its reasons for doing so, emphasizing that it is not only not a proscribed weapon under international law but that it was deployed with a high degree of success.⁴⁸²

888. It has explained that it used white phosphorous in two forms. One was as exploding munitions used as mortar shells by ground and naval forces. It says that in this form it was deployed only in unpopulated areas for marking and signalling purposes, and not in an anti-personnel capacity. It claims that, as a result of international concerns, it decided to stop using these munitions on 7 January 2009, although this was not required by international law. It also acknowledges the use of smoke projectiles containing felt wedges dipped in white phosphorous.

889. The Mission understands the means of deploying these smoke projectiles was that they were fired as a canister shell by 155-mm howitzers. The projectile was timed or programmed to air-burst over its designated target. The canister shell then discharged a quantity of felt wedges impregnated with white phosphorous, usually in the order of 160 wedges in a fan-like dispersion earthwards. These wedges with white phosphorous, which is a pyrophoric chemical (that is, self-igniting when in contact with the air), emit smoke and continue to do so until the chemical is exhausted or deprived of air. Wedges of white phosphorous therefore remain active and have done so in Gaza for up to 21 and 24 days after discharge. It is technically possible that there are

⁴⁸¹ See, for example, Physicians for Human Rights-Israel, Report of the Independent Fact Finding Mission into violations in the Gaza Strip during the period 27.12.08-18.01.09, http://www.phr.org.il/phr/files/articlefile_1241949935203.pdf, Human Rights Watch, Rain of Fire: Israel's Unlawful Use of White Phosphorous in Gaza (March 2009), Amnesty International, Fuelling conflict: Foreign arms supplies to Israel/Gaza (February 2009), Report of the Independent Fact Finding Committee on Gaza, "No safe place...", paras. 206-207; Summary of the Report of the United Nations Headquarters Board of Inquiry, paras. 46-56, documentation provided by UNRWA.

⁴⁸² "The operation in Gaza...", paras. 406-430. The Mission addressed written questions to the Government of Israel regarding the use of white phosphorous during the military operations in Gaza. No reply was received.

still active white phosphorous wedges in Gaza – in water tanks or in sewage systems, for example. Children have subsequently been injured by coming in contact with such wedges.

890. The Mission has recounted a number of incidents where it has particular concern about the choice to use white phosphorous. These incidents have been addressed in detail elsewhere and include the incidents at the UNRWA compound in Gaza City, the attacks on al-Quds and al-Wafa hospitals, also in Gaza City, and the use of white phosphorous in the attack on the Abu Halima family to the north of al-Atatra and in Khuz'a.

891. The Mission notes that, at least in the case of Abu Halima,⁴⁸³ it appears that the white phosphorous was deployed by means of an exploding shell and not as a smoke projectile. This occurred several days after the apparent decision to stop using the munitions on 7 January 2009.

892. The Mission has also spoken at some length to a number of local and international medical experts who treated patients in Gaza who suffered burns as a result of exposure to white phosphorous.

893. The Mission need not repeat much of what it has already concluded on the choice to use white phosphorous in specific circumstances. It has already made clear that the risks it posed to the civilian population and civilian objects in the area under attack were excessive in relation to the specific military advantages sought.

894. The Israeli Government has frequently pointed out the difficulties posed by fighting in built-up areas. One of the difficulties is the proximity of civilian premises to possible military targets. Commanders have no choice but to factor in the risk to such premises and the people inside them in deciding which weapons to use. The Mission finds that the Israeli armed forces were systematically reckless in determining to use white phosphorous in built-up areas and in particular in and around areas of particular importance to civilian health and safety.

895. In addition to the reckless use of white phosphorous, the Mission must emphasize that it is concerned not only with the inordinate risks the Israeli armed forces took in using it, but also the damage it caused in fact. In speaking with medical experts and practitioners, it was impressed by the severity and sometimes untreatable nature of the burns caused by the substance.

896. Several doctors told of how they believed they had dealt with a wound successfully only to find unexpected complications developing as a result of the phosphorous having caused deeper damage to tissue and organs than could be detected at the time. Several patients died, according to doctors, as a result of organ failure resulting from the burns.

897. A senior doctor at al-Shifa hospital in Gaza City confirmed that Sabah, Ghada and Farah Abu Halima were admitted with serious burns and transferred to Egypt for treatment. The doctor believed that the burns were caused by contact with white phosphorous.⁴⁸⁴

⁴⁸³ See chap. XI.

⁴⁸⁴ Mission interview on 12 June 2009.

898. The doctor commented that, before the military operations, the hospital was not familiar with white phosphorous burns. Staff became concerned when patients who had been sent home after treatment of apparently minor burns would come back in the following days with more serious wounds. They found that when they removed the bandages that had been applied to a wound that still contained fragments of white phosphorous, smoke would come from the wound, even hours after the injury. White phosphorous continues to burn as long as it is in contact with oxygen.

899. International doctors working with al-Shifa staff, some of whom had worked in Lebanon during the 2006 war, identified white phosphorous as the cause of these injuries and the treatment was adapted accordingly. Any apparent white phosphorous burn was immediately covered with a wet sponge and the particles extracted. White phosphorous sticks to tissue, so all flesh and sometimes the muscle around the burn would have to be excised.

900. In addition, the highly toxic substance, used so widely in civilian settings posed a real health threat to doctors dealing with patients. Medical staff reported to the Mission how even working in the areas where the phosphorous had been used made them feel sick, their lips would swell and they would become extremely thirsty and nauseous.

901. While accepting that white phosphorous is not at this stage proscribed under international law, the Mission considers that the repeated misuse of the substance by the Israeli armed forces during this operation calls into question the wisdom of allowing its continued use without some further degree of control. The Mission understands the need to use obscurants and illuminants for various reasons during military operations and especially in screening troops from observation or enemy fire. There are, however, other screening and illuminating means which are free from the toxicities, volatilities and hazards that are inherent in the chemical white phosphorous. The use of white phosphorous in any form in and around areas dedicated to the health and safety of civilians has been shown to carry very substantial risks. The Mission therefore believes that serious consideration should be given to banning the use of white phosphorous as an obscurant.

B. Flechettes⁴⁸⁵

902. Flechettes are small, dart-like pieces of composite metal and are usually fired in salvo from canister projectiles or shells. Those fired and retrieved in Gaza were 4 cm long and approximately 2–4 mm wide, having a pointed end and a fletched end.

903. Flechettes are used in an anti-personnel role and are discharged in such quantities that they cover an area forward of the canister shell. As an area weapon, on impact the darts will hit whatever is within a certain zone. They are incapable of discriminating between objectives after detonation. They are, therefore, particularly unsuitable for use in urban settings where there is reason to believe civilians may be present.

⁴⁸⁵ See “The operation in Gaza...”, paras. 431-434. The report simply states that the weapons are not proscribed and this was reiterated by the Israeli High Court of Justice in 2002. Although it does not address specific allegations, it does state in general terms that allegations are still being investigated (para. 435). The Mission addressed questions to the Government of Israel regarding the use of flechettes during the military operations in Gaza. No reply was received.

904. Flechettes were fired during the military operations on several occasions by tanks and on at least one occasion from an air-to-surface missile of the “Helfire” type.⁴⁸⁶ In all cases those hit by these devices were civilians and in one case were attending a condolence tent following the loss of a family member who was also killed by flechettes.

905. Flechettes are known to bend, break or “tumble” on impact with human flesh. Such performances are often part of the flechettes design characteristic and are marketed as such. “Tumbling” in particular is adjudged to be a further determination of the projectiles “incapacitation” effect.⁴⁸⁷ The Mission notes, however, that flechettes can be designed to be free of these post-impact characteristics if it is desired that they should do so.

C. Alleged use of munitions causing a specific type of injury

906. The Mission received reports from Palestinian and foreign doctors who operated in Gaza during the military operations of a strikingly high percentage of patients with severed legs as a result of the impact of projectiles launched by the Israeli armed forces. Dr. Mads Gilbert, a Norwegian anaesthetist, and Dr. Eric Fosse, a Norwegian surgeon, who carried out surgery in al-Shifa Hospital from 31 December 2008 to 10 January 2009,⁴⁸⁸ described to the Mission the characteristics of the wounds. The amputations mostly occurred at waist height in children, generally lower in adults, and were combined with skin-deep, third-degree burns, four to six fingers upward from the amputation. Where the amputation took place, the flesh was cauterized as a result of the heat. The patients with these amputations had no shrapnel wounds, but red flashes on the abdomen and chest. The excision of large pieces of flesh was not infrequent in these patients. Dr. Gilbert added that the patients also suffered internal burns. This description was confirmed to the Mission by Palestinian surgeons.

907. The Mission understands such injuries to be compatible with the impact of DIME weapons. DIME weapons consist of a carbon-fibre casing filled with a homogeneous mixture of an explosive material and small particles, basically a powder, of a heavy metal, for instance, a tungsten alloy. Upon detonation of the explosive, the casing disintegrates into extremely small, non-lethal fibres. The tungsten powder tears apart anything it hits. The impact of such weapons in general causes very severe wounds within a relatively limited diameter (compared to other projectiles) from the point of detonation. As the small heavy metal particles can slice through soft tissue and bone, survivors close to the lethal zone may have their limbs amputated and tungsten alloy particles embedded in their bodies. The probabilities of injuries to persons at a greater distance from the detonation point are reduced compared to more conventional projectiles. It is therefore also referred to as a “focused lethality munition”.⁴⁸⁹

⁴⁸⁶ See Abduldayem case in chapter XI.

⁴⁸⁷ William Kokinakis and Joseph Sperrazza, “Criteria for incapacitating soldiers with fragments and flechettes (U)”, Ballistic Research Laboratories Report Number 1269, Aberdeen Proving Ground, Maryland (January 1965).

⁴⁸⁸ Mads Gilbert and Eric Fosse, “Inside Gaza’s al-Shifa hospital”, *The Lancet*, vol. 373, No. 9659 (17 January 2009), p. 200.

⁴⁸⁹ The DIME munitions subject of discussion here are distinct from the missile described, for example, in the al Maqadmah mosque case. In that case the missile had been fitted with a micro-shrapnel fragmentation sleeve. The

908. The materials submitted to the Mission, including by the expert witness Lt. Col. Lane, point to specific medical concerns with regard to survivors of DIME weapon injuries.⁴⁹⁰ The tungsten alloy particles are suspected to be highly carcinogenic and so small that they cannot be extracted from the patient's body. Dr. Gilbert noted that there had been no follow-up studies on the survivors of this type of amputation observed in Gaza and Lebanon since 2006 following Israeli military operations. There is some research suggesting that these patients might be at increased risk of cancer. These concerns apply equally to missile or projectile shrapnel of heavy metal such as tungsten or tungsten alloy which was used in at least two occasions in Gaza. The carcinogenic hazards are the same no matter the delivery means or the size or shape of the pieces of the metal that enter human flesh.

D. Factual findings on the use of munitions causing a specific type of injury

909. From the facts it gathered, the Mission finds that the allegations that DIME weapons were used by the Israeli armed forces in Gaza during the military operations require further clarification with regard to their use and, particularly, the health-care needs of survivors of the amputations attributed to DIME weapons.

910. The Mission notes that DIME or heavy metal shrapnel weapons and weapons armed with heavy metal are not prohibited under international law as it currently stands. The "focused lethality" reportedly pursued in the development of DIME weapons could be seen as advancing compliance with the principle of distinction. The Mission also observes, however, that there remains a very high risk of harming civilians when using these weapons in built-up areas and that concerns have been expressed that DIME weapons could have a particularly adverse impact on the enjoyment of the right to health of survivors, which would go beyond the impact generally associated with being affected by anti-personnel weapons in an armed conflict.

E. Allegations regarding the use of depleted and non-depleted uranium munitions by the Israeli armed forces

911. The Mission received submissions and reviewed reports alleging the use of depleted uranium weapons by the Israeli armed forces during the military operations in Gaza.⁴⁹¹ While it cannot be excluded that such weapons were used, on the basis of the information received the Mission decided not to investigate the matter further.

912. The Mission also received a submission which alleged that the analysis of the air filter taken from an ambulance which was in operation in the Beit Lahia area during the military

micro-shrapnel consisted of tungsten or tungsten alloy cubes, which may have similar carcinogenic hazards as the powder or fibres in DIME.

⁴⁹⁰ Written submissions to the Mission by expert witness Lt. Col. Lane.

⁴⁹¹ Arab Commission for Human Rights, Action des citoyens pour le désarmement nucléaire and International Coalition Against War Criminals, Preliminary report, Mission for Gaza, April 2009 by Jean-François Fechino, pp. 55-60; Action des citoyens pour le désarmement nucléaire, On the use of radioactive weapons in the Gaza Strip during « Operation Cast Lead » (27 December 2008 - 18 January 2009), <http://www.acdn.net/>.

operations showed unusually high levels of non-depleted uranium and niobium in the air.⁴⁹² In view of the limited time available, the Mission could not further investigate this matter.

XIII. ATTACKS ON THE FOUNDATIONS OF CIVILIAN LIFE IN GAZA: DESTRUCTION OF INDUSTRIAL INFRASTRUCTURE, FOOD PRODUCTION, WATER INSTALLATIONS, SEWAGE TREATMENT PLANTS AND HOUSING

A. The destruction of el-Bader flour mill

913. The Mission visited the site of the air strikes and surveyed the surrounding area in Sudaniyah, west of Jabaliyah. It met and interviewed the Hamada brothers, joint owners of the el-Bader flour mill, on four occasions. It spoke with representatives of the business community about the context and consequences of the strike on the flour mill. Mr. Hamada also testified at the public hearings in Gaza.⁴⁹³ The Mission also addressed questions to the Government of Israel with regard to the military advantage pursued in attacking the el-Bader flour mill, but received no reply.

914. The Hamada brothers are well-established businessmen and hold *Businessman Cards*, issued by the Israeli authorities to facilitate business travel to and from Israel. The flour mill is one of several businesses owned by the brothers on this site, including a tomato-canning factory and a factory for the production of nappies. These last two businesses were closed down sometime before the beginning of the Israeli military operations in Gaza, as the blockade led to a lack of supplies. According to Mr. Rashad Hamada, the tomato-canning business failed primarily because of the Israeli authorities' refusal to allow tins for canning into Gaza. The owners had transferred many employees from the businesses that had closed down to the flour mill so that these employees would continue to draw a salary. At the time of its destruction, the flour mill employed more than 50 people.

915. The el-Bader flour mill began operations in 1999.⁴⁹⁴ By 27 December 2008, it was the only one of Gaza's three flour mills still operating. The others had ceased operations owing to a lack of supplies. The el-Bader mill was able to continue in part because of its greater storage capacity.

⁴⁹² Submission by Chris Busby & Dai Williams. *Battlefield Fallout: Evidence of Uranium and Niobium in Weapons Employed by the Israeli Military in Gaza. Analysis of Ambulance Air Filter and Bomb Crater.*

⁴⁹³ The Mission met Rashad Hamada and other members of the Palestinian business community on 3 June 2009 and interviewed him at the site of the el-Bader flour mill on 4 June 2009. Mr. Hamada testified at the public hearings in Gaza on 29 June 2009.

⁴⁹⁴ Rashad Hamada stated that the aim of the business, besides making a profit, was to help Gaza to be more self-sustaining economically and thus to reduce dependence on external supplies. He indicated that the increase in running costs caused by the blockade gave Israeli competitors a considerable advantage. The cost of electricity, for example, was approximately 50 per cent higher than it was for his competitors in Israel. In addition, since the Israeli Government had closed the Erez crossing and all imports and exports had to go through the Karni crossing, transport costs had increased 10-fold. The increased cost for the consumer had, as a result, also been significant. The retail price of milled flour had risen, in his estimation, by perhaps as much as 10 per cent.

916. On 30 December 2008, a recorded warning was left on the flour mill's answering machine to the effect that the message was from the Israeli armed forces and that the building should be evacuated immediately. The approximately 45 workers in the mill at the time were evacuated at around 9.30 a.m.

917. Following the evacuation, Mr. Hamada called a business associate in Israel, explained what had happened and asked him for advice. The business associate called him back, indicating that he had spoken with contacts in the Israeli armed forces on Mr. Hamada's behalf, and had been told that, although the mill had been on a list of proposed targets, they had decided not to proceed with the strike. Mr. Hamada did not receive any information as to why his mill might have been targeted.

918. As a result of these conversations and the fact that there had been no strike, the employees returned to work the next day. Work continued for a number of days until a second recorded warning was received on or around 4 January 2009. The flour mill was again evacuated and Mr. Hamada again contacted his business associate in Israel. The same scenario unfolded whereby Mr. Hamada received a call later on to the effect that the Israeli armed forces had informed his associate that the mill would not be hit. The employees returned to work in the light of the information and the fact that the warnings had not been put into effect.

919. On 9 January, at around 3 or 4 a.m., the flour mill was hit by an air strike, possibly by an F-16. The missile struck the floor that housed one of the machines indispensable to the mill's functioning, completely destroying it. The guard who was on duty at the time called Mr. Hamada to inform him that the building had been hit and was on fire. He was unhurt. In the next 60 to 90 minutes the mill was hit several times by missiles fired from an Apache helicopter. These missiles hit the upper floors of the factory, destroying key machinery. Adjoining buildings, including the grain store, were not hit. The strikes entirely disabled the factory and it has not been back in operation since. A large amount of grain remains at the site but cannot be processed.

920. The Israeli armed forces occupied the disabled building until around 13 January. Hundreds of shells were found on its roof after the soldiers left. They appeared to be 40-mm grenade machine-gun spent cartridges.

921. The Hamada brothers rejected any suggestion that the building was at any time used for any purpose by Palestinian armed groups. They pointed out that all of the buildings and factories were surrounded by a high wall and manned by at least one guard at night. In addition, the Israeli authorities knew them as businessmen and they would not have been given Businessman Cards had there been any reason for the Israeli Government to suspect that they were involved with or supported armed groups. They were both adamant that their interest was and always had been industrial and commercial, and that the last thing they were prepared to do was put their business at risk.

1. Factual findings

922. The Mission found the Hamada brothers to be credible and reliable witnesses. It has no reason to doubt the veracity of their testimony. The information they provided was corroborated

by other representatives of the Gaza business community with whom the Mission discussed the context and consequences of the strike on the flour mill.

923. The owners and employees of the flour mill were forced to evacuate the building twice because of the two recorded warnings left on the answerphone, which were not followed by air strikes. They were put into a state of fear as a result of the false alarms. When the mill was hit on 9 January, the strike happened without prior warning, raising questions about the efficacy or seriousness of the warnings system used by the Israeli armed forces.

924. The consequences of the strike on the flour mill were significant. Not only are all the employees out of work, the capacity of Gaza to produce milled flour, the most basic staple ingredient of the local diet, has been greatly diminished. As a result, the population of Gaza is now more dependent on the Israeli authorities' granting permission for flour and bread to enter the Gaza Strip.

925. Available information does not suggest that the Israeli authorities have investigated the destruction of the flour mill. The Mission finds the version of the Hamada brothers to be credible and in line with the Israeli practice of leaving telephone warnings of impending attacks.

2. Legal findings

926. In considering the degree to which there may have been violations of international humanitarian law, the Mission refers to article 52 of Additional Protocol 1, which is set out in full above at chapter VII. The Mission also considers the following provisions to be relevant to its deliberations:

Article 54 (1) and (2) of Additional Protocol I

1. Starvation of civilians as a method of warfare is prohibited.
2. It is prohibited to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and supplies and irrigation works, for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse party, whatever the motive, whether in order to starve out civilians, to cause them to move away, or for any other motive.

Article 147 of the Fourth Geneva Convention provides:

Grave breaches to which the preceding article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person, compelling a protected person to serve in the forces of a hostile Power, or wilfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

927. No other buildings in the industrial compound belonging to the Hamadas were damaged at the time of the strikes. It appears that the strikes on the flour mill were intentional and precise.

928. The Hamada brothers are well-known businessmen. The Israeli authorities did not appear to consider them either before or after the military operations to be a threat, given the unrestricted issuance of their Businessman Cards and their ability to travel to Israel afterwards. The issuance of a Businessman Card is no trifle, especially in the context of the ongoing restrictions on trade. It is not plausible that the Israeli authorities would issue such a document to any party it regarded with suspicion.

929. The only issue that remains to be examined is whether there was any reason for the flour mill to have been deemed a military objective on 9 January. The building was one of the tallest in the area and would have offered extensive views to the Israeli armed forces. The Mission notes that taking control of the building might be deemed a legitimate objective in the circumstances. However, by 9 January the Israeli armed forces were fully aware that the flour mill could be evacuated at short notice by using the warning message system. If the reason for attacking the mill was to gain control of it for observation and control purposes, it made no sense to bomb the principal machinery and to destroy the upper floors. There is also no suggestion that the Israeli armed forces considered the building to be a source of enemy fire.

930. The nature of the strikes on the mill and in particular the precise targeting of crucial machinery on one of the mid-level floors suggests that the intention was to disable its productive capacity. There appears to be no plausible justification for the extensive damage to the flour mill if the sole objective was to take control of the building. It thus appears that the only purpose was to put an end to the production of flour in the Gaza Strip.

931. From the facts it ascertained, the Mission finds that there has been a violation of the grave breaches provisions of the Fourth Geneva Convention. Unlawful and wanton destruction which is not justified by military necessity would amount to a war crime.

932. Having concluded that the strikes were without any military justification, and therefore wanton and unlawful, the Mission finds it useful to consider if there was any non-military purpose to the strikes.

933. The aim of the strike, if not military, could only have been to destroy the local capacity to produce flour. The question is whether such deliberate destruction of the sole remaining flour-producing capacity in the Gaza Strip can be described as having been done for the purpose of denying sustenance to the civilian population.

934. Article 54 (1) and (2) of Additional Protocol I reflect customary international law.⁴⁹⁵ Article 54 (2) prohibits acts whose specific purpose is the denial of sustenance for whatever reason, including starvation, forced displacement or anything else. In short, the motive for denying sustenance need not be to starve the civilian population. Indeed, the motive is irrelevant.

⁴⁹⁵ In this respect the Mission agrees with the views expressed by ICRC in *Customary Rules of International Law...*, pp. 189-193.

935. The civilian population is increasingly dependent on external humanitarian assistance, whose arrival depends on permission from the Israeli authorities. While it is not suggested that starvation is imminent, the health and welfare of the population at large have been profoundly affected by the blockade and the military operations. The only reason why starvation is not imminent however is precisely the provision of humanitarian assistance. Without such assistance Gaza's civilian population would not be able to feed itself.⁴⁹⁶

936. States cannot escape their obligations not to deny the means of sustenance simply by presuming the international community will fill the gap they have created by deliberately destroying the existing capacity.

937. From the facts ascertained by it, the Mission finds that the destruction of the mill was carried out for the purpose of denying sustenance to the civilian population, which is a violation of customary international law as reflected in article 54 (2) of Additional Protocol I and may constitute a war crime.

3. The right to food⁴⁹⁷

938. The right to adequate food therefore requires the right to food security (through either self-production or adequate income) and the "fundamental" right to be free from hunger.⁴⁹⁸ That Israel has not created a state of hunger is the result largely of the external aid provided to the population of Gaza. It has, however, severely affected the ability of Gazans both to produce food and to purchase it.

939. Article 1 of the International Covenant on Civil and Political Rights states that "in no case may a people be deprived of its own means of subsistence."

940. The right to adequate food is also reflected in the Convention on the Elimination of All Forms of Discrimination against Women, which requires State parties to guarantee to women "adequate nutrition during pregnancy and lactation."

941. The Mission finds that, as a result of its actions to destroy food and water supplies and infrastructure, Israel has violated article 1 of the International Covenant on Civil and Political Rights, article 11 of the International Covenant on Economic, Social and Cultural Rights and article 12 (2) of the Convention on the Elimination of All Forms of Discrimination against Women.

⁴⁹⁶ According to John Ging, 80 per cent of the Gazan population is dependent on UNRWA for food supplies. Interview with IRIN, 20 January 2009.

⁴⁹⁷ See chap. XVII.

⁴⁹⁸ See Randle C. DeFalco, "The right to food in Gaza: Israel's obligations under international law", *Rutgers Law Record*, vol. 35 (Spring 2009), available at: http://www.lawrecord.com/rutgers_law_record/2009/05/the-right-to-food-in-gaza-israels-obligations-under-international-law.html#sdfootnote24sym.

B. The destruction of the Sawafeary chicken farms

942. On or around the night of 3 January 2009 Israeli troops arrived at a number of houses on al-Sekka Road in Zeytoun. The Mission interviewed four people who were direct witnesses to and victims of the events that occurred in the aftermath of their arrival. One witness was interviewed three times for a total of five hours and testified at the public hearings in Gaza.⁴⁹⁹ Another three were interviewed for an hour each. The Mission also visited the site of the Sawafeary chicken farms. Finally, the Mission addressed questions to the Government of Israel with regard to the military advantage pursued in attacking Mr. Sawafeary's chicken farms, but received no reply. The following narrative reflects the eyewitness accounts.

943. Sameh Sawafeary is a chicken farmer. His family has been in the egg production business for many years. He indicated that he, his brothers and his children owned 11 chicken farms in Zeytoun as of December 2008. The farms housed more than 100,000 chickens.

944. On 3 January, Mr. Sawafeary, who was in his home on al-Sekka Road in the al-Samouni neighbourhood of Zeytoun with his family, was alerted by an al-Jazeera television news broadcast at around 8 p.m. that an Israeli ground invasion was imminent.⁵⁰⁰ As a result, he took a number of precautions, including hiding money and other valuables. He then gathered around 11 members of his family on the upper floor of the two-storey concrete house. At around 10 p.m. a missile struck the house, entering through the rear of the upper floor and exiting near the window of the living room opposite. The missile passed over several of Mr. Sawafeary's children and grandchildren, who were lying on the floor. No one was injured.

945. At around 11 p.m., Mr. Sawafeary heard the sound of helicopters flying over his house followed by soldiers landing on his roof. The soldiers remained there until 7 a.m. the next morning, firing what he described as "a rain of bullets". The family stayed, terrified, on the floor of an upstairs room.

946. At around 7.15 a.m. on 4 January, soldiers came into the upstairs room where the family was sheltering. They separated the men from the women and put the women in another room. The hands of the men and the boys were tied behind their backs, except for one of Mr. Sawafeary's sons who has only one arm. After some time the commander told Mr. Sawafeary that they should walk south and "go to Rafah". The soldiers then searched the house. The 11 members of the household there at the time left the house as instructed.

947. The Sawafeary family spent the following five days in terror. Together with neighbouring families they spent one night in the Abu Zur house and the following three in the nearby house of Mr. Rajab Mughrabi. During that time they suffered a number of violations at the hands of the Israeli armed forces, including the killing of the child Ibrahim Juha (see chap. XI).

948. For the purposes of this section the Mission refers to the information it received about the systematic destruction that occurred for several days and which the witnesses were able to see during the time they were forced by the circumstances to remain in the house of Mr. Mughrabi.

⁴⁹⁹ Interviewed by the Mission in Gaza on 3 June and 14 June and at the Gaza public hearing on 29 June.

⁵⁰⁰ The previous night, a garage next door had been destroyed by an air strike.

949. Mr. Sawafeary and Mr. Mughrabi informed the Mission that they had watched Israeli armoured bulldozers systematically destroy land, crops, chickens and farm infrastructure. Mr. Mughrabi stated that he watched the bulldozers plough through fields with crops and trees, destroying everything in their path. Mr. Sawafeary stated that he saw less, as he was watching through a small opening because he was afraid of being seen and shot. He stated that he saw only two or three “tanks”, but was not in a position to say whether there were more. He watched as the armoured bulldozers destroyed the chicken farms, crushing the wire mesh coops with the chickens inside. He could not see his own farms and the chickens he could see being destroyed were not his. He noted that the drivers of the tanks would spend hours flattening the chicken coops, sometimes stopping for coffee breaks, before resuming their work.

950. When he left Mr. Mughrabi’s house on 8 January, Mr. Sawafeary was able to see that his own farms did not appear to have been subjected to the destruction he had witnessed from inside the house. However, when he was able to return to his home after the Israeli withdrawal all 31,000 of his chickens had been killed and the coops systematically flattened.

951. The Mission visited the site and saw the still flattened mesh coops, which had been covered with corrugated iron, as well as the remains of water tanks and machinery. The Mission was also shown the remnants of a small mosque near the end of one of the lines of the coops that had been destroyed. The remains of some dead chickens were still visible and Mr. Sawafeary stated that it had been a mammoth task to clean up the area when he returned. He pointed out that, in addition to the loss of livestock, the farm had been completely automated with significant investment in machinery, all of which had been destroyed, as had the plant for packaging the eggs. In short, the business had been razed to the ground. A protective grille, believed to be part of a D-9 armoured bulldozer, was found at the site.

952. The Mission notes comments from one soldier to *Breaking the Silence* that appears to broadly corroborate the destruction in Zeytoun, probably at the hands of the Givati Brigade.⁵⁰¹

953. The Mission inspected the inside of Mr. Sawafeary’s house and noted damage to the upper floor, where a missile had penetrated. It also observed a number of graffiti that appeared to have been written by Israeli troops. One said “424 Givati”. There were others apparently written in Russian.

954. Mr. Sawafeary told the Mission that he and his family together supplied approximately 35 per cent of the egg market in Gaza. His own farms supplied over 10 per cent. He noted that it was not only his farms that had been destroyed but also most of his family’s farms had been destroyed in the same way as his. He estimated that close to 100,000 chickens were killed in the process.

955. The Mission has reviewed the relevant UNOSAT report and satellite imagery. One satellite image shows the Sawafeary chicken farms in June 2007 and another shows the area in

⁵⁰¹ *Soldiers’ Testimonies...*, testimony 37, p. 82.

January 2009. The images depict clearly the size of the farms and the surrounding area. The destruction is plainly visible in the second image.⁵⁰²

1. Factual findings

956. The systematic destruction along with the large numbers of killings of civilians suggest premeditation and a high level of planning. Even in the context of a campaign that had many serious violations of international humanitarian law, the events in Zeytoun at this time stand out.

957. The Mission finds that the destruction of the land and farms in the area was not justified by the pursuit of any military objective. The Israeli armed forces that arrived took control of the area within a matter of hours. They remained there until 18 January. The destruction of the land was not necessary to move the tanks or equipment or gain any particular visual advantage.

958. An inspection of the scene indicates that the area is relatively sparsely populated. The Mission rejects the idea that the Sawafeary farm was destroyed in the pursuit of any military objective.

959. The destruction of the farms appears to have been wanton and not militarily necessary. Not only were the coops with the chickens destroyed, but all of the plant and machinery of the farms as well.

960. From the facts ascertained by it, the Mission finds that the Sawafeary chicken farms, the 31,000 chickens and the plant and material necessary for the business were systematically and deliberately destroyed, and that this constituted a deliberate act of wanton destruction not justified by any military necessity.

2. Legal findings

961. The Mission makes the same findings regarding article 147 of the Fourth Geneva Convention and article 54 (2) of Additional Protocol I, article 1 of the International Covenant on Civil and Political Rights, article 11 of the International Covenant on Economic, Social and Cultural Rights and article 12 (2) of the Convention on the Elimination of All Forms of Discrimination against Women as it made above in relation to the el-Bader flour mill.

C. The destruction of water and sewage installation

1. The Gaza wastewater treatment plant, Road No. 10, al-Sheikh Ejlin, Gaza City

962. The Mission visited the site of al-Sheikh Ejlin treatment plant on 3 and 17 June 2009. While there it interviewed the Director of the Coastal Municipalities Water Utility (CMWU), Mr. Munther Shublaq, inspected the plant, the site of lagoon No. 3 and the location where a large pipe carrying raw sewage had been ruptured. On 3 June, the Mission also visited a nearby farm that had been inundated with raw sewage and spoke to the farmer. The Mission interviewed Mr.

⁵⁰² UNOSAT satellite image analysis, 27 April 2009, p. 29.

Munther Shublaq a second time at length on 14 June 2009. The Mission took photographs of the area, and obtained plans and diagrams of the plant. Finally, the Mission addressed questions to the Government of Israel with regard to the military advantage pursued in attacking al-Sheikh Ejlin treatment plant, but received no reply.

963. The Gaza wastewater treatment plant is located in the coastal area south-west of Gaza City in the al-Sheikh Ejlin neighbourhood. It was built in 1977 and expanded with support from development cooperation. It consists of a number of installations, including offices, tanks and lagoons to store raw sewage.

964. At some point between 3 and 10 January, a large missile hit the northernmost wall of lagoon No. 3, causing a massive outflow of raw sewage, which travelled a distance of 1.2 kilometres and damaged 5.5 hectares of land, including agricultural land, according to UNOSAT satellite imagery.

965. The chief of the plant, Mr. Jaoudat al-Dalou, explained to the Mission that when the Israeli ground offensive started around 3 January, all staff left for security reasons, as did the local residents of the sparsely populated area. Around 14 January, he received a phone call from someone in the vicinity of the plant reporting the strike on lagoon No. 3 and the flooding of neighbouring farmland by sewage. He contacted ICRC and PRCS to seek permission from the Israeli armed forces to go to the plant and carry out urgent repairs. Permission was denied on the grounds that the area was a “military zone”.

966. After the withdrawal of the Israeli armed forces, Mr. al-Dalou and his colleagues returned to al-Sheikh Ejlin to inspect the damage. They also saw what they believed to be unexploded bombs nearby and called the police to contact UNRWA to clear the area. Mr. al-Dalou found a crater five metres deep on the north-east side of lagoon No. 3. The damaged wall took over four days to repair at a cost of some US\$ 158,000. More than 200,000 cubic metres of raw sewage had flowed into neighbouring farmland.

967. In addition, a number of items, including an incubator, had been taken out of the plant and used by Israeli soldiers to make a barricade or protection wall. The damage done by the impact of bullets could still be seen on interior walls. Shattered windows had still not been replaced as glass was not available. Other damaged equipment included distillation equipment (damaged beyond repair) and a nitrogen ammonium machine.

968. In interviews with the Mission, Mr. Munther Shublaq, who issued a CMWU report of the damage in January 2009,⁵⁰³ confirmed that staff had left upon the arrival of Israeli ground forces and did not return until their withdrawal. He also indicated that on hearing news of the rupture of lagoon No. 3 he made several unsuccessful efforts to obtain permission to access the area to stop the damage caused by the outflow.

969. The Mission noted breaks in a large raw-sewage pipe which ran to the north of lagoon No. 3. Plant officials suggested that clearly visible markings on the pipe had been made by tanks.

⁵⁰³ CMWU, “Damage assessment report: water and waste water infrastructure and facilities”, January 2009, available at: http://www.cmwu.ps/upload/Damages_Assessment_for_W_WW_after_War2009.pdf.

The routes of such pipes are marked by 1.5-metre-high, red and white poles to ensure that care is taken not to damage the pipes. The damage is very close to one such pole.

970. The precise date of the strike on Lagoon No. 3 is uncertain because there were no witnesses in the area at the time. With satellite images it is, however, possible to establish that the strike must have occurred before 10 January 2009, as the images clearly show the massive outflow of sewage from the lagoon on that date.

971. It is also possible to ascertain from the satellite images that the strike on the lagoon wall's eastern side created a breach of about 22 metres, through which the sewage flowed. The same images show the route of the outflow and where it stopped. The United Nations Environment Programme carried out a ground survey of the site on 30 January 2009 and data from that survey were added to the UNOSAT image interpretation.

972. The plant occupies a position at the top of a hill and provides a view over a considerable area of open land, which is mainly farmland. As such, it might reasonably be considered to be of strategic interest.

Factual findings

973. The plant was effectively abandoned by staff when the ground invasion began. The strike on lagoon No. 3 must have occurred after the Israeli armed forces had taken control of the plant and the surrounding area as the employees interviewed confirmed that it was intact when they left the area. Although the damage to the raw-sewage pipe may have been caused by a tank stopping or passing over it, the Mission is not in a position to conclude that this was in fact what occurred.

974. Notwithstanding the possible military advantage offered to the Israeli armed forces by the plant's location, the Mission cannot find any justification for striking the lagoon with what must have been a very powerful missile, sufficient to cause a breach 5 metres deep and 22 metres wide. It is highly unlikely that Palestinian armed groups could have taken up positions in or around the lagoon after the initial occupation of the area by Israeli armed forces: any such groups would have been exposed in the open area. The fact that the lagoon wall was struck precisely there where it would cause outflow of the raw sewage suggests that the strike was deliberate and premeditated.

2. Namar wells group, Salah ad-Din Street, Jabaliyah refugee camp

975. The Mission visited the site of the Namar wells group on 17 June 2009.⁵⁰⁴ It interviewed engineer Ramadan Nai'm, CMWU water production and storage manager, and Ibrahim al-Ejjla, CMWU media coordinator. The Mission took photographs of the site. The Mission also addressed questions to the Government of Israel with regard to the military advantage pursued in attacking the Namar wells group, but received no reply.

⁵⁰⁴ The Namar wells group consists of two of installations situated in Jabaliyah. See "Damage assessment report...".

976. The wells group stood approximately 50 metres from the Jabaliyah refugee camp's administration building, which was also destroyed. A crater (approximately five metres wide) was still visible in the grounds belonging to the civil administration, with at its bottom the case of a rocket.⁵⁰⁵

977. This was a complex of two water well pumps, one in operation and another next to it as standby. Mr. Ramadan Nai'm told the Mission how proud CMWU had been of this water well, which produced more than 200 cubic metres per hour of the best-quality water in the area. The well supplied water to some 25,000 people in eastern and central Jabaliyah. The standby well pump was capable of pumping some 100 cubic metres of water. Both were completely destroyed on 27 December by an airstrike.

978. In the Namar water wells complex there were not only pumping machines but also a 180 kg generator, a fuel store, a reservoir chlorination unit, buildings and related equipment. These were also destroyed.

979. The operator, Mr. Abdullah Ismail al-Zein, was killed in the air strike while he was working at the station. He was employed by the Municipality rather than by CMWU and had been working in the station for four years. He was blown to pieces and his identity was established when his shoes were found three days later.

980. The strike also blew up the pipes connecting the wells to other water wells; incoming water spilled into the area for some 10 days before the pipes could be shut off.

981. Mr. Nai'm informed the Mission that he tried through the mediation of ICRC to get permission from the Israeli armed forces to repair the supply pipes, but permission was not granted and he was obliged to wait until the withdrawal of the Israeli armed forces.

982. It was calculated that repairs to this group of water wells would cost around US\$ 200,000, excluding the ancillary but necessary civil engineering works.

983. Mr. Nai'm stated that at least 10 bombs were used to destroy the complex. Not a single wall was left intact.

Factual findings

984. From the facts ascertained by it, the Mission finds that the Namar wells were destroyed by multiple air strikes on the first day of the Israeli aerial attack and that civil administration buildings located at approximately 50 metres were also destroyed.

985. The question remains as to whether the Israeli air strikes on the Namar wells group were deliberate or made in error. The Mission notes that the deployment systems and aircraft used in the strikes of 27 December (principally F-16 fighter jets and UAVs) are capable of a high degree of precision. It notes also that, by all accounts, a great deal of preparation had been put into determining and designating the targets of air strikes. The Mission considers it unlikely that a target the size of the Namar wells could have been hit by multiple strikes in error, given the

⁵⁰⁵ Photographs of the damage can be found in "Damage assessment report...".

nature of the deployment systems and the distance between the wells and any neighbouring buildings. The facts thus indicate that the strikes on the Namar wells group were intentional.

986. The Mission found no grounds to suggest that there was any military advantage to be gained from hitting the wells. There was no suggestion that Palestinian armed groups had used the wells for any purpose.

3. Legal findings

987. From the facts ascertained by it, the Mission makes similar findings to those set out regarding the violation of article 147 of the Fourth Geneva Conventions and article 54 (2) of Additional Protocol I in relation to the destruction of the el-Bader flour mill.

988. The right to food clearly includes the right to have adequate access to water. The Mission finds that this was denied to the people served by the Namar wells. It took some 75 days to repair them

989. The Mission also finds that the killing of Mr. Abdullah Ismail al-Zein was unlawful and constitutes a violation of the right to life. Since targeting the wells constituted an act of wanton destruction, the incidental loss of life cannot be justified with regard to any military advantage.

D. The destruction of housing

990. The Mission received information about the extensive destruction of houses and private property during the military operations.⁵⁰⁶ During its own visits to the Gaza Strip, the Mission witnessed the extent of the destruction caused by air strikes, mortar and artillery shelling, missile strikes, the operation of bulldozers and demolition charges. Some areas of the Gaza Strip were more heavily affected than others, but the Mission saw many piles of rubble where, prior to the military operations, there had been multi-storey houses.

991. In many, if not most, of the incidents investigated by the Mission, described in chapters X, XI, XIV and XV, the victims it interviewed not only suffered the loss of loved ones (or were used as human shields or detained), but also saw their homes severely damaged or completely destroyed. For present purposes, the Mission will recall a few of the incidents relating to the destruction of housing.

992. In some cases, the damage to or destruction of housing was arguably related to the conduct of military operations against Palestinian combatants. The houses of Majdi Abd Rabbo

⁵⁰⁶ Information received includes the following reports: Al Mezan, Statistical Report on Persons Killed and Property Destroyed by Israeli Occupation Forces during Operation Cast Lead, June 2009, Al-Dameer Gaza, IOF Targets Civilian Premises and Cultural Properties during its Offensive on the Gaza Strip, May 2009, Submission to the Mission by Habitat International Coalition's Housing and Land Rights Network entitled "Targeting Shelters and Shelter Seekers during Operation Cast Lead in the Context of Israeli Military Practice.", and Submission to the Mission by the Centre on Housing Rights and Evictions (COHRE), June 2009, pp. 3-4.

and of his neighbour, HS/08, for instance, were destroyed in combat against the three Palestinian fighters hiding in HS/08's house (see chap. XIV).⁵⁰⁷

993. In many others, such as the shelling of the houses of Mahmoud Abd Rabbo al-Ajrami (chap. XIV), of the Sawafeary family (see above and chap. XI) and of the Abu Halima family (chap. XI), the houses were in the general path of the advancing Israeli ground troops.

994. In a third group of cases, however, the facts ascertained by the Mission strongly suggest that housing was destroyed without their having any direct link to combat operations. On 6 January 2009 at 1.45 a.m., Mr. Abu Askar received a phone call from the Israeli armed forces informing him that his family should evacuate their house as it was going to be targeted by an air strike. This warning was put into practice a few minutes later, when the home of about 40 members of the extended Abu Askar family was destroyed by a missile (see chap. X).

995. In Juhf ad-Dik, after the killing of Majda and Rayya Hajaj (chap. XI), the Israeli armed forces directed machine-gun fire at the house of the al-Safadi family for the entire afternoon of 4 January 2009. The soldiers firing at the house had seen the Hajaj and al-Safadi families taking refuge there after their failed attempt to flee to Gaza City. When the Hajaj family managed to leave Juhf ad-Dik the following day, Israeli troops apparently took up position in Mr. Youssef Hajaj's house, which they rendered completely uninhabitable, as the Mission saw for itself during a visit. His brother Saleh Hajaj was even less fortunate. His house was reduced to a pile of rubble.

996. Other neighbourhoods were destroyed during the last few days of the military operations as the Israeli armed forces were preparing to withdraw. For example, in an incident described below, after an attempt to demolish a cement-packaging plant in east Gaza, soldiers also destroyed the surrounding houses of the owner and the employees. The factory owner, Mr. Abu Jubbah, had hidden in the house for two days with seven members of his family. Suddenly, a direct strike on the side of the house warned them that the house was to be destroyed and they should leave. Waving a white flag, Mr. Abu Jubbah left the house in a rush, put his family in a car and drove off. On their way they saw tanks and soldiers in the area. Their house was destroyed by shelling. It took several strikes to destroy it, while the factory facilities and the fence were demolished by bulldozers. Housing for 55 factory workers was also demolished with bulldozers.⁵⁰⁸

997. Two further cases investigated by the Mission also exemplify the deliberate demolition of residential housing. The house of Wa'el al-Samouni, in which 21 family members died, was damaged but still standing when PRCS and ICRC extracted the wounded survivors in the afternoon of 7 January 2009 (chap. XI). When the family and rescuers returned to the area on 18 January, the house was completely demolished. As the Mission could see for itself during its visit to the area as well as on photographs taken on that day, the manner in which the house had collapsed strongly indicated that this was the result of deliberate demolition and not of combat.

⁵⁰⁷ The Mission is only noting that there was a factual link between combat and the destruction of the houses, it is not making a finding as to whether the destruction of the two civilian houses was proportionate to the military objective to be achieved.

⁵⁰⁸ Mission interview with Mr. Atta Abu Jubbah, owner of the cement packaging factory.

Similarly, when Khalid Abd Rabbo returned to the home of his extended family in Izbat Abd Rabbo (which he had abandoned intact after the shooting of his daughters, see chap. XI) after the withdrawal of the Israeli armed forces, he found it completely demolished, as were the other houses in the vicinity. Khalid Abd Rabbo drew the Mission's attention to what appeared to be an anti-tank mine visible under the rubble of his neighbour's house, which had reportedly been used by the Israeli armed forces to cause the controlled explosion which brought down the building. As in the case of Wa'el al-Samouni's house, the way the buildings had collapsed strongly suggests that both Khaled Abd Rabbo's house and that of his neighbour were deliberately demolished by explosives experts, rather than damaged during combat. Khaled Abd Rabbo added that, to his knowledge, his house had been demolished by the Israeli armed forces shortly before they withdrew from Gaza.

1. Factual findings

998. From the facts gathered, the Mission concludes that, in a number of cases it investigated, the Israeli armed forces launched direct attacks against residential houses, destroying them. Although the Mission does not have complete information on the circumstances prevailing in Juhr ad-Dik, al-Samouni neighbourhood and Izbat Abd Rabbo when the houses of the Hajaj, al-Samouni and Khalid Abd Rabbo families were destroyed, the information in its possession strongly suggests that they were destroyed outside of any combat engagements with Palestinian armed groups. Nor were these houses otherwise making any effective contribution to military action. These attacks deprived the extended families living there of shelter and of a significant part of their property.

999. In other cases, residential neighbourhoods were subjected to air-launched bombing and to intensive shelling apparently in the context of the advance of Israeli ground forces. In these cases, although the facts gathered by the Mission do not suggest that the residential houses were directly targeted, it doubts whether there were military objectives pursued by the shelling.

2. Corroboration of Mission's factual findings and widespread nature of housing destruction

1000. Testimonies of Israeli soldiers deployed in Gaza during the military operations corroborate what the Mission saw for itself and heard from the witnesses it interviewed. Several of the soldiers interviewed by *Breaking the Silence* spoke of the unprecedented scale of destruction of houses and of "intentional, systematic destruction."⁵⁰⁹ The testimonies of the soldiers appear to distinguish between three phases in or types of destruction of residential housing. First, there is the destruction which is incidental to the actual combat between the advancing Israeli forces and the Palestinian combatants or to Israeli forces directing fire at locations from which rockets were launched.⁵¹⁰ Second, there is destruction of houses for what

⁵⁰⁹ *Soldiers' Testimonies...*, pp. 59, 66, 69 and 101. One soldier recalls: "There was a point where D-9s were razing areas. It was amazing. At first you go in and see lots of houses. A week later, after the razing, you see the horizon further away, almost to the sea. They simply took down all the houses around so the terrorists would have nowhere else to hide."

⁵¹⁰ In "The hidden dimension of Palestinian war casualties...", the Jerusalem Centre for Public Affairs argues that Palestinian houses were also demolished when Palestinian armed groups attacked houses in Gaza in which the Israeli armed forces had taken up positions. This argument is supported with reports of incidents gathered from websites of Palestinian armed groups, such as the following referring to the evening of 9 January 2009: "Three RPG

is termed “operational reasons”. This is the deliberate destruction of houses from which fire had been opened on Israeli soldiers or which were suspected of being booby-trapped, containing tunnels or being used for weapons storage.⁵¹¹ “Operational necessity” also embraced the destruction of houses which obstructed visibility for the Israeli armed forces or had a “strategic advantage” for them.⁵¹² “In case of any doubt, takedown houses. You don’t need confirmation for anything, if you want”, were the instructions of one commander to his troops.⁵¹³

1001. The third phase of destruction of housing was no longer tied to the “operational necessities” of the ongoing military operations. It was in view of “the day after” the Israeli armed forces withdrew from Gaza. In the words of one Israeli soldier:

... then we were told there are houses to be demolished for the sake of “the day after”. The day after is actually a thought that obviously we’re going in for a limited period of time which could be a week and it might also be a few months. But it’s not a longer span of time without defining what it is. And the rationale was that we want to come out with the area remaining sterile as far as we’re concerned. And the best way to do this is by razing. That way we have good firing capacity, good visibility for observation, we can see anything, we control a very large part of the area and very effectively. This was the meaning of demolition for the sake of the day after. In practical terms this meant taking a house that is not implicated in any way, that its single sin is the fact that it is situated on top of a hill in the Gaza Strip.⁵¹⁴

1002. Satellite imagery provided by UNOSAT at the Mission’s request is consistent with the soldiers’ testimonies. It shows, for instance, that 65 per cent of the destruction/damage of buildings in Rafah was caused by airstrikes between 11 and 18 January. By contrast, 54 per cent of the destruction/damage in Izbet Abd Rabbo (east Gaza) occurred between 6 and 10 January as the Israeli troops advanced into the city.⁵¹⁵

1003. The UNOSAT reports on the destruction of buildings in al-Samouni neighbourhood and al-Atatra, two areas that suffered particularly heavy destruction of civilian housing and other buildings, show that most were destroyed during the last three days of the Israeli armed forces’ presence on the ground in Gaza. In al-Samouni, out of 114 severely damaged or completely destroyed buildings, 60 were destroyed between 27 December 2008 and 10 January 2009 (i.e. the

rockets and machine guns are fired against a house where IDF soldiers took up positions in the Ezvet Abd Rabbo region in the eastern sector of Jabalya” (p. 12).

⁵¹¹ *Soldiers’ Testimonies...*, pp. 26, 35, 44, 56, 59, 61 (“Sometimes you know the house is empty. You know as far as you can know. Now if the house disrupts your defence line, you take it down with a tank or a bulldozer. We took an eight-storey house and the instruction was not to enter any doorway because it would be booby-trapped.”), and 66 (“we were to raze as much as possible of the area. Such razing is a euphemism for intentional, systematic destruction, enabling total visibility. Razing was meant to give us the advantage of full control over fire and field of view, to see exactly what was happening throughout the zone. So that no one could hide anything from us.”).

⁵¹² *Ibid.*, pp. 12, 61, 100 and 101.

⁵¹³ *Ibid.*, p. 56.

⁵¹⁴ *Ibid.*, p. 66. See also p. 69.

⁵¹⁵ UNOSAT satellite imagery, pp. 14 ff.

air phase and the advance of the ground invasion), only 4 between 10 and 16 January and 50 between 16 and 19 January 2009.⁵¹⁶ Similarly, in al-Atatra, out of 94 severely damaged or completely destroyed buildings, 36 were destroyed between 27 December 2008 and 10 January 2009, only 6 between 10 and 16 January, and 52 between 16 and 19 January 2009.⁵¹⁷

1004. These figures confirm that a first phase of extensive destruction of housing for the “operational necessity” of the advancing Israeli forces in these areas was followed by a period of relative idleness on the part of the Israeli bulldozers and explosives engineers. But during the last three days, aware of their imminent withdrawal, the Israeli armed forces engaged in another wave of systematic destruction of civilian buildings.⁵¹⁸

3. Legal findings

1005. From the facts ascertained by it, the Mission finds that the houses of the families of Saleh Hajaj, of Wa’el al-Samouni, of Khalid Abd Rabbo and of Muhammad Fouad Abu Askar were subjected to direct attacks in spite of their unmistakably civilian nature. They did not present any apparent threat to the Israeli armed forces. These attacks violated the principle of distinction in customary international humanitarian law as codified in article 52 of Additional Protocol I.

1006. Considering the facts it has gathered on the destruction of these houses from the soldiers’ testimonies and the UNOSAT report, the Mission finds that the conduct of the Israeli armed forces in these cases amounted to the grave breach of “extensive destruction... of property, not justified by military necessity and carried out unlawfully and wantonly” under article 147 of the Fourth Geneva Convention.

1007. Article 11 of the International Covenant on Economic, Social and Cultural Rights requires State parties to “recognize the right of everyone to an adequate standard of living for himself and his family, including adequate... housing”. From the facts ascertained by it, the Mission finds that the Israeli armed forces violated the right to adequate housing of the families concerned.

E. Analysis of the pattern of widespread destruction of economic and infrastructural targets

1008. The Mission interviewed Mr. Amr Hamad, the Deputy General-Secretary of the Palestinian Federation of Industries, on three separate occasions, including at the public hearings in Gaza. The Mission also met a number of businessmen involved in fishing, strawberry farming, construction, including concrete and cement production and packaging, food and drinks production, car mechanics and repairs, livestock farming and refrigeration. While much of the information provided to the Mission focused on the effect of the restrictions Israel had imposed

⁵¹⁶ UNOSAT report, p. 17.

⁵¹⁷ Ibid., pp. 20–21.

⁵¹⁸ The Mission finally notes that, in its formal submission, Housing and Land Rights Network – Habitat International Coalition provides a detailed historical account of the Israeli army practices of targeting civilian homes and generating displaced populations that suggests a pattern that is not unique to the military operation in Gaza of December 2008 – January 2009, but “consistent over time and across borders”.

on the Gaza Strip for a considerable time before 27 December 2008, significant information was also provided on the effect of the attacks during the Israeli military operations in Gaza.

1009. Mr. Amr Hamad indicated that 324 factories had been destroyed during the Israeli military operations at a cost of 40,000 jobs. In its detailed written report on the impact of the Israeli military activities, the Palestinian Federation of Industries points out that 200 businesses and factories were destroyed in Gaza City, 101 in northern Gaza and 20 in southern Gaza. Of the total 324 premises damaged, almost 30 per cent were linked to the metals and engineering sector, over 20 per cent to construction and 16 per cent to furniture businesses. Other sectors with significant losses were aluminium, food, sewing textiles, chemicals and cosmetics, plastics and rubber, paper and carton, and handicrafts. The Federation states that more than half were totally destroyed.

1010. The Federation emphasized that “the Gaza Strip’s most crucial industries, and ones which require the greatest investment, were most severely hit”.⁵¹⁹ Eleven of the 324 premises struck by the Israeli armed forces were linked to the food industry and the losses incurred amount to some US\$ 37 million, i.e. over one third of all the losses to the industrial sector. Similarly, while the construction sector suffered 69 of the 324 strikes, this represented just under 30 per cent of the total damage. The report notes that the majority of the losses resulting from the strikes on the 324 premises related to machinery costs (50 per cent), while just over a quarter relate to the buildings themselves.

1011. The Mission found the information provided by Mr. Hamad, as well as the report produced by the Palestinian Federation of Industries, to be credible and reliable. The Mission discussed and was satisfied by the methodology used in compiling the report, which was produced with the support of the Konrad Adenauer Foundation. The Mission also found that the testimony of businessmen whose premises had been struck or destroyed by the Israeli armed forces corroborate information provided by Mr. Hamad and the Palestinian Federation of Industries.

1. Construction industry

1012. One of the incidents Mr. Hamad referred to at the public hearing relates to the destruction of the only cement-packaging plant in Gaza. The Mission also interviewed its owner, Mr. Atta Abu Jubbah.⁵²⁰ According to the reconstruction of the events, the Israeli armed forces began striking the plant from the air, damaging it significantly. Later ground forces -- equipped with bulldozers and tanks -- moved in and used mines and explosives to destroy the silo that used to contain 4,000 tons of cement. Helicopters launched rockets to destroy the main manufacturing line and fired holes into the cement containers. Bulldozers were used to destroy the factory walls. Over four days the factory was systematically destroyed. The Mission spoke with a number of other witnesses able to verify this account and considers it to be reliable. Among those witnesses was a civil engineer who inspected the site and confirmed that certain aspects of the destruction

⁵¹⁹ Page 14 of the Report of the Palestinian Federation of Industries.

⁵²⁰ Mission interview with Mr. Atta Abu Jubbah, Gaza, 17 June 2009.

could have been achieved only by placing explosives inside the building. The silo had not been entirely destroyed in the aerial attacks, so explosives were attached to its supporting columns.

1013. The plant was an important part of Gaza's construction industry. It produced cement in bags, selling 200 tons per day with a profit of US\$ 15 per ton. The company is valued at some US\$ 12 million. As mentioned above, the owner's house was also destroyed by rocket fire.

1014. The owner is one of fewer than 100 businessmen who are in possession of the Businessman Card issued by Israel. The Mission notes that the plant was not destroyed during the aerial phase but was systematically reduced to rubble in a concerted effort over several days at the end of the military operations.

1015. The destruction of Mr. Atta Abu Jubbah's plant forms part of what appears to have been a very deliberate strategy of attacking the construction industry. The Palestinian Federation of Industries also provides detail on the systematic and total destruction of the Abu Eida factories for ready-mix concrete. They were established in 1993. Nineteen of the 27 concrete factories were reported to have been destroyed, representing 85 per cent of the productive capacity.

1016. The ability to produce and supply concrete in a context where external supplies are entirely controlled by Israel is a matter not only of economic importance but arguably one of human necessity to satisfy the basic need for shelter. Even if the population can get by in makeshift accommodation or by living in cramped conditions with their extended families, the capacity to repair the massive damage done to buildings without internally produced concrete is severely reduced. To the extent that concrete is allowed to enter at all, it is significantly more expensive than domestically produced concrete.

1017. There appears to have been no military reason or justification for destroying the factory. This conclusion is borne out by the long established trading history of the owners and their recognition through the Businessman Cards.

2. Destruction of the remaining food industry

1018. As already reported, more than a third of all egg factories were destroyed by the Israeli armed forces. Other testimonies, for example that of the Mayor of al-Atatra,⁵²¹ who referred to the destruction of his sister's chicken farms, indicated that a substantial part of the chicken farming industry appears to have been deliberately and systematically destroyed.

1019. The Mission also notes the destruction of the al-Wadiyah Group's factories. The al-Wadiyah Group employed some 170 people, had been in business since 1954 and produced a variety of food and drinks. Dr. al-Wadiyah presented a detailed account of its activities and losses to the Mission.⁵²²

⁵²¹ Mission interview with Muhammad Husein al-Atar, Mayor of al-Atatra, 3 June 2009.

⁵²² Mission interview with Dr. Yasser al-Wadia, 3 June 2009.

1020. The Mission found no reason to believe that the premises of the flour mill, chicken farms and food-processing plants that were destroyed had been used for purposes that would render them in any way military objectives.

1021. The Mission also reviewed satellite images showing significant destruction of greenhouses throughout Gaza.⁵²³ In total, it is estimated that over 30 hectares of greenhouses were demolished; 11.2 hectares were destroyed in Gaza City and 9.5 hectares in north Gaza. The Mission found that the large-scale and systematic destruction of greenhouses was not justified by any possible military objective.

3. Destruction of water installations

1022. Finally, in relation to the supply and treatment of water, the Mission analysed a limited number of cases. The strikes on the al-Sheikh Ejlin plant and on the Namar water wells have been described in some detail. The Mission also spoke at length with Mr. Munther Shublaq, who was responsible for the CMWU Damage Assessment Report. That report indicates that all types of water installations appeared to have been damaged to some extent during the Israeli operations, but notes especially that in some areas, particularly Beit Lahia, Jabaliyah, Beit Hanoun, part of Zeytoun, south of Rafah and the villages in the east, buildings, water and wastewater infrastructure and other facilities have been totally destroyed. “Those areas need a complete water and wastewater infrastructure which may require re-designing the networks based on the new population in the area”.⁵²⁴

1023. Mr. Munther Shublaq noted that, although a number of wells had been struck, the worst effects had been as a result of the damage to water-treatment plants and sewage pipes. The Mission heard a number of reports that indicated that the strikes on plants, pipes, wells and tanks had put considerable pressure on the sanitation and water-supply system.

1024. The Palestinian Authority claimed that 5,708 roof water storage tanks were destroyed, but it is not clear how many of these were on the roofs of the 4,036 houses that the Palestinian Authority stated were destroyed.

1025. The Mission found that the targeting of water-related installations was not justified by any possible military objective.

4. Conclusions

1026. The facts ascertained by the Mission indicate that there was a deliberate and systematic policy on the part of the Israeli armed forces to target industrial sites and water installations. In a number of testimonies given to *Breaking the Silence*, Israeli soldiers have described in detail the way in which what is at one point euphemistically referred to as “infrastructure work” was

⁵²³ UNOSAT report, pp. 23–27. See also chapter XVII.

⁵²⁴ “Damage assessment report...”, p. 8.

carried out. The deployment of bulldozers for systematic destruction is graphically recounted. Soldiers confirm in considerable detail information provided to the Mission by witnesses.⁵²⁵

1027. The Mission refers to chapter XVII, where it found that the systematic destruction of food production, water services and construction industries was related to the overall policy of disproportionate destruction of a significant part of Gaza's infrastructure.

5. General legal findings

1028. The Mission has made detailed findings in relation to each of the incidents set out above. However, given the nature of the systematic attacks on the food, water and infrastructure provision in Gaza during the military operations, the Mission also believes it is important to highlight the issue of State responsibility and the liability of Israel in relation to the internationally wrongful acts committed.

1029. While the element of fault is controversial in the law of State responsibility, the Mission has found that in all of the cases described above both the act and the consequence were intended.

1030. Israel had a number of duties in respect of its actions during the military operations. These included the general obligation reflected in article 52 of Additional Protocol I to ensure that civilian objects are not the objects of attack and to ensure the protection of objects indispensable to the survival of the civilian population. In addition, the customary norms of international law contained in article 54 (2) of Additional Protocol I require States not to destroy objects indispensable to the survival of the population.

1031. Israel displayed a premeditated determination to achieve the objective of destruction. It is, therefore, responsible for the internationally wrongful acts it perpetrated in breach of the duties specified above.

XIV. THE USE OF PALESTINIAN CIVILIANS AS HUMAN SHIELDS

1032. The Mission received allegations that in two areas in north Gaza Israeli troops used Palestinian men as human shields whilst conducting house searches. The Palestinian men were allegedly forced to enter houses at gunpoint in front of or, in one case, instead of soldiers. The Mission investigated four cases. One incident took place in the Izbet Abd Rabbo neighbourhood and another in al-Salam neighbourhood, both east of Jabaliyah, close to the border with Israel. Two incidents took place in al-Israa neighbourhood, west of Beit Lahia. The Mission visited

⁵²⁵ See *Soldiers' Testimonies...*, testimony 17 on "infrastructure work" and the razing of orchards, p. 44 and testimony 29, p. 66. Note also testimony 46 on the practice of D-9 armoured bulldozers effectively working around the clock, largely destroying orchards (p. 100). The Mission notes that an issue raised on several occasions was the idea of the "day after" – the circumstances that Israel would find after finishing the military operations in terms of addressing future attacks from Gaza. Even if this could be conceived of as a longer-term strategic military goal, it is not a legitimate one in these circumstances. It does not meet the appropriate test for military advantage in the pursuit of certain objectives. Nor does it meet the test of military necessity referred to in the grave breaches provisions. See also chapter XVI.

each of the locations and interviewed a number of witnesses. In each case, the Mission found the allegations to be credible.

A. The case of Majdi Abd Rabbo

1033. To investigate this case, the Mission visited Izbat Abd Rabbo. The Mission interviewed Mr. Majdi Abd Rabbo⁵²⁶ and several of his neighbours.⁵²⁷ It also obtained two sworn statements Majdi Abd Rabbo had given to two NGOs.

1034. Majdi Abd Rabbo, a man aged 39 at the time of the incident, is married and the father of five children aged between 16 years and 14 months. He is an intelligence officer of the Palestinian Authority. He lived with his family in a house on the main street of Izbat Abd Rabbo, al-Quds Street, which in this section is commonly known as Izbat Abd Rabbo Street. His family house stood next to Salah ad-Din mosque. The home of the family of Khalid and Kawthar Abd Rabbo (see chap. XI) is less than 500 metres east of the Majdi Abd Rabbo family home.

1035. Majdi Abd Rabbo recounted that, at around 9.30 a.m. on 5 January 2009, he heard loud banging on the outer door of the house. He asked who was at the door and someone responded in Arabic, ordering him to open the door. He opened the door and saw in front of him a handcuffed Palestinian man, whom he later found out to be HS/07, aged 20. A group of around 15 Israeli soldiers stood behind HS/07. One of the soldiers was holding a weapon to HS/07's head. The soldiers pushed HS/07 to one side and four soldiers pointed their weapons at Majdi Abd Rabbo. They ordered him to undress down to his underwear. He was then told to dress again and they pushed him into the house.

1036. The soldiers ordered him to call his children one by one. He started with his eldest son, aged 16, who was ordered by the soldiers to strip naked. The same process was followed with the two other sons, aged nine and eight. He then called his daughter, aged 14, who was told to press her clothes to her body and turn around. His wife, who was holding their baby daughter, was also told to press her clothes to her body, and then to take the baby's trousers off.

1037. Majdi Abd Rabbo stated that the soldiers then forced him to walk in front of them as they searched the house, room by room, holding a firearm to his head. They questioned him about the house behind his. He told them that the house was empty and the owner, HS/08, had been absent for four years working in the Sudan. There was a small gap between the two houses, but they were joined at the roof. The soldiers gave him a sledgehammer, the kind used to break stones, and told him to break a hole through the dividing wall into HS/08's house. This took around 15 minutes.

1038. From the roof, the soldiers entered HS/08's house, pushing Majdi Abd Rabbo ahead of them down the stairs while they watched over his shoulders. They had descended only a few steps, however, when the soldiers apparently detected some movement in the house, started

⁵²⁶ Mission interview with Majdi Abd Rabbo.

⁵²⁷ Mission interviews with Muhammad Muhammad Abd Rabbo, Muhammad 'Aish Muhammad Abd Rabbo, witness HS/11 and Iyad Abd Rabbo.

shouting, pulled Majdi Abd Rabbo back and rushed back into his house over the roof. Majdi Abd Rabbo heard some gun shots.

1039. The soldiers ran out into the street, forcing Majdi Abd Rabbo and HS/07 with them while they were shooting. Both were taken into the adjacent mosque, where there were a large number of soldiers with military equipment. They were forced to sit down and then handcuffed.

1040. The soldiers used the raised area of the mosque, from where the imam leads prayers, to fire at Majdi Abd Rabbo's house and the houses next to it. He shouted at the soldiers to stop, as his family was still in the house. A soldier told him to shut up or they would shoot him. The shooting continued for around 30 minutes. After a lull, the soldiers warned that there would be a huge explosion and, indeed, about three minutes later there was a huge explosion. The explosion was followed by intensive gunfire and artillery shells. Majdi Abd Rabbo could not identify the source of the explosion.⁵²⁸

1041. In the meantime, he had been forced to break a hole in the wall of the mosque on the south side and into the neighbouring house. He had then been interrogated about his knowledge of Hamas and the location of tunnels. Subsequently, he was taken and detained together with a group of neighbours, men and women, in another house in the neighbourhood (the HS/09 family home).

1042. When the shooting stopped, soldiers came to fetch him. He was taken to the road next to his house, to an empty area behind HS/08's house. He saw that HS/08's house and the entrance area of his house had been damaged. There were numerous soldiers standing next to the house, including some officers. He saw a senior officer talking to the soldiers who raided his house, and the officer then came to speak to him, through an Arabic-speaking soldier. The soldier said that they had killed the fighters inside the house and told him to go into the house and come back with their clothes and weapons. He protested, saying that he just wanted to find out if his family was safe. The officer told him to obey their orders if he wanted to see his family again. He refused to go, and was kicked and beaten by soldiers with their weapons until he gave in.

1043. He approached HS/08's house from the street. The entrance was destroyed and blocked by rubble. He went back to the officer and told him that he could not get in. The officer told him to go through the roof instead. He went into his own house, which he found empty, except for a soldier. This reinforced his anxiety about the fate of his family. At this point, there was no major damage to his house. He crossed the roof and went down the stairs into HS/08's house. He was scared that the fighters would shoot at him and shouted, "I am a Palestinian, a neighbour. I am being forced to come into this house." In a room at the bottom of the stairs he found three armed young men wearing military camouflage and headbands of al-Qassam Brigades. They pointed their weapons at him. He told them that the Israeli soldiers thought that they had been killed and had sent him to check. He said that he was helpless as the soldiers had taken his wife and

⁵²⁸ Other sources clarify that HS/08's house had been bombed by Israeli aircraft which had been called in by the soldiers in the mosque. Jerusalem Center for Public Affairs, "The hidden dimension of Palestinian war casualties in operation 'cast lead': Hamas fire on Palestinian areas", p. 20; *Soldiers' Testimonies...*, p. 7 ("The [combat] helicopters fired anti-tank missiles" according to testimony 1, which in this part appears to repeat an account heard from other soldiers).

children. The armed men told him that they had seen everything, and asked him to go back to the soldiers and tell them what he had seen.

1044. He went back outside, again crossing over the roof of his house. As he approached the soldiers, they pointed their weapons at him and ordered him to stop, strip naked and turn around. After he dressed again, he told them what he had seen. Initially, the soldiers did not believe him. They asked how he knew that they were Hamas militants and he explained about their headbands. The soldiers asked about their weapons. He replied that they were carrying Kalashnikovs. The officer told him that, if he was lying, he would be shot dead.

1045. He was handcuffed and taken back to the HS/09 family house for detention. At around 3 p.m., he heard gunfire for around 30 minutes. The soldiers came back for him and took him to the same officer. This time he noticed different soldiers present with different military equipment. Through the translator, the officer told him that they had killed the militants, and told him to go in and bring back their bodies. Again he refused, saying "this is not my job, I don't want to die." He lied to them, saying that the three militants had told him that if he came back, they would kill him. The officer told him that, as they had already killed the militants, he should not worry. He added that they had fired two missiles into the house, which must have killed the militants. When he still resisted, he was beaten and kicked again, until he went into HS/08's house via the roof again.

1046. He found the house very badly damaged. The bottom part of the stairs was missing. He again went in shouting, to alert the militants if they were still alive. He found them in the same room as before. Two were unharmed. The third was badly injured, covered in blood, with wounds to his shoulder and abdomen. They asked him what was going on outside and he told them that the area was fully occupied and the soldiers had taken numerous hostages, including his family.

1047. The wounded man gave him his name (HS/10) and asked him to tell his family what had happened. Majdi Abd Rabbo promised to do so if he survived and later did so. Another of the three told him to tell the Israeli officer that, if he was a real man, he would come to them himself.

1048. Majdi Abd Rabbo returned to the soldiers, who again forced him to strip naked before they approached him. He told the officer that two of the militants were unharmed. The officer swore at him and accused him of lying. Majdi Abd Rabbo then repeated the message from the militant, at which the officer and four other soldiers assaulted him with their weapons and insulted him.

1049. The officer asked Majdi Abd Rabbo for his identity card. He replied that it was in his house but gave him the ID card number. The officer checked the number via an electronic device. Three minutes later the officer asked him if it was true that he worked with the head of Palestinian Authority's intelligence services, which he confirmed. The officer asked him if he was with Abu Mazen and a Fatah affiliate. He said he was.

1050. The soldiers brought Majdi Abd Rabbo a megaphone and told him to use it to call the militants. He initially refused but did so under threat. As instructed, he told the militants to surrender, that ICRC was present and they could hand themselves over. There was no response.

1051. By then, night had fallen. Majdi Abd Rabbo was again handcuffed and taken back to the house of the HS/09 family. Thirty to forty minutes later, he heard shooting and a huge explosion. Soldiers came to tell him that they had bombed HS/08's house and ordered him to go in again and check on the fighters.

1052. The Israeli armed forces had floodlit the area. Majdi Abd Rabbo found both his and HS/08's house very badly damaged. He could not use the roof of his house to enter HS/08's house, as it had collapsed. He went back to the soldiers, who again made him strip, this time to his underwear. He asked where his family was and said that he could not reach the fighters because of the damage to the houses. He accused the soldiers of destroying his house. The officer said that they had only hit HS/08's house. Majdi Abd Rabbo was then handcuffed. Until this time, he had been given no food or water, and it was very cold. After a while, his handcuffs were removed, he was told to dress and taken back to the HS/09 family house, to the room where he found that other people were being held. All the men and boys in this room were handcuffed and their ankles were tied. A soldier came with some drinking glasses and smashed them at the entrance to the room where they were being held. After smashing the glasses, he left again. Majdi Abd Rabbo had developed a severe headache. Another detainee, who spoke Hebrew, called a soldier to say that Majdi Abd Rabbo was sick and needed medicine. The soldier told him to keep quiet or he would be shot. A woman tied a scarf around Majdi Abd Rabbo's head to ease the pain.

1053. At around 7 a.m., Majdi Abd Rabbo was taken back to the soldiers outside. He was questioned about the number of fighters in the house. He confirmed that he had seen only three.

1054. Two young Palestinian men from the neighbourhood were brought over. A soldier gave them a camera and told them to go into the house and take photos of the fighters. The two tried to refuse, and were beaten and kicked. The soldier showed them how to use the camera and they went into HS/08's house through the damaged main entrance. About 10 minutes later, they came back with photos of the three fighters. Two appeared to be dead, under rubble. The third was also trapped by rubble but appeared to be alive and was still holding his firearm. A soldier showed Majdi Abd Rabbo the photos and asked if these were the same people. He confirmed they were.

1055. A soldier took the megaphone and told the fighters that they had 15 minutes to surrender, that the neighbourhood was under the control of the Israeli armed forces and that, if they did not surrender, they would hit the house with an air strike.

1056. Fifteen minutes later, a soldier came with a dog, which had electronic gear attached to its body and what looked like a camera on its head. Another soldier had a small laptop. The dog handler sent the dog into the house. A few minutes later, shots were heard and the dog came running out. It had been shot and subsequently died.

1057. At around 10.30 a.m. on 6 January 2009, a bulldozer arrived and started to level the house. The bulldozer moved from east to west, demolishing everything in its way. Majdi Abd Rabbo watched it demolish his own house and HS/08's house. He and the two young men were told to go back to the HS/09 house. They heard shooting.

1058. At around 3 p.m., he was taken back close to the site of his and HS/08's house. He told the Mission that he saw the bodies of the three fighters lying on the ground in the rubble of the house.

1059. The soldiers then forced him to enter other houses on the street as they searched them. All the houses were empty. The soldiers forced him to go into the house alone initially and, when he came out, sent in a dog to search the house. During the house searches he managed to find some water to drink, the first drink he had had for two days. At midnight, the soldiers took him back to the HS/09 family house.

1060. On 7 January, all the men and boys were taken from the HS/09 family house and transferred to the house of a cousin of Majdi Abd Rabbo's in the same neighbourhood. There were more than 100 men and boys, including members of his extended family, aged between 15 and 70. The women were being held elsewhere. Majdi Abd Rabbo's immediate family members were not there, and he learnt that no one had seen them. He remained extremely anxious about their safety.

1061. At around 11 p.m., the men and boys in that house were told that they were going to be released, and that they should all walk west towards Jabaliyah, without turning left or right, on threat of being shot. They found Izbat Abd Rabbo Street severely damaged. Majdi Abd Rabbo went to his sister's house in Jabaliyah, where he was reunited with his wife and children on 9 January 2009. His wife then told him that they had stayed for some hours in the house, during the first shooting on 5 January, and had then fled with a white flag to a neighbour's house.

1062. Majdi Abd Rabbo told the Mission that he and his family were traumatized by what had happened to them and did not know what to do now, having lost their home and all their possessions. His children were all suffering psychologically and performing poorly at school. Five months later, in June 2009, Majdi Abd Rabbo was still having nightmares.

1063. The Mission notes that his account to it implies that there were at least three other Palestinian men compelled by the Israeli armed forces to search houses. A journalist's account indicates that the author "spoke with eight residents of Izbat Abd Rabbo neighbourhood, who testified that they were made to accompany IDF soldiers on missions involving breaking into and searching houses [...]. The eight estimated that about 20 local people were made to carry out "escort and protection" missions of various kinds, [...], between January 5 and January 12."⁵²⁹

B. The case of Abbas Ahmad Ibrahim Halawa

1064. The Mission interviewed Mr. Abbas Ahmad Ibrahim Halawa and his wife,⁵³⁰ and visited al-Israa, the neighbourhood west of Beit Lahia, where his house is located.

1065. When hostilities started on 27 December 2008, Abbas Ahmad Ibrahim Halawa, aged 59, asked his family to leave the home and stayed behind alone. On 9 January 2009, after a day of

⁵²⁹ Haaretz, "Gazans: IDF used us as 'human shields' during offensive", 28 March 2008, available at: <http://www.haaretz.com/hasen/spages/1065594.html>.

⁵³⁰ Mission interviews with Abbas Ahmad Ibrahim Halawa and his wife.

shelling, the ground forces invaded the north-west of his neighbourhood. At around 0.05 a.m. on 5 January 2009, the Israeli armed forces stormed into his house. He was hiding under the staircase and screamed when they reached him, putting his hands in the air. The soldiers had torch lights on their rifles and helmets, and their faces were painted black.

1066. At gunpoint, the soldiers ordered him to take off his clothes, which he did except for his underwear. They made him turn around and ordered him to dress again. By this time there were some 40 soldiers in the house. His hands were tied behind his back, his legs were tied and he was blindfolded. He was severely beaten. He was then taken to a neighbour's house. He told the soldiers that he had bad asthma, but they would not allow him to take his inhaler.

1067. In the neighbour's house, he was questioned by an Israeli officer about the whereabouts of Gilad Shalit and the location of Hamas tunnels and rocket launch sites. The soldiers threatened to blow up his house if he did not tell them. He insisted that he did not know the answers to their questions. He pleaded that he had worked in Israel for 30 years and had built hundreds of houses there. He speaks fluent Hebrew and communicated with the soldiers in Hebrew.

1068. After about 30 minutes, he was taken to a different location in the vicinity and made to sit down. After another 15 minutes, he was again made to walk to a different location. He was still blindfolded; the ties binding his legs had been loosened slightly, but walking was difficult. One of the soldiers was directing his footsteps while holding him at gunpoint.

1069. In a house that he subsequently recognized as that of a neighbour, one of the soldiers untied his legs and the blindfold. His hands remained tied. He saw a number of soldiers in the house and around 15 officers sitting in the living room. They had maps and radios in front of them. One of the officers (there were three stripes on the shoulder of his uniform) asked him to identify his house on the map, and then asked him about the location of tunnels and rocket launching sites. He answered that he did not know. He was blindfolded again but he could see a little through the blindfold.

1070. He was then taken out of the house and onto the road. As previously, he was held from behind, a weapon pressed against his back or the back of his head. Due to the damage to the roads caused by the tanks and other military equipment, walking was difficult. For about two hours he walked around as directed by the soldiers. They would stop and call: "Who is in the house?" They would then open fire, force Abbas Ahmad Ibrahim Halawa to go into the house while they were gathering behind him, and then leave the house again after the search. He was made to go into five houses in this way. They did not find anyone in any of the houses.

1071. Thereafter, they walked and stopped for about an hour without any shooting. Finally, he was ordered to sit down on the ground and covered with a blanket. He was held for two days at this location, which he identified to be near the American School in north Gaza, close to an Israeli armed forces' tank position. During the two days he was given neither food nor water.

1072. He was then transported, blindfolded, in what he believes was a tank, for about 90 minutes to another location which he believes was Netsalim (Nitzarim), where he was thrown on the ground. He was kept there for two days and nights in the open, during which time the soldiers refused to give him a blanket. During the two days he was again interrogated several times about

the location of Hamas tunnels and rockets, and about Gilad Shalit's whereabouts. He was beaten and threatened with death if he did not provide the information.

1073. At around 5 p.m. on the second day he was taken in a closed vehicle, which he believes was a truck, to a detention centre inside Israel, which he heard a soldier refer to as Telmund. He was fingerprinted and taken to see a doctor, whom he told that he was suffering from acute asthma and severe pain from a back injury caused by the beating.⁵³¹ The doctor did not give him medication. He was placed in a cell, where he was again refused a blanket.

1074. He was interrogated again at the detention centre, this time by civilians and then transferred to another location, where he was held together with some 50 Arabs. After two days, he was taken to the Erez border crossing and told to walk back into Gaza. Soldiers shot around his feet and over his head as he walked. He managed to reach his sister's house, where he collapsed and was taken to al-Shifa hospital.

1075. When he returned to his house, he found it vandalized. When the Mission spoke to him, he was still traumatized from the treatment he had undergone at the hands of the Israeli armed forces.

C. The case of Mahmoud Abd Rabbo al-Ajrami

1076. Mr. Mahmoud Abd Rabbo al-Ajrami was interviewed twice, at length, by the Mission. He also testified at the public hearing in Gaza on 30 June 2009.

1077. Mahmoud Abd Rabbo al-Ajrami is a former civil servant, whose last position was as Assistant Foreign Minister. He resigned from the Ministry when Hamas took over Gaza and has not worked since. He, his wife and 15-year-old daughter lived in a house in the same neighbourhood west of Beit Lahia as Abbas Ahmad Ibrahim Halawa. The area was shelled during the initial air strikes of the Israeli campaign. Mahmoud Abd Rabbo al-Ajrami's home was directly hit for the first time on 2 or 3 January 2009, according to him by tank shells and by missiles fired by Apache helicopters, which seriously damaged external and internal walls. Tanks came into the area on 3 or 4 January and initially were positioned around 500 metres north of his house.

1078. He stayed in the house with his wife and daughter. As he told the Mission, he had decided not to leave because of his father's experience of leaving his home in Israel and not being able to return. On an unspecified date during the first week of January, however, he decided that this was proving too difficult for his daughter. He called a taxi and his daughter moved to the house of an uncle in a safer area.

1079. On 9 January 2009, shelling of the area was particularly intensive. According to Mahmoud Abd Rabbo al-Ajrami, 10 tank shells hit his house. His wife received light injuries from shrapnel and broken glass. In the night of 9 to 10 January 2009, around midnight, soldiers made a violent entry into their home, where he and his wife were sheltering on the ground floor,

⁵³¹ The Mission was provided medical documentation supporting his statement that he suffered two fractured vertebrae as a result of the beating by Israeli soldiers. He now has to wear a corset to support his spine.

underneath the stairs. They threw a grenade into the entrance on the west side of the building and entered the house shooting.

1080. An officer ordered Mahmoud Abd Rabbo al-Ajrami to lift his robe (he was in nightclothes) and turn around. He then told Mahmoud Abd Rabbo al-Ajrami's wife to press her clothes close to her body and turn around. Mahmoud Abd Rabbo al-Ajrami and his wife were then taken to a neighbouring house where soldiers took his identity card and checked his identity on a laptop computer. An officer interrogated him about the location of Hamas tunnels, rockets, Palestinian fighters and Gilad Shalit. He responded that he could not provide that information because he did not know, that he was previously a member of the Fatah administration. The soldier responded: "You are Hamas; Hamas killed all Fatah and others in Gaza, so you must be Hamas." Mahmoud Abd Rabbo al-Ajrami insisted that he was a civilian. The officer told him again that he had five minutes in which to give him information or he would be shot. Five minutes later, he again responded that he did not know anything about the questions asked.

1081. He was handcuffed with his hands in front of him and blindfolded. Two or three soldiers took him by the shoulders and forced him to walk in front of them. His wife tried to go with him but they pushed her back into the room. It was by now around 2 a.m. The soldiers took him up to the second floor of the building and threw him down. He landed on rubble and fainted. When he came to, he had severe pain in his right side and had difficulty breathing. He found out later that he had broken four ribs and he had severe bruising down his right leg. Four soldiers forced him to stand. He was moaning with the pain but did not want them to hear. It was raining and still dark. The soldiers pushed him against a wall and walked away from him. He thought that they were going to shoot him. He was still blindfolded.

1082. In the early morning hours, the soldiers took him and another man (whom he subsequently found out to be his neighbour Abbas Ahmad Ibrahim Halawa) and forced them to walk in front of them. Mahmoud Abd Rabbo al-Ajrami was blindfolded and a gun was held to the back of his head. He thinks that there were around 25 soldiers behind him and the other Palestinian man. Having walked in this way for a while, both he and the other man were forced to enter several houses with the soldiers taking cover behind them. In Mahmoud Abd Rabbo al-Ajrami's recollection, on six or seven occasions the soldiers opened fire. They did not find anyone in any of the houses.

1083. After these house searches, the soldiers, Mahmoud Abd Rabbo al-Ajrami and Abbas Ahmad Ibrahim Halawa walked north towards a place called Dogit, a former settlement. He could hear the movement of tanks and see tank positions. Both men were forced to sit on the ground. Mahmoud Abd Rabbo al-Ajrami had his hands handcuffed in front; the other man had his hands handcuffed behind him. It was still raining, very cold, and Mahmoud Abd Rabbo al-Ajrami's ribs and leg were very stiff and painful. They were left there without food, water or blankets until morning. At around 10 a.m., soldiers took Abbas Ahmad Ibrahim Halawa for interrogation.

1084. During that and the following day, Mahmoud Abd Rabbo al-Ajrami was also interrogated, by a senior officer. On the second day, he was taken to the edge of the camp and told to walk back south into Gaza City. He was able to reach the outskirts of the city and was helped by a stranger to reach a family member's house, from where he was taken to al-Shifa hospital.

1085. On returning to his house, he found it ransacked and vandalized. He recounted that many items of value had been stolen, including jewellery and electronic equipment.

D. The case of AD/03

1086. The summary of AD/03's case is based on his interview by the Mission. His case is also discussed in chapter XV, which gives more details on his case.

1087. AD/03 is a resident of al-Salam neighbourhood, located east of Jabaliyah, close to the eastern border with Israel. On 8 January, at around noon, the Israeli armed forces made an announcement ordering all residents of the area to evacuate their homes and come out in the street. The men were separated from the women and children, the men being told to line up against a wall. They were told to lift their shirts and to strip to their underwear. They remained in that position, stripped and lined up against the wall for approximately 15 minutes. The women and children were told to go to Jabaliyah. Shortly afterwards, AD/03 and three others (his brother, a cousin and an unknown man) were made to lie on the ground, were blindfolded and their hands were tied behind their backs with plastic strips. They were detained overnight in a house, in a room together with three men who identified themselves as residents of Izbat Abd Rabbo. The next morning, on 9 January, their blindfolds were removed and the seven men were interrogated.

1088. On the second day of detention, the Israeli armed forces began to use a number of the detainees as human shields. At this point the detainees had been without food and without sleep for a day. There were constant death threats and insults. To carry out house searches, the Israelis took off AD/03's blindfold but he remained handcuffed. He was forced to walk in front of the soldiers and told that, if he saw someone in the house but failed to tell the Israeli soldiers, he would be killed. He was instructed to search each room in each house cupboard by cupboard. After one house was completed, he was taken to another house with a gun pressed against his head and told to carry out the same search there. He was punched, slapped and insulted throughout the process. AD/03 indicates that he was forced to do this twice while the group was held in this house for eight days. Others were also required to do it. On the first occasion he was forced to carry out searches in three houses and on the second occasion in four houses. AD/03 estimates that each time he was involved in searches for between one hour and one and a half hours. At no point did he come across any explosive devices or armed group members.

E. Denial of the allegations by the Israeli armed forces

1089. Reacting to reports of the use of civilian men as human shields in Izbat Abd Rabbo, the Israeli armed forces' Spokesperson's Unit told an Israeli journalist:

The IDF is a moral army and its soldiers operate according to the spirit and values of the IDF, and we suggest a thorough examination of the allegations of Palestinian elements with vested interests. The IDF troops were instructed unequivocally not to make use of the civilian population within the combat framework for any purpose whatsoever, certainly not as "human shields."

Following an examination with the commanders of the forces that were in the area in question, no evidence was found of the cases mentioned. Anyone who tries to accuse

the IDF of actions of this kind creates a mistaken and misleading impression of the IDF and its fighters, who operate according to moral criteria and international law.⁵³²

F. Factual findings

1090. The Mission found the foregoing witnesses to be credible and reliable. It has no reason to doubt the veracity of their accounts and found that the different stories serve to support the allegation that Palestinians were used as human shields.

1091. The Mission notes in particular that Mr. Majdi Abd Rabbo has told the story of his experience from 5 to 7 January 2009 to several NGOs, to several journalists and to the Mission without any material inconsistencies. There are some minor inconsistencies, which are not, in the opinion of the Mission, sufficiently weighty to cast doubt on the general reliability of Majdi Abd Rabbo. There are also, not surprisingly, some elements of the long account which appear in some versions and not in others. The Mission finds that these inconsistencies do not undermine the credibility of Majdi Abd Rabbo's account.

1092. The Mission further notes that one of the Israeli soldiers interviewed by the NGO Breaking the Silence recounts the case of Majdi Abd Rabbo. The soldier describes the case in great detail and mentions having personally met Majdi Abd Rabbo.⁵³³ Finally, the Mission notes that the submission it has received from the Jerusalem Center for Public Affairs, while not containing a summary of Majdi Abd Rabbo's role in the incident in which the three Palestinian fighters were killed, also refers to the incident.⁵³⁴

⁵³² "Gazans: IDF used us as 'human shields' during offensive".

⁵³³ The Mission notes, however, that the soldier does not appear to have been a direct witness to the incident, but rather heard it from others and subsequently met Majdi Abd Rabbo. *Soldiers' Testimonies...*, pp. 7-8:

"Testimony 1 [...] In one case, our men tried to get them to come out, then they opened fire, fired some anti-tank missiles at the house and at some point brought in a D-9, bulldozer, and combat helicopters. There were three armed men inside. The helicopters fired anti-tank missiles and again the neighbour was sent in. At first he told them that nothing had happened to them yet, they were still in there. Again helicopters were summoned and fired, I don't know at what stage of escalation (in the use of force). The neighbour was sent in once again. He said that two were dead and one was still alive, so a D-9 was brought in and started demolishing the house over him until the neighbour went in, the last armed man came out and was caught and passed on to the Shabak. [...] [Some civilians] were made to smash walls with 5-kilo sledgehammers. There was a wall around a yard where the force didn't want to use the gate, it needed an alternative opening for fear of booby-traps or any other device. So the "Johnnies" themselves were required to bang open another hole with a sledgehammer. Talking of such things, by the way, there was a story published by Amira Hass in Haaretz daily newspaper, about Jebalya where a guy tells exactly the same thing. It's the guy who was sent. I saw him afterwards, the guy who was made to go into that house three times. He also told us about being given sledgehammers to break walls."

The newspaper article referred to by this testimony is "Gazans: IDF used us as 'human shields' during offensive". The Mission notes that the soldier who gave testimony 1 states that one of the three Palestinian combatants was arrested, while Majdi Abd Rabbo's testimony is that he saw all three of them dead.

⁵³⁴ "The hidden dimension..." p. 20. This submission is a "war diary" pieced together "from detailed data that both Hamas and its Izz ad-Din Qassam Brigades have published." That this incident and the story of Majdi Abd Rabbo are the same is corroborated by comparing the three names of the killed Palestinian combatants mentioned in both accounts (one name is identical, the second very similar).

1093. In more general terms, the Mission notes that the statements of the men used as human shields by the Israeli armed forces during house searches are corroborated by statements made by Israeli soldiers to the NGO Breaking the Silence. The soldier providing testimony 1 speaks of the “Johnnie procedure”: “It was the first week of the war, fighting was intense, there were explosive charges to expose, tunnels in open spaces and armed men inside houses. [...] Close in on each house. The method used has a new name now – no longer 'neighbour procedure.' Now people are called 'Johnnie.' They're Palestinian civilians, and they're called Johnnies [...] To every house we close in on, we send the neighbour in, 'the Johnnie,' and if there are armed men inside, we start, like working the 'pressure cooker' in the West Bank.” This soldier then mentions that some commanders were “bothered” by the fact that “civilians were used to a greater extent than just sending them into houses.” A second soldier interviewed by Breaking the Silence, testimony 17, appears to have discussed the “Johnnie procedure” at length, but his testimony was censored or otherwise cut in that respect, so that we can only read: “They [civilians found in houses] were used as ‘Johnnies’ (at a different point in the interview the witness described the ‘Johnnie’ procedure, using Palestinian civilians as human shields during house searches), and then released, and we’re finding them in later searches.”⁵³⁵

1094. The Mission thus finds that while these testimonies do not confirm the details of the specific cases it investigated, they strongly support the general allegation that the Israeli armed forces engaged in the practice of compelling Palestinian civilians to accompany them on house searches.

1095. In conclusion, from the facts it gathered, the Mission finds that Messrs. Majdi Abd Rabbo, Abbas Ahmad Ibrahim Halawa, Mahmoud Abd Rabbo al-Ajrani and AD/03 were captured by the Israeli armed forces while they were in their homes, in some cases together with their families, and were then forced at gunpoint to search houses together with the Israeli armed forces. The Mission also finds on the basis of those facts that they were all subject to cruel, inhuman and degrading treatment during their captivity.

G. Legal findings

1096. Several provisions of international humanitarian law prohibit the practice of using civilian men captured by the armed forces to search houses in which the invading army suspects the risk of ambushes or booby traps.

1097. This practice constitutes the use of involuntary human shields and is a violation of article 28 of the Fourth Geneva Convention which reads: “The presence of a protected person may not be used to render certain points or areas immune from military operations.” Article 51, paragraph 7, of Additional Protocol I (set out in full in chapter VIII above) adds that “the presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military

⁵³⁵ *Soldiers’ Testimonies...*, pp. 7–8 and 46. A third soldier recounts discussing the use of Palestinian civilians with his unit commander. The unit commander denied knowing about this, but the soldier concludes: “This procedure of using civilians exists, he knows about this. 'Neighbour procedure' is an official army procedure; it's just not called that any longer. The brigade commander was on the ground the whole time. He even came to visit us one day. An official army procedure means army instructions.” *Ibid.*, p. 107.

objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempt to shield military objectives from attacks or to shield military operations.” The prohibition of the use of human shields also has customary law status (rule 97 of the ICRC rules of customary humanitarian law⁵³⁶), both in international and in non-international armed conflict. The Mission, therefore, finds that the Israeli armed forces have violated article 28 of the Fourth Geneva Convention and the prohibition under customary international law that the civilian population as such will not be the object of attacks, as reflected in article 51 (2) of Additional Protocol I.

1098. In 2002, the Israeli Supreme Court sitting as the High Court of Justice was seized of a case regarding the use of a very similar practice in the West Bank, at the time known as the “neighbour procedure”. The petitioners, seven Israeli and Palestinian human rights organizations, described cases in which “the IDF forced Palestinian residents to walk through and scan buildings suspected to be booby-trapped, and in which it ordered them to enter certain areas before the combat forces, in order to find wanted persons there; also described are cases in which the army used residents as a “human shield” which accompanied the combat forces, to serve as a shield against attack on those forces. [...] Further described were cases in which local residents were asked about the presence of wanted persons and weapons, under threat of bodily injury or death, should the questions go unanswered.”⁵³⁷ In other words, the petitioners described incidents analogous to those investigated by the Mission in Gaza.

1099. In their response to the petition, the Israeli armed forces and other respondents “clarified unequivocally that they recognize that the forces operating in the field are categorically forbidden from using Palestinian residents as a ‘live shield’ or as ‘hostages’, and that involving local residents in any activity exposing them to danger to life or limb is prohibited.”⁵³⁸ The Israeli armed forces also submitted to the High Court of Justice a directive regarding the use of the so-called “early warning” procedure. This procedure relied on the allegedly exclusively voluntary cooperation of Palestinian civilians to give wanted persons a warning to turn themselves in. The directive states that “it is strictly forbidden to use the local resident in military missions (e.g. locating explosive charges, intelligence gathering).” It also provides “it is strictly forbidden to use a local resident as a ‘live shield’ against attack. Thus, during the advance of the force, accompanied by the local resident, the latter is not to be positioned at the head of the force.”⁵³⁹

1100. As a result of these assurances given by the Israeli armed forces, the High Court of Justice did not rule on the so-called neighbour procedure, but on the “early warning” procedure. In its ruling, it found that the “early warning” procedure was also “at odds with international law” and

⁵³⁶ *Customary International Humanitarian Law...*, p. 337. The Israeli Government recognizes the customary nature of the principle enshrined in Additional Protocol I, article 51 (7) (“The operation in Gaza...”, para. 151).

⁵³⁷ Adalah Legal Centre for Arab Minority Rights in Israel et al. v. Commander of the Central Region et al., case No. 3799/02, Judgement of 23 June 2005.

⁵³⁸ Ibid., Opinion Justice D. Beinisch.

⁵³⁹ Ibid., para. 7.

ordered the armed forces to desist from any further use of the procedure.⁵⁴⁰ In reaching this outcome, Supreme Court President A. Barak left no doubt that he considered the “neighbour procedure” to violate article 28 of the Fourth Geneva Convention. He quotes approvingly from J. Pictet’s *Commentary* to the Fourth Geneva Convention, in which it is stated that “such practices [the use of human shields], the object of which is to divert enemy fire, have rightly been condemned as cruel and barbaric”.

1101. When reporting on its military operations in Gaza, the Israeli Government stated:

IDF’s rules of engagement strictly prohibit the use of civilians as human shields. Moreover, the Israel Supreme Court has ruled that use of civilians in any capacity for the purpose of military operations is unlawful, including the use of civilians to call terrorists hiding in buildings. Following this judgement, this latter practice has also been proscribed by IDF orders. The IDF is committed to enforcing this prohibition.

The IDF took a variety of measures to teach and instil awareness of these rules of engagement in commanders and soldiers.⁵⁴¹

The Israeli Government does not, however, in any way mention the very specific allegations of use of Palestinian civilians as human shields in January 2009 which have been in the public domain since they were published in an Israeli newspaper in March 2009⁵⁴² and in NGO reports from April 2009 onwards, and which have been brought to the attention of the Attorney-General of Israel in letters by Israeli NGOs.

1102. The Mission further finds from the facts available to it that the conduct of the Israeli armed forces in the cases above violates article 31 of the Fourth Geneva Convention. This provision dictates that “no physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.” The ICRC Commentary notes that “article 31 prohibits coercion for any purpose or reason and the obtaining of information is only given as an example. Thus, the custom, hitherto accepted in practice but disputed in theory, that an invasion army may force the inhabitants of an occupied territory to serve as ‘guides’ is now forbidden.”⁵⁴³

1103. The questioning of civilians under threat of death or injury by Israeli soldiers, who demanded information about Hamas and the location of Palestinian combatants and tunnels, also constitutes a violation of article 31. The Mission has no information on cases in which such a threat was actually followed by the killing of a captured civilian. However, Messrs. Majdi Abd Rabbo, Abbas Ahmad Ibrahim Halawa and Mahmoud Abd Rabbo al-Ajrmi, all claim that they were threatened with execution. Majdi Abd Rabbo also claimed that he was kicked and beaten by soldiers until he gave in to their request to enter the house of HS/08. Mahmoud Abd Rabbo

⁵⁴⁰ Ibid., para. 25.

⁵⁴¹ “The operation in Gaza...”, paras. 227-228.

⁵⁴² “Gazans: IDF used us as ‘human shields’ during offensive”.

⁵⁴³ p. 220.

al-Ajrami was thrown from the second floor of his house after refusing to provide information to Israeli soldiers, resulting in several broken ribs.

1104. The use of the “neighbour procedure”, now apparently renamed “Johnnie procedure”, constitutes a violation of fundamental human rights norms. It puts the right to life of the civilians concerned, protected in article 6 of ICCPR, at risk in an arbitrary and unlawful way. The anguish to which civilians who, blindfolded and handcuffed, are forced at gunpoint to enter houses which – this is the reason they are forced to enter the houses – might be booby-trapped or harbour combatants who might open fire on them, can only be described as cruel and inhuman treatment prohibited by article 7 of ICCPR. Furthermore, the witnesses were all deprived of liberty and the security of their person violated. This also constitute a violation of article 9 of ICCPR. The Mission must state that numerous civilians who came into contact with the Israeli armed forces during the military operation recounted shocking stories of humiliation that would certainly be in stark contravention of the principle of respect for human dignity, which forms the core of all human rights and fundamental freedoms.

1105. The Mission also finds that the intentional use as human shields of those whose accounts are presented above qualifies as inhuman treatment of and wilfully causing great suffering to protected persons under the Fourth Geneva Convention. As such, the Mission considers the conduct of the Israeli armed forces in relation to such persons to amount to grave breaches of the said Convention. The use of human shields is also a war crime under article 8 (2) (b) (xxiii) of the Rome Statute.

1106. Finally, the Mission finds that obliging Majdi Abd Rabbo to use a megaphone to call on the men trapped in the house behind his to surrender, on the grounds that ICRC was present and they could safely hand themselves over, qualifies as a violation of article 37 of Additional Protocol I of the Geneva Conventions, which prohibits perfidy. At the time, the Izbet Abd Rabbo area was a closed military zone into which no one, including ICRC, was permitted to enter. Perfidy is defined by article 37 as “acts inviting the confidence of an adversary to lead him to believe that he is entitled to, or is obliged to accord, protection under the rules of international law applicable in armed conflict, with intent to betray that confidence”. Acts amounting to perfidy resulting in death or serious personal injury are also a war crime under article 8 (2) (b) (vii) of the Rome Statute.

XV. DEPRIVATION OF LIBERTY: GAZANS DETAINED DURING THE ISRAELI MILITARY OPERATIONS OF 27 DECEMBER 2008 TO 18 JANUARY 2009

1107. According to information that the Mission received, hundreds of Gazans, including women and children, were detained by the Israeli armed forces during the military operations. Their exact number is not known. Some were held for hours or days in homes, other buildings or sandpits in the Gaza Strip; others were taken into detention in Israel, either immediately or after an initial period of detention in the Gaza Strip. A number of people were held in army bases (e.g. Sde Teiman⁵⁴⁴), others were held in prison, and some released detainees do not know where they

⁵⁴⁴ Correspondence with HaMoked, 22 July 2009. See also the testimony of AD/06 taken by Addameer, Prisoners Support and Human Rights Association.

were held. Some detainees have reported abuse during detention, including beatings, and being kept in unsanitary conditions, without any or with only inadequate food or toilet facilities. Some released persons have reported that they were used as human shields during their detention, for example, forced to walk in front of soldiers and enter buildings ahead of soldiers.⁵⁴⁵

1108. On 28 January 2009, seven Israeli human rights organizations appealed to the Israeli Military Judge Advocate General and to the Attorney General, concerning the “appalling conditions in which Palestinians arrested during the fighting in Gaza were held, and the humiliating and inhuman treatment to which they were subjected from the time of their arrest until their transfer to the custody of the Israel Prison Service.”⁵⁴⁶

1109. The number of detainees that were eventually taken to Israeli prisons has been estimated at around 100.⁵⁴⁷ Some of them have since been released. It often took the families and lawyers several weeks to find out that their loved ones or clients were being detained. Some lawyers have alleged that Israel deliberately did not disclose the number of detentions, even to ICRC.⁵⁴⁸ Human rights organization Adalah have filed a freedom of information request to the Government, but at the time of writing this report is yet to receive a response. Eventually many were released by the Israeli Prison Service but the Mission is not in a position to determine the exact number.

1110. A PCATI lawyer representing detainees, Mr. Bader, who spoke at the Mission’s public hearings in Geneva, interviewed a number of the detainees in Israeli prisons and relayed their testimonies. These include stories from prisoners who said they were used as human shields or held in sandpits.

1111. The Mission has interviewed a number of persons who were detained by the Israeli armed forces for substantial periods of time during the military operations in Gaza and thereafter. In the course of that detention they were in some cases held without trial or respect for basic due process guarantees, and were mentally and physically abused. The Mission has also heard directly from legal representatives of several people who were detained at this time, including some of those referred to above. Moreover, the Mission addressed questions to the Government of Israel with regard to the number of persons from Gaza detained by Israel during the military operations and the duration of their detention, including how many remain in custody. The Mission asked how many persons detained in Gaza were charged with being “unlawful combatants” and on what basis, how many were subjected to trial and what due process guarantees were afforded to them. No reply was received.

⁵⁴⁵ PCATI Affidavit submitted to the Mission. Addameer, Prisoners Support and Human Rights Association affidavit of AD/06.

⁵⁴⁶ The complaint was submitted by the Public Committee against Torture in Israel (PCATI), the Association for Civil Rights in Israel (ACRI), HaMoked – Centre for the Defence of the Individual, Physicians for Human Rights – Israel (PHR-Israel), B’Tselem, Adalah and Yesh Din. See http://www.btselem.org/english/press_releases/20090128.asp

⁵⁴⁷ Figures supplied to the Mission by PCHR, Adalah and PCATI.

⁵⁴⁸ Correspondence with Addameer, Prisoners Support and Human Rights Association, 25 June 2009.

A. Al-Atatra sandpits

1112. Al-Atatra is located 10 kilometres north of Gaza City, west of Beit Lahia and three to four kilometres south of the Green Line. The neighbourhood is largely agricultural with orange and lemon orchards. On the morning of 5 January, it suffered heavy aerial bombardment, which was followed by a ground incursion by Israeli troops. The Mission met six people, members of the same extended family⁵⁴⁹ and residents of al-Atatra, three of whom were direct witnesses and victims of the events that occurred in the aftermath of the ground incursion.⁵⁵⁰ Their testimonies are supported by those of three others, also residents of al-Atatra, submitted to the Mission by an NGO.⁵⁵¹

1113. On the morning of 5 January, shortly after the ground operations began, an estimated 40 Israeli soldiers broke into several homes, including that of AD/01, who described to the Mission how 65 persons, several of whom were holding white flags, were made to assemble in the street. The soldiers separated the men from the women. The men were made to line up against a wall and strip to their underwear. AD/01 indicated that any attempt to resist the soldiers was met with physical force, resulting in injuries.

1114. Approximately 20 minutes later, they were taken into a house owned by Mr. Khalil Misbah Attar, where they were detained for a day, the men still separated from the women. The house had been struck by a number of missiles that morning and was badly damaged. Witnesses indicated to the Mission that the house was at that time being used by the Israeli armed forces as a military base and sniper position.⁵⁵²

1115. At around 10 p.m., all of the men were handcuffed behind their backs with plastic restraints and blindfolded. The men, 11 women and at least seven children below the age of 14 were taken on foot to al-Kaklounk located south of the American School, one to two kilometres away. Many of the men remained in their underwear, exposed to the harsh winter weather.⁵⁵³ Al-Kaklounk is very close to Israeli military artillery and tank positions, and while the detainees were held here at least one tank was engaged in frequent firing.

1116. AD/01 told the Mission that, on arrival at al-Kaklounk, everyone was asked to clamber down into trenches, which had been dug to create a pit surrounded by a wall of sand, about three metres high. There were three such pits, each of which was surrounded by barbed wire. They were estimated to cover about 7,000 square metres (“six or seven *donums*”) each. AD/01 described how they were assembled in long single files, rather than massed together, and held in

⁵⁴⁹ For security reasons the witnesses from the family are referred to by coded reference here.

⁵⁵⁰ Testimony to the Mission by AD/01 (plus three others), 30 June 2009.

⁵⁵¹ Affidavit of RR, RS and RT, residents of al-Atatra, submitted to the Mission by Adv. Majd Bader.

Public Committee Against Torture in Israel who testified at the public hearings in Geneva.

⁵⁵² The use of Mr. Khalil Misbah Attar’s house as a detention place is corroborated in the testimony of Samir Ali Muhammad Attar collected in an affidavit by Advocate Mahar Talhamy on behalf of PCATI, available at: http://www.stoptorture.org.il/files/28109_eng.pdf.

⁵⁵³ According to the BBC weather services, temperatures in the Gaza Strip in December and January, on average, vary from maximum 17° to minimum 7° Celsius.

these pits, in the open air and exposed to cold temperatures for three days (till 8 January). Each pit accommodated approximately 20 people. They were forced to sit in stress positions, on their knees and leaning forward keeping their heads down. They were monitored by soldiers and were not allowed to communicate with each other. They had no access to food or water on the first day of their internment, and were given a sip of water and an olive each to eat on the second and third days of their detention (6 and 7 January). They had limited access to toilet facilities. The men had to wait for two to three hours after asking before they were allowed to leave the pits to relieve themselves and sometimes were able to remove their blindfolds for the purpose. A few of them were told to relieve themselves inside the pit, behind a small mound of sand. They stated that it was culturally too difficult for the women to seek permission to relieve themselves and they did not ask.

1117. AD/01 states that some tanks were inside the pit with at least one tank positioned at the eastern end.⁵⁵⁴ While the people were held there, the tank facing inland each day sporadically fired on the houses along the road opposite the site.

1118. AD/01B and AD/01C recounted that on 8 January, the women and children were released and told to go to Jabaliyah. The men were transferred to military barracks near the northern border, identified as the Izokim Barracks. At the Izokim barracks, the men were detained in pits similar to but smaller than those in al-Kaklouk. They continued to be exposed to the cold temperature, rain and the constant sound of tank movement overhead. The witnesses have described to the Mission the experience of continued and prolonged exposure to the sound of this tank movement as disorienting and creating feelings of futility, isolation, helplessness and abject terror.

1119. The men were held handcuffed and in their underwear in the Izokim barracks overnight. They were questioned intermittently, mostly on details and locations of Qassam rockets, the tunnels and the whereabouts of Hamas parliamentarians. According to statements made to the Mission, they were beaten during the interrogation and threatened with death and being run over by tanks. The Mission notes that the nature and types of questions asked remained the same throughout the interrogations in various detention facilities.

1120. On 9 January, the men were taken to a prison in Israel, indentified by one witness as the Negev prison, where they remained until 12 January. They were detained in one section of the prison, alternating between being held in isolation and in shared cells, and were subjected to harsh interrogation, often by two people dressed in civilian clothes. Interrogation focused on the identification of Hamas tunnels and arms as well as the whereabouts of Gilad Shalit.

1121. AD/01B and AD/01C recounted that they were shackled to a chair with plastic strips and interrogated several times, with AD/01B stating that he was made to strip naked during an interrogation. He was kept in solitary confinement where a soldier would come intermittently during the day, and slam the cell door open and shut, exposing him to extremely cold temperatures. AD/01C stated that during the first interrogation he was verbally threatened and in the subsequent two he was blindfolded and beaten. He was made to stand up and face the wall,

⁵⁵⁴ This is corroborated in the statement by RR to PCATI.

following which his face was smashed against the wall several times before he was severely beaten (kicked and punched) on his back and buttocks.

1122. Requests for clothing were denied. During the interrogation the detainees were informed that they were “illegal combatants” and that they had no protection under the Geneva Conventions. They had limited access to food, water and sanitation. Their morning meal was a bottle-cap-sized piece of bread with a drop of marmalade. The evening meal, if provided, consisted of rotting sardines and cheese on mouldy bread.

1123. AD/01C described the experience of being detained, stripped and shackled as one of abandonment, desperation, suffocation and isolation. He continues to experience discomfort where he was beaten and is unable to sit and sleep comfortably.

1124. AD/01C stated that while in Negev prison an additional group arrived. They were kept separately in the second section. The exact number of detainees in the second group is unknown, although AD/01C indicated to the Mission that the second group was smaller.

1125. On 12 January, nine people including the witnesses were blindfolded, handcuffed and transported to the Erez border. AD/01 described to the Mission how they were subjected to harsh interrogation at Erez and made to strip completely. Several hours later they were told to run into Gaza, to look straight ahead and not to look back.

1126. AD/01 states that all 65 detainees from the original group taken from al-Atatra to Israel were eventually released. Some members of his family were detained afterwards, but not in the original group of 65. At the time of writing, three of these remain incarcerated in various detention facilities of the Israel Prison Service. An unknown number remain in prison facing charges of being illegal combatants and members of al-Qassam Brigades. The first hearing was scheduled to be held in August in Israel (exact date not known).

B. Detention and abuse of AD/02

1127. AD/02 was interviewed by the Mission on 1 July 2009. He is a resident of Beit Lahia and a businessman. He was detained on 4 January 2009 for around 85 days. In that period he was held in Beersheba and Negev prisons, after being detained in locations identified as military posts. He was mentally and physically abused. He appeared before what appeared to be a criminal court, but the precise nature of the proceedings and their results were never made clear to him. He was released without explanation and returned to the Erez border and told to re-enter Gaza.

1128. By 3 January AD/02 and his extended family, numbering over 200, had gathered together in Beit Lahia as a result of the attacks that were taking place in the area. At around 4 a.m. on 4 January Israeli troops entered the area shooting. They ordered everyone out of the house and separated the men from the women and children. They selected 15 of the men, without asking for names. The women and children were ordered to go south. AD/02 recounted that the 15 men, including him, were separated from the other men and were blindfolded and handcuffed with

plastic strips.⁵⁵⁵ They were taken on foot to an open space half a kilometre away. An hour later, they were taken to a house where they were joined by an estimated 54 or 55 people, who apparently also wore blindfolds.

1129. AD/02 described how they were interrogated in a separate room, individually and at times in groups of two or three. He stated that some of the men, though not him, were beaten during the interrogation and were made to clamber down into trenches or pits, dug in the ground outside the house, big enough to accommodate one person. They were kept in the pits for several hours at a time, handcuffed and blindfolded, with no access to toilets.

1130. Later that night, 15 people – four women and at least 11 children – were brought to the house. They were detained overnight in the corridor outside the room where the men were detained. The next morning, on 4 January, the men, women and children were taken out of the house to an open space. The men remained blindfolded and handcuffed. AD/02 stated that the open space was a military post with many tanks and soldiers. They were all told to sit in the middle of the empty space. A fence of barbed wire was then erected around them. They sat within the barbed enclosure all day and all night in close proximity to the movement and sound of military tanks.

1131. AD/02 stated that 18 to 20 other men were held overnight in an open truck, exposed to the cold and rain. AD/02 knew this from talking to some of the men the following morning.⁵⁵⁶

1132. On 5 January, 18 to 20 men, not including AD/02, were taken from the military post to an unknown location.⁵⁵⁷ AD/02 and 35 others were taken to an area described by him as located north of Gaza City and in Israel. They remained handcuffed and blindfolded for an hour and a half. Then a roll-call was taken, their blindfolds removed and they were interrogated by a person who identified himself as an intelligence officer. Shortly afterwards, AD/02 and a few others (exact number not known) were interviewed by a group of people identifying themselves as part of a television crew. AD/02 does not know the name and/or details of the television channel. They were then led to an open space, where they stayed all evening exposed to the rain and cold. Later that night (5–6 January) they were blindfolded and shackled with chains and taken to a location which AD/02 subsequently learned was the Beersheba prison facility. A few hours later, at dawn, their blindfolds and handcuffs were removed.

1133. AD/02 recounted that he was in extreme pain as the handcuffs were very tight, adding to the pain caused by pre-existing injuries to his hands and wrist. Earlier in his life, he had suffered serious burns and the scarring on his hands and arms is evident. There is continued nerve damage to the skin tissue which causes significant pain in cold weather. His gloves were taken away by

⁵⁵⁵ Jerusalem Centre for Public Affairs submission, page 48; see also testimony 21 in *Soldiers' Testimonies...*, which supports AD/01's statement: "we go in, call out to the owner to open, gather all the males, shackled them, gather the family in one room and begin to search", p. 50.

⁵⁵⁶ AD/02's statement is corroborated in a letter sent by various NGOs (ACRI, PCATI, HaMoked, PHR, B'Tselem, Yesh Din and Adalah) to the Military Advocate General on 8 January 2009, available at: http://www.stoptorture.org.il/files/28109_eng.pdf.

⁵⁵⁷ AD/02 indicated that it was later learned that the men had been taken to Ashkelon prison before being brought to the Beersheba Prison, where they were grouped with the others, including AD/02.

soldiers during an interrogation, exposing his hands to the extreme cold. His requests for medical assistance were ignored several times before his arrival in Beersheba, where he was given access to a doctor. He was, however, given only a non-medicated lotion.

1134. AD/02 stated that he was detained in Beersheba for approximately a week. He was intermittently kept in isolation and then in a courtyard with several other detainees. In one instance, he was blindfolded, handcuffed and shackled, and interrogated for approximately two hours by three people. He was verbally abused and beaten during the interrogation, his hair was pulled and he was kicked with one of the interrogators attempting to push his boots through the loop of the handcuffs tied around his wrists.

1135. On or around 13 January, pursuant to an interrogation by a person dressed in civilian clothes, AD/02 was blindfolded and handcuffed and taken to the Negev prison. He remained there until the end of March. During this time he was transferred at least 10 times from one cell to another.

1136. On arrival his handcuffs were removed and he was taken to a ward, which consisted of small one-man cells with iron doors and no windows. The cells each contained an iron bench. Two hours later, he was blindfolded and taken to an interrogation room, where he was stripped and made to stand alone, naked, for almost an hour before his clothes were returned and he was handcuffed and shackled. He was taken by four people to another room, where he was beaten with the butt of a rifle while also being kicked and punched several times. The beating lasted for about 30 minutes. He was then left alone in the room for about 2 hours. He was then taken to a large communal space referred by the soldiers as the "tents." There were seven or eight such spaces or tents spread across the prison.

1137. AD/02 said that he was unable to stand owing to the severe injuries sustained during the beatings and had to be carried to the tents. He was taken to a doctor, given some medicines and allowed to take a shower. AD/02 stated that he stayed in the tent area for about a week before being transferred to a cell occupied by four people. The cell had an iron bed and a bunk bed. Two people including AD/02 slept on the floor. The cell was dark and filthy. There was no clean water and no toilet. During the entire week the men had to relieve themselves in the cell, which was never cleaned.

1138. AD/02 remained in the cell for about one week. At some time during this period he was taken, blindfolded, handcuffed and shackled, by bus to what appeared to be a court. On arrival, his handcuffs and blindfold were removed. He remained shackled when he was taken inside the courtroom. The courtroom had a standard layout with the judge seated behind a table in the centre of the room. The prosecution was on one side and the defence on the other. They were all dressed in civilian clothes. Once inside the courtroom, AD/02 was made to sign a consent form, accepting the lawyer reportedly appointed to defend him. Although the lawyer identified himself as belonging to a human rights organization, he gave no name. As the proceedings began, the judge addressed AD/02 and read out the charge against him. The judge announced that he was being charged with being an illegal combatant but did not explain specific charges. AD/02 was asked no questions. When the defence lawyer asked for the charge to be elaborated, the judge replied that the charges were part of a secret dossier and could not be elaborated upon or revealed. The proceeding lasted about 30 minutes and AD/02 was taken back to Negev.

1139. A week later, around or on 28 January, AD/02 was transferred to another section of the prison, where roll-calls and strip searches were carried out regularly. Some 8 to 10 days later, around 7 February, he and 14 others, were moved to a larger ward with prisoners from the West Bank. The ICRC was given access to them.

1140. On 8 February, AD/02 was transferred, twice, to another section of the prison and shortly afterwards to the cell where he had first been detained on arrival at Negev. On 9 February, at around noon, he and several others were transferred, for the ninth time, to another section of the prison occupied by a large number of prisoners, including those from the West Bank. AD/02 indicated that several of them were parliamentarians. He remained in this section for approximately 20 days. During this time he three times met a person who identified himself as a lawyer. He was informed of the charges against him, which included membership and involvement with the resistance.

1141. On 2 March, he was transferred with 10 others to yet another section of the prison. They were put in two rooms, five in each room. The rooms had graffiti on the wall that read *illegal combatants* in English and in Hebrew. They had limited access to toilets and were given uncooked food to eat.

1142. Around 29–30 March, AD/02 was finally released. He and his brother, a cousin and two other residents of Izbat Abd Rabbo were blindfolded and handcuffed and taken to the Erez border, where they were interrogated for approximately four hours. They were then told to cross the border and not look back. They were given no explanation about either their detention or their release.

C. AD/03

1143. AD/03 is a resident of al-Salam neighbourhood, east of Jabaliyah and close to the eastern border with Israel. His arrest and detention were preceded by aerial attacks and a ground invasion in his neighbourhood. His house was struck several times, over a period of five days, by projectiles fired from F-16 aircraft. The attacks continued throughout the night when most people were asleep.⁵⁵⁸ As a result of the continued attacks, he sought refuge in a relative's house nearby.

1144. AD/03 stated that, although the area could be considered as a frontline where armed groups had been present, the neighbourhood could not reasonably have been perceived as a military threat by the time the Israeli armed forces arrived on the ground. There was no resistance going on in the neighbourhood when it was targeted. If the intent of the attacks was to

⁵⁵⁸ On the afternoon of 3 January, AD/03's house was struck twice by projectiles, within two hours, causing significant damage. He and his family moved to a relative's house nearby, where they stayed overnight. On 4 January in the evening, when AD/03 had returned to his own home, it was struck for the third time and part of the roof collapsed. AD/03 sustained minor injuries; his mother and his wife sustained more serious injuries. Later that night, at around 9.40 p.m., the house was hit by a fourth rocket, which was followed by another attack 20 minutes later that completely destroyed the ground floor facade injuring AD/03's father's second wife. Another shell (the sixth attack) was fired shortly afterwards. AD/03 and his family relocated for the second time to his cousin's house, where they remained for four nights, until 7 January. On the morning of 8 January, aerial bombardment intensified to the extent that three explosions/shells were reportedly heard every minute.

destroy alleged command centres, positions or weapons caches of Hamas, he felt that those positions would have been destroyed in the first few attacks on the neighbourhood given the intensity of the shelling.

1145. On 8 January, at around 11.30 a.m., the house where AD/03 was seeking refuge was struck by a missile so he decided to return to his own house. He described how Israeli soldiers fired at them, including women and children carrying white flags, when they tried to leave his cousin's house. His father's wife sustained a bullet injury to her leg. Thirty minutes later, around noon, the Israeli armed forces ordered all residents to evacuate their homes and come out in the street. The men were separated from the women and children, and told to line up against a wall, lift their shirts and strip to their underwear. They remained stripped and lined up against the wall for approximately 15 minutes. The men, women and children were then told to walk down the street.

1146. AD/03 recounted that the street was blocked with large piles of heavy rubble and debris of bulldozed buildings, which provided a difficult obstacle for several people, including children and elderly people. They walked 200-250 metres before arriving at a house. Two hours later the women and children were told to go to Jabaliyah. Shortly afterwards, AD/03, his brother, cousin and an unknown man were taken to another room, where they were forced to lie on the ground. They were then blindfolded and their hands were tied behind their backs with plastic strips. They were interrogated individually for several hours. Later that evening, they were made to walk about 100 metres eastward to another house. They were detained overnight in a room, together with three others, who identified themselves as residents of Abd Rabbo. They had no access to food, water or toilets. The next morning, on 9 January, their blindfolds were removed and all seven were interrogated, individually, by one soldier.

1147. AD/03 stated that the house was being used as a military base and sniper position. On the second day of detention the Israeli soldiers began to use some detainees as human shields. By then the detainees had been without food and sleep for a day. They had been subjected to what AD/03 described as psychological torture. There were constant death threats and insults. To carry out house searches as human shields the Israeli soldiers took off AD/03's blindfold but he remained handcuffed. He was forced to walk in front of the soldiers and told that, if he saw someone in the house but failed to tell them, he would be killed. He was instructed to search each room in each house cupboard by cupboard. After one house was completed he was taken to another house with a gun pressed against his head and told to carry out the same procedure there. He was punched, slapped and insulted throughout the process.

1148. AD/03 indicated that he was forced to do this twice while the group was being held in this house for eight days. Others were also required to do the same thing. On the first occasion he was forced to carry out searches in three houses and on the second in four. AD/03 estimates that these searches took between one hour and one hour and a half. At no point did he come across any explosive devices or armed group members.

1149. AD/03 stated that, at the end of every search, the houses were vandalized by the Israeli soldiers, who broke doors, windows, kitchenware and furniture, for instance.⁵⁵⁹

1150. At the end of the day he was taken back to the house, where he and six others continued to be detained for 8 days, until 16 January. They had limited access to food and water and were often denied access to toilets. They were told that their ordeal would continue indefinitely. One soldier reportedly told them that the soldiers were “following instructions issued by the chain of command.”

1151. For the first time the detainees were asked for proof of identity. AD/03 said that their identification documents were thoroughly inspected. Had they revealed anything in relation to militant activities, he believed they would have been killed.

1152. On 16 January they were handcuffed, with plastic strips tied very tightly around their wrists, made to stand in a single file, blindfolded and told to hold on to the shirt of the person standing in front of them. They were made to walk towards a military tank positioned very close to the house where they had been detained and told to sit on top of each other inside the tank. The tank drove on a bumpy track and over big boulders causing them to frequently slam against the sides of the tank. About three hours later it stopped in an unknown location. On arrival, they were asked to clamber down into holes or pits about three to four metres deep. AD/03 stated that they were in a military post, as they heard the voices of several soldiers laughing and joking noisily. They remained blindfolded and handcuffed and exposed to the continued sound of tank movement overhead. They remained in the pit for about one hour and were then made to sit inside a tank that moved in circles.

1153. Shortly afterwards, their handcuffs were removed and they were shackled with chains inside a bus. They were accompanied by soldiers who spoke Hebrew. On arrival, they were searched and then interrogated for eight hours before being taken to the military barracks in Beersheba. Then they were made to line against the wall before being asked to strip naked. They were made to stand, blindfolded, naked and exposed to the cold winds, for about three or four hours.

1154. On 19 January, eight people, including AD/03, his brother and one other man from the group of seven who were taken to Beersheba on 16 January, were shackled inside the bus, made to bend forward and keep their heads down, between their knees, and were taken to Negev prison, a journey that lasted approximately four hours. During this journey they were continuously beaten, kicked and punched by four or five soldiers on board. According to AD/03, the detainees sustained serious injuries and were bleeding, two bleeding more profusely than the others. Two detainees reportedly even fainted. He stated that soldiers on board made constant reference to shackling practices in the Russian Federation, leading AD/03 to believe that the soldiers were from there.

⁵⁵⁹ The account of a soldier interviewed by Breaking the Silence and the account in the submission of the Jerusalem Centre for Public Affairs clarify that soldiers would vandalize houses after searches. Jerusalem Center for Public Affairs submission, p. 78. “The family was not in there, they had run away. He [one of the soldiers] took out notebooks and textbooks and ripped them. One guy smashes cupboards for kicks, out of boredom. [...]” *Soldiers’ Testimonies*..., testimony 35, p. 80.

1155. On arrival at Negev, they were severely beaten by the prison security for approximately one and a half hours before being put into cells and told that they were caught during battle and were illegal combatants. Later that night, 10 more people joined the group of detainees.

1156. AD/03 described how on the second day of their incarceration, 20 January, the detainees (at this point 18 in number) were told that they would be interrogated in accordance with their alleged political affiliations. Several of them pointed out that they had none. They were grouped apart. AD/03 said that they talked among themselves and he found out that nine of them were livestock farmers and three or four were merchants and traders.

1157. AD/03 described how the detainees were divided into two groups of nine each and put in a section of the prison referred to as the *mardaban*, which was divided into two wards containing 10 iron beds each and guarded by Israeli Arab soldiers. They remained incarcerated for eight days, until 27 January, with limited access to food, water, toilets and physical exercise.

1158. On 24 January, AD/03 was given access to a lawyer, affiliated with Addameer, Prisoners Support and Human Rights Association,⁵⁶⁰ for the first and only time. The Mission interviewed him⁵⁶¹ and he confirmed that he had visited AD/03 and his brother on 25 January 2009. The lawyer's evidence provided corroboration of the detention of AD/03 and his brother (who was also assisted by the lawyer), and the conditions under which he was subjected to criminal proceedings in Israel. The lawyer was informed by the Israeli authorities that AD/03 was detained under the illegal combatant law but he was not given the dossier to review. His brother was never formally charged.

1159. On 25 January, the detainees were told that they would be taken to Beersheba for their trial. On 26 January, all 18 detainees were shackled with iron chains to iron benches in a bus, handcuffed with iron handcuffs and taken to Beersheba. They were not blindfolded. The journey lasted five hours during which the bus drove on bumpy roads causing the detainees to slam against the sides of the bus. They were detained in Beersheba overnight in overcrowded cells together with people convicted of serious offences, according to AD/03. They were mostly Israeli Jews.

1160. The following morning, on 27 January, they were taken back to the Negev prison in shackles and handcuffs. They were given no information regarding the scheduled hearing. The outcome of the proceedings was not clear to AD/03 at the time, as he believed he had been "acquitted" only when they were returned to the Negev prison.

1161. The lawyer from Addameer was present in the court. According to him, the prosecutor made the decision not to proceed with the case rather than the detainees being acquitted. The lawyer confirms that they were held in Ktziot prison in the Negev Desert and released on 27 January.

⁵⁶⁰ The Mission has heard directly from AD/03's legal representative, who stated that he received a copy of his file, but not the secret file, from the Prosecutor's Office on 21 January 2009. AD/03 was arrested on suspicion of being an illegal combatant.

⁵⁶¹ The lawyer had been alerted to the cases by Al Mezan, a human rights organization in Gaza.

1162. AD/03 said they were then taken back to Beersheba and later to the Erez border, where they were released. They were told to run into Gaza and not look back.

1163. AD/03 indicated that two others, detained with him, were released a month later. Two others continue to be detained in the Ktziot prison and are reportedly awaiting trial. The status and whereabouts of 11 others are not known.

D. Factual findings

1164. The Mission found the witnesses credible and reliable taking into account their demeanour and the consistency of their statements. At least one of them was still suffering considerable anguish because of the treatment he had endured at the hands of the Israeli soldiers and other officials. The Mission notes that there are several common features to these incidents that disclose a pattern of behaviour on the part of the Israeli soldiers, indicating that the treatment meted out to the persons deposing before the Mission were not isolated incidents. The facts available to the Mission indicate that:

- All three locations were near the border with Israel;
- Before the arrival of ground troops, all three had been under aerial or ground attack. The soldiers on the ground were in complete control of the area at the time of their encounter with the civilians;
- There was no combat activity by the persons reporting, nor any likelihood of such activity being under way in the area or nearby at the time that the soldiers started the operation against civilians in the three locations. None of the civilians was armed or posed any apparent threat to the soldiers. In two of the incidents they were holding white flags as a sign of their non-combatant status;
- It is clear in two of the incidents that none of those detained had been asked for their names by the soldiers for several days. This establishes that there was no definite suspicion against them that they were combatants or otherwise engaged in hostile activities;
- In all cases a number of persons were herded together and detained in open spaces for several hours at a time and exposed to extreme weather conditions;
- The soldiers deliberately subjected civilians, including women and children, to cruel, inhuman and degrading treatment throughout their ordeal in order to terrorize, intimidate and humiliate them. The men were made to strip, sometimes naked, at different stages of their detention. All the men were handcuffed in a most painful manner and blindfolded, increasing their sense of fear and helplessness;
- Men, women and children were held close to artillery and tank positions, where constant shelling and firing was taking place, thus not only exposing them to danger, but increasing their fear and terror. This was deliberate, as is apparent from the fact that the sandpits to which they were taken were specially prepared and surrounded by barbed wire;

- During their detention in the Gaza Strip, whether in the open or in houses, the detainees were subjected to beatings and other physical abuse that amounts to torture. This continued systematically throughout their detention;
- Civilians were used as human shields by the Israeli armed forces on more than one occasion in one of the three incidents. Taking account of other incidents in which the Mission has found this to have happened, it would not be difficult to conclude that this was a practice repeatedly adopted by the Israeli armed forces during the military operation in Gaza;
- Many civilians were transferred across the border to Israel and detained in open spaces as well as in prisons;
- The methods of interrogation amounted not only to torture in some of the cases, but also to physical and moral coercion of civilians to obtain information;
- These persons were subjected to torture, maltreatment and foul conditions in the prisons. They were deprived of food and water for several hours at a time and any food they did receive was inadequate and inedible;
- While in detention in Israel they were denied due process.

E. Legal findings

1165. The Mission considers the following legal provisions relevant to its consideration of the matters presented above:⁵⁶²

Article 4 of the Fourth Geneva Convention

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a party to the conflict or occupying Power of which they are not nationals.

Nationals of a State which is not bound by the Convention are not protected by it. Nationals of a neutral State who find themselves in the territory of a belligerent State, and nationals of a co-belligerent State, shall not be regarded as protected persons while the State of which they are nationals has normal diplomatic representation in the State in whose hands they are.

The provisions of Part II are, however, wider in application, as defined in article 13.

Persons protected by the Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field of 12 August 1949, or by the Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea of 12 August 1949, or by the Geneva

⁵⁶² The Mission does not repeat here the provisions already cited elsewhere, such as article 57 of Additional Protocol I or common article 3.

Convention relative to the Treatment of Prisoners of War of 12 August 1949, shall not be considered as protected persons within the meaning of the present Convention.

Article 5 of the Fourth Geneva Convention

Where, in the territory of a party to the conflict, the latter is satisfied that an individual protected person is definitely suspected of or engaged in activities hostile to the security of the State, such individual person shall not be entitled to claim such rights and privileges under the present Convention as would, if exercised in the favour of such individual person, be prejudicial to the security of such State.

Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the occupying Power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case, such persons shall nevertheless be treated with humanity and, in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the State or occupying Power, as the case may be.

Article 27 of the Fourth Geneva Convention

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity.

Women shall be especially protected against any attack on their honour, in particular against rape, enforced prostitution, or any form of indecent assault.

Without prejudice to the provisions relating to their state of health, age and sex, all protected persons shall be treated with the same consideration by the party to the conflict in whose power they are, without any adverse distinction based, in particular, on race, religion or political opinion.

However, the parties to the conflict may take such measures of control and security in regard to protected persons as may be necessary as a result of the war.

Article 76 of the Fourth Geneva Convention

Protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein. They shall, if possible, be separated from other detainees and shall enjoy conditions of food and hygiene which will be sufficient to keep them in good health, and which will be at least equal to those obtaining in prisons in the occupied country.

They shall receive the medical attention required by their state of health. They shall also have the right to receive any spiritual assistance which they may require.

Women shall be confined in separate quarters and shall be under the direct supervision of women.

Proper regard shall be paid to the special treatment due to minors.

Protected persons who are detained shall have the right to be visited by delegates of the protecting Power and of the International Committee of the Red Cross, in accordance with the provisions of article 143.

Such persons shall have the right to receive at least one relief parcel monthly.

1166. Relevant parts of article 75 of Additional Protocol I, which reflect customary international law, provide:

1. In so far as they are affected by a situation referred to in article 1 of this Protocol, persons who are in the power of a party to the conflict and who do not benefit from more favourable treatment under the Conventions or under this Protocol shall be treated humanely in all circumstances and shall enjoy, as a minimum, the protection provided by this article without any adverse distinction based upon race, colour, sex, language, religion or belief, political or other opinion, national or social origin, wealth, birth or other status, or on any other similar criteria. Each Party shall respect the person, honour, convictions and religious practices of all such persons.

2. The following acts are and shall remain prohibited at any time and in any place whatsoever, whether committed by civilian or by military agents:

(a) Violence to the life, health, or physical or mental well-being of persons, in particular:

[...]

(ii) torture of all kinds, whether physical or mental;

(iii) corporal punishment; and

[...]

(b) Outrages upon personal dignity, in particular humiliating and degrading treatment, enforced prostitution and any form of indecent assault;

(c) The taking of hostages;

(d) Collective punishments; and

(e) Threats to commit any of the foregoing acts.

3. Any person arrested, detained or interned for actions related to the armed conflict shall be informed promptly, in a language he understands, of the reasons why these measures have been taken. Except in cases of arrest or detention for penal offences, such persons shall be released with the minimum delay possible and in any event as soon as the circumstances justifying the arrest, detention or internment have ceased to exist.

4. No sentence may be passed and no penalty may be executed on a person found guilty of a penal offence related to the armed conflict except pursuant to a conviction pronounced by an impartial and regularly constituted court respecting the generally recognized principles of regular judicial procedure, which include the following:

(a) The procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(b) No one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) No one shall be accused or convicted of a criminal offence on account of any act or omission which did not constitute a criminal offence under the national or international law to which he was subject at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) Anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) Anyone charged with an offence shall have the right to be tried in his presence;

(f) No one shall be compelled to testify against himself or to confess guilt;

(g) Anyone charged with an offence shall have the right to examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(h) No one shall be prosecuted or punished by the same Party for an offence in respect of which a final judgement acquitting or convicting that person has been previously pronounced under the same law and judicial procedure;

(i) Anyone prosecuted for an offence shall have the right to have the judgement pronounced publicly; and

(j) a convicted person shall be advised on conviction of his judicial and other remedies and of the time limits within which they may be exercised.

5. Women whose liberty has been restricted for reasons related to the armed conflict shall be held in quarters separated from men's quarters. They shall be under the immediate supervision of women. Nevertheless, in cases where families are detained or interned,

they shall, whenever possible, be held in the same place and accommodated as family units.

6. Persons who are arrested, detained or interned for reasons related to the armed conflict shall enjoy the protection provided by this article until their final release, repatriation or re-establishment, even after the end of the armed conflict.

7. In order to avoid any doubt concerning the prosecution and trial of persons accused of war crimes or crimes against humanity, the following principles shall apply:

(a) Persons who are accused of such crimes should be submitted for the purpose of prosecution and trial in accordance with the applicable rules of international law; and

(b) Any such persons who do not benefit from more favourable treatment under the Conventions or this Protocol shall be accorded the treatment provided by this article, whether or not the crimes of which they are accused constitute grave breaches of the Conventions or of this Protocol.

8. No provision of this article may be construed as limiting or infringing any other more favourable provision granting greater protection, under any applicable rules of international law, to persons covered by paragraph 1.

1167. From the facts available to it, and in the absence of any information refuting the allegations that the incidents described above took place, the Mission finds that there have been a number of violations of international humanitarian law and human rights law.

1168. All of the persons held were civilians and protected persons under article 4 of the Fourth Geneva Convention. The Mission does not accept the proposition that the men were detained as or considered to be unlawful combatants and therefore beyond the protection of the Fourth Geneva Convention. An individual loses the status of protected person only if that person is “definitely suspected of or engaged in activities hostile to the security of the State” (art. 5). The Mission has not heard any information suggesting this to be the case. Even if a person is no longer entitled to the status of protected person, article 5 provides that such persons must “be treated with humanity” and “shall not be deprived of the rights of fair and regular trial.” Furthermore, under Additional Protocol I, article 75, they shall enjoy “as a minimum” the protections provided by that article.

1169. The Mission has considered to what extent the actions of the Israeli armed forces might legitimately be considered as some kind of internment in the light of the resistance from armed groups in the area generally, although not in the context of the specific detentions. These people from Gaza were detained in prisons inside Israel (Beersheba, Ashkelon and Negev prisons), contrary to the Fourth Geneva Convention, which stipulates in article 76 that protected persons should be detained inside the occupied territory and not transferred out of it unless there is a pressing security need.⁵⁶³ It also makes clear that internment is the most severe measure that a

⁵⁶³ ICRC also specifies that, in occupied territories, civilians can be interned, or placed in assigned residence, only within the frontiers of the occupied country itself. See ICRC Commentary on article 78 of the Fourth Geneva Convention.

detaining authority or occupying Power may take with respect to protected persons against whom no criminal proceedings have been initiated. Internment is a preventive administrative measure and cannot be considered a penal sanction.⁵⁶⁴ Recourse to the measure may be had only if the security of the State makes it “absolutely necessary” (art. 42) or “for imperative reasons of security” (art. 78).

1170. The Mission does not consider that the information it has received supports defining the treatment described above as internment.

1171. The rounding-up of large groups of civilians and their prolonged detention under the circumstances described above constitute a collective penalty on those persons in violation of article 33 of the Fourth Geneva Convention and article 50 of the Hague Regulations. Such treatment amounts to measures of intimidation and terrorism, prohibited under article 33 and a grave breach of the Convention that constitutes a war crime.

1172. By holding the detainees in sandpits without privacy, the Israeli soldiers failed to ensure respect for their persons or to treat them humanely as required by article 27 of the Fourth Geneva Convention. The information before the Mission suggests that this treatment could not be justified as necessary “measures of control and security.” This treatment also constituted outrages on personal dignity, humiliating and degrading treatment contrary to the Geneva Conventions, common article 3, and Additional Protocol I, article 75 (2) (b). The abuse, which required a considerable degree of planning and control, was sufficiently severe to constitute inhuman treatment within the meaning of article 147 of the Fourth Geneva Convention and thus a grave breach of the said Convention that would constitute a war crime.

1173. “Women shall be the object of special respect”, in accordance with article 76 of Additional Protocol I. The Mission finds, on the information before it, that the treatment of the women in the sandpits, where they endured especially distressing circumstances, was contrary to this provision and would also constitute a war crime.

1174. The Mission has received information relating to the particular treatment received by some witnesses, such as shackling, severe beatings during detention and interrogation, being held in foul conditions or solitary confinement, which added to their already profound sense of degradation. Such treatment violates article 31 of the Fourth Geneva Convention, which prohibits physical or moral coercion against protected persons, “in particular to gain information from them”. This would also constitute a war crime.

1175. Furthermore, on the basis of this information, the Mission considers that the severe beatings, constant humiliating and degrading treatment and detention in foul conditions allegedly suffered by individuals in the Gaza Strip under the control of the Israelis and in detention in Israel, would constitute torture, and a grave breach under article 147 of the Fourth Geneva Convention and a violation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Such violations also constitute war crimes.

⁵⁶⁴ ICRC Commentary on the Fourth Geneva Convention.

1176. From the facts ascertained by it, the Mission believes that there has also been a violation of articles 7 and 10 of the International Covenant on Civil and Political Rights, as well as of article 14 ICCPR with regard to the right to be brought before a judge at the earliest opportunity, the right to be informed of the charges against one, the right to consult with legal counsel and the right to be provided with a meaningful opportunity to defend oneself.

XVI. OBJECTIVES AND STRATEGY OF ISRAEL'S MILITARY OPERATIONS IN GAZA

1177. This chapter addresses the objectives and the strategy underlying the Israeli military operations in Gaza.

A. Planning

1178. The question of whether incidents involving the Israeli armed forces that occurred between 27 December 2008 and 18 January 2009 are likely to be the result of error, the activities of rogue elements or a deliberate policy or planning depends on a number of factors, including the degree and level of planning involved, the degree of discretion field commanders have in operations, the technical sophistication and specification of weaponry, and the degree of control commanders have over their subordinates.

1179. The Government of Israel has refused to cooperate with the Mission. The Mission has therefore been unable to interview high-level members of the Israeli armed forces. It has, nevertheless, reviewed a significant amount of commentary and conducted a number of interviews on planning and discipline, including with persons who have been connected with the planning of Israeli military operations in the recent past. The Mission has also analysed the views expressed by Israeli officials in official statements, official activities and articles, and considered comments by former senior soldiers and politicians.

1. The context

1180. Before considering the issue of planning there is an important issue that has to be borne in mind about the context of Israeli operations in Gaza. The land mass of Gaza covers 360 square kilometres of land. Israel had a physical presence on the ground for almost 40 years with a significant military force until 2005. Israel's extensive and intimate knowledge of the realities of Gaza present a considerable advantage in terms of planning military operations. The Mission has seen grid maps in possession of the Israeli armed forces, for example, that show the identification by number of blocks of houses throughout Gaza City.

1181. In addition to such detailed background knowledge, it is also clear that the Israeli armed forces were able to access the telephone networks to contact a significant number of users in the course of their operations.⁵⁶⁵

1182. Since the departure of its ground forces from Gaza in 2005, Israel has maintained almost total control over land access and total control over air and sea access.⁵⁶⁶ This has also included

⁵⁶⁵ See "The operation in Gaza...", paras. 8, 24, 138, 264, 350, 354, 375, 389 and 447.

the ability to maintain a monitoring capacity in Gaza, by a variety of surveillance and electronic means, including UAVs. In short, Israel's intelligence gathering capacity in Gaza since its ground forces withdrew has remained extremely effective.

2. Legal input and training of soldiers on legal standards

1183. The Israeli Government has set out the legal training and supervision relevant to the planning, execution and investigation of military operations.⁵⁶⁷ The Mission also met Col. (Ret.) Daniel Reisner, who was the head of the International Legal Department of the Military Advocate General's Office of the Israeli Defense Forces from 1995 until 2004. In an interview with the Mission he explained how the principles and contents of international humanitarian law were instilled into officers. He explained the four-tiered training system, reflecting elements similar to those presented by the Government, which seeks to ensure knowledge of the relevant legal obligations for compliance in the field. Firstly, during training all soldiers and officers receive basic courses on relevant legal matters. The more senior the ranks, the more training is required "so that it becomes ingrained". Secondly, before a significant or new operation, legal advice will be given. Col. Reisner indicated that he understood from talking with colleagues still in active service that detailed consultations had taken place with legal advisers in the planning of the December-January military operations. He was not in a position to say what that advice had been. Thirdly, there would be real-time legal support to commanders and decision makers at headquarters, command and division levels (but not at regiment levels or below). The fourth stage is that of investigation and prosecution wherever necessary.

1184. The same framework explained by Col. Reisner appears to be repeated in similar detail in a presentation of the Office of the Legal Adviser to the Ministry of Foreign Affairs.⁵⁶⁸

3. The means at the disposal of the Israeli armed forces

1185. The Israeli armed forces are, in technological terms, among the most advanced in the world.⁵⁶⁹ Not only do they possess the most advanced hardware in many respects, they are also a market leader in the production of some of the most advanced pieces of technology available, including UAVs.⁵⁷⁰ They have a very significant capacity for precision strikes by a variety of methods, including aerial and ground launches. Moreover, some new targeting systems may have been employed in Gaza.⁵⁷¹

⁵⁶⁶ See chap. IV.

⁵⁶⁷ "The operation in Gaza...", paras. 212-221.

⁵⁶⁸ <http://www.mfa.gov.il/NR/rdonlyres/8DC5105D-A2A1-4709-9874-F42F1D1DA44B/0/TaubGazaLegalAspects270509.pps>.

⁵⁶⁹ For a detailed breakdown of Israeli capacity, see [http://www.inss.org.il/upload/\(FILE\)1245235226.pdf](http://www.inss.org.il/upload/(FILE)1245235226.pdf).

⁵⁷⁰ Ibid., pp. 8-9.

⁵⁷¹ According to the Israeli armed forces, the system, controlled by a computer and composed of 120 ml mortars, was developed for use by ground forces. "The Keshet weapons system is an autonomous mortar with the ability to aim and navigate independently. It fires at a fast speed and has the capacity to fire the first mortar accurately within a minute". See <http://dover.idf.il/IDF/English/News/today/2008n/04/1401.htm>.

1186. Taking into account all of the foregoing factors, the Mission, therefore, concludes that Israel had the means necessary to plan the December-January military operations in detail. Given both the means at Israel's disposal and the apparent degree of training, including training in international humanitarian law, and legal advice received, the Mission considers it highly unlikely that actions were taken, at least in the aerial phase of the operations, that had not been the subject of planning and deliberation.⁵⁷² In relation to the land-air phase, ground commanders would have had some discretion to decide on the specific tactics used to attack or respond to attacks. The same degree of planning and premeditation would therefore not be present. However, the Mission deduces from a review of many elements, including some soldiers' statements at seminars in Tel Aviv and to *Breaking the Silence*, that what occurred on the ground reflected guidance that had been provided to soldiers in training and briefing exercises.⁵⁷³

1187. The Mission notes that it has found only one example where the Israeli authorities have acknowledged that an error had occurred. This was in relation to the deaths of 22 members of the al-Daya family in Zeytoun. The Government of Israel explained that its armed forces had intended to strike the house next door, but that errors were made in the planning of the operation.⁵⁷⁴ The Mission expresses elsewhere its concerns about this explanation (see chap. XI). However, since it appears to be the only incident that has elicited an admission of error by the Israeli authorities, the Mission takes the view that the Government of Israel does not consider the other strikes brought to its attention to be the result of similar or other errors.

1188. In relation to air strikes, the Mission notes the statement issued in Hebrew posted on the website of the Israeli armed forces on 23 March 2009:

Official data gathered by the Air Force concluded that 99 per cent of the firing that was carried out hit targets accurately. It also concluded that over 80 per cent of the bombs and missiles used by the Air Force are defined as accurate and their use reduces innocent casualties significantly...⁵⁷⁵

1189. The Mission understands this to mean that in over 80 per cent of its attacks the Air Force deployed weapons considered to be accurate by definition – what are known colloquially as precision weapons as a result of guidance technology. In the other 20 per cent of attacks, therefore, it apparently used unguided bombs. According to the Israeli armed forces, the fact that these 20 per cent were unguided did not diminish their accuracy in hitting their targets, but may have caused greater damage than those caused by precision or “accurate” weapons.

⁵⁷² See “The operation in Gaza...”, para. 236.

⁵⁷³ See, for example, a soldier's report of a junior officer's briefing before entering Gaza: “I want aggression. If we suspect a building we take down this building. If there's a suspect on one of the floors of that building we shell it. No second thoughts. It's either them or us. Let it be them... No one has second thoughts. Let error take their lives, not ours”. See transcript from Channel Ten News on record with the Mission of soldiers speaking at a seminar in Tel Aviv.

⁵⁷⁴ “The operation in Gaza...”, paras. 385-387. The Israeli Government's comments in relation to the attack on a truck with oxygen tanks is somewhat more equivocal. The blame is put on the proximity of the tanks to alleged armed groups. *Ibid.*, paras. 398-400.

⁵⁷⁵ http://dover.idf.il/IDF/News_Channels/today/09/03/2301.htm (Mission's own translation).

1190. These represent extremely important findings by the Israeli Air Force. It means that what was struck was meant to be struck. It should also be borne in mind that the beginning of the ground phase of the operation on 3 January did not mean the end of the use of the Israeli Air Force. The statement indicates:

During the days prior to the operation "Cast Lead", every brigade was provided with an escorting UAV squadron that would participate in action with it during the operation. Teams from the squadrons arrived at the armour and infantry corps, personally met the soldiers they were about to join and assisted in planning the infantry manoeuvres. The UAV squadrons had representatives in the command headquarters and officers in locations of actual combat who assisted in communication between the UAVs – operated by only two people, who are in Israeli territory – and the forces on the ground. The assistance of UAVs sometimes reached a ratio of one UAV to a regiment and, during extreme cases, even one UAV to a team.

1191. Taking into account the ability to plan, the means to execute plans with the most developed technology available, the indication that almost no errors occurred and the determination by investigating authorities thus far that no violations occurred, the Mission finds that the incident and patterns of events that are considered in this report have resulted from deliberate planning and policy decisions throughout the chain of command, down to the standard operating procedures and instructions given to the troops on the ground.

B. The development of strategic objectives in Israeli military thinking

1192. Israel's operations in the Occupied Palestinian Territory have had certain consistent features. In particular, the destruction of buildings, including houses, has been a recurrent tactical theme.⁵⁷⁶ The specific means Israel has adopted to meet its military objectives in the Occupied Palestinian Territory and in Lebanon have repeatedly been censured by the United Nations Security Council, especially its attacks on houses.⁵⁷⁷ The military operations from 27 December to 18 January did not occur in a vacuum, either in terms of proximate causes in relation to the Hamas/Israeli dynamics or in relation to the development of Israeli military thinking about how best to describe the nature of its military objectives.

1193. A review of the available information reveals that, while many of the tactics remain the same, the reframing of the strategic goals has resulted in a qualitative shift from relatively focused operations⁵⁷⁸ to massive and deliberate destruction.

1194. In its operations in southern Lebanon in 2006, there emerged from Israeli military thinking a concept known as the Dahiya doctrine, as a result of the approach taken to the Beirut

⁵⁷⁶ See, for example, Housing and Land Rights Network – Habitat International Coalition's submission to the Mission (pp. 12-28).

⁵⁷⁷ Security Council resolutions 101 (1953), 106 (1955), 111 (1956), 171 (1962), 228 (1966), 248 (1968), 265 (1969), 270 (1969), 313 (1972), 316 (1972), 332 (1973), 347 (1974), 450 (1979), 501 (1982), 515 (1982), 520 (1982) and 1544 (2004).

⁵⁷⁸ The reference to relatively focused operations here should not be misunderstood as an indication that all such actions were acceptable in terms of distinction and proportionality. It is merely a comparative reference.

neighbourhood of that name.⁵⁷⁹ Major General Gadi Eisenkot, the Israeli Northern Command chief, expressed the premise of the doctrine:

1195. What happened in the Dahiya quarter of Beirut in 2006 will happen in every village from which Israel is fired on. [...] We will apply disproportionate force on it and cause great damage and destruction there. From our standpoint, these are not civilian villages, they are military bases. [...] This is not a recommendation. This is a plan. And it has been approved.⁵⁸⁰

1196. After the war in southern Lebanon in 2006, a number of senior former military figures appeared to develop the thinking that underlay the strategy set out by Gen. Eisenkot. In particular Major General (Ret.) Giora Eiland⁵⁸¹ has argued that, in the event of another war with Hizbullah,⁵⁸² the target must not be the defeat of Hizbullah but “the elimination of the Lebanese military, the destruction of the national infrastructure and intense suffering among the population... Serious damage to the Republic of Lebanon, the destruction of homes and infrastructure, and the suffering of hundreds of thousands of people are consequences that can influence Hizbollah’s behaviour more than anything else”.⁵⁸³

1197. These thoughts, published in October 2008 were preceded by one month by the reflections of Col. (Ret.) Gabriel Siboni:⁵⁸⁴

With an outbreak of hostilities, the IDF will need to act immediately, decisively, and with force that is disproportionate to the enemy's actions and the threat it poses. Such a response aims at inflicting damage and meting out punishment to an extent that will demand long and expensive reconstruction processes. The strike must be carried out as quickly as possible, and must prioritize damaging assets over seeking out each and every launcher. Punishment must be aimed at decision makers and the power elite... In Lebanon, attacks should both aim at Hizbollah’s military capabilities and should target economic interests and the centres of civilian power that support the organization. Moreover, the closer the relationship between Hezbollah and the Lebanese Government, the more the elements of the Lebanese State infrastructure should be targeted. Such a response will create a lasting memory among ... Lebanese decision makers, thereby increasing Israeli deterrence and reducing the likelihood of hostilities against Israel for an

⁵⁷⁹ During the 2006 Lebanon war, Israel inflicted massive destruction on Dahiya, which it considered to be a stronghold of Hizbullah.

⁵⁸⁰ Ynet, “Israel warns Hizbullah war would invite destruction”, 10 March 2008.

⁵⁸¹ Former Chief of the Israeli National Security Council, former National Security Adviser to the Prime Minister, and prior to that head of the IDF Operation Branch.

⁵⁸² Although Major General Eiland was writing about Lebanon and the Syrian Arab Republic, it is the suggestion of the objectives and the means of obtaining them that is striking in relation to what occurred in Gaza.

⁵⁸³ Giora Eiland, “The third Lebanon war: target Lebanon”, Strategic Assessment, vol. 11, No. 2 (November 2008), p. 9.

⁵⁸⁴ Colonel (Res.) of the IDF. Researcher for Institute for National Strategic Studies. Former fighter and commander in the Golani Brigade, completed his service as the brigade’s reconnaissance unit commander. Within the scope of his reserve service, he served as senior staff officer of the Golani Brigade, Deputy Commander of the logistics unit, and Chief of Staff of an armoured division in the north.

extended period. At the same time, it will force Syria, Hizbollah, and Lebanon to commit to lengthy and resource-intensive reconstruction programmes...

This approach is applicable to the Gaza Strip as well. There, the IDF will be required to strike hard at Hamas and to refrain from the cat and mouse games of searching for Qassam rocket launchers. The IDF should not be expected to stop the rocket and missile fire against the Israeli home front through attacks on the launchers themselves, but by means of imposing a ceasefire on the enemy.⁵⁸⁵

1198. General Eisenkot used the language quoted above while he was in active service in a senior command position and clarified that this was not a theoretical idea but an approved plan. Major General Eiland, though retired, was a man of considerable seniority. Colonel Siboni, while less senior than the other two, was nonetheless an experienced officer writing on his field of expertise in a publication regarded as serious.

1199. The Mission does not have to consider whether Israeli military officials were directly influenced by these writings. It is able to conclude from a review of the facts on the ground that it witnessed for itself that what is prescribed as the best strategy appears to have been precisely what was put into practice.

C. Official Israeli statements on the objectives of the military operations in Gaza

1200. The Mission is aware of the official statements on the goals of the military operations:

The Operation was limited to what the IDF believed necessary to accomplish its objectives: to stop the bombardment of Israeli civilians by destroying and damaging the mortar and rocket launching apparatus and its supporting infrastructure, and to improve the safety and security of Southern Israel and its residents by reducing the ability of Hamas and other terrorist organizations in Gaza to carry out future attacks.⁵⁸⁶

1201. The Israeli Government states that this expression of its objectives is no broader than those expressed by NATO in 1998 during its campaign in the Federal Republic of Yugoslavia.

1202. The Mission makes no comment on the legality or otherwise of NATO actions there.

D. The strategy to achieve the objectives

1203. The issue that is of special concern to the Mission is the conceptualization of the “supporting infrastructure”. The notion is indicated quite clearly in General Eisenkot’s statements in 2006 and reinforced by the reflections cited by non-serving but well-informed military thinkers.

⁵⁸⁵ Siboni, *op. cit.* This appears very similar to the so-called Dahiya doctrine. See, for example, Ed Blanche, *Jane’s Rockets and Missiles*, 3 February 2009, citing Major General Gadi Eisenkot.

⁵⁸⁶ See “The operation in Gaza...”, para. 83.

1204. On 6 January 2009, during the military operations in Gaza, Deputy Prime Minister Eli Yishai⁵⁸⁷ stated: "It [should be] possible to destroy Gaza, so they will understand not to mess with us". He added that "it is a great opportunity to demolish thousands of houses of all the terrorists, so they will think twice before they launch rockets". "I hope the operation will come to an end with great achievements and with the complete destruction of terrorism and Hamas. In my opinion, they should be razed to the ground, so thousands of houses, tunnels and industries will be demolished". He added that "residents of the South are strengthening us, so the operation will continue until a total destruction of Hamas [is achieved]".⁵⁸⁸

1205. On 2 February 2009, after the end of the military operations, Eli Yishai went on: "Even if the rockets fall in an open air or to the sea, we should hit their infrastructure, and destroy 100 homes for every rocket fired."⁵⁸⁹

1206. On 13 January 2009, Israel's Foreign Minister, Tzipi Livni, was quoted as saying:

We have proven to Hamas that we have changed the equation. Israel is not a country upon which you fire missiles and it does not respond. It is a country that when you fire on its citizens it responds by going wild – and this is a good thing.⁵⁹⁰

1207. It is in the context of comments such as these that the massive destruction of businesses, agricultural land, chicken farms and residential houses has to be understood. In particular, the Mission notes the large-scale destruction that occurred in the days leading up to the end of the operations. During the withdrawal phase it appears that possibly thousands of homes were destroyed. The Mission has referred elsewhere in this report to the "day after" doctrine,⁵⁹¹ as explained in the testimonies of Israeli soldiers, which can fit in with the general approach of massively disproportionate destruction without much difficulty.

1208. The concept of what constituted the supporting infrastructure has to be understood not only in the context of the military operations of December and January, but in the tightening of the restrictions of access to goods and people into and out of Gaza, especially since Hamas took power. The Mission does not accept that these restrictions can be characterized as primarily an attempt to limit the flow of materials to armed groups. The expected impact, and the Mission believes primary purpose, was to bring about a situation in which the civilian population would

⁵⁸⁷During the military operation in Gaza, Eli Yishai served as [Deputy Prime Minister](#) and Minister of Industry, Trade, and Labour in the Government of Mr. Olmert. He serves in the current Government headed by Mr. Netanyahu as Internal Affairs Minister as well as Deputy Prime Minister. During the military operations in Gaza, he was also a member of the Security Cabinet for National Security within the Israeli Cabinet. Its duties include setting the targets of the security system and its policies; questions related to the Israeli armed forces, issues related to intelligence, foreign policy, military and security operations, and coordination of the activities of the Government in "Judea, Samaria and Gaza". See <http://www.pmo.gov.il/PMO/Archive/Decisions/2006/05/des20.htm> (in Hebrew).

⁵⁸⁸ <http://news.walla.co.il/?w=/1412570> (in Hebrew).

⁵⁸⁹ <http://www.ynet.co.il/Ext/Comp/ArticleLayout/CdaArticlePrintPreview/1,2506,L-3665452,00.html> (2 February 2009, in Hebrew).

⁵⁹⁰ The Independent, Israeli cabinet divided over fresh Gaza surge, 13 January 2009.

⁵⁹¹ See chap. XIII.

find life so intolerable that they would leave (if that were possible) or turn Hamas out of office, as well as to collectively punish the civilian population.

1209. The Israeli Government has stated:

While Hamas operates ministries and is in charge of a variety of administrative and traditionally governmental functions in the Gaza Strip, it still remains a terrorist organization. Many of the ostensibly civilian elements of its regime are in reality active components of its terrorist and military efforts. Indeed, Hamas does not separate its civilian and military activities in the manner in which a legitimate government might. Instead, Hamas uses apparatuses under its control, including quasi-governmental institutions, to promote its terrorist activity.⁵⁹²

1210. The framing of the military objectives Israel sought to strike is thus very wide indeed. There is, in particular, a lack of clarity about the concept of promoting “terrorist activity”: since Israel claims there is no real division between civilian and military activities and it considers Hamas to be a terrorist organization, it would appear that anyone who supports Hamas in any way may be considered as promoting its terrorist activity. Hamas was the clear winner of the latest elections in Gaza. It is not far-fetched for the Mission to consider that Israel regards very large sections of the Gazan civilian population as part of the “supporting infrastructure”.

1211. The indiscriminate and disproportionate impact of the restrictions on the movement of goods and people indicates that, from as early as some point in 2007, Israel had already determined its view about what constitutes attacking the supporting infrastructure, and it appears to encompass effectively the population of Gaza.

1212. A statement of objectives that explicitly admits the intentional targeting of civilian objects as part of the Israeli strategy is attributed to the Deputy Chief of Staff, Maj. Gen. Dan Harel. While the Israeli military operations in Gaza were under way, Maj. Gen. Harel was reported as saying, in a meeting with local authorities in southern Israel:

This operation is different from previous ones. We have set a high goal which we are aiming for. We are hitting not only terrorists and launchers, but also the whole *Hamas* government and all its wings. [...] We are hitting government buildings, production factories, security wings and more. We are demanding governmental responsibility from Hamas and are not making distinctions between the various wings. After this operation there will not be one Hamas building left standing in Gaza, and we plan to change the rules of the game.⁵⁹³

E. Conclusions

1213. The Israeli military conception of what was necessary in a future war with Hamas seems to have been developed from at least the time of the 2006 conflict in southern Lebanon. It finds its origin in a military doctrine that views disproportionate destruction and creating maximum

⁵⁹² “The operation in Gaza...”, para. 235.

⁵⁹³ *Ynet*, “Deputy chief of staff: worst still ahead”.

disruption in the lives of many people as a legitimate means to achieve military and political goals.

1214. Through its overly broad framing of the “supporting infrastructure”, the Israeli armed forces have sought to construct a scope for their activities that, in the Mission’s view, was designed to have inevitably dire consequences for the non-combatants in Gaza.

1215. Statements by political and military leaders prior to and during the military operations in Gaza leave little doubt that disproportionate destruction and violence against civilians were part of a deliberate policy.⁵⁹⁴

1216. To the extent to which statements such as that of Mr. Yishai on 2 February 2009 indicate that the destruction of civilian objects, homes in that case, would be justified as a response to rocket attacks (“destroy 100 homes for every rocket fired”), the Mission is of the view that reprisals against civilians in armed hostilities are contrary to international humanitarian law.⁵⁹⁵ Even if such actions could be considered a lawful reprisal, they do not meet the stringent conditions imposed, in particular they are disproportionate,⁵⁹⁶ and violate fundamental human rights and obligations of a humanitarian character.⁵⁹⁷ One party's targeting of civilians or civilian areas can never justify the opposing party’s targeting of civilians and civilian objects, such as homes, public and religious buildings, or schools.

XVII. THE IMPACT OF THE BLOCKADE AND OF THE MILITARY OPERATIONS ON THE PEOPLE OF GAZA AND THEIR HUMAN RIGHTS

“A military commander’s obligation does not end with avoiding harm to the lives and the dignity of the local residents, a “negative obligation”, but his obligation is also “positive”- he must protect the lives and dignity of the residents, within the constraints of the time and place....” Justice Barak (HCJ 764/04)

“As long as Israel has control of the transfer of necessities and the supply of humanitarian needs to the Gaza Strip, it is bound by the obligations of international humanitarian law to allow the civilian population to have access, inter alia, to medical facilities, food and water, as well as additional humanitarian items”.
Justice Beinisch (HCJ 201/09)

1217. During its visits to the Occupied Palestinian Territory, and its meetings and hearings in Gaza, Amman, Geneva and other places, the Mission saw for itself and received reports and

⁵⁹⁴ Highlighting the pattern of military actions targeting civilian shelters and shelter seekers, the Habitat International Coalition concludes: “The official statements that accompany these actions [...] seem to reflect a presumption that any source of brutality against the indigenous inhabitants would convert the victims into agents of the attackers’ preferred outcome: defeat of resistance” (submission, cited, p. 40).

⁵⁹⁵ See Additional Protocol I, art. 51 (6).

⁵⁹⁶ *Customary International Humanitarian Law...*, pp. 513–518.

⁵⁹⁷ See also article 50 of the articles on responsibility of States for internationally wrongful acts of the International Law Commission (General Assembly resolution 56/83, annex).

testimonies about the negative effects that the severe restrictions on the movement of goods and people from and to the Gaza Strip had caused to the full enjoyment of a range of social, economic and civil rights by women, men and children. These reports and testimonies come from a variety of sources, including businesspeople, industry owners, ordinary residents, public officials and NGOs in the Occupied Palestinian Territory and abroad.

1218. People in Gaza, as in other parts of the Occupied Palestinian Territory, have been living under foreign occupation for decades and enduring the restrictions and other effects of the policies implemented by the occupying Power. While the start of the blockade and the most recent military operations have undoubtedly added to those restrictions and scarcities, people in Gaza have not been living in what can be called a “normal” situation for a long time.

1219. The restrictions imposed by Israel on the imports to and exports from the Gaza Strip through the border crossings as well as the naval and airspace blockade have had a severe impact on the availability and accessibility of a whole range of goods and services necessary for the people of Gaza to enjoy their human rights. Their already eroded ability to access and buy basic goods was compounded by the effects of the four-week Israeli military campaign, which further restricted access to those essential items and destroyed goods, land, facilities and infrastructure vital for the enjoyment of their fundamental rights. In conjunction, the blockade and the military hostilities have created a situation in which most people are destitute. Women and children have been particularly affected. The current situation has been described as a crisis of human dignity.⁵⁹⁸

A. The economy, livelihoods and employment

1220. The Mission received information about the state of the economy, employment and family livelihoods in the Gaza Strip. Before the December-January military operations, the Gaza economy was already in dire straights, with few business sectors able to operate at full capacity. The blockade restricted or denied entry to a range of items and energy necessary for the economy to function. These included fuel and industrial diesel for the Gaza power plant to produce enough electricity for factories and businesses to function and for agricultural activities to continue on a regular basis. The net result was a stalled economy, with many businesses, factories and farms either closed or operating at reduced capacity.

1221. Electricity was purchased directly from Israel (51 per cent) and Egypt (7 per cent), while the Gaza power plant produced only 34 per cent, leaving an 8 per cent electricity deficit. Following additional cuts by Israel in the supply of industrial fuel, the Gaza power plant further reduced its output. The shortage of fuel caused the plant to malfunction, while the lack of spare parts and maintenance is likely to damage the plant in the long term.⁵⁹⁹ According to OCHA, the electricity shortfall in the Gaza Strip was 41 per cent by 15 December 2008. Cooking gas was also restricted although less drastically.

⁵⁹⁸ WHO report 2009, p. 8.

⁵⁹⁹ OCHA, “Gaza humanitarian situation report: the impact of the blockade on the Gaza Strip”, 15 December 2008.

1222. Raw materials, equipment, spare parts and other inputs necessary for industrial and agricultural activity were not allowed into the Gaza Strip either.

1223. The consequences for day-to-day life were considerable. Some areas of the Gaza Strip were left without electricity for several hours a week, many households, especially those in buildings that depend on the use of water pumps, had access to water only a few hours a week. Intermittent electricity supply damaged medical equipment in hospitals and doctors' practices, and generally disrupted civilian life. The operation of sewage treatment facilities was also reduced and increased quantities of untreated sewage were dumped into the sea, causing public health risks and pollution, which in turn affected fishing.

1224. Several companies closed or cut back their operations, laying off employees, who consequently lost their livelihoods. Information provided to the Mission covering June 2007 to July 2008 showed that 98 per cent of industries were temporarily shut down and five establishments were relocated to the West Bank and Jordan. Around 16,000 workers were laid off. The ban on all exports caused losses for the agricultural sector estimated at US\$ 30 million up until July 2008 and 40,000 jobs lost. Similarly, the construction sector endured severe losses resulting from the halt in development projects and other construction projects owing to the absence of construction materials. Some 42,000 workers were reported to have lost their jobs as a result.⁶⁰⁰ Those who were laid off searched for employment in other sectors, such as agriculture, or joined the ranks of those who live on food assistance from the United Nations and aid agencies.

1225. As a result of the closure of the crossings to the transit of people, many families also lost the financial support they had from relatives, usually the male head of the family, who used to work abroad, either in Israel or in neighbouring Arab countries.⁶⁰¹ In its submission to the Mission, UNCTAD stated that 15.4 per cent of Gaza's labour force was employed in Israel by 2000.⁶⁰² In his presentation to the Mission, the economist Shir Hever explained that by 2009 no one from Gaza could find work in Israel. Even Palestinian workers from the West Bank mostly work in industrial zones in settlements rather than in Israel.⁶⁰³

1226. By December 2008 the destructive impact of the blockade on the local economy had doubled unemployment levels. While in 2007 79 per cent of households lived below the official poverty line (US\$ 4 per capita/day) and some 70 per cent below the deep poverty line (US\$ 3 per capita/day), these figures were expected to increase by the end of 2008 – even before the Israeli military operations. The Mission received information from organizations explaining how the agricultural sector had traditionally absorbed unemployed workers from other sectors, but in the circumstances imposed by the blockade, without fertilizers, pesticides, machinery, spare parts

⁶⁰⁰ Palestine Trade Center (PALTRADE), "Gaza Strip: A year through siege", July 2008.

⁶⁰¹ GISHA Legal Center for Freedom of Movement and Physicians for Human Rights – Israel, *Rafah Crossing: Who holds the keys?* (March 2009).

⁶⁰² UNCTAD submission, p. 4.

⁶⁰³ Mission meeting with Shir Hever, Alternative Information Centre, 2 July 2009.

and, crucially, without access to markets, it could no longer fulfil the role of shock absorber.⁶⁰⁴ In its submission to the Mission, UNCTAD noted that when the industrial and agricultural sectors lost their capacity to provide jobs, public administration and services absorbed up to 54 per cent of Gaza's labour force (up from 37 per cent in 1999). UNCTAD concluded:

The ultimate impact of this momentum is the systematic erosion of the Palestinian productive base to deprive them from the ability to produce and feed themselves, and turn them into poor consumers of essential goods imported mainly from Israel and financed mainly by donors.

1227. The military operations destroyed a substantial part of the Gaza Strip's economic infrastructure and its capacity to support decent livelihoods for families. Many factories and businesses were directly targeted and destroyed or damaged. Poverty, unemployment and food insecurity increased dramatically.

1228. Information provided to the Mission showed that some 700 private (industry and trade) businesses were damaged or destroyed during the military operations, with direct losses totalling approximately US\$ 140 million. The industrial sector appeared the most affected, as it suffered 61 per cent of those losses, in particular in the sub-sectors of construction and food.⁶⁰⁵ Because of the extent and gravity of the destruction inflicted on the industrial sector, businesspeople and industrialists who spoke to the Mission stated their belief that Israel had as one of its military objectives the destruction of local industrial capacity so as to harm the prospects for an economic recovery in the Gaza Strip.⁶⁰⁶

1229. The severe restrictions on the availability of banknotes imposed by Israel caused serious disruptions in economic transactions and affected the ability of the public sector and the non-governmental sector to carry out operations such as contracting or procuring goods and services.

1230. The agricultural sector, including crop farming, fisheries, livestock farming and poultry farming, suffered direct losses worth some US\$ 170 million. Indirect losses have still to be definitively calculated. One business organization estimates that 60 per cent of all agricultural land had been destroyed, 40 per cent directly during the military operations.⁶⁰⁷ Moreover, 17 per cent of all orchards, 8.3 per cent of livestock, 2.6 per cent of poultry, 18.1 per cent of hatcheries, 25.6 per cent of beehives, 9.2 per cent of open fields and 13 per cent of groundwater wells were destroyed. Agriculture had already lost a third of its capacity since the start of the second intifada and the frequent Israeli incursions, according to NGO estimates used by UNDP-Gaza.⁶⁰⁸ Parts of

⁶⁰⁴ Meetings with representatives from the agricultural sector in Gaza, 30 June 2009; meeting with representatives of Campaign to End the Siege, Gaza, 29 June 2009.

⁶⁰⁵ Private Sector Coordination Council Gaza Governorates, "Gaza private sector: Post-war status and needs", 25 February 2009.

⁶⁰⁶ Interviews with Amr Hamad of the Palestinian Federation of Industries and with Ali Abu Shalah of the Palestinian Business Association.

⁶⁰⁷ "Gaza private sector: post-war status...", p. 5.

⁶⁰⁸ UNDP, FAO and Ministry of Agriculture, "Assessment of impact of cast lead operation: estimated direct losses to agriculture in the Gaza Strip between 27 December 2008 and 18 January 2009".

the land were reportedly contaminated by unexploded munitions and chemical weapons residues (e.g. white phosphorous) and would need to be tested and cleared before agricultural activity could resume.⁶⁰⁹ Some 250 agricultural wells were reportedly destroyed or severely damaged.

1231. Fishing that provided direct employment to some 3,000 people was also affected by the blockade and the military operations. Several boats and some fishermen were directly hit. The Mission met representatives of fishermen's associations and a fisherman testified at the public hearings in Gaza.⁶¹⁰ One fisherman interviewed by the Mission explained that he had previously owned a fishing boat, mainly to fish sardines. It was hit by shelling as it was moored beside the civil defence buildings that were hit by air strikes on 27 December. Half of it was destroyed. Another small boat was also destroyed as were the nets. The family house was also destroyed and he had been out of work since the beginning of the military operations in December. However, his fishing activities had already been affected before the operations, when the Government of Israel had imposed a limit of six nautical miles for fishing, and then further reduced it to only three.⁶¹¹

1232. The continuation of the blockade does not permit the reconstruction of the economic infrastructure that was destroyed. Not only do construction materials continue to be banned but the provision of energy is also still insufficient and irregular. Local purchasing capacity being shattered, there is not enough market demand for many products.

1233. Exports also continue to be prohibited, with the exception of some truckloads of flowers that crossed the borders between January and March 2009. Without external markets, local production of all kinds has no prospect and so employment and livelihoods will remain precarious and diminished. A strawberry farmer and the Head of the Association of Strawberry Farmers based in Beit Lahia explained that before the military operations he used to export up to 2,000 tons of strawberries to Europe. Hundreds of *donums* of land were destroyed during the operations as well as some 300 greenhouses and 2,000 acres of citrus trees. As a result, they had lost the European market for their products.⁶¹²

B. Food and nutrition

1234. The availability of food in the Gaza Strip is determined by the amount imported through the crossings and that which is locally produced. The Mission received credible information indicating that during the months preceding the military operations both sources of food suffered from the severe restrictions imposed by Israel.

1235. The closing of the Karni grain conveyor belt, the only mechanism for importing wheat, during part of December, resulted in the depletion of wheat stocks, forcing the six mills in the Gaza Strip to close down or reduce operations. The el-Bader flour mill appeared to be the only

⁶⁰⁹ "Gaza private sector: post-war status...", p. 5; FAO, "Impact of Gaza crisis: Agricultural sector report", p. 16; WHO Report, p. 29.

⁶¹⁰ Public hearings, Gaza, 29 June 2009.

⁶¹¹ Meeting with the Mission, Gaza, 3 June 2009.

⁶¹² Meeting with the Mission, Gaza, 3 June 2009.

one that kept working as its owners had kept a good stock of grain, but it was later bombed and destroyed (see chap. XIII). However, about one third of the previous number of truckloads of wheat continued entering through the Kerem Shalom crossing. The blockade was tightened following the confrontations of November 2008, further restricting United Nations food assistance. On 18 December, UNRWA was compelled to halt its food distribution programme to thousands of families because its stocks were depleted. It also had to downsize its cash-for-work programmes as it ran out of banknotes.

1236. By December 2008 food insecurity was on the rise. Food security is the capacity of each individual to have access to sufficient and adequate food at all times. The Mission received information indicating that rising food insecurity was the result falling income levels, eroded livelihoods and higher food prices. Some food items were also unavailable in the local markets. Consequently, the average Gazan household was spending two thirds of its income on food.⁶¹³ People had to reduce the quantity and the quality of food they ate, shifting a diet based on low-cost and high-energy cereals, sugar and oil.

1237. Changes in diet patterns are likely to prejudice the long-term health and nutrition of the population. According to the WHO office in Gaza, there are indications of chronic micronutrient deficiencies among the population, in particular among children. Among the most worrying indicators is the high prevalence of stunting among 6- to 16-year-old children (7.2 per cent), while the prevalence of thinness among that group was 3.4 per cent for 2008 (the WHO standard is 5 per cent). Levels of anaemia are alarming: 66 per cent on average among 9- to 12-month-old babies (the rate being higher for girls (69 per cent)). On average, 35 per cent of pregnant women suffer from anaemia.⁶¹⁴

1238. During the military operations the availability and quality of fresh food dropped: local production was suspended during the fighting and local produce was spoilt. Mr. Muhammad Husein al-Atar, Mayor of al-Atatra, told the Mission how agricultural land in his neighbourhood was razed. The area is close to the Israeli border and 95 per cent of the work is farming-related. Israeli military incursions had been happening since 2000 accompanied by destruction and bulldozing. As a result, 50,000 acres of land had not a single tree left standing and between 10 and 15 farmers had been killed every year during the last nine years. During the December – January military operations the area was bombed from the air, land and sea. He had personally lost three (industrial) refrigerators, each capable of holding 600 tons of vegetables, for instance. His sister's chicken farms were also destroyed, including some 70,000 chickens (see chap. XIII).⁶¹⁵

1239. The destruction of land and greenhouses has an impact on the availability of fresh food in the Gaza Strip and, consequently, on the total supply of micronutrients to the population. Satellite imagery commissioned by the Mission shows that for the whole Gaza Strip an estimated 187 greenhouse complexes were either destroyed or severely damaged, representing approximately 30.2 hectares. Of all the destroyed greenhouses 68.6 per cent were in the Gaza

⁶¹³ “Gaza humanitarian situation report: the impact...”.

⁶¹⁴ Nutrition indicators for 2008 and 2009 provided by WHO office in Gaza to the Mission.

⁶¹⁵ Meeting with the Mission, 3 June 2009.

and Gaza North Governorates; and 85.4 per cent were destroyed or damaged during the last week of the military operations. Satellite imagery also gives strong indications that tanks and/or heavy vehicles were likely to have been responsible for most of the damage.⁶¹⁶

1240. Despite the increased quantities of food allowed into Gaza since the beginning of hostilities, representing between 60 and 80 per cent of all truckloads, wheat flour was in short supply. This was probably the result of the severe depletion of local stocks following the tighter restrictions during December. After the ceasefire was declared by the parties to the conflict, access to food remained problematic for most people many prices had risen and there was a lack of income and banknotes. It was reported that the military operations caused food insecurity to increase and affect up to 75 per cent of the population.⁶¹⁷

1241. In a rapid assessment, FAO and the World Food Programme (WFP) found that food availability was back to pre-military operations levels, but the supply of fresh food was likely to decrease in the immediate future due to the large-scale destruction. Prices continued to be very high and some items were prohibitively expensive (e.g. poultry, eggs and meat) and unaffordable. However, severe access problems persisted and were aggravated for a population whose income and livelihoods had been shattered, despite the food assistance provided by the United Nations and aid agencies.⁶¹⁸

C. Housing

1242. Figures about the overall damage to residential housing vary according to the source and time of the measurement as well as the methodology. The human rights NGO Al Mezan reports that a total 11,135 homes were partially or fully destroyed.⁶¹⁹ According to the human rights NGO Al-Dameer-Gaza, 2,011 civilian and cultural premises were destroyed, of which 1,404 were houses that were completely demolished and 453 were partially destroyed or damaged.⁶²⁰ A UNDP survey immediately after the end of military operations reported 3,354 houses completely destroyed and 11,112 partially damaged.⁶²¹ The destruction was more serious in the north, where 65 per cent of houses were completely destroyed. As a result of the destruction, more than 600 tons of rubble had to be removed, with the consequent costs and potential impact on the environment and public health. Information provided to the Mission showed that much of the construction in Gaza contained important amounts of asbestos, the particles of which had been or could be released into the air at the time of destruction or removal. The refugee population was concentrated in the north and the destruction of residential housing appeared to have particularly affected them.

⁶¹⁶ UNOSAT satellite imagery, p. 23. See also chap. XIII.

⁶¹⁷ OCHA, *The Humanitarian Monitor*, No. 33 (January 2009).

⁶¹⁸ FAO and WFP, "Report of the rapid qualitative emergency food security assessment – Gaza Strip", 24 February 2009.

⁶¹⁹ Al Mezan Center for Human Rights, "Cast lead offensive in numbers".

⁶²⁰ Al-Dameer Gaza, "IOF targets civilian premises and cultural properties during its offensive on the Gaza Strip", May 2009.

⁶²¹ *The Humanitarian Monitor*, No. 33, p. 7. A figure similar to this was provided by the Palestinian Authority in its reply to questions by the Mission, 5 August 2009.

1243. The destruction or damage of their homes forced many people to flee and find shelter with relatives or agencies providing assistance, such as UNRWA. At the height of the military operations UNRWA was providing shelter to 50,896 displaced persons in 50 shelters. This number was estimated to be a fraction of those who had become homeless, most of whom found temporary shelter with relatives. The Mission was informed that this situation created extreme hardship for people who had to share already deteriorated and limited housing, sanitary and water facilities. It saw for itself people who were still living in tents some six months after the end of the operations.

1244. Children and women were particularly affected by the hardship caused by the destruction of homes and the displacement. Housing and Land Rights Network – Habitat International Coalition reported that “of those forced to seek shelter following the military damage or destruction of their home, over half were children. While female-headed households constitute only a relatively small percentage of the total affected families (7 per cent), their number in absolute terms, 763 such families, is significant.”⁶²²

1245. The impact of the destruction of housing is aggravated by the substantial destruction of the Gaza construction industry during the military operations. In chapter XIII, the Mission described the destruction of the Atta Abu Jubbah cement-packaging plant, which formed a significant part of the construction materials industry in Gaza. The Mission also noted reports regarding the destruction of 19 producing plants (representing 85 per cent of the production capacity of the Gaza factories of ready-mix concrete). External supplies of concrete and other building materials into Gaza are entirely controlled by Israel, which has banned imports of cement into Gaza. The thousands of families who have lost their shelter as a result of the military operations are therefore prevented by the blockade imposed by Israel from rebuilding their homes.

D. Water and sanitation

1246. The Mission received submissions, testimonies and information about the effects of the blockade and of the military operations on the supply of and access to water and sanitation facilities by the population of the Gaza Strip.⁶²³ During the months preceding the military operations the water and sanitation sectors were already under severe strain. The lack of construction materials, pipes and spare parts had prevented the building of additional infrastructure and the proper maintenance of existing facilities. Desalinization plants and works to preserve the aquifer had to be postponed. By December 2008, OCHA reported that the degradation of the system “is posing a major public health hazard”.⁶²⁴ Frequent power outages, fuel shortages and a lack of spare parts for electricity generators had also affected the functioning of the water and sanitation systems.

⁶²² Submission to the Mission by Housing and Land Rights Network -- Habitat International Coalition, “Targeting shelters and shelter seekers during operation Cast Lead in the context of Israeli military practice”.

⁶²³ Submission by the Centre on Housing Rights and Evictions (COHRE); Al Mezan Center for Human Rights, “The impact of the Israeli offensive on the right to water in the Gaza Strip”, February 2009.

⁶²⁴ “Gaza humanitarian situation report: the impact...”.

1247. By December 2008, it was reported that some 80 per cent of Gaza's water wells were only partially functioning while the others were not functioning at all. This situation had already affected the population's access to water: over half of the residents of Gaza City had access to running water few hours a week, with those living in houses and buildings using water pumps spending many hours trying to get water by other means. Of the water supplied in Gaza 80 per cent did not meet WHO standards for drinking water owing to, among other factors, the shortage of chlorine to purify the water. Important health risks were consequently likely to arise. Other health hazards were expected to arise from the practice of discharging untreated or partially treated wastewater into the sea. More than 70 million litres a day were discharged into the sea, creating significant environmental damage and health risks for human beings and marine life.

1248. As with other sectors, the military operations worsened the situation in the water and sanitation sector. Services and infrastructure already partially paralysed or in serious need of maintenance suffered further destruction or damage. The Gaza wastewater treatment plant was hit sometime between 3 and 10 January and one of its lagoons was severely damaged (see chap. XIII). Sewage pipes leading to the plant and others in different parts of the city were hit or damaged. Up to 11 water wells that supplied water for human consumption were hit and 3 completely destroyed.⁶²⁵ Thousands of metres of water and sewage pipes/networks were destroyed or damaged and around 5,700 rooftop water tanks destroyed and some 2,900 damaged.

1249. By the end of January only 70 per cent of Gaza's water wells were working, either whether fully or partially, i.e. 10 per cent less than before the hostilities. At the height of the military operations some 500,000 Palestinians did not have access to running water at all, whereas the rest received water for few hours a week. Sanitation and water facilities in public shelters were overwhelmed, and raw sewage ran through fields and streets in some areas. The water authorities' reparations team were prevented from going to the sites to carry out urgent repairs and had to wait in most cases until Israeli troops had withdrawn. All urgent repairs were done on a provisional basis given the lack or shortage of construction materials and equipment. The Mission witnessed how precarious those repairs could be when it saw one sewage pipe in the vicinity of the Gaza wastewater treatment plant explode during a site visit.

E. Environment

1250. The Mission has received comments and concerns from non-governmental organizations and concerned individuals in Gaza relating to threatened environmental damage by reason of munitions or debris from munitions. These concerns relate to the fear that hazardous material might have remained or will remain in the soil and water of parts of the Gaza Strip for indefinite periods of time and could enter the food chain or otherwise be hazardous to life.

1251. The Mission was unable to further investigate these concerns, but is aware of an environmental impact study being undertaken by the United Nations Environmental Programme (UNEP) in the Gaza Strip. Preliminary results from UNEP indicate that the environment in the Gaza Strip has been seriously impacted by the Israeli military operations of December-January.

⁶²⁵ "Damage assessment report...". Al Mezan reports that 112 wells were destroyed but it clarifies that this figure includes agricultural wells; COHRE submission to the Mission.

In particular, the groundwater in Gaza show high nitrate levels exceeding WHO ceilings, putting infants at risk of nitrate poisoning.

F. Physical and mental health

1252. The capacity of the health sector in the Gaza Strip was already diminished by the blockade when the Israeli offensive started. While hospitals and clinics continued operating, the quality of their service and its accessibility were eroded. The insufficient and erratic supply of electricity caused equipment to malfunction even when the staff had recourse to generators. Power cuts and water impurities damaged equipment and created additional health hazards. The lack of maintenance and spare parts that were blocked at the crossings further compounded the situation. In addition, the lack of construction materials and inputs hampered the development of additional facilities and needed infrastructure.

1253. Reported confrontation between the Palestinian Authority in Ramallah and the Gaza authorities also affected the quantity and quality of the service provided. The Ministry of Health in Ramallah had been responsible for the supply of medicines to Gaza since September 2008, but it was reported that few trucks with medicines actually reached the Gaza Strip after that time resulting in serious availability problems for some 20 per cent of essential medicines. The referral of patients needing specialized treatment abroad (e.g. in Israel, Jordan and Egypt) was also affected by the blockade established in 2007. Before that date only some 9 per cent of patients intending to cross the border were rejected or their permits delayed, but that proportion had reached some 22 per cent by September 2008.⁶²⁶

1254. The beleaguered health sector was subjected to severe strain when the military operations started on 28 December. Hospitals and health centres of the Ministry of Health worked on an emergency basis under extremely difficult conditions and with limited resources. They nevertheless responded effectively to the crisis. Urgent medical interventions to treat critical injuries were performed under severe circumstances. Of the 5,380 injured people reported by the Ministry, 40 per cent were admitted to the main hospitals, but because of the policy of discharging patients as soon as feasible to free up beds and staff, there were concerns that some injuries (e.g. burns and acute surgical conditions) might have led to complications as follow-up care may have been inadequate. Some injuries will result in permanent disability (see also section G below).

1255. Medical facilities and personnel were targeted during the fighting. Seventeen health personnel were killed and 26 injured. In total, 29 ambulances were damaged or destroyed by bombs or crushed by armoured vehicles, while 48 per cent of Gaza's 122 health facilities were either directly or indirectly hit by shelling. Medical relief and rescue were in many cases also intentionally hindered.

1256. OCHA reported that medical supplies, including drugs and equipment, were allowed into the Gaza Strip in larger quantities during January in the midst of the fighting. However, logistical difficulties and the fact that many medicines had a very short expiration date prevented the health staff from using the increased quantities for the benefit of patients. Finally, the situation of

⁶²⁶ WHO Report....; "Gaza humanitarian situation report: the impact...".

patients with chronic health conditions, such as heart and kidney problems, became a concern because patients with critical life-threatening injuries requiring urgent attention were given priority.⁶²⁷

1257. The destruction of sewage treatment facilities and pipes together with the lack of purifying materials had consequences for public health. Thousands of litres of untreated sewage dumped in fields or in the sea created a potential health hazard. The Mission received information about recent epidemiological tests of water samples. The samples had been collected from all water networks and wells, especially from areas targeted during the military operations, to investigate the presence of microbiological pollutants. Information on water-related diarrhoea among children under age 3 attending UNRWA facilities was collected weekly in January and February 2009. The analyses showed an increase of 18 per cent between 19 January and 8 February. Moreover, 14 per cent of the water samples collected in February were polluted with microbiological pollutants. The increase in diarrhoeal disease was also confirmed to have occurred in the areas where the water had been contaminated.⁶²⁸

1258. WHO also cited the preliminary results from UNEP initial sampling in Gaza, which showed that “much of the rubble is contaminated with asbestos; damage to the waste treatment system had contaminated the aquifer; the health waste handling system had completely broken down, with such waste going into domestic waste. The results on heavy metal contamination are so far inconclusive.”⁶²⁹ The Mission also investigated and confirmed allegations about the use of weapons whose potential long-term impact on individual victims’ health raises concern. They include allegations of the use of weapons containing chemical pollutants such as tungsten and white phosphorus (see also chapter XII).⁶³⁰

1259. Conditions under Israeli occupation prior to 2005, together with poverty and the difficulties caused by the blockade, had already made a deep impact on the mental health of the local population. The three weeks of intense bombardment and military ground action added new, serious psychological traumas, especially noticeable in children. According to Dr. Iyad al Sarraj of the Gaza Community Mental Health Programme, over 20 per cent of Palestinian children in Gaza suffer from post-traumatic stress disorders, the symptoms of which “will appear over the days, months, years, or decades to come”.⁶³¹

1260. One particular characteristic of the conflict, namely that the population could not flee the conflict areas as can be done in many conflicts, and had no shelters or safe places in which to hide or protect themselves, reinforced feelings of being trapped, defenceless and vulnerable to more attacks with a sense of inevitability.⁶³² Many of those who met the Mission stated that they felt terrorized.

⁶²⁷ The Humanitarian Monitor, No. 33.

⁶²⁸ WHO, “Quality of water in the Gaza Strip”, March 2009.

⁶²⁹ WHO Report, p. 29.

⁶³⁰ Report of the Mission by Physicians for Human Rights-Israel, p. 75-76.

⁶³¹ Public hearing, Gaza, 29 June 2009.

⁶³² WHO report, p. 12.

1261. According to Dr. Ahmad Abu Tawahina, psychosomatic disorders have a particularly serious impact on Palestinian society, where social stigma is often associated with mental suffering. In general, this makes it difficult for people to express psychological problems. This condition is frequently experienced in the form of recurrent psychosomatic symptoms, such as migraines, pains in joints and muscles, general fatigue and the inability to do even normal daily activities. Most of these patients are referred not to mental health practitioners, but to general physicians, who prescribe drugs to alleviate the symptoms and not the causes. This in turn has given rise to a serious problem of drug dependency.⁶³³

1262. The sense of security that comes from living in a supportive and safe environment had already been eroded over the years by constant attacks and military confrontation, but was further undermined by the direct experience and/or witnessing of violence against relatives. The widespread destruction, the displacement, the inability to find a safe place anywhere, together with the direct exposure to life-threatening events will continue to have a serious impact on the population. The general state of the inhabitants of the Gaza Strip was described as a form of alienation.⁶³⁴

1263. Many of the mental health problems are the result of years of conflict, living in poverty, scarcity and instability in the area and will probably continue until the root causes are eliminated. People, in particular children, live or grow up in a society under occupation, with constant episodes of violence and no sense of security or normalcy.

1264. The situation is compounded by the relative scarcity of qualified professionals and inadequate facilities. The Gaza Community Mental Health Programme has only about 40 members of staff specialized in mental health, including physicians, social researchers, nurses, as well as psychologists. According to Dr. al-Sarraj, this number is not sufficient to cover even the needs of Gaza City district, whereas for the entire population of the Gaza Strip a team of 300 specialists would be necessary.⁶³⁵

1265. Over the past two decades, the Gaza Community Mental Health Programme and others have worked to build resilience in people. They told the Mission that the recent military operations had wiped out their achievements. People suffering severe loss also detach themselves from reality, in a phenomenon called “numbness”. According to Dr. Tawahina, the general feeling among most people in Gaza is that they have been completely abandoned by the international community. This feeling of abandonment in turn increases their frustration, creating additional pain, and leads eventually to more violence and extremism. The Gaza Community Mental Health Programme studied children’s attitudes towards violence and found that, as a result of this situation, and especially when children had lost their parents and with them the

⁶³³ Dr. Ahmad Abu Tawahina, Gaza Community Mental Health Programme, public hearing, Gaza, 29 June 2009, available at: <http://www.un.org/webcast/unhrc/archive.asp?go=090629>.

⁶³⁴ Ibid.

⁶³⁵ Dr. Iyad al-Sarraj, public hearing, Gaza, 29 June 2009, available at: <http://www.un.org/webcast/unhrc/archive.asp?go=090629>.

associated protection and sense of security, they tended to look at “martyrs” and members of armed groups as adult role models instead.⁶³⁶

1266. A study conducted by the United Nations Development Fund for Women (UNIFEM) revealed that men also showed more symptoms of psychological trauma after the December-January military operations. Based on specialists’ reports, the Mission is of the view that this could in part be due to the additional stress that men face as heads of families in a male-dominated society when they are unable to fulfil their role as main breadwinners or to provide protection and security to their children, wives and other family members.⁶³⁷

1267. Based on previous experiences with emergencies, WHO expects the number of people with serious mental health disorders to increase by an average of 1 per cent above the baseline and with mild to moderate disorders by 5 to 10 per cent “provided that a protective environment is restored”.⁶³⁸

G. Education

1268. The Mission received information about the state of the education sector in the Gaza Strip. UNRWA operates one of the largest school systems in the Middle East and has been the main provider of basic education to Palestine refugees for nearly five decades. The Mission was greatly impressed by its activities and achievements. UNRWA runs 221 schools, while the Government runs 383. UNRWA schools are also a vehicle for health-monitoring and food/nutritional programmes. That Palestinians have high levels of education is largely the result of that work. By the same token, the Mission was shocked to learn how badly educational facilities and activities in the Gaza Strip have been affected as a result of the blockade and the recent military operations.

1269. Information and testimonies received by the Mission showed that the education system was affected in several ways by the restrictions imposed by the blockade. The lack of construction materials had halted all new construction. Repairs to the educational infrastructure also had to be postponed. Around 88 per cent of UNRWA schools and 82 per cent of Government schools operated on a shift system to cope with the demand. The lack of educational material and equipment hampered the ability to maintain teaching standards. This situation was causing a decline in attendance and performance at governmental schools.⁶³⁹

1270. The ban on the movement of people through the crossings affected not only university students planning to study or already undertaking studies abroad, but also the possibilities for academics and scholars to travel abroad on academic exchanges. Between July and September 2008 only 70 students managed to leave the Gaza Strip via Erez but hundreds saw their aspirations to study abroad truncated.

⁶³⁶ Meeting of the Mission with the Gaza Community Mental Health Programme, 4 June 2009.

⁶³⁷ United Nations, *Voicing the Needs of Women and Men in Gaza*, 2009, p. 32.

⁶³⁸ WHO report, p. 13.

⁶³⁹ UNRWA and the Association of International Development Agencies (AIDA), “The Gaza blockade: Children and education fact sheet”.

1271. The military operations destroyed or damaged at least 280 schools and kindergartens. Six of them were located in northern Gaza, affecting some 9,000 pupils, who had to be relocated. According to the Ministry of Education and Higher Education, 164 pupils and 12 teachers were killed during the military operations. Another 454 pupils and five teachers were injured. At UNRWA schools, 86 children and three teachers were killed, and 402 children and 14 teachers injured. During the military operations, 44 UNRWA schools were used as emergency shelters to cope with the more than 50,000 displaced individuals.

1272. Schools were generally closed for the duration of the hostilities, disrupting the study programme. After the ceasefire it was unclear how many students and teachers returned to schools but that number was reported to reach up to 90 per cent in UNRWA schools.⁶⁴⁰ Children and teachers reported situations of anxiety and trauma as a result of the extreme violence to which they had been exposed and the loss of relatives or friends. The Mission heard that the start of the military operations with air strikes at a time when schools were functioning exposed children to a heightened risk and filled them with fear and panic. Schools and the roads towards them occasionally remained unsafe because of the presence of explosive remnants of war. Two Palestinian children were killed by those explosives in Zeytoun shortly after the ceasefire was declared. The Mission heard reports that some children were injured by white phosphorus on their way to school.

1273. The Mission saw the destruction caused to the American School. It also saw the destruction caused at the Islamic University and in other university buildings that were destroyed or damaged. These were civilian, educational buildings and the Mission did not find any information about their use as a military facility or their contribution to a military effort that might have made them a legitimate target in the eyes of the Israeli armed forces.

1274. The Mission was also informed of indoctrination programmes allegedly introduced by the Gaza authorities, and of a process of ideological and political polarization. Such programmes have a high potential for imposing models of education at odds with human rights values and with a culture of peace and tolerance. In this regard, the Mission believes that efforts to incorporate human rights in the curricula should be encouraged by the relevant authorities.

H. Impact on women and children

1275. The attention of the Mission was drawn to the particular manner in which children and women had been affected by the blockade policies and the military operations. In its report, WHO took figures from PCHR: out of 1,417 persons killed, 313 were children and 116 women. It also takes figures from the Israeli armed forces that showed that 1,166 were killed, of whom 49 were women and 89 were under 16.⁶⁴¹ Among the 5,380 injured, 1,872 were children and 800 women.⁶⁴² The Mission directly investigated many incidents in which women and children had been killed as a result of deliberate or indiscriminate attacks by the Israeli armed forces.⁶⁴³

⁶⁴⁰ The Humanitarian Monitor, No. 33.

⁶⁴¹ WHO report, p. 10.

⁶⁴² The Palestinian National Early Recovery and Reconstruction Plan....

⁶⁴³ See chapters VII, X, XI and XIV.

WHO also reported that among the many injured people who crossed the Rafah border and were accepted for medical treatment in Egypt during the second week of the military operations there were 10 children showing a single bullet injury to the head and one with two.

1276. The Mission held interviews with a number of women and representatives of women's organizations and heard the testimony of Mariam Zaqout of the Culture and Free Thought Association.⁶⁴⁴ It heard that the blockade and the military operations had aggravated poverty, which particularly affected women, who must find food and other essentials for their families. Women were often the sole breadwinners (for instance, if male family members had died or been injured as a result of conflict or violence, or were imprisoned) but jobs were hard to come by. Over 300 women had been widowed as a result of the military operations and had become dependent on food and income assistance. In addition, women bore a greater social burden, having to deal with daily life made harsher by the crisis and, at the same time, provide security and care for injured family members and children, their own and others who have lost their parents. These responsibilities sometimes compelled them to conceal their own sufferings, so their concerns remained unaddressed.

1277. In the same interviews, the participants stated that women were particularly affected by the destruction of homes and the invasion of privacy. Having to live in tents without privacy or appropriate sanitary facilities added to their hardship. Moreover, the military operations had strained relations among family members. Psychological pressures on men and women, together with financial difficulties, led to family disputes, family violence and divorce. There were frequent disputes between widows and their in-laws regarding child custody and inheritance. Widows were also under increased pressure to get married again to be able to sustain themselves. Consequently, there was an increase in women seeking legal aid, as legal problems tended to become aggravated because of shortcomings in the law and fewer safeguards for the rights of women.⁶⁴⁵

1278. The particular manner in which the conflict affected women was dramatically illustrated for the Mission by the testimony of a woman of the al-Samouni family (see chap. XI). She had three children and was pregnant when her family and her house came under attack. She commented on how the children were scared and crying. She was distressed when recounting how her 10-month-old baby, whom she was carrying in her arms, was hungry but she did not have anything to give him to eat, and how she tried to feed him by chewing on a piece of bread, the only food available, and giving it to him. She also managed to get half a cup of water from an ill functioning tap. There were other babies and older children. She and her sister exposed themselves to danger by going out to search for food for them. Her husband, mother and sister were killed but she managed to survive. Her other son was wounded in the back, and she carried both out of the house.⁶⁴⁶

1279. Many women felt helpless and embarrassed at not being able to protect and care for their children. Others felt frustrated, invaded in their personal space and powerless when their houses

⁶⁴⁴ Public hearings, Gaza, 29 June 2009.

⁶⁴⁵ Meeting with women's organizations, 3 June 2009.

⁶⁴⁶ Mission interview with Mrs. Massouda Sobhia al-Samouni, Gaza, 3 June 2009.

and possessions were destroyed or vandalized. Those feelings contributed to their psychological suffering.⁶⁴⁷

1280. A UNFPA study conducted immediately after the December-January military operations reported a 40 per cent increase in miscarriages admitted to maternity wards, a 50 per cent increase in neonatal deaths, a rise in obstetric complications and anecdotal evidence of deaths or health complications because pregnant women were unable to reach hospital to deliver their babies.⁶⁴⁸ Women interviewed in the context of another UNFPA study expressed extreme fears for themselves and their loved ones. Associated symptoms included anxiety, panic attacks, feelings of insecurity, disturbed sleep and eating patterns, depression, sadness and fear of sudden death.⁶⁴⁹

1281. Adults and children showed signs of profound depression, while children suffered from insomnia and bed-wetting. Numerous testimonies received by the Mission highlight the presence of children in situations where houses were searched or occupied with force by Israeli soldiers, and when killings occurred.⁶⁵⁰ The Mission heard the testimony of a mother whose children, aged 3 to 16, had witnessed the killing of their father in their own house. With Israeli soldiers forcefully questioning their mother and uncle and vandalizing their house, the children asked their mother whether they would be killed as well. Their mother felt the only comfort she could give them was to tell them to say the *Shehada*, the prayer recited in the face of death.⁶⁵¹ Children were present in improvised shelters on United Nations premises, enduring the trauma of displacement as well as feelings of fear from the military attacks and of deep insecurity from having been attacked in their own homes or in a shelter that was expected to be safe. During its visits, the Mission saw many children living with their families in the ruins of their homes and in makeshift accommodation. The trauma for children having witnessed violence and often the killing of their own family members will no doubt be long-lasting. Mrs. Massouda Sobhia al-Samouni told the Mission that her son was still traumatized. He kept placing coins in his mouth and when she told him it was dangerous and he might die if he did so, he replied that he wanted to join his father.

1282. Some 30 per cent of children screened at UNRWA schools had mental health problems, while some 10 per cent of children had lost relatives or friends or lost their homes and

⁶⁴⁷ Culture and Free Thought Association and UNFPA, “Gaza crisis: Psychosocial consequences for women, youth and men”, executive summary, 27 April 2009, p. 3.

⁶⁴⁸ UNFPA, “Gaza crisis: impact on reproductive health, especially maternal and newborn health and obstetric care”, draft report, 10 February 2009.

⁶⁴⁹ Culture and Free Thought Association, “Gaza crisis: Psycho-social consequences for women”, executive summary, 8 February 2009.

⁶⁵⁰ See, for example, chapters X and XI. See also the testimony of Mrs. Abir Hajji at the public hearing, Gaza, 6 June 2009, recounting the killing of her husband in the presence of her children.

⁶⁵¹ Mission interview with Mrs. Abir Hajji, Gaza, 3 June 2009. Mrs. Hajji also participated in the public hearings, Gaza, 28–29 June 2009.

possessions. WHO estimated that some 30,000 children would need continued psychological support and warned of the potential for many to grow up with aggressive attitudes and hatred.⁶⁵²

I. Persons with disabilities

1283. Information provided to the Mission showed that many of those who were injured during the Israeli military operations sustained permanent disabilities owing to the severity of their injuries and/or the lack of adequate and timely medical attention and rehabilitation. Gaza hospitals reportedly had to discharge patients too early so as to handle incoming emergencies. Other cases resulted in amputations or disfigurement. About 30 per cent of patients were expected to have long-term disabilities.⁶⁵³

1284. WHO reported that by mid-April 2009 the number of people with different types of permanent disability (e.g. brain injuries, amputations, spinal injuries, hearing deficiencies, mental health problems) as a result of the military operations was not yet known. It reported speculations that there might be some 1000 amputees; but information provided by the WHO office in Gaza and based on estimates by Handicap International indicated that around 200 persons underwent amputations.⁶⁵⁴

1285. While the exact number of people who will suffer permanent disabilities is still unknown, the Mission understands that many persons who sustained traumatic injuries during the conflict still face the risk of permanent disability owing to complications and inadequate follow-up and physical rehabilitation.⁶⁵⁵

1286. The Mission also heard moving accounts of families with disabled relatives whose disability had slowed their evacuation from a dangerous area or who lived with a constant fear that, in an emergency, their families would have to leave them behind because it would be too difficult to evacuate them.

1287. One testimony concerned a person whose electric wheelchair was lost after his house was targeted and destroyed. Since the residents were given very short notice of the impending attack, the wheelchair could not be salvaged and the person had to be taken to safety on a plastic chair carried by four people.

1288. The Mission also heard a testimony concerning a pregnant woman who was instructed by an Israeli soldier to evacuate her home with her children, but to leave behind a mentally disabled child, which she refused to do.

1289. Even in the relative safety of shelters, people with disabilities continued to be exposed to additional hardship, as these shelters were not equipped for their special needs. The Mission heard of the case of a person with a hearing disability who was sheltering in an UNRWA school,

⁶⁵² WHO report, p. 13.

⁶⁵³ The Humanitarian Monitor, No. 33.

⁶⁵⁴ WHO report, p. 11; Gaza Situation Report Feb - May 2009, WHO Gaza, provided to the Mission.

⁶⁵⁵ Gaza Situation report.

but was unable to communicate in sign language or understand what was happening and experienced sheer fear.

1290. Frequent disruptions in the power supply had a severe impact on the medical equipment needed by many people with disabilities. People using wheelchairs had to face additional hurdles when streets started piling up with the rubble from destroyed buildings and infrastructure.

1291. In addition, programmes for people with disabilities had to be closed down during the military operations and rehabilitation services stopped (for instance, organizations providing assistance were unable to access stocks of wheelchairs and other aids). Many social, educational, medical and psychological programmes have not yet fully resumed.⁶⁵⁶

J. Impact on humanitarian assistance provided by the United Nations

1292. The tightening of the blockade during the two months before the military operations entailed additional restrictions also for United Nations programmes and activities, in particular those of UNRWA, WFP and others that provide food and other forms of support. The Mission was informed that, as a result of the blockade and the Israeli limitations on the delivery of humanitarian assistance, the capacity of UNRWA to mitigate the effects of the military operations on the civilian population was reduced.⁶⁵⁷ As stated above, just days before the Israeli military operations started, UNRWA had to suspend its food assistance programmes and scale down other programmes.

1293. But the impact of the blockade also extended to several humanitarian projects that had been planned or were in progress and had to be stopped and postponed. Most of them were in health, sanitation, water and education.

1294. During the military operations, UNRWA workers and trucks were also hit, resulting in deaths and injuries. The Board of Inquiry established by the United Nations Secretary-General investigated a number of incidents in which United Nations facilities were targeted and issued a report determining responsibilities.⁶⁵⁸ The Mission is of the view that the factual findings made by the Board of Inquiry entail legal liability for those responsible (see below).

1295. The Mission learned that seven UNRWA staff members (none of them on duty), five job creation programme contractors (one on duty) and three contractors were killed; 21 other contractors were injured. In all, 57 UNRWA buildings were damaged by shelling or airstrikes, including 36 schools (six serving as emergency shelters), seven health centres, three sanitation offices, two warehouses and five other buildings.

1296. Thirty-five UNRWA vehicles, including three armoured vehicles, were damaged. From its remaining 321 vehicles, only 286 are operational and 7 are damaged beyond repair.

⁶⁵⁶ Meeting of the Mission with the Society for Disabled in the Gaza Strip, 30 June 2009.

⁶⁵⁷ Meeting of the Mission with UNRWA, 1 June 2009.

⁶⁵⁸ See Summary of the Report of the United Nations Headquarters Board of Inquiry.

1297. UNRWA informed the Mission that between 27 December and 19 January, 536 UNRWA trucks entered the Gaza Strip through the Kerem Shalom border crossing. By 21 January, 394 trucks had entered through Karni and 2089 through Kerem Shalom (including private, humanitarian and UNRWA trucks). UNRWA considered these amounts to be insufficient to meet the humanitarian needs of the population of the Gaza Strip.⁶⁵⁹

1298. The Israeli Government stated that “from the commencement of the Gaza Operation and for its duration” a total of 1,511 trucks with supplies from Israel as well as diesel, cooking gas and other fuel were allowed into the Gaza Strip. It would appear that some 60 per cent of these supplies were foodstuffs. The Israeli Government states that (presumably during the same period) it also coordinated the passage of 706 trucks carrying donations from international organizations and various countries.⁶⁶⁰ Information from UNRWA suggests that these quantities were irrelevant given the situation prevailing during the military operation and the local needs. For instance, although fuel for the power plant was let in, it was inadequate, forcing the power plant to shut down and causing 16-hour power cuts in some areas. Israel also reported allowing in 2,277,000 litres of diesel during the military operations, but according to UNRWA records only 199,400 litres were allowed in, while OCHA records suggest only 92,000 litres were allowed in, compared to 6,628,400 litres in January 2007.⁶⁶¹

1299. The Israeli Government also provided information about medical supplies that were brought into the Gaza Strip, but the figures are imprecise or incomplete as it was unclear what unit of measure was being used. In addition, many of the agencies listed were not actually bringing in medical supplies. For instance, its report lists that WFP brought in “3,611” medical supplies, but information made available to the Mission indicated that WFP was bringing in only flour and hygiene kits.

K. Legal analysis

1300. Obligations under international humanitarian law are relevant for the assessment of the facts described above. As mentioned earlier, the Fourth Geneva Convention as well as provisions of Additional Protocol I reflecting customary international law apply to the actions of Israel in the Occupied Palestinian Territory before and during the military operations. The protections owed under international humanitarian law to the civilian population of the Gaza Strip by all parties to the conflict include the duty to allow the free passage of humanitarian medical supplies, as well as consignments of essential foodstuffs and clothing for children, pregnant women and mothers at the earliest opportunity (article 23 of the Fourth Geneva Convention). Article 70 of Additional Protocol I provides that parties to a conflict are obliged to allow the passage of articles that are essential for the civilian population, at the earliest opportunity and without delay.

⁶⁵⁹ By 1 February UNRWA was providing food assistance to 900,000 registered Palestine refugees, 504,000 of them children, in the Gaza Strip. There are 1,048,125 refugees in the Gaza Strip (74 per cent of the population), see UNRWA, “Fact sheet: Consequences of the conflict in the Gaza Strip 27 December 2008- 18 January 2009”.

⁶⁶⁰ “The operation in Gaza...”, para. 271.

⁶⁶¹ OCHA also reported that in January 2009 no imports of petrol to Gaza were registered, compared to 1,522,250 litres in January 2007; 915,310 kilograms of cooking gas was imported in January 2009, compared to 5,238,030 in January 2007; and 3,760,400 litres of industrial diesel, compared to 8,370,290 in January 2007.

1301. The relevant provisions of the Fourth Geneva Convention relating to the duties of an occupying Power should also be taken into consideration, in particular the obligations contained in articles 50 (duty to facilitate the working of care and education institutions), 55 (duty to ensure food and medical supplies to the population), 56 (duty to ensure and maintain medical and hospital establishments and services), 59 (duty to agree on relief schemes if the occupied territory is not well supplied) and 60 (duty to continue performing obligations even if third parties provide relief consignments). Several provisions of Additional Protocol I reflecting customary international law are also relevant here, including articles 51 and 52, which prohibit attacks on civilians and on civilian objects, and article 54, which prohibits the destruction of objects indispensable to the survival of the civilian population.

1302. Access to adequate food, shelter and clothing, as part of an adequate standard of living, are human rights recognized in article 11 of the International Covenant on Economic, Social and Cultural Rights. The same instrument recognizes the rights to education and to the highest attainable standard of physical and mental health (art. 12). The content of these rights and the corresponding State duties has been clarified by the United Nations Committee on Economic, Social and Cultural Rights. The Convention on the Rights of the Child protects the child's right to life, survival and development (art. 6) and to be protected from all forms of mental or physical violence (art. 19), to the highest standard of health (art. 24), to an adequate standard of living (art. 27) and to education (arts. 28 and 29). Although these instruments protect women and men, girls and boys alike, the Convention on the Elimination of All Forms of Discrimination against Women adds more specification and scope to those obligations with regard to women. All these human rights obligations are applicable to Israel with respect to its actions in the Gaza Strip since they apply also in situations of armed conflict.

1303. Some rights contained in the International Covenant on Economic, Social and Cultural Rights are subject to progressive realization. This means that they can be achieved only over time. States have an obligation to move as expeditiously and effectively as possible towards that goal. Deliberate retrogressive measures are permitted only under stringent conditions.⁶⁶²

1304. The Mission recalls in this regard its analysis of the Israeli objectives and strategies during the military operations in chapter XVI. There the Mission referred to statements made by Deputy Prime Minister Eli Yishai on 6 January 2009: "It [should be] possible to destroy Gaza, so they will understand not to mess with us". He added that "it is a great opportunity to demolish thousands of houses of all the terrorists, so they will think twice before they launch rockets". The Mission also referred to the so-called Dahiya doctrine, which requires widespread destruction as a means of deterrence and seems to have been put into practice. These objectives and strategies should be kept in mind with regard to the following analysis.

1305. The Mission considers that the closure of or the restrictions imposed on border crossings by Israel in the immediate period before the military operations subjected the local population to extreme hardship and deprivations that are inconsistent with their protected status. The restrictions on the entry of foodstuffs, medical supplies, agricultural and industrial input, including industrial fuel, together with the restrictions on the use of land near the border and on

⁶⁶² General comment No. 3 (1990), para 9.

fishing in the sea have resulted in widespread poverty, increased dependence on food and other assistance, increased unemployment and economic paralysis. The Mission can conclude only that Israel has and continues to violate its obligations as an occupying Power under the Fourth Geneva Convention.

1306. The Mission has given consideration to the argument put forward by the Israeli Government that the above policies and restrictions are being imposed as a form of sanction. However, such blanket sanctions are not permitted under international law. The Committee on Economic, Social and Cultural Rights has addressed economic sanctions and their effects on the enjoyment of economic and social rights, and held:

[...] whatever the circumstances, such sanctions should always take full account of the provisions of the International Covenant on Economic, Social and Cultural Rights [and]

[...] it is essential to distinguish between the basic objective of applying political and economic pressure upon the governing elite of the country to persuade them to conform to international law, and the collateral infliction of suffering upon the most vulnerable groups within the targeted country.⁶⁶³

1307. In respect to the right to water, the Committee stated: “States parties should refrain at all times from imposing embargoes or similar measures that prevent the supply of water, as well as goods and services essential for securing the right to water.” Similar considerations apply to food and health services and goods.⁶⁶⁴

1308. The Mission also notes that reprisals and collective penalties are prohibited under international humanitarian law.

1309. The Mission has considered the question of military security. As serious as the situation that arises when rockets and mortars are fired on or near border crossings may be, the Mission considers that it does not justify a policy of collective punishment of the civilian population of the Gaza Strip. The Mission is aware of the Government of Israel’s declaration of the Gaza Strip as a “hostile territory”. Again, for the Mission, such a declaration does not relieve Israel of its obligations towards the civilian population of the Gaza Strip under international humanitarian law.

1310. Moreover, the Mission takes note that following the decision of the Supreme Court of Israel in what is known as the *Fuel and electricity* case,⁶⁶⁵ Israel reconsidered its obligations relating to the amounts and types of humanitarian supplies that it allowed into the Gaza Strip to meet “vital humanitarian needs”. Whatever that somewhat vague standard may be, the Mission stresses that Israel is bound to ensure supplies to meet the humanitarian needs of the population, to the fullest extent possible.

⁶⁶³ General comment No. 8 (1997), paras. 4 and 16.

⁶⁶⁴ General comments No. 15 (2002) and No. 12 (1999), para. 8.

⁶⁶⁵ Gaber et al. v. The Prime Minister, case No. 9132/07.

1311. In sum, the Mission restates its view that Israel has not fulfilled its duties as an occupying Power in relation to the Gaza Strip.

1312. Again, reference is made to the blockade and Israel's obligation to respect, protect, facilitate or provide, to the extent possible, for the enjoyment of the whole range of economic, social and cultural rights in the Gaza Strip. At the very least, Israel is "under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities".⁶⁶⁶ Israel's actions have led to a severe deterioration and regression in the levels of realization of those rights. Consequently, the Mission finds that Israel has failed to comply with those obligations.

1313. The Mission has also given consideration to the extent and type of military operations conducted by Israel in the Gaza Strip between 27 December 2008 and 18 January 2009. As mentioned earlier, provisions of the Fourth Geneva Convention and of Additional Protocol I that reflect international customary law apply to those operations. Their obligations include that under the Fourth Geneva Convention to give particular protection and respect to the infirm and expectant mothers (art. 16), to respect and protect civilian hospitals and medical personnel (arts. 18 and 20), and to allow the free passage of all consignments of medical and hospital objects, food and clothing subject to certain conditions (art. 23). The Mission will address here only respect for the provisions contained in article 23, which it considers to be part of customary international law. With regard to Additional Protocol I, the Mission will address here Israel's compliance with article 54.

1314. The Government of Israel has provided information about the actions it took to ensure the supply of humanitarian assistance to the Gaza Strip and to ensure that medical relief and rescue as well as essential facilities would function during the hostilities. These actions allegedly comprised: the continuous supply of humanitarian aid through the crossings; coordination of evacuation within the Gaza Strip and outside; a unilateral suspension of military operations each day to enable the resupply of assistance for the population and actions to ensure the functioning of essential infrastructure in the Gaza Strip. To this end, the Government of Israel reported that it established a number of coordinating and liaison bodies with Palestinian authorities and organizations, the United Nations agencies on the ground and humanitarian agencies, such as ICRC. The Government also reported that a number of trucks carrying humanitarian goods from Israel and from other countries, including from international organizations, were given passage.

1315. In response, the Mission draws attention to the fact that no consideration was given to the situation that prevailed in the Gaza Strip before the military operations. In particular, the Mission notes that the amounts and types of food, medical and hospital items and clothing were wholly insufficient to meet the humanitarian needs of the population. Given that since the end of the operations the number of truckloads allowed through the crossings has again fallen, the humanitarian supplies are even less sufficient.

1316. At the height of the military operations, several NGOs appealed to the Government of Israel to ensure a sufficient supply of electricity and fuel to the Gaza Strip to allow for the

⁶⁶⁶ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004, para. 112.

functioning of vital services.⁶⁶⁷ At the same time, two petitions were filed with the Supreme Court of Israel on 7 and 9 of January, respectively, to order the Government to ensure that the Israeli armed forces did not attack ambulances and medical personnel and that sufficient electricity and fuel were supplied to enable hospitals, water and sanitation systems to function during the conflict. On 19 January, as military operations ended, the Supreme Court ruled denying both petitions.⁶⁶⁸

1317. The Government of Israel seems to see the hardship and suffering of Palestinians as an inevitable consequence of a situation of war. The Government's statement that "civilian populations inevitably and tragically suffer during a time of armed combat, particularly where the combat operations take place in densely populated urban areas"⁶⁶⁹ may be correct, but this does not relieve Israel from its obligations under international humanitarian law.

1318. From the facts it ascertained and the foregoing analysis, the Mission finds that Israel has violated its obligation to allow the free passage of all consignments of medical and hospital stores and objects, food and clothing (article 23 of the Fourth Geneva Convention).

1319. Article 54 of Additional Protocol I contains the prohibition:

to attack, destroy, remove or render useless objects indispensable to the survival of the civilian population, such as foodstuffs, agricultural areas..., drinking water installations and supplies and irrigation works for the specific purpose of denying them for their sustenance value to the civilian population or to the adverse party, whatever the motive [...].

The Mission regards this rule as reflective of international customary law. In this context, Israel's obligations to respect, protect and facilitate or provide for the realization of economic, social and cultural rights, and its obligations under the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women are also relevant, and have been undermined by the blockade and restrictions on the Gaza Strip, as well as the actions taken during the military operations.

1320. With regard to article 54 (2) of Additional Protocol I, the Mission recalls its analysis included in chapter XIII on the destruction of buildings, food production and industry. From the facts ascertained and the circumstances described in the present chapter and in chapters XIII and XVI, the Mission concludes that in the destruction or damaging of greenhouses, agricultural land, water wells for irrigation and irrigation networks there was the specific purpose of denying their use for the sustenance of the civilian population of the Gaza Strip. Furthermore, this

⁶⁶⁷ An excerpt from the Hebrew appeal is available in an English press release at: <http://www.gisha.org/UserFiles/File/Press%20Materials/HR%20groups%20-%20resumption%20of%20gaza%20fuel%20supplies%201-1-09%20-%20online%20version.pdf>

⁶⁶⁸ Physicians for Human Rights et. al. v. The Prime Minister et. al., case No. 201/09, and Gisha Legal Centre for Freedom of Movement et al. v. Minister of Defense, case No. 248/09, Judgement of 19 January 2009, para. 26, available at http://elyon1.court.gov.il/files_eng/09/010/002/n07/09002010.n07.pdf

⁶⁶⁹ "The operation in Gaza...", para. 277.

appears to be done as part of a policy of collective punishment of the civilian population as elaborated below.

1321. With respect to the right to water, the Committee on Economic, Social and Cultural Rights stated:

The obligation to *respect* [the right to water] requires that States parties refrain from [...] limiting access to, or destroying, water services and infrastructure as a punitive measure, for example, during armed conflicts in violation of international humanitarian law.⁶⁷⁰

1322. This language is similar to that of a resolution adopted by consensus at the 26th International Conference of the Red Cross and Red Crescent that calls upon parties to a conflict to “take all feasible measures to avoid in their military operations, all acts liable to destroy or damage water sources.”⁶⁷¹

1323. Similar considerations apply to the right to adequate housing.⁶⁷² The widespread destruction of residential housing, water wells and pipe networks cannot be seen as an inevitable or necessary incidence of military hostilities. Israel had a duty to distinguish between civilian and military objects and not to direct any attacks at civilians or civilian objects. The Mission has not received any information suggesting that all the houses destroyed served as hideouts for Hamas fighters or were booby-trapped and does not accept that this was the case. The patterns of destruction described in the present chapter and in others reveal that many houses were fired at or demolished after their occupants had been ordered to leave them. There was then no clear necessity for Israeli soldiers to occupy such properties or to destroy them. They were in effective control of the area. In other cases, houses were demolished with bulldozers during the last few days of the military operations when, again, Israeli forces were in total control of the areas in which the houses were located. Military necessity and the need to prevent rockets being fired from the houses into Israel do not seem to the Mission plausible reasons for this widespread destruction. These considerations apply equally to the destruction of agricultural land and greenhouses, which are so important for local food security.

1324. From the facts available to it and by virtue of the foregoing considerations, the Mission believes that the destruction of private residential houses, water wells, water tanks, agricultural land and greenhouses violates Israel’s duties to respect the right of the people in the Gaza Strip to an adequate standard of living (including food, housing and water).

1325. The Mission is aware of the statement of the Committee on the Rights of the Child that many of the fundamental rights of the child “have been blatantly violated during this crisis”.⁶⁷³ On the basis of this finding and on the facts as described above, the Mission also considers that

⁶⁷⁰ General comment No. 15 (2002), para. 21.

⁶⁷¹ *Customary International Humanitarian Law...*, p. 150.

⁶⁷² Submission to the Mission made by COHRE.

⁶⁷³ Committee on the Rights of the Child, “Effects of the Gaza conflict on children ‘devastating’”, statement, 12 January 2009.

Israel has violated its obligations under the Convention on the Rights of the Child during its military operations in the Gaza Strip and in particular of article 24 (1), stipulating that “States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health-care services”; article 38 (1), stipulating that “States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child”; and article 38 (4), stipulating that “States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict”.

1326. The Mission also notes that Israel is in continuing violation of article 39 of the Convention in that, by actively preventing reconstruction efforts, it does not fulfil its obligations to “take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: [...] armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child”.

1327. The Mission is also aware of the statement made by the Committee on the Elimination of All Forms of Discrimination against Women that “the human rights of women and children in Gaza, in particular to peace and security, free movement, livelihood and health, have been seriously violated during this military engagement.”⁶⁷⁴ It concurs with this statement. The Mission also notes that the Convention on the Rights of Persons with Disabilities, article 11, requires States parties to take “all necessary measures to ensure the protection and safety of persons with disabilities in situations of risk, including situations of armed conflict”. Israel has signed, but not yet ratified, this Convention and is thus under an obligation not to defeat its object and purpose.

1328. The Mission also considered whether the Gaza population was subject to collective punishment or penalty. According to article 33 of the Fourth Geneva Convention, “collective penalties and likewise all measures of intimidation or of terrorism are prohibited”. Article 75 (2) (d) of Additional Protocol I includes collective punishment as an act that is “prohibited at any time and in any place whatsoever”. Reprisals against protected persons are also prohibited under article 33. These prohibitions are part of customary international law.⁶⁷⁵

1329. The Mission notes that the scope of collective penalties goes beyond physical or criminal sanctions to encompass also “sanctions and harassment of any sort, administrative, by police action or otherwise”.⁶⁷⁶ The cumulative effect of the blockade policies, with the consequent hardship and deprivation among the whole population, and of the military operations coupled with statements by Israel made to the effect that the whole of the Gaza Strip was a “hostile territory” strongly suggest that there was an intent to subject the Gaza population to conditions such that they would be induced into withdrawing their support from Hamas. This was apparently confirmed by the then Minister of Foreign Affairs of Israel commenting on the

⁶⁷⁴ United Nations, UN committee says women’s rights were seriously violated during Gaza conflict, press release, 6 February 2009.

⁶⁷⁵ See *Customary International Humanitarian Law...*, p. 374.

⁶⁷⁶ ICRC Commentary to Additional Protocol I, p. 3055.

decision by the Supreme Court to uphold the fuel cuts: “The Palestinians need to understand that business is not usual, I mean there is no equation in which Israeli children will be under attacks by Kassam rockets on a daily basis and life in the Gaza Strip can be as usual”.⁶⁷⁷

1330. The above statements should also be seen in the light of what the Mission has identified as the objectives and strategies of Israel before and during the operations (see chap. XVI). Israel, rather than fighting the Palestinian armed groups operating in Gaza in a targeted way, has chosen to punish the whole Gaza Strip and the population in it with economic, political and military sanctions. This has been seen and felt by many people with whom the Mission spoke as a form of collective punishment inflicted on the Palestinians because of their political choices.

1331. The facts ascertained by the Mission, the conditions resulting from the deliberate actions of the Israeli armed forces and the declared policies of the Israeli Government – as they were presented by its authorized representatives – with regard to the Gaza Strip before, during and after the military operation, cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip. The Mission, therefore, finds a violation of the provisions of article 33 of the Fourth Geneva Convention.

1332. The Mission has also considered the question of whether the crime of persecution as a form of crime against humanity had been committed against the civilian population of the Gaza Strip. To establish that a crime against humanity was committed it would have to be established that there was a widespread or systematic attack on a civilian population that blatantly discriminated and infringed a fundamental right recognized under international customary law or treaty, and was carried out deliberately with the intention so to discriminate.⁶⁷⁸

The crime of persecution encompasses a variety of acts, including, inter alia, those of physical, economic or judicial nature, that violate an individual’s right to the equal enjoyment of his basic rights.⁶⁷⁹

1333. In *Prosecutor v. Kupreskic* judgement, the Trial Chamber of the International Criminal Tribunal for the former Yugoslavia describes the types of acts that would constitute the crime of persecution in the following terms:

[...]

(c) Persecution can also involve a variety of other discriminatory acts, involving attacks on political, social, and economic rights. [...]

⁶⁷⁷ *Global Security*, “Israel’s Supreme Court upholds fuel cuts to Gaza”, 30 November 2007, available at: <http://www.globalsecurity.org/military/library/news/2007/11/mil-071130-voa02.htm>. The issue is also addressed in the submission to the Mission by Diakonia.

⁶⁷⁸ *Prosecutor v. Kunarac et al.*, International Criminal Tribunal for the former Yugoslavia, Trial Chamber, case No. IT-96-23-T and No. IT-96-23/1-T, Judgement of 22 February 2001, para. 431.

⁶⁷⁹ *Prosecutor v. Tadić*, International Criminal Tribunal for the former Yugoslavia, Trial Chamber, case No. IT-94-1-T, Judgement of 7 May 1997, para. 710.

(d) Persecution is commonly used to describe a series of acts rather than a single act. Acts of persecution will usually form part of a policy or at least of a patterned practice, and must be regarded in their context. [...]

(e) [...] discriminatory acts charged as persecution must not be considered in isolation. Some of the acts mentioned above may not, in and of themselves, be so serious as to constitute a crime against humanity. For example, restrictions placed on a particular group to curtail their rights to participate in particular aspects of social life (such as visits to public parks, theatres or libraries) constitute discrimination, which is in itself a reprehensible act; however, they may not in and of themselves amount to persecution. These acts must not be considered in isolation but examined in their context and weighed for their cumulative effect.⁶⁸⁰

1334. The Mission has described above a series of acts that deprive Palestinians in the Gaza Strip from their means of subsistence, employment, housing and water. Palestinians are further denied freedom of movement and their right to leave and enter their own country. Later the report will address the extent to which Palestinian rights to access a court of law and an effective remedy are limited or denied by Israeli laws (see chap. XXVII)

1335. From the facts available to it, the Mission is of the view that some of the actions of the Government of Israel might justify a competent court finding that crimes against humanity have been committed.

XVIII. THE CONTINUING DETENTION OF ISRAELI SOLDIER GILAD SHALIT

1336. The Mission notes the continued detention of Gilad Shalit, a member of the Israeli armed forces, captured in 2006 by Palestinian armed groups during a cross-border operation. In reaction to the capture, the Israeli Government ordered a number of incursions to attack important infrastructure in the Gaza Strip as well as Palestinian Authority offices. This was followed by the arrest of eight Palestinian Government ministers and 26 members of the Palestinian Legislative Council by the Israeli security forces (see chap. II).

1337. Israeli Government officials have repeatedly stated that the easing of the blockade on the Gaza Strip (see chaps. V and XVII) is linked to the release of Gilad Shalit. In February 2009, it appeared that the Israeli Government had dropped its demand for Palestinian militants to release Gilad Shalit before it would end the blockade.⁶⁸¹ However, the then Deputy Prime Minister stated shortly after that "Israel is facing a serious humanitarian crisis, and it is called Gilad Shalit, and... until he is returned home, not only will we not allow more cargo to reach the residents of Gaza, we will even diminish it." Israel's then Prime Minister also stated that "we will not reopen the border crossings [into Gaza] and assist Hamas so long as Gilad Shalit is in

⁶⁸⁰ *Prosecutor v. Kupreškić et al.*, case No. IT-95-16-T, Judgement of 14 January 2000, para. 615.

⁶⁸¹ Agence France Presse quoted by France 24 – "Israel drops Shalit release from truce demands, Hamas claims", 6 February 2009.

their brutal prison."⁶⁸² According to the CBS News Channel, this position was reiterated by the current Israeli Prime Minister in July 2009.⁶⁸³

1338. In October 2008, a Hamas spokesman stated that “the Shalit case is dependent on prisoners swap... He will never be released if the Israeli occupation does not release Palestinian prisoners whom Hamas wants free....”⁶⁸⁴

1339. The Mission is aware that negotiations, through intermediaries, continue with regard to the exchange of prisoners between the Israeli Government and Hamas representatives.

1340. The Mission asked the Gaza authorities to confirm the status of Gilad Shalit. In their reply, which the Mission considered to be unsatisfactory, the Gaza authorities denied being involved in any way with the capture and detention of Gilad Shalit and stated that they are not in possession of any information regarding his current status.

1341. During its investigations in the Gaza Strip, the Mission heard testimonies indicating that during the military operations of December 2008 – January 2009, Israeli soldiers questioned captured Palestinians about the whereabouts of Gilad Shalit (see chap. XV).

1342. Gilad Shalit’s father, Noam Shalit, appeared before the Mission at the public hearing held in Geneva on 6 July 2009.⁶⁸⁵ He informed the Mission of his extreme concern about the condition of his son, who has not been able to communicate with his family and has not been allowed to receive ICRC visits. Mr. Shalit expressed concern about the health and psychological status of his son after more than three years of captivity and appealed for his release.

Legal findings and conclusions

1343. The Mission is of the opinion that, as a soldier who belongs to the Israeli armed forces and who was captured during an enemy incursion into Israel, Gilad Shalit meets the requirements for prisoner-of-war status under the Third Geneva Convention. As such, he should be protected, treated humanely and be allowed external communication as appropriate according to that Convention. ICRC should be allowed to visit him without delay. Information about his condition should also be provided promptly to his family.

1344. The Mission is concerned by the declarations referred to above, made by various Israeli officials, who have indicated the intention of maintaining the blockade of the Gaza Strip until the release of Gilad Shalit. The Mission is of the opinion that this would constitute collective punishment of the civilian population of the Gaza Strip.

⁶⁸² Amnesty International, “Detainees used as bargaining chips by both sides in Israel/Gaza conflict”, 20 March 2009.

⁶⁸³ CBS News Channel, “Gaza blockade remains until Shalit freed”, 30 July 2009.

⁶⁸⁴ “Detainees used as bargaining chips...”.

⁶⁸⁵ Mission’s public hearings: <http://www.un.org/webcast/unhrc/archive.asp?go=090706>.

SECTION B: INTERNAL VIOLENCE

XIX. INTERNAL VIOLENCE AND TARGETING OF FATAH AFFILIATES BY SECURITY SERVICES UNDER THE CONTROL OF THE GAZA AUTHORITIES

1345. The Mission has received reports and allegations of violations committed in Gaza by the security services in the period under inquiry. It has heard some of those allegations first-hand and investigated them by comparing the accounts it received with reports of domestic and international human rights organizations.

1346. From the beginning of 2006, when Hamas won the majority of seats in the Palestinian Legislative Council, violence between competing Palestinian political groups in the Gaza Strip escalated. Armed clashes periodically erupted between the security forces affiliated with the two main political groups – Fatah and Hamas – and culminated in June 2007, when Hamas seized control of the Palestinian Authority’s civil and security institutions of the Gaza Strip.⁶⁸⁶

1347. During the six months preceding the Israeli military operations in Gaza of December 2008-January 2009, reports of deaths in suspicious circumstances and abuses by the security services reporting to the Gaza authorities continued to be documented by domestic monitoring mechanisms, including by the Independent Commission for Human Rights (ICHR).⁶⁸⁷

1348. Between June and December 2008, ICHR received 45 complaints from citizens alleging that they were subjected to torture while being detained or interrogated. All these complaints were lodged against the Ministry of Interior, the police, the military intelligence, the general intelligence and the internal security services of the Gaza authorities, as well as al-Qassam Brigades.

1349. During the same period, ICHR received about 250 complaints from citizens that security agencies (namely the internal security and the police) detained them without respecting legally prescribed procedures. In particular, ICHR reported that no arrest warrants from the competent authorities were presented to detainees and that the security services searched civilian houses without having obtained the relevant search warrants. ICHR reported that family visits to detainees were denied, especially in the al-Saraya and al-Mashtal detention and interrogation centres of the internal security agency. In addition, detainees were not brought before the judicial

⁶⁸⁶ Non-governmental organizations reported that members of the security forces and armed groups belonging to both groups “committed grave human rights abuses and displayed a flagrant disregard for the safety of the civilian population.” “Both sides killed captured rivals and abducted scores of members of rival groups and held them hostage, to be exchanged for friends and relatives held by their rivals.” See “Occupied Palestinian Territories torn apart...”.

⁶⁸⁷ The Independent Commission for Human Rights is an independent Palestinian institution established in 1993 by Presidential Decree with a broad mandate in accordance with national and international norms. This mandate gives it the authority to deal with human rights violations; complaints of abuse of power submitted by citizens; education and promotion; monitoring; and generally integrating human rights into Palestinian legislation and practices. The Mission was impressed by the outstanding work of the institutions in both Gaza and the West Bank. See ICHR, “Monthly reports on violations of HR” (June to December 2008), available at: <http://www.ichr.ps/etemplate.php?id=12>.

authorities within the legally prescribed period. According to ICHR, the security services also continued to detain citizens with arrest warrants issued by the military justice authority.

1350. Many leaders of the Fatah movement as well as the Governors of Khan Yunis and Gaza were at the time of drafting this report still in detention at the al-Mashtal detention and interrogation centre.

1351. In the course of its investigations in Gaza, the Mission obtained information from international and domestic organizations and from individuals in Gaza about violence against political opponents by the security services that report to the Gaza authorities. The Israeli attacks, including the aerial strikes targeting police stations and the main prison in Gaza City (see chap. VII), created chaos, making it impossible to independently verify initial reports about violations by the security services. Towards the end of the military operations, however, domestic human rights organizations started to verify such allegations, including by analysing information from hospitals that they had received bodies of persons who had apparently not been killed in the Israeli attacks.

1352. According to both domestic and international human rights organizations, members of the security services and unidentified gunmen killed between 29 and 32 Gaza residents between the beginning of the Israeli military operations and 27 February.⁶⁸⁸ Among these, between 17 and 22 detainees, who had been at al-Saraya detention facility on 28 December and had fled following an Israeli aerial attack, were killed in seemingly extrajudicial or summary executions, some of them while seeking medical assistance in hospitals (see chap. VII).

1353. Not all those killed after escaping detention were Fatah affiliates, detained for political reasons, or charged with collaborating with the enemy. Some of the escapees had been convicted of serious crimes, such as drug-dealing or murder, and had been sentenced to death.⁶⁸⁹ Regardless of the intended scope of the Israeli attack on the prison, the effect was to create a chaotic situation that, according to some domestic observers,⁶⁹⁰ was exploited by some elements in the security services.

1354. During the course of its work in Gaza, the Mission heard first-hand accounts of violations against Fatah affiliates committed during the period of the Israeli military operations. Some of the witnesses who were interviewed by the Mission were severely distressed and asked that their identity not be disclosed for fear of retaliation. The Mission questioned the witnesses and found them to be credible. The following cases are among those reported to the Mission and are based on information it gathered from a variety of sources.

⁶⁸⁸ See Under Cover of War...; ICHR, “Monthly report on human rights and freedoms in the PNA-controlled territory”, January 2009, available at: <http://www.ichr.ps/pdfs/eMRV-1-09.pdf>; PCHR, “Special report: inter-Palestinian human rights violations in the Gaza Strip”, 3 February 2009, available at: http://www.pchrgaza.org/files/Reports/English/pdf_spec/Increase_rep.pdf.

⁶⁸⁹ No death sentence has been carried out since the Hamas takeover. Death sentences must be approved by the Palestinian Authority’s President, who has not approved any of these sentences since Hamas took control of the administration of justice in Gaza. The last official execution was carried out in 2005 by firing squad.

⁶⁹⁰ Mission interview with a civil society activist, Gaza City, June 2009.

1355. One of the individuals killed following their escape from the damaged al-Saraya prison was a Fatah affiliate who had been arrested and detained long before the Israeli military operations in Gaza. For about two weeks his family made several unsuccessful enquiries with different security services to discover his whereabouts. After finally tracing him, the family was able to visit him in the detention facility run by the internal security and saw that he was in poor health as the likely result of torture and inadequate detention conditions. He was reportedly not able to speak freely while in detention.

1356. He was still in al-Saraya prison on 28 December 2008, when it was hit during an Israeli aerial bombardment. His dead body was later found with signs of bullet wounds at al-Shifa hospital in Gaza City. The family was told that he had been shot dead by unknown persons. Independent sources consulted by the Mission seem to indicate that the victim had fled from al-Saraya detention facility after the aerial attack and had been wounded in the attack itself or shot by the prison staff trying to prevent detainees from escaping.⁶⁹¹

1357. The Mission received a number of reports of violent attacks against individuals affiliated with Fatah⁶⁹² by armed men who broke into their homes. In one incident,⁶⁹³ a group of persons claiming to be police officers knocked at the door of a family residence in Gaza City. The family was confronted by a group of 7 to 10 men wearing civilian clothes, most of them masked. They took one member of the family outside. When they brought him back roughly half an hour later, he appeared to have been beaten violently with metal pipes. He died of his injuries about a month later.⁶⁹⁴

1358. In another incident reported to the Mission, a group of 10 to 12 masked men wearing military uniforms broke into the residence of an individual who used to work for the preventive security under the Palestinian Authority before the Hamas takeover. When the family tried to resist attempts to capture him, the masked men started shooting indiscriminately, killing one member of the family and injuring 11 others. After the shooting, the masked men fled. According to the information provided to the Mission, when the injured were transferred to al-

⁶⁹¹ The Mission ascertained that on 28 December 2008, the second day of the air strikes by Israel, about 200 to 300 prisoners were still held in the facility. Most of the almost 700 prisoners had been released in the previous days. According to a Human Rights Watch report based on the testimony of prisoners, “authorities ... kept in custody roughly 115 alleged collaborators with Israel, about 70 Fatah supporters held on various charges, and some persons convicted of criminal offences who had been sentenced to death. Some of the remaining detainees escaped the following day when Israel bombed the prison, but were subsequently tracked down and killed by masked gunmen. The ICHR documented 20 cases of escaped prisoners being shot and killed by masked gunmen from December 28 to January 31; at least 12 of the victims had been detained in the prison for allegedly ‘collaborating with the enemy.’ Seventeen of the 29 people killed by gunmen that the Palestinian Center for Human Rights (PCHR) reported from December 28 to February 27 were prisoners and detainees who had fled the prison compound after Israel’s attack, including 13 men sentenced to death for collaboration with Israel, three convicted of common crimes, and one man awaiting trial.” (Under Cover of War....). The Gaza authorities informed the Mission (in correspondence of July 2009) that only 11 persons accused or convicted of criminal offences remained in their custody and were transferred “under supervision” to a residential apartment. See also chap. VIII.

⁶⁹² Dates and other identifying information have been removed to protect sources.

⁶⁹³ Mission interviews, Gaza, June 2009.

⁶⁹⁴ “In total, Palestinian human rights groups documented nine deaths by torture or severe beating in Gaza in January, February and March 2009”. Under Cover of War....

Shifa hospital, members of the security services there prevented medical staff from providing assistance.

1359. The Mission was informed that – although serious – this was only one of many incidents in which this family had been targeted by Hamas operatives. One year earlier, a member of the family had been abducted and shot in the legs.

1360. The Mission was also informed of an incident in which a group of armed, masked men broke into the house of a Fatah supporter in Gaza City, abducted him and took him to a nearby location, where he was tortured and shot in the leg. He was reportedly left unconscious and rescued by neighbours. The ordeal reportedly lasted about one hour. The same individual had previously been arrested by members of the security services and kept in detention for a month and a half. He was released only after signing a pledge not to participate in Fatah political celebrations or occasions.

1361. The Mission was informed that, in another incident, three armed, masked men wearing symbols of al-Qassam Brigades broke into the residence in Gaza City of an individual who is a Fatah supporter and on the payroll of a Fatah-controlled institution. The men started beating everyone inside, including a child, and were screaming insults. All the males were then reportedly made to go outside – where other masked men were waiting – and were beaten with metal bars and with rifle butts. After this, the masked men took one of the men to a nearby location, where they again beat him very violently. While he was being beaten, the masked men reportedly kept insulting him, accusing him of collaborating with Israel and calling him a traitor. In response to a question by the Mission, a witness stated that he had the feeling that there was a clear chain of command among the group of masked men. Shortly before meeting the Mission, the same individual had been summoned by the internal security in Gaza along with other Fatah affiliates and kept for four hours at an internal security detention centre in Gaza City before being released.

1362. Similarly, a group of people who were identified as belonging to the internal security stormed the residence of an individual in Gaza City and beat members of the family. The group was composed of masked men who left only after shooting him in the leg. The victim was allegedly prevented by members of the security services from getting treatment at al-Shifa hospital for his injuries. He had previously been arrested and detained by members of the security services. During his detention, he was allegedly subjected to different forms of torture, including beatings, *shabah*,⁶⁹⁵ electric shocks and sleep deprivation. His captors did not reportedly question him or levy specific charges against him. Finally, towards the end of his detention, he was formally accused of “having contacts with the Ramallah government”. He was reportedly arrested again after the end of the conflict by members of the security services and again subjected to torture.

1363. The Mission was also informed of the case of another Fatah affiliate who had been summoned by the internal security in Gaza and detained on the basis of evidence provided by another member of his family who accused him of collaborating with Israel. Additional abuses allegedly committed by the security services include the confiscation of property from the

⁶⁹⁵ A torture method in which the prisoner is tightly shackled for long periods.

families of Fatah affiliates, as well as additional cases of torture while in detention in facilities that they operate.

1364. The Mission was informed that the movement of many Fatah members was restricted during Israel's military operations in Gaza and that many were put under house arrest very early on and threatened with "action" should they disobey. Hundreds of cases in which house arrest was imposed without any kind of due process were reported to domestic human rights organizations during this period. Some individuals received a written order from the police or the internal security (the Mission has a sample of these orders), or a verbal order from the members of al-Qassam Brigades or the internal security. In some cases, those issuing these orders would not identify themselves. The Mission was informed of one case in which an individual put under house arrest in this way was allegedly shot dead by the security services when he and other members of his family were evacuated from their home owing to the presence of the Israeli armed forces.⁶⁹⁶

1365. The Gaza authorities denied that any arrests had taken place in Gaza between 27 December 2008 and 18 January 2009 owing to the insecurity created by the Israeli military operations.⁶⁹⁷ They stated that arrests were made only after the end of these operations and only in relation to criminal acts, "security prevention and to restore public order".

A. Factual findings

1366. The Mission finds that the statements provided to it in relation to abuses committed by the Gaza authorities' security services are credible and has no reason to doubt their veracity.

1367. As for violent attacks against individuals either in their homes or after being taken from their homes, this finding is reinforced by a number of factors. The pattern of armed and sometimes uniformed, masked men breaking into houses is described in almost all incidents reported to the Mission. Also, in most cases those abducted from their homes or otherwise detained were reportedly not accused of offences related to specific incidents, but rather targeted because of their political affiliation. When charges were laid, these were always linked to suspected political activities contrary to the perceived interest of the Gaza authorities. Some of the accounts also indicate that elements of hierarchical control were present within the groups of armed, masked men executing the attacks. The testimonies of witnesses and the reports provided by international and domestic human rights organizations bear striking similarities and indicate that these attacks were not randomly executed, but constituted part of a pattern of organized violence directed mainly against Fatah affiliates and supporters.

1368. In relation to the allegations that between 27 December 2008 and 18 January 2009 more than 20 persons suspected of collaborating with Israel were killed or maimed by being shot in the leg or otherwise severely injured, the Gaza authorities stated that their investigations found these incidents to be the result of family feuds "or otherwise they were individual acts motivated by personal revenge." In addition, they stated that "the Government, through its competent

⁶⁹⁶ Mission interview with a civil society activist, Gaza City, June 2009.

⁶⁹⁷ Mission correspondence with the Gaza authorities, July 2009.

agencies, opened investigations into these events immediately after the war, and submitted charges before the competent Courts.”⁶⁹⁸ According to PCHR, however, on 2 February 2009 a spokesperson for the Gaza authorities stated that “the Government makes distinctions between abuses of law and the actions of the Palestinian resistance during the war, regarding the execution of some collaborators who are involved in collaborating with the [Israeli] occupation.”⁶⁹⁹ The statement seems to express support for a number of acts of violence that occurred in the chaotic atmosphere created by the military operations.

B. Legal findings

1369. Although not internationally recognized and therefore not able to be party to international human rights treaties, the Gaza authorities have an obligation to respect and enforce the protection of the human rights of the people of Gaza, inasmuch as they exercise effective control over the territory, including law enforcement and the administration of justice⁷⁰⁰ (see chap. IV).

1370. Before Hamas took full control of the Gaza Strip in June 2007, its leaders had publicly indicated that they would respect international human rights standards.⁷⁰¹ In July 2009, the Gaza authorities formally stated to the Mission that they accepted the obligation to respect human rights and fundamental freedoms, including those enshrined in the Universal Declaration of Human Rights and in the Palestinian Basic Law. They added that “the Government is in permanent contact with the Red Cross and human rights organizations, and listens to their observations and takes into account their recommendations as far as it can, and those institutions can testify on that”.⁷⁰²

1371. From the facts ascertained by it, the Mission finds that the actions by members of the security services described above constitute serious violations of human rights and are not consistent with either the Universal Declaration of Human Rights or the Palestinian Basic Law. In particular, regarding the Universal Declaration – which has become part of international customary law – they are in violation of article 3 in relation to everyone’s right to life, liberty and security of the person; article 5 in relation to the freedom from torture and cruel, inhuman or degrading treatment or punishment; article 9 stating that no one shall be subjected to arbitrary

⁶⁹⁸ Written reply from the Gaza authorities to the Mission; July 2009.

⁶⁹⁹ Taher al-Nouno, a spokesman of the Gaza authorities, attended the press conference with Ehab al-Ghusein, spokesman of the Ministry of the Interior, and Islam Shahwan, spokesman of the Palestinian police in Gaza. See “Special report...”.

⁷⁰⁰ For example, in their joint report on Lebanon and Israel, a group of four United Nations Special Rapporteurs concluded that: “Although Hezbollah, a non-State actor, cannot become a party to these human rights treaties, it remains subject to the demand of the international community, first expressed in the Universal Declaration of Human Rights, that every organ of society respect and promote human rights. [...] It is especially appropriate and feasible to call for an armed group to respect human rights norms when it exercises significant control over territory and population and has an identifiable political structure” (A/HRC/2/7, para. 19). See A/HRC/6/76, paras. 4-9, for a brief overview of relevant events leading up to Hamas’ seizure of full control in the Gaza Strip. (See also Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford, Oxford University Press, 2006), chap. 7.

⁷⁰¹ See A/HRC/8/17.

⁷⁰² The Gaza authorities have allowed IHCR to function uninterruptedly and regularly deal with the complaints it brings to their attention.

arrest and detention; articles 10 and 11 regarding the right to fair and impartial legal proceedings; and article 19 regarding the freedom of opinion and expression, including the freedom to hold opinions without interference.

1372. The Mission takes note of the statement of the Gaza authorities of the opening of criminal investigations into some of the killings that happened between 28 December 2008 and 18 January 2009. It is, however, concerned that – according to the Gaza authorities – these investigations concern only family feuds or individual acts motivated by personal revenge. The Mission also notes with concern that, at the time of drafting this report, appeals by international and domestic human rights organizations to the Gaza authorities to conduct serious investigations into all allegations of violations, to bring perpetrators to justice and to publish all of their findings remain unanswered. Failure to conduct credible investigations into these allegations and hold those responsible accountable will prevent the victims from accessing justice and encourage a culture of impunity.

THE WEST BANK, INCLUDING EAST JERUSALEM

1373. As explained above in chapter I, the Mission believes that the reference in its mandate to violations “in the context” of the military operations in Gaza required it to go beyond the violations that occurred in and around Gaza. It also believes that violations within its mandate in terms of time, objectives and targets, include those that are linked to the December 2008 – January 2009 military operations, and include restrictions on human rights and fundamental freedoms related to the strategies and actions of Israel in the context of its military operations.

1374. Developments in Gaza and the West Bank are closely interrelated, in the Mission’s view, an analysis of both is necessary to reach an informed understanding of and to report on issues within the Mission’s mandate. On the one hand, the events in Gaza have consequences in the West Bank, on the other, pre-existing problems in the West Bank have been exacerbated by the Gaza military operations.

1375. In its examination of the West Bank with respect to actions taken by Israel, the Mission focused on four key aspects in their linkage to the Israeli military operations in Gaza: (a) the sharp increase in the use of force by Israeli security forces, including the military, in the West Bank; (b) the tightening and entrenchment of the system of movement and access restrictions; (c) the issue of Palestinian detainees and especially the increase in child detainees during and after the military operations; and (d) the Gaza corollary of the detention of Hamas members of the Palestinian Legislative Council.⁷⁰³ While the treatment by the Gaza authorities of those opposing its policies is discussed in chapter XIX, similar issues with regard to the conduct of the Palestinian Authority in the West Bank also called for investigation. Linkages with the Israeli operation in Gaza are elaborated in the respective chapters.

⁷⁰³ The issue of Gazans detained by Israel during and following the operations from December 2008 to January 2009 is discussed in chapter XV.

Methodology

1376. One consequence of the refusal by Israel to cooperate with the Mission was that it was unable to visit the West Bank to investigate alleged violations of international law. The Mission nonetheless received many oral and written reports and other relevant materials from Palestinian, Israeli and international human rights organizations and institutions. In addition, the Mission met with representatives of a number of human rights organizations and with members of the Palestinian legislature and other community leaders (see annex). It invited experts, witnesses and victims to participate in the public hearings held in Geneva on 6 and 7 July 2009. The Mission also conducted telephone interviews with affected individuals and witnesses, and reviewed relevant video and photographic material.

1377. Owing to the lack of access to the West Bank, the chapters in the section below rely on secondary information to a greater extent than in the previous sections.

1378. The Mission found the witnesses it heard in relation to the situation in the West Bank to be credible and reliable. The Mission is also satisfied that the reports it reviewed and to which it refers are credible and based on sound methodologies.

1379. The Mission also wrote to the Palestinian Authority and the Government of Israel seeking information and official positions on, inter alia, the issues addressed in this section. The information received by the Palestinian Authority was taken into account in the present chapter. The Government of Israel has not responded to the Mission's requests.

1380. Owing to the complexity of the issues relating to Palestinian detainees and of freedom of movement and access, the chapters on these issues include an explanatory introduction that sets out the factual parameters of the problems and explains some of the key terminology and concepts.

XX. TREATMENT OF PALESTINIANS IN THE WEST BANK BY ISRAELI SECURITY FORCES, INCLUDING USE OF EXCESSIVE OR LETHAL FORCE DURING DEMONSTRATIONS

1381. The information gathered by the Mission indicates an ongoing pattern of ill treatment and use of force by the Israeli security forces against Palestinians in the West Bank, including East Jerusalem. Ill treatment and low levels of force are reported being common in encounters at checkpoints between Palestinians and the Israeli security forces (army, police and border police),⁷⁰⁴ while a greater, sometimes lethal, degree of force has been used during demonstrations, incursions and search and arrest operations. With heavily armed Israeli military forces present throughout the West Bank, the possibility of violence always exists. As a witness reported to the Mission, "the use of force is part of the system of control of the occupation, where a key element is fear, which can only be sustained by the constant threat and the periodic act of violence".⁷⁰⁵

⁷⁰⁴ B'Tselem, "Beatings & Abuse" (www.btselem.org/english/beatings_and_abuse/index.asp). For the use of private contractors at checkpoints, see chap. XXI.

⁷⁰⁵ Mission interview with Defence for Children International-Palestine Section, 3 July 2009.

1382. Violence against Palestinians in the West Bank does not only come from the security forces. The Israeli military operations in Gaza commenced when the West Bank was experiencing some of the worst acts of settler violence in several years.⁷⁰⁶

1383. Witnesses and experts informed the Mission of a sharp increase in the use of force by the Israeli security forces against Palestinians in the West Bank from the commencement of the Israeli operations in Gaza.⁷⁰⁷ A number of protesters were killed and scores were injured by Israeli forces during Palestinian demonstrations following the beginning of the,⁷⁰⁸ the degree of violence employed in the West Bank during the operations in Gaza, has been sustained since 18 January.⁷⁰⁹ Reports from non-governmental organizations confirm this information.⁷¹⁰

A. Settler violence in the West Bank in the period preceding the Israeli military operations in Gaza

1384. In early December 2008, Israeli settlers in the city of Hebron rioted and perpetrated acts of violence against the local Palestinian population. Although Israel, as the occupying power, has the responsibility to maintain public order and safety in the occupied territory,⁷¹¹ the Israeli police did not intervene to protect Palestinians.⁷¹² Settler violence is a regular occurrence, targeting primarily Palestinian civilians and their property but also, on occasion, Israeli soldiers.⁷¹³ According to the Office for the Coordination of Humanitarian Affairs, “a root cause

⁷⁰⁶ Office for the Coordination of Humanitarian Affairs Special Focus: “Unprotected: Israeli settler violence against Palestinian civilians and their property”, December 2008. In its reply to the Mission (5 August 2009), the Palestinian Authority reported 58 acts of violence perpetrated by settlers on Palestinian civilians from 16 November 2008 to 15 December 2008, compared to a monthly average of 26 reported incidents in the year to date..

⁷⁰⁷ The NGO Al-Haq reported another particularly disturbing case of “what appears to be a willful killing” of a farmer from Hebron on 17 January 2009. According to medical personnel who were asked to collect his body from the Israeli soldiers by whom he had been detained, the farmer appeared to have been shot at point blank in the stomach while seated. See “A vicious reminder of occupation in the West Bank: Israeli soldiers Kill Palestinian farmer in Hebron”. Al-Haq press release, 17 January 2009.

⁷⁰⁸ Mission interview with Al-Haq, 2 July 2009 (six deaths were recorded by Al-Haq). See also Weekly Protection of Civilians reports of the Office for the Coordination of Humanitarian Affairs for the relevant period; the communication received by the Mission from the Palestinian Authority, which reported 30 injuries by shooting from 27 December 2008 to 18 January 2009; the statements of Mohamed Srour and Jonathan Pollak at the public hearings in Geneva, 6 July 2009; and B’Tselem press release of 18 June 2009 “Prohibit live ammunition in circumstances that are not life-threatening in the West Bank”.

⁷⁰⁹ Mission meetings with B’Tselem on 3 July 2009 and Al-Haq on 2 July 2009.

⁷¹⁰ B’Tselem reported an increase in the number of beatings, and referred to some particularly serious cases, including that of an elderly shepherdess whose arm was broken by border police on 11 March 2009. “Border police break arm of Halimeh a-Shawamreh, near the Separation Barrier”, Deir al-‘Asal al-Foqa, March 2009”.

⁷¹¹ The Palestinian Authority is not allowed to enter the part of the Old City of Hebron known as “H2” as a result of the Protocol Concerning the Redeployment in Hebron of January 1997.. With regard to the general situation in Hebron see www.btselem.org/English/Hebron/.

⁷¹² “Al-Haq calls for immediate measures to stop settler violence in Hebron and throughout the Occupied Palestinian Territory”, Al-Haq urgent release, 5 December 2005. In its reply to the Mission, the Palestinian Authority reported 335 settler attacks from 19 May 2008 to 17 July 2009.

⁷¹³ In 2008, the Office for the Coordination of Humanitarian Affairs recorded 290 incidents of settler violence, resulting in 131 Palestinian deaths, a substantial rise over previous years. Most incidents reported involved groups of

of the phenomenon is Israel's decade-long policy of facilitating and encouraging the settling of its citizens inside occupied Palestinian territory, defined as transfer of population and prohibited by international humanitarian law."⁷¹⁴ Israeli media attribute the increase in settler violence to the settler movement which became increasingly radicalized after the Gaza Disengagement in August 2005.⁷¹⁵

1385. According to various sources,⁷¹⁶ rioting erupted in Hebron on 4 December 2008 after the evacuation by the Israeli security forces of Israeli settlers from the Rajabi family home in the old city of Hebron. United Nations sources reported that, at first, clashes erupted between settlers and Israeli security forces, causing injuries on both sides; afterwards, "violence continued in Hebron city. Groups of settlers threw stones at Palestinian houses and set fire to vehicles, agricultural fields, houses and the contents of one mosque. Settlers also attempted to force entry into Palestinian homes."⁷¹⁷ One incident in which Israeli settler Ze'ev Braude shot and injured three members of the al-Matariyeh family was filmed and broadcast by the international media.⁷¹⁸

1386. The wave of violence continued for days.⁷¹⁹ Palestinian hospitals reported 17 injuries during the period, including five bullet wounds.⁷²⁰

settlers attacking vulnerable targets (children, women and the elderly) mainly in the Hebron and Nablus areas. In January 2007, B'Tselem launched a camera distribution and video advocacy project focusing on the Occupied Palestinian Territory. The project aims at providing "Palestinians living in high-conflict areas with video cameras, with the goal of bringing the reality of their lives under occupation to the attention of the Israeli and international public, exposing and seeking redress for violations of human rights." The B'Tselem project has resulted in footage of these kinds of attacks being publicized, such as the attack by settlers on herders in Susya, June 2008..

⁷¹⁴ Office for the Coordination of Humanitarian Affairs Special Focus: "Unprotected: Israeli settler violence against Palestinian civilians and their property", December 2008.

⁷¹⁵ See also, "Israel's religious right and the question of settlements", International Crisis Group Middle East Report N°89 – 20 July 2009.

⁷¹⁶ "Settler violence after evacuation of Occupied House", Temporary International Presence, Hebron, Press Release; "Israel braces for settler violence in wake of Hebron house evacuation", *Ha'aretz*, 5 December 2008, and "Dozens injured as Israeli army removes settlers from Hebron house", Maan News Net, 4 December 2008.

⁷¹⁷ Office for the Coordination of Humanitarian Affairs Special Focus: "Unprotected: Israeli settler violence against Palestinian civilians and their property", December 2008.

⁷¹⁸ For example, "Settlers filmed shooting at Palestinians turn themselves in", *Ha'aretz*, 7 December 2008. The settler was eventually released and not charged or prosecuted.

⁷¹⁹ According to the Office for the Coordination of Humanitarian Affairs, "settler violence quickly spread to other West Bank areas (...) groups of settlers threw stones at Palestinian vehicles in more than twelve locations on the day of the evacuation and attacked Palestinian communities, setting fire to Palestinian property and land, cutting down olive trees, slashing vehicle tires and vandalizing other property", Office for the Coordination of Humanitarian Affairs Special Focus: "Unprotected: Israeli settler violence against Palestinian civilians and their property", December 2008., See also the Alternative Information Centre Settler Violence report for November/December 2008 available at www.alternativenews.org/publications/164-settler-violence-reports/1829-settler-violence-report-november-december-2008-.html and *Ha'aretz*: www.haaretz.com/hasen/spages/1043794.html

⁷²⁰ "IDF declares Hebron area a closed Military Zone after settler rampage", *Ha'aretz*, 4 December 2008. <http://>

1387. The use of force against Gaza solidarity demonstrations in the West Bank during the Israeli operations in Gaza

1388. There was a significant increase in the use of force by Israeli security forces during demonstrations in the West Bank after the start of the Israeli operations in Gaza. The degree of force used against protests during the previous year had already been high, including during protests against the Wall in places such as Jayyous, al-Ma'sara, Bi'lin and Ni'lin.⁷²¹ The villages where demonstrations are regularly held have lost or stand to lose much of their land to Israeli settlements and the Wall. A vibrant grass-roots, non-violent resistance movement has evolved that has attracted support from Israeli and international activists. New tactics and weapons used by the Israeli security forces aimed at suppressing the popular movement⁷²² have resulted in deaths and injuries. For example, in July 2008, Israeli border police killed two children, Ahmad Musa, aged 10,⁷²³ and Yusef Amara, aged 17, both of whom were shot in the head.⁷²⁴

1389. Another cause of concern for the Mission were further allegations of the use of unnecessary, lethal force by Israeli security forces. At the public hearing in Geneva of 6 July 2009, two witnesses, Mohamed Srour and Jonathan Pollak, described the fatal shooting, on 28 December 2008, of two young men from the village of Ni'lin during a protest against the Israeli operations in Gaza. Mr Srour was himself shot in the leg during the same protest.⁷²⁵

1390. At the hearing on 6 July, Mr Srour stated that as a result of this war, many people all around the West Bank, but also in his village Ni'lin, wanted to demonstrate and express their solidarity with the people of Gaza. The demonstration included important participation of people from the different solidarity movements, from Israel as well from the international community.” The two witnesses spoke of the atmosphere that they had encountered in the confrontation with

⁷²¹ “Repression Allowed, Resistance Denied: Israel’s suppression of the popular movement against the Apartheid Wall of Annexation”, Addameer and Stop the Wall report, July 2009. For a list of the 19 people including 11 children killed in anti-wall demonstrations up until July 2009, see <http://palsolidarity.org/2009/06/7647> .

⁷²² See Ni'lin Factsheet at <http://stopthewall.org/factsheets/1669.shtml>

⁷²³ 29 July 2008: Killing of Ahmed Husam Yusef Mousa (10) in Ni'lin. According to Al-Haq “Ahmad Husam Musa, a ten-year-old child, hid in an olive grove. A member of the Israeli Border Police saw Ahmad Musa, left the Border Police vehicle, aimed his rifle and fired a live bullet. Shot from a distance of 50 metres, the bullet entered Ahmad Musa’s forehead and exited through the back of his skull. While two of the demonstration’s organisers attempted to carry Ahmad Musa to safety, they were fired upon by the Border Police. They succeeded in carrying the child to safety, but he was already dead”, “Right to life of Palestinian children disregarded in Ni'lin as Israel’s policy of wilful killing of civilians continues”, Al-Haq press release, 7 August 2008.

⁷²⁴ “Right to life of Palestinian children disregarded in Ni'lin as Israel’s policy of wilful killing of civilians continues”, Al-Haq press release, 7 August 2008. See also “Repression Allowed, Resistance Denied: Israel’s suppression of the popular movement against the Apartheid Wall of Annexation”, Addameer and Stop the Wall report, July 2009. To illustrate the use of unusual weapons which, the report states, is aimed at creating lasting injury, on 13 June 2008, Ibrahim Burnat (aged 26) was shot three times in the thigh while in the weekly anti-Wall demonstration in Bi'lin. According to his medical report, he was shot with an explosive bullet. The report also states that, in the four villages mentioned, 1,566 people had been injured while six people had been killed at protests.

⁷²⁵ The testimony of Mr. Srour and Mr. Pollak, including a video of the events can be viewed at <http://webcast.un.org/ramgen/ondemand/conferences/unhrc/gaza/gaza090706pm1-eng.rm?start=00:35:37&end=01:41:24>.

the soldiers and border police, which was markedly different from the situation before the operations in Gaza. Mr. Pollak stated:

The atmosphere of the incident, and during and after the start of the war generally was that all checks and balances had been removed. The soldiers were saying things related to the Gaza war, taunting things like, "It's a shame we're not in Gaza killing Arabs." There seemed to be an enthusiasm to confront and the amount of live ammunition used shows this. The behaviour of the soldiers has escalated immensely – not that in the past the army was so gentle.

1391. According to the witnesses, the main demonstration had ended when the army and border police used tear gas and stun grenades to disperse the crowd. The next sequence of events took place on the edge of the village, at a considerable distance from the site of the construction of the Wall. The two young men killed were part of a small group of demonstrators, some of whom had thrown stones at the soldiers. In video footage, four or five soldiers appeared to be casually walking around and not seemingly threatened. No tear gas was used at that stage. Dozens of rounds of live ammunition were fired in the direction of the group of young men, hitting three of them within minutes of each other. Mohamed Khawaja was shot in the forehead; Arafat Khawaja, who had turned to run away, was shot in the back, and Mohammed Srour was shot in the leg. Subsequently an ambulance was prevented from reaching the victims, who had to be carried some distance and were eventually put onto a pick-up truck, at which the army fired tear gas. Arafat Khawaja was pronounced dead on arrival at the hospital and Mohamed Khawaja passed away a few days later.

1392. Two Palestinians were killed during other protests against the military operations in Gaza. On 4 January, Mufid Walwel was shot dead during a demonstration near Qalqilya, where the Wall is to be built. In Hebron, on 16 January, Mus'ab Da'na died after being shot in the head. According to an NGO report, the Israeli border police are believed to have been responsible for both incidents.⁷²⁶

1393. The Mission has asked the Government of Israel to explain the increased use of live ammunitions during demonstrations in the West Bank, but has received no reply.

B. The increased level of force since the end of the operations in Gaza

1394. Since the end of the December-January military operations in Gaza, the increased level of force has reportedly continued against demonstrators and in other situations. The Mission heard from an eye witness, how, on 13 March 2009, United States citizen Tristan Anderson was hit, while participating in an anti-Wall demonstration in Ni'lin, with a high velocity tear gas canister in the forehead. According to the witness, Mr. Anderson was taking pictures of Israeli soldiers and border police attacking the demonstrators. A high velocity long-range tear gas canister was used at short range, crushing his forehead. As he laid on the ground, the border police, who would have been able to see him falling down and lying on the ground, continued to shoot tear gas in his direction. Video footage received by the Mission showed Palestinian paramedics in bright orange uniforms putting Mr. Anderson's body on to a stretcher, a tear gas canister landing

⁷²⁶ Al-Haq affidavit No. 4667/2009 and 4608/2009.

directly beside them and a large cloud of gas developing.⁷²⁷ According to the witness, Israeli forces delayed Mr. Anderson's transfer from the Palestinian ambulance to an Israeli ambulance at the checkpoint before entering Israel.⁷²⁸ At 1 August 2009, Mr. Anderson remains in a critical condition in an Israeli hospital.

1395. On 17 April 2009, in Bi'lin, Bassem Abu Rahma was killed by a high velocity tear gas canister which was shot at his chest from a distance of 30 to 40 metres. The killing, which took place during a peaceful demonstration against the Wall, was filmed.⁷²⁹ The footage shows Mr. Abu Rahma standing on a small hill, clearly visible and not armed or otherwise posing a threat.

1396. Eye witnesses reported to the Mission that they felt that it had become almost a sport for snipers, who now routinely enter villages and occupy roofs of buildings, to aim at protesters in a manner that is inappropriate in the context of crowd control, with apparent disregard for the lives or limbs of the persons they hit.⁷³⁰

1397. On 5 June 2009, five people were shot by snipers in a demonstration in Ni'lin, of whom one, Aqel Srour, was killed, and another, a 15 year-old boy, was shot in the abdomen and will be permanently disabled.⁷³¹ Al-Haq described the shooting of Srour, who according to Al-Haq had run to assist the boy who was shot in the abdomen, as a case of "wilful killing".⁷³²

1398. The weapons used by the security forces are also a cause for concern. Many of the injuries to protesters during anti-Wall demonstrations in recent months (in Ni'lin, Bi'lin, Jayyous, Bitunya and Budrus) and the death of Aqel Srour and that of a 14-year-old who was killed in Hebron in February⁷³³ were reportedly inflicted by a .22 caliber Ruger rifle. B'Tselem has protested against the use of this weapon as a means of crowd control on the grounds that it is potentially lethal.⁷³⁴ In its response to B'Tselem's letter of 26 February, the Israeli Judge Advocate General wrote, that "the open-fire regulations applying to the .22 ammunition are

⁷²⁷ See <http://palsolidarity.org/2009/03/5324>.

⁷²⁸ Mission telephone interview with Ulrika Karlsson, 5 August 2009. Israel does not allow Palestinian ambulances to enter Israel. The witness also reported having been shot herself in January, in the calf, with a .22 bullet shot aimed at her, while moments later the only other person near her was shot in the foot. See also the Democracy Now news report "US Consul General says awaiting Israeli Report on IDF shooting of American citizen", 16 March 2009.

⁷²⁹ "Our peaceful village should no longer be the graveyard of our youth", 17 April 2009, at the website www.bilin-village.org/english/articles/press-and-independent-media/Our-Peaceful-Towns-Should-No-Longer-Be-The-Graveyard-Of-Our-Youth.

⁷³⁰ Mission telephone interview with Ulrika Karlsson on 5 August 2009 and direct interview with Jonathan Pollak on 6 July 2009.

⁷³¹ Mission interview with Jonathan Pollak and Mohamed Srour on 6 July 2009 and telephone interview with Ulrika Karlsson on 5 August 2009. See also Addameer report.

⁷³² "The willful killing of Aqel Srour following a Ni'lin demonstration against the Annexation Wall: a deplorable illustration of impunity's slippery slope", Al-Haq press release, 25 June 2009.

⁷³³ "Prohibit live ammunition in circumstances that are not life-threatening in the West Bank", B'Tselem, Press Release, 18 June 2009.

⁷³⁴ Correspondence received by the Mission, available at www.btselem.org/English/Press_Releases/20090709.asp.

comparable, in general, to the open-fire rules applying to “ordinary” ammunition” and that “following your letter, we directed that the forces again be instructed with respect to the binding Open-Fire Regulations that apply to use of the Ruger rifle.”⁷³⁵ However, from the nature of the killing of Aqel Srour and the injuries sustained by protesters in the months following the Judge Advocate General’s response, it is clear that the use of the Ruger rifle has not been tempered.⁷³⁶

1399. The Israeli armed forces’ open-fire regulations for the West Bank provide that different rules apply in situations where Israeli citizens are present, as compared to situations where there are only Palestinians present.⁷³⁷ For example, they provide for the use of live ammunitions under certain conditions, in the case of violent “disturbances”⁷³⁸ near the Wall or in the nearby area. Where Israelis participate, however, the use of live ammunitions is forbidden. Similarly different provisions are found with regard to the use of warning shots and rubber bullets. Witnesses indicated to the Mission, however, that the army no longer distinguishes between Palestinians and their Israeli and international supporters, and uses a greater degree of force against all.⁷³⁹

1400. The Mission asked the Government of Israel about the differences in open fire regulations applied in the Occupied Palestinian Territory in situations in which Israeli citizens are present as opposed to situations where none are present, but has received no reply.

1401. In a recent court hearing, Colonel Virob, an Israeli Brigade Commander in the West Bank, defended the routine use of force in achieving the goals of the occupation.⁷⁴⁰ According to the Association for Civil Rights in Israel, when Colonel Virob was asked about using physical force during an investigation against people who are not suspects, he stated that “using violence and aggression to prevent the situation from escalating and the need to use even more violence is not only allowed but sometimes imperative (...), giving a blow, a push, in a situation even with people who are not involved in an operational situation, if it can advance the mission, is certainly possible.” He added that “the way you use violence should also be appropriate (...), a slap, sometimes a hit to the back of the neck or the chest, in cases that there is friction, a reaction from the Palestinian side, sometimes a knee jab or strangulation to calm someone down is reasonable.”⁷⁴¹

1402. The Mission considers with concern reports of gratuitous abuse by Israeli soldiers. It heard testimonies in a video footage shown on Israeli television⁷⁴² that described a search and

⁷³⁵ Letter from Major Yehoshua Gortler, Legal Assistant to the Judge Advocate General to B’Tselem, dated 15 March 2009.

⁷³⁶ See also B’Tselem letter to Brig. Gen. Avichai Mandelblit, Judge Advocate General, 17 June 2009.

⁷³⁷ See *Open Fire Regulations Booklet for the Soldier in Judea and Samaria region*, issued by the Headquarters of the Central Command in July 2006. See “Open fire regulations for Palestinians only” (in Hebrew), *Maariv* at www.nrg.co.il/online/1/ART1/590/452.html.

⁷³⁸ Situations of disturbances are defined as those that may be the result of demonstrations, marches, and similar events.

⁷³⁹ Mission interview with Jonathan Pollak, 6 July 2009.

⁷⁴⁰ “Truth walks into a Jaffa court”, by Michael Sfar, *Yesh Din*, 10 June 2009.

⁷⁴¹ Association for Civil Rights in Israel Press Release, 24 June 2009.

⁷⁴² Available at <http://news.nana10.co.il/Article/?ArticleID=641918&TypeID=1&sid=126>.

detain operation by the Kfir brigade in the West Bank village of Haris. Hundreds of troops had participated in a nocturnal raid on a village aimed at finding boys who were thought to have thrown stones at settlers' cars some days previously. On 9 June 2009, *The Independent* reported on the operation, quoting soldiers of the Kfir Brigade involved. One was quoted as saying he saw many soldiers "just knee [Palestinians] because it's boring, because you stand there ten hours, you're not doing anything, so they beat people up."⁷⁴³ A second soldier described a "fanatical atmosphere" during the search operations. "We would go into a house and turn the whole thing upside down", he recalled, but no weapons were found. "They confiscated kitchen knives." The first soldier stated that numerous soldiers were involved. "There were a lot of reservists that participated, and they totally had a celebration on the Palestinians: curses, humiliation, pulling hair and ears, kicks, slaps. These things were the norm." He described the beating of a child:

The soldiers who took [detainees] to the toilet just exploded [over] them with beatings; cursed them with no reason. When they took one Arab to the toilet so that he could urinate, one of them gave him a slap that brought him to the ground. He had been handcuffed from behind with a nylon restraint and blindfolded. He wasn't insolent, he didn't do anything to get on anyone's nerves ... [it was] just because he's an Arab. He was something like 15 years old.

1403. He stated that the incidents in the toilet were the "extreme" and added that the beatings did not draw blood. They were "dry beatings, but it's still a beating".⁷⁴⁴

1404. Video footage uploaded to the internet by Israeli border police, and filed under "comedy" offers an insight into how wanton abuse is perceived by members of the security forces themselves.⁷⁴⁵ The Mission has received reports of other, similar occurrences,⁷⁴⁶ giving rise to the concern that an increased level of force and the dehumanization have become normalized in the practice of security forces.

C. The role of impunity

1405. Several witnesses told the Mission that, during the operations in Gaza, the sense in the West Bank was one of a "free for all", where any behavior was permitted for Israeli forces. An even greater use of force than that used in the West Bank could be attributed to a change in atmosphere or attitude towards the "other" during time of war. There are indications that this shift in attitude was also apparent during the war in Lebanon in 2006.⁷⁴⁷ The concept of what is

⁷⁴³ "Bound, Blindfolded and Beaten, By Israeli Troops", *The Independent*, 9 June 2009.

⁷⁴⁴ Ibid.

⁷⁴⁵ "Border Police upload footage of their abuse of Palestinians to YouTube", *Ha'aretz*, 19 June 2009. The article reports how in the footage an Arab youth slaps himself while a voice is heard instructing him to say "I love you, Border Police," and "I will f**k you, Palestine," in Arabic, to the raucous laughter of those present, all border police.

⁷⁴⁶ For example, "Soldiers come across Palestinians and detain and abuse them for hours, Dura, April 2009", B'Tselem.

⁷⁴⁷ Mission telephone interview with Sarit Michael, 5 August 2009. In the video footage of the shooting of an Israeli demonstrator during the war in Lebanon in 2006, a border police member can be heard saying, after the order to

considered “normal” and “acceptable” conduct risks shifting to even higher levels, if those in positions of responsibility do not respond appropriately. In the face of the recently increase in violence by the Israeli security forces in the West Bank, B’Tselem stated that condemnations by Ministers and other officials

remain solely declarative. Security forces, meanwhile, misusing their power, continue to abuse and beat Palestinians, among them, minors (...). If a message is sent to security forces, it is that even if the establishment does not accept acts of violence, it will not take measures against those who commit them. The effect of such a message is that the lives and dignity of Palestinians are meaningless and that security forces can continue, pursuant to the function they serve, to abuse, humiliate, and beat Palestinians with whom they come into contact.⁷⁴⁸

1406. In the past, every case in which a Palestinian not participating in hostilities was killed was subject to criminal investigation. This policy changed in 2000. Criminal investigations are now the exception,⁷⁴⁹ these cases are now simply discussed in an “operational debriefing” by the military itself.⁷⁵⁰ In 2003, the Association for Civil Rights in Israel and B’Tselem filed a petition to reverse this policy change, demanding that every civilian death be independently investigated. The petition included demands for investigations into individual deaths as well as the principle question relating to the overall policy. The former were dismissed, while the principle question is still pending.⁷⁵¹

1407. Yesh Din reports that over 90 per cent of investigations into settler violence are closed without an “indictment being filed”.⁷⁵² B’Tselem reported in June 2009 that the charges against Mr Braude, the Hebron settler who was filmed shooting and injuring three Palestinians in December 2009, would be dropped, as the court had ordered that “secret evidence” against him be disclosed, and the potential public harm of this disclosure would outweigh the harm done by a person, documented as having committed a violent crime, being released back into society.⁷⁵³

open fire was given, “now we’re in Lebanon”. When passing by the injured demonstrator lying on the ground bleeding from his head injury, the commander ignored the calls by a woman to get an ambulance for the injured Israeli. He answers that there are many Israelis injured in Lebanon, too. As shown in the footage, the demonstrator was shot at close range from behind, as he was walking in front of the soldiers. See www.liveleak.com/view?i=8dba196f36.

⁷⁴⁸ “Beating and Abuse”, B’Tselem.

⁷⁴⁹ Mission telephone interview with the Association for Civil Rights in Israel, 29 July 2009.

⁷⁵⁰ Mission interview with Daniel Reisner, 6 July 2009. See also “Response to the Attorney-General's Refusal Concerning a Gaza Probe” at www.acri.org.il/eng/story.aspx?id=635 and chapter XXVIII below.

⁷⁵¹ See the Association for Civil Rights in Israel press release at www.acri.org.il/eng/Story.aspx?id=216. Text of the petition is available at www.btselem.org/english/Legal_Documents/HC9594_03_Investigations_Appeal.rtf.

⁷⁵² “Law Enforcement upon Israeli Civilians in the OPT”, Yesh Din data sheet, July 2008.

⁷⁵³ B’Tselem compares this to the admission in judicial proceedings of secret evidence in the prosecution of Palestinians (see also section below). See “8 June ’09: Bring Ze’ev Braude, the shooter from Hebron, to justice” B’Tselem press release.

1408. In July 2009, an Israeli activist who had been shot in the head in 2006 by the Israeli border police was awarded compensation for his injury in an out of court settlement. To date, the commander who ordered the shooting has not been subject to criminal investigation.⁷⁵⁴

1409. On 7 July 2008, Ashraf Abu-Rahma was shot at short range while blindfolded and handcuffed. The incident was filmed and widely broadcast.⁷⁵⁵ When the Israeli Military Advocate General charged the officer who ordered the shooting with “conduct unbecoming”, Israeli international law Professor Orna Ben-Naftali stated that “the decision (was) indicative of a policy of tolerance towards violence against non-violent civilian protests against the construction of the Separation Wall”. She added that “the implication of such a policy is twofold: first, it might transform ‘conduct unbecoming’ – which as a matter of law is a war crime – into a crime against humanity; second, it may well be construed as an invitation to the international community to intervene through the exercise of universal jurisdiction.”⁷⁵⁶

D. Legal analysis and conclusions

1410. Israel has obligations to Palestinians in the West Bank under both international humanitarian law and international human rights law. With regard to the former, the obligations flow from the status of Israel as the occupying power and the consequent obligations concerning protected persons. With regard to the latter, specific human rights obligations to all individuals in the West Bank arise from both customary law and the obligations assumed by Israel under the various human rights conventions that it has ratified. The obligations under both bodies of law are complementary and mutually reinforcing, and provide a clear framework against which the facts outlined above may be analysed (see chapter IV above). With regard to the issues discussed in the present chapter, the most relevant obligations are set out below.

1. Violence by settlers against Palestinians in the West Bank

1411. Israel has an obligation under customary law, as reflected in article 43 of the Hague Regulations, to ensure public order and safety in the West Bank:

Article 43. The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

⁷⁵⁴ Mission telephone interview with the Association for Civil Rights in Israel, 29 July 2009.

⁷⁵⁵ “Soldiers fires ‘rubber’ bullet at handcuffed, blindfolded Palestinian”, B’Tselem, July 2008, at www.btselem.org/English/Video/20080707_Nilin_Shooting.asp.

⁷⁵⁶ “Whose ‘conduct unbecoming’? The shooting of a handcuffed, blindfolded Palestinian demonstrator, by Orna Ben-Naftali and Noam Zamir, *Journal of International Criminal Justice*, 3 March 2009. Recently, the Israeli Military Advocate General’s decision to charge commander Omri Bomberg and his subordinate with “conduct unbecoming” was overturned, the second time in recent decades that a decision by the Military Advocate General has been overturned. The first being related to the demotion of General Tamir, who let his 14-year-old son drive his military vehicle, see “Neither an officer nor a gentleman”, *Ha’aretz*, 31 July 2008; and “Israeli High Court of Justice rules against Judge Advocate General’s ‘extremely unreasonable’ decision”, B’Tselem press release, 1 July 2009.

1412. This obligation is supported by the obligation by Israel under article 27 of the Fourth Geneva Convention (set out in chapter XV above) to ensure that Palestinians, as protected persons, are protected against all acts or threats of violence.

1413. Israel also has obligations under international human rights law to protect Palestinians from violence by private individuals, and to investigate and punish acts of violence through the application of criminal law, without discrimination.

1414. Palestinians thus have “the right to security of the person” under article 9 (1) of the International Covenant on Civil and Political Rights, which the Human Rights Committee has read to mean that the State has an obligation to take reasonable and appropriate measures to protect individuals from threats to the life of persons under their jurisdiction, including threats from private actors.⁷⁵⁷ Under article 2 of the Covenant, Israel has an obligation “to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant” and to “ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy”. In applying the law, Israel has an obligation under article 26 of the Covenant to ensure that “all persons are equal before the law and are entitled without any discrimination to the equal protection of the law”. Finally, insofar as acts of violence amounting to cruel, inhuman or degrading treatment are perpetrated by private individuals with the acquiescence of public officials (including security forces), Israel has an obligation under article 16 of the Convention against Torture to prevent such acts:

Article 16 (1). Each State party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment ..., when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

Conclusions

1415. With regard to violent acts perpetrated by settlers against Palestinians, such as those relating to the cases of December 2008 in Hebron reported above, the Mission concludes, on the basis of the reports received and the video footage viewed, that Israel has failed to fulfil its obligations to protect the Palestinians from violence by private individuals under both international human rights law and international humanitarian law. In some instances, evidence of the acquiescence of the security forces in this violence could amount to a violation of the relevant obligations relating to cruel, inhuman or degrading treatment.

1416. Insofar as this acquiescence only occurs in respect of violence against Palestinians by settlers, and not vice-versa, there is a strong argument that the behaviour of the security forces is in breach of the obligations of Israel to not discriminate on the basis of national origin under the International Covenant on Civil and Political Rights.

1417. The facts also suggest a violation of article 26 of the International Covenant on Civil and Political Rights guaranteeing equal protection of the law, particularly insofar as there is a failure to investigate Palestinians’ allegations of assault by settlers.

⁷⁵⁷ For example, *William Eduardo Delgado Paez v. Colombia*, Communication 195/1985, views adopted 12 July 1990.

1418. Finally, the failure by Israel to adequately investigate allegations of the failure of the State to protect Palestinians, and of the acquiescence of state actors before the violence of private actors and thus to provide an effective remedy for those suffering human rights violations also place Israel in violation of article 2 of the International Covenant on Civil and Political Rights.

2. Actions by Israel with regard to Gaza solidarity demonstrations

1419. All individuals in the West Bank enjoy the right to freedom of expression provided in article 19 of the International Covenant on Civil and Political Rights:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

1420. Israel has an obligation under article 21 of the International Covenant on Civil and Political Rights to recognize the right of peaceful assembly. While restrictions may be placed on the exercise of this right, they must be “in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others”. In accordance with article 2 of the Covenant, any restrictions on the right of peaceful assembly can only be imposed “without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”.

1421. In dealing with Palestinian civilians, including in the context of public demonstrations, Israel has an obligation under articles 2 and 6 of the International Covenant on Civil and Political Rights to ensure, without distinction of any kind, that no one is arbitrarily deprived of their life:

Article 2 (a). Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 6 (1). Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

1422. A further obligation on Israel is to ensure that no one is subject to torture or to cruel, inhuman or degrading treatment or punishment (article 7 of the International Covenant on Civil and Political Rights and articles 2 and 16 of the Convention against Torture), without discrimination.

1423. The Fourth Geneva Convention places a number of obligations on Israel relevant to the treatment of Palestinians participating in demonstrations. Under article 27, Israel must ensure that Palestinians as protected persons are “at all times ... humanely treated, and ... protected, especially against all acts of violence or threats thereof and against insults and public curiosity”. Treatment by Israel as the occupier must be “without any adverse distinction based, in particular, on race, religion or political opinion”. From article 32 derives the prohibition of “taking any

measure of such a character as to cause the physical suffering or extermination of protected persons”.

1424. Finally, Israel has obligations under articles 146 and 147, as set out in chapter IV, which include an obligation to:

bring before its courts persons alleged to have committed, or to have ordered to be committed ... grave breaches of the Fourth Geneva Convention, including wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

1425. The content of the international human rights obligations set out above has been clarified through a number of other sources, including the jurisprudence of the human rights treaty bodies (in this, particularly the Human Rights Committee), and various standards adopted under the auspices of the United Nations. The most relevant in respect of the facts outlined above are set out below.

1426. The permissible use of force by those exercising police powers is narrowly construed under international human rights law. The Code of Conduct for Law Enforcement Officials,⁷⁵⁸ states that law enforcement officials (which include military authorities when exercising police powers) “may use force only when strictly necessary and to the extent required for the performance of their duty” (art. 3). Under the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials:⁷⁵⁹

law enforcement officials shall not use firearms against persons except in self-defence or defence of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives.

1427. Whenever the lawful use of force and firearms is unavoidable, law enforcement officials are obliged, inter alia, to “ensure that assistance and medical aid are rendered to any injured or affected persons at the earliest possible moment”.

1428. Insofar as the events involve individuals who are human rights defenders, the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms (Declaration on Human Rights Defenders) is also relevant,⁷⁶⁰ in particular article 5 which affirms the right of

⁷⁵⁸ General Assembly resolution 34/169.

⁷⁵⁹ Adopted at the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August to 7 September 1990.

⁷⁶⁰ General Assembly resolution, 53/144, annex. Israel joined consensus when the Declaration was adopted by the Assembly.

everyone “to meet or assemble peacefully” for the purpose of promoting and protecting human rights and fundamental freedoms.

Conclusions

1429. The dispersal by Israeli security forces of demonstrations in the West Bank is *prima facie* in violation of the rights to freedom of expression and to peaceful assembly. Insofar as the protesters were protesting against the violation of human rights in Gaza, the activities of the security forces in dispersing demonstrations ran counter to the provisions of the Declaration on Human Rights Defenders.

1430. Regardless of whether the facts indicate that the above mentioned rights could be permissibly limited under the terms of the International Covenant on Civil and Political Rights, the methods and means of dispersal are questionable. The use of force described to the Mission against peaceful demonstrations is clearly prohibited in such situations, in particular the lethal use of tear gas canisters against demonstrators, of live ammunition (including .22 ammunition), and of snipers. It should be emphasized that the norms relating to the use of force by law enforcement officers outlined above, continue to apply even when the demonstrations are no longer peaceful, such as when stones are thrown, such as in the case of the Ni’lin demonstration of 28 December. The situation described by the witnesses to the killings in Ni’lin suggests that firearms were used when there was no threat to the life of the Israeli security forces or others under their protection. According to the witnesses, both the deceased were shot in the upper body and one of them in the back.

1431. On the basis of the facts obtained, the Mission finds that the use of firearms resulting in the death of demonstrators constitutes a violation of article 6 of the International Covenant on Civil and Political Rights as an arbitrary deprivation of life. Reports that Israeli security forces delayed the provision of medical aid to the injured in at least two demonstrations also suggest that violations occurred under the Fourth Geneva Convention and Principle 5 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

1432. The impermissible use of force that resulted in injury rather than death is in clear violation of a number of standards, including articles 7 and 9 of the International Covenant on Civil and Political Rights.

1433. The use of snipers and lethal ammunitions against demonstrators in situations where there is no threat to soldiers’ lives or to the lives of others under their protection appears to indicate an intention, or at least recklessness, to cause harm to civilians, which may amount to wilful killing. Several of the incidents reported to the Mission raise concerns in this regard.

1434. The discrimination in the open-fire regulations for security forces dealing with demonstrations based on the presence of persons of a particular nationality, violates the principle of non-discrimination of article 2 of the International Covenant on Civil and Political Rights and article 27 of the Fourth Geneva Convention. These violations are all the more serious insofar as the regulations reflect a State policy based on discrimination.

3. Violence by Israeli security forces outside the context of demonstrations

1435. Reports on incidents such as the raid on Haris of March 2009 and the types of acts described by Colonel Virob, as well as those described in affidavits reviewed by the Mission raise concerns with regard to their compliance with article 32 of the Fourth Geneva Convention, article 7 of the International Covenant on Civil and Political Rights and article 16 of the Convention against Torture on the prevention of cruel, inhuman or degrading treatment or punishment.

4. Accountability

1436. The Mission emphasizes that effective investigation and, if appropriate, prosecution resulting from acts by its agents or by third parties involving deprivation of life, serious injuries and torture or inhuman or degrading treatment or punishment, and other possible violations of international humanitarian law and human rights law, is an obligation of the State of Israel. The Mission is concerned that the facts before it point to a failure by Israel to do so with regard to acts committed against Palestinians as reported above.

5. Conclusions

1437. The Mission is alarmed at both the reported increase in settler violence over the past year and the failure of the Israeli security forces to prevent settler attacks against Palestinian civilians and their property.

1438. The Mission is also gravely concerned at the increased use of force, including the use of lethal force, in response to demonstrations, and at the generalized violence of security forces against Palestinians living under occupation in the West Bank. Of particular concern is the apparent and systematic lack of accountability for acts of violence committed by Israeli security forces against Palestinian civilians.

1439. While the filming of incidents has led to the exposure of particular grave incidents of violence, the Mission is also concerned about violence that may have occurred out of sight gone unreported.

1440. In the opinion of the Mission, a line has been crossed, what is fallaciously considered acceptable “wartime behaviour” has become the norm. Public support for a more hard-line attitude towards Palestinians generally,⁷⁶¹ lack of public censure and lack of accountability⁷⁶² all combine to increase the already critical level of violence against the protected population.

⁷⁶¹ As stated by a number of interviewees, such as Sarit Michaeli during a telephone interview, 5 August 2009.

⁷⁶² Michael Sfar, a prominent Israeli human rights lawyer, concludes in an article entitled “The price of internal legal opposition to human rights abuses”, in which he reviews 35 years of human rights practice in Israel, “by lodging petitions to the Israeli High Court, human rights lawyers act as public relations agents of the occupation by promoting the notion that Palestinian residents have a recourse to justice.”

XXI. DETENTION OF PALESTINIANS IN ISRAELI PRISONS

1441. According to estimates, as at 1 June 2009, there were approximately 8,100 Palestinian “political prisoners” in detention in Israel, including 60 women and around 390 children.⁷⁶³ Most of these detainees are charged or convicted by the Israeli military court system that operates for Palestinians in the West Bank. The most common convictions are for stone-throwing. Being a “member of an illegal organization” is another common charge.⁷⁶⁴ All but one of the Israeli prisons holding Palestinians from the Occupied Palestinian Territory are located inside Israel.⁷⁶⁵

1442. As at June 2009, of all the Palestinians held by Israel for reasons related to the occupation, 512 were held without charge or trial, of whom 12 were held under the Israeli Unlawful Combatants Law and 500 as “administrative detainees”.^{766, 767}

1443. The military courts system has been specifically set up by Israel to deal with Palestinians from the Occupied Palestinian Territory, while Israeli citizens living or otherwise present in the West Bank, if arrested, are dealt with under the Israeli civilian legal system. The Palestinian Authority is not allowed to arrest or detain Israeli citizens.⁷⁶⁸

1444. It is estimated that during the past 43 years of occupation, approximately 700,000 Palestinian men, women and children have been detained under Israeli military orders.⁷⁶⁹ Israel argues that these detentions are necessary on grounds of security.

⁷⁶³ Estimates vary. The Mission is using figures provided by Addameer, Prisoners Support and Human Rights Association at 1 June 2009. Its General Director, Ms. Sahar Francis, explained at the public hearing in Geneva on 7 July 2009 that its statistics were based on monthly figures published by the Israeli prison authority and on its own monthly visits to detention facilities in Israel. The organization also attempted to collect direct information from the prisoners. Providing exact statistics was difficult as these figures changed daily, with new arrests and releases. She mentioned, for example, that in 2008, the Israeli military arrested more than 4,000 people, so the average was around 300 per day. Addameer defines as “political prisoners” those prisoners detained in relation with the occupation, as opposed to detainees suspected or convicted of crimes/offences unrelated to the occupation.

⁷⁶⁴ Ms. Sahar Francis, testimony at the public hearing, Geneva, 7 July 2009.

⁷⁶⁵ See “Yesh Din Petitions HCJ: Stop holding Palestinian detainees inside Israel. Yesh Din, along with the Association for Civil Rights in Israel (ACRI) and HaMoked: Center for the Defence of the Individual, filed a petition to the HCJ on March 25, 2009 demanding that prisoners and detainees who reside in the West Bank not be held in facilities within Israel, and that arraignment hearings for such detainees also not be held in courts outside the West Bank”. See also, for instance, *Backyard Proceedings...* See also <http://www.hamoked.org/>. See also Lisa Hajjar, *Courting Conflict: The Israeli Military Court System in the West Bank and Gaza* (University of California Press, 2005).

⁷⁶⁶ Figures provided by Addameer for 1 June 2009.

⁷⁶⁷ The original military order dealing specifically with administrative detention is Military Order No. 1226. Subsequent amendments to it have each received different numbers. The most recent is: Order regarding Administrative Detentions (Temporary Order) [Combined version] (Judea and Samaria) (No. 1591), 2007. See also Addameer, “Administrative detention in the Occupied Palestinian Territory: A legal analysis report”, November 2008.

⁷⁶⁸ The Palestinian-Israeli Interim Agreement on the West Bank and Gaza Strip, annex IV, Protocol Concerning Legal Affairs, art. I.

⁷⁶⁹ A/HRC/7/17.

1445. Due process rights for Palestinians in the Israeli military court system are severely limited. Military Order No. 378, which is the main source regulating detention and trial, allows for a Palestinian detainee from the Occupied Palestinian Territory, including children as young as 12, to be held for up to eight days before being brought before a military judge (Israeli detainees must be brought before a judge within 48 hours). Moreover, Palestinian detainees can be held for up to 90 days without access to a lawyer (compared to 48 hours for Israeli detainees).⁷⁷⁰ Palestinian detainees can be held for up to 188 days before being charged (an Israeli detainee must be charged within 30 days).⁷⁷¹

1446. Accusations of torture and other ill-treatment during arrest, interrogation and detention are common, while the court system is criticized for the use of coerced evidence.⁷⁷² It is also alleged that complaints about the ill-treatment of detainees rarely lead to investigations or to prosecution, let alone conviction.⁷⁷³ The Israeli military court system treats Palestinian children as adults from the age of 16.⁷⁷⁴ Israeli citizens, however, are considered adults only from the age of 18.

1447. Palestinian prisoners are reportedly held in substandard detention facilities (for example, Ktziot prison houses prisoners in tents) with very limited access to health care and education.⁷⁷⁵ Detention inside Israel also means that many detainees do not receive family visits, as their relatives are prohibited from entering Israel (see chap. XXII).

1448. During the Israeli military operations in Gaza, scores of Gazans were detained by the Israeli armed forces. A portion of those were taken to prisons inside Israel, where some remain at the time of writing. This is discussed in chapter XV.

A. Issues linked to Israel's December-January military operations in Gaza

1. Differential treatment of Gaza prisoners

1449. After its disengagement from Gaza in August 2005, Israel ceased to apply its military orders to Gaza and began to prosecute Gaza detainees under domestic criminal law. In June

⁷⁷⁰ Articles 78c and d of Military Order No. 378 "Order Concerning Security Directives" and the Israeli Criminal Procedure (Powers of Enforcement – Detention) Law 1996.

⁷⁷¹ See also, for instance, *Backyard Proceedings*.... See also <http://www.hamoked.org>.

⁷⁷² In its review of Israel in May 2009, the United Nations Committee against Torture expressed concern inter alia at the "numerous, ongoing and consistent allegations" of the use of methods of interrogation contrary to the Convention (CAT/C/ISR/CO/4). See also the United Against Torture coalition's three "Alternative Reports" to the Committee, September 2008; United Against Torture Report, April 2009; examples of torture practised in the briefing by PCATI and the World Organisation against Torture to the Committee (April 2009); Amnesty International's report to the Committee.

⁷⁷³ PCATI, "No defence: Soldier violence against Palestinian detainees", Periodic Report, June 2008, p. 38; see also Yesh Din's Accountability Project statistics: <http://www.yesh-din.org/site/index.php?page=criminal3&lang=en>.

⁷⁷⁴ See Military Order No. 132.

⁷⁷⁵ On child detainees, see below; on female detainees, see, for instance, Addameer, "In need of protection: Palestinian female prisoners in Israeli detention", November 2008.

2006, the Knesset passed a law⁷⁷⁶ which alters existing Israeli criminal law due process guarantees by, for example, allowing a detainee to be held incommunicado for 21 days (after an initial appearance before a judge within 96 hours).⁷⁷⁷

1450. The Law does not discriminate. However, in practice, it is applied only to Palestinian suspects, whether Palestinians from the Occupied Palestinian Territory or Palestinian citizens of Israel. According to estimates submitted to the Knesset's Constitution, Law and Justice Committee by the head of the investigations unit of the General Security Services concerning the applicability of the Law, "over 90 per cent of detainees (to whom this Law was applied) were from the Gaza Strip, but there were cases of detainees who are not from the Gaza Strip such as East Jerusalem and the Arab-Israeli... who are Israeli civilians."⁷⁷⁸

1451. The Law was extended in January 2008. In January 2009 a petition submitted to the Israeli High Court of Justice by ACRI, PCATI and Adalah was heard. The Court criticized many aspects of the law, but the Government argued that it had secret materials that explained why such a law was necessary. In March 2009, the Court decided, on the basis of the secret evidence provided by the State, that the restrictions imposed by the Law were legal and proportionate.⁷⁷⁹ In protest against the Court's use of secret evidence to determine the constitutionality of the Law, the human rights organizations withdrew their petition.⁷⁸⁰

(a) Unlawful Combatants Law

1452. The Israeli Internment of Unlawful Combatants Law 2002 provides for the indefinite detention of "foreign" nationals.⁷⁸¹ It offers a lower level of protection than the Law described above. In addition, it provides for a lower burden of proof and a higher threshold for judicial review.⁷⁸² In its submission to the Committee against Torture, the United Against Torture

⁷⁷⁶ Criminal Procedure (Enforcement Powers – Detention) (Detainee Suspected of Security Offence) (Temporary Order) Law 2006.

⁷⁷⁷ Compared to detainees held under the regular criminal procedural law, who have to be brought before a judge within 24 hours, or 48 hours, as per the Criminal Procedure (Powers of Enforcement – Arrests) Law – 1996. The Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism commented, on 5 July 2006, following the adoption on 27 June 2006 by the Knesset of Law 5765 – 2006 "Criminal Procedure (Enforcement Powers – Detention) (Detainees Suspected of Security Offences) (Temporary Provision)": "The law still does not provide all the necessary procedural safeguards for individuals detained for security reasons. In particular, the law provides that an individual may be held in detention for up to 96 hours before being brought before a judge and may not be present in court when a decision on the extension of the detention is made during the period when he is barred from contact with a legal counsel. In addition, while the provisions on access to legal counsel have not been worsened by this new law, the 21 days of detention without access to legal counsel authorized by the detention law currently in force remain incompatible with international human rights law" (A/HRC/4/26/Add.1).

⁷⁷⁸ Quoted in the petition submitted by ACRI, PCATI and Adalah to the High Court of Justice, *The Public Committee against Torture et al. v. Minister of Justice et al.*, case No. 2028/08.

⁷⁷⁹ ACRI and Partners, "Revoke law severely limiting due process rights", press release, 4 January 2009.

⁷⁸⁰ ACRI, "Illegal decision by HCJ Judges to hear classified GSS evidence", press release, 24 March 2009.

⁷⁸¹ According to Adalah's data, the Law has been applied only to Gazans in the past six months, see "New data on Palestinian prisoners incarcerated in Israeli prisons", *Adalah's Newsletter*, vol. 62, July 2009.

⁷⁸² Mission correspondence with HaMoked, 22 July 2009.

coalition of NGOs concludes that “an examination of its provisions suggests that the goal behind the law is to allow Israel to hold suspects as hostages who can be used as bargaining chips in future negotiations”.

1453. According to this Law, a person is designated an “unlawful combatant” by the Chief of General Staff. The definition the Law gives to the concept of “unlawful combatant” is:

a person who has participated either directly or indirectly in hostile acts against the State of Israel or is a member of a force perpetrating hostile acts against the State of Israel, where the conditions prescribed in article 4 of the Third Geneva Convention of 12th August 1949 with respect to prisoners-of-war and granting prisoner-of-war status in international humanitarian law, do not apply to him (art. 2).

1454. The amendments made to the Law in July 2008, which included lengthening the time detainees can be held before they must be brought before a judge and before they must be allowed access to a lawyer, were challenged and upheld on appeal. Israel’s Court of Criminal Appeals considered the Law constitutional and consistent with international humanitarian law.⁷⁸³

1455. Detention under this Law does not require admission of guilt or the existence of evidence acceptable as part of fair trial standards. According to Al-Mezan, “this law essentially licenses the military to hold individuals arbitrarily and indefinitely, on the basis of assumed rather than proven guilt that they are conducting direct or indirect activities that could harm the security of Israel or are affiliated to groups working to harm the security of Israel.”⁷⁸⁴

(b) Gaza and the ICRC Family Visits Programme

1456. On 6 June 2007, the Israeli authorities suspended the ICRC Family Visits Programme in the Gaza Strip, effectively barring all means of communication between Gazan prisoners and the outside world.⁷⁸⁵ Before the new arrests of Gazan residents during Israel’s latest offensive in the Gaza Strip (see chapter XV), the ban affected approximately 900 prisoners and their families. In June 2009, ICRC called for the ban to be lifted.⁷⁸⁶

1457. According to Addameer, the timing of the decision to ban family visits coincided with factional fighting in the Gaza Strip which was followed by Hamas’ seizing of control, a party which Israel does not recognize and defines as a “terrorist” organization. Therefore, the decision to suspend the programme appears to be a form of collective punishment intended to coerce Palestinians to respond to Israel’s demands in terms of Palestinian leadership.⁷⁸⁷ On 17 June 2008, Adalah filed a petition on behalf of Gazan prisoners’ families, Al-Mezan and the

⁷⁸³ Supreme Court sitting as the Court of Criminal Appeals, *A and B v. State of Israel*, Judgement of 11 June 2008.

⁷⁸⁴ “Al-Mezan calls for release of all detainees held by Israel and especially those categorized as ‘unlawful combatants’ in contravention of international law and human rights principles”, 26 March 2009.

⁷⁸⁵ Palestinian detainees are not normally given access to telephones or the Internet.

⁷⁸⁶ ICRC, “Gaza: families should be allowed to resume visits to relatives detained in Israel”, news release, 10 June 2009.

⁷⁸⁷ Addameer, “The Palestinian prisoners of Israel”, fact sheet, February 2009.

Association for the Palestinian Prisoners, challenging the legality of the ban on visits.⁷⁸⁸ At the time of writing, this petition remained pending.⁷⁸⁹ In October 2008, the Government of Israel submitted arguments to the Supreme Court to suggest that the State is not obliged to permit families from Gaza to visit their relatives incarcerated in Israeli prisons.⁷⁹⁰

1458. In addition, during the December-January military operations in Gaza, Adalah filed a petition demanding that Gazan prisoners should be allowed to use the telephone to contact family members. Not allowing this, Adalah argues, violates detainees' right to dignity and their right to family life, and "transforms their imprisonment to a humiliating and degrading experience that contradicts international norms and conventions, in particular the Universal Declaration of Human Rights."⁷⁹¹ According to Adalah, the Prison Authority replied that they allowed each detainee to use the telephone once. Some prisoners confirmed to Adalah that they had been allowed to use the telephone, but others said that they were not allowed to do so on the grounds that they did not present a certificate proving that a close relative had passed away during the offensive.⁷⁹²

2. Increase in children from the West Bank arrested and detained during or after the military operations in Gaza

1459. The Mission received information that during the Israeli military operations in Gaza the numbers of children from the West Bank detained by Israel increased. According to Defence for Children International – Palestine Section, the figures for January and February were 389 and 423, compared with 327 and 307 the previous year and a monthly average of 319 in 2008. Many of these children were reportedly arrested on the street and/or during demonstrations.⁷⁹³ Defence for Children International also found that their average age changed: for the 12–15 age range, the percentage is usually 23; in January–February 2009, it was 36.⁷⁹⁴ In January–March, it represented 69 children in the Israeli military courts. As of 20 June 2009, eight of these children

⁷⁸⁸ Adalah, "Adalah, Al Mezan and the Association for the Palestinian Prisoners petition Supreme Court demanding that Palestinians from Gaza be permitted to visit their relatives incarcerated in Israeli prisons", press release, 17 June 2008.

⁷⁸⁹ Mission correspondence with Adalah, 2 August 2009.

⁷⁹⁰ Adalah, "State to Supreme Court: Israel not obliged to permit families from Gaza to visit their relatives incarcerated in Israeli prisons", press release, 27 October 2008.

⁷⁹¹ Adalah: "Adalah to [Attorney General] and Prison Service: Prisoners from Gaza incarcerated in Israel must be allowed to use telephones to check on their family members", press release, 31 December 2008.

⁷⁹² Mission correspondence with Adalah, 2 August 2009.

⁷⁹³ Defence for Children International – Palestine Section, "DCI concerned by increase in arrests of West Bank children", statement, 17 January 2009. In the first two weeks of January 10 Palestinian children were brought before Israeli military courts in pretrial hearings, while the normal monthly average is 10-15. Many of these children were arrested from the street and/or during demonstrations."

⁷⁹⁴ Submission to the Mission. See also "DCI concerned by sharp increase in detention of child", statement, 11 March 2009.

were released without charge, while among the 61 charged, 47 were sentenced and 14 are still awaiting trial.⁷⁹⁵

1460. Defence for Children International also found that there was a change in the percentages of children charged with particular offences in the first three months of 2009: in 2008, 27 per cent of children had been charged with throwing stones, as opposed to 61 per cent in the period covered by the report. “During OCL, the army didn’t want to lose control of the West Bank, so they came down like a tonne of bricks on demonstrations.” It concludes “The fact that many of these children were younger than the average child detainee and the fact that the majority were charged with minor offences suggest that this increase is the result of children’s participation in a high number of demonstrations in the West Bank during Operation Cast Lead, and the increased use of force, including mass arrest, by Israeli authorities to suppress and discourage these protests.”⁷⁹⁶

Number of Palestinian children in Israeli detention at the end of each month (2008)⁷⁹⁷

<i>Year/Month</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>
2008	327	307	325	327	337	323	324	293	304	297	327	342
2009	389	423	420	391	346	355	-	-	-	-	-	-

Note: These figures are not cumulative.

1461. One of the cases recorded by Defence for Children International is summarized as follows:

Ahmad Q.: 15-year-old boy arrested on 1 January 2009 and accused of throwing stones. On 1 January 2009, Ahmad was protesting against the war in Gaza near Qalandiya checkpoint. He was arrested by soldiers and dragged 100 metres to a jeep. He was slapped and kicked, had his hands tied with plastic cords and he was blindfolded. He was transferred to Atarot for interrogation, made to sit outside in the cold until 4 a.m., transferred to Ofer prison, and then to prisons inside Israel. He was charged with throwing stones and sentenced to four and a half months in prison and fined NIS 1,000.

1462. The Israeli operations in Gaza caused a wave of demonstrations that did not end with the operations. Child detentions continued to be high in February and March, with the high percentage of children charged with stone-throwing indicating that they were detained during demonstrations. Defence for Children International reports two incidents of mass arrests of

⁷⁹⁵ Submission to the Mission, p. 4. Defence for Children International – Palestine Section estimates that it represents 30-40 per cent of children appearing before Israeli military courts.

⁷⁹⁶ Mission meeting with Defence for Children International, 3 July 2009. On the increased use of force by the Israeli military in the West Bank, see chap. XX.

⁷⁹⁷ Defence for Children International – Palestine Section. These numbers are essentially taken up by West Bank ID holders. Palestinian children (and adults) with Jerusalem ID are generally processed by civilian Israeli courts. The numbers do not include children from Gaza. (Mission interview with Gerard Horton of Defence for Children International, 24 July 2009.)

children after demonstrations in January and March 2009, including one in the village of Haris, where the Israeli armed forces entered the village at around midnight and rounded up about 90 children, detaining them in a school for almost a day, before finally arresting four of them.⁷⁹⁸ The same incident was referred to in the British media and included testimony by Col. Itai Virob commander of the Kfir Brigade:

The worst beatings were in the bathrooms, he said. "The soldiers who took [detainees] to the toilet just exploded [over] them with beatings; cursed them with no reason. When they took one Arab to the toilet so that he could urinate, one of them gave him a slap that brought him to the ground. He had been handcuffed from behind with a nylon restraint and blindfolded. He wasn't insolent, he didn't do anything to get on anyone's nerves... [it was] just because he's an Arab. He was something like 15 years old."⁷⁹⁹

1463. On 6 March 2009, the President of Defence for Children International wrote to the Israeli Minister of Justice, Daniel Friedmann, seeking an explanation for the sharp increase in the number of Palestinian children being detained by Israel and notified the United Nations Committee on the Rights of the Child of these developments. At the time of writing, there had been no response.⁸⁰⁰

1464. In its report on Israel's detention of Palestinian children, Defence for Children International concluded that the abuse of Palestinian children by Israeli authorities is systematic and institutionalized.⁸⁰¹

1465. In a statement issued in support of this report, UNICEF, WHO, OHCHR and local and international child protection agencies (together the 1612 Working Group on Grave Violations against Children) stated that, "Israeli military courts violate many basic fair trial rights according to international humanitarian and human rights law... For example, in almost all cases, the primary evidence used to convict children is a confession obtained through coercive interrogations carried out in the absence of a lawyer. The most common charge made against children was stone-throwing (about 27 per cent), which carries a maximum sentence of 20 years. With the potential for harsh sentences, approximately 95 per cent of cases end in the child pleading guilty, whether the offence was committed or not."⁸⁰²

1466. A former Israeli military commander told the BBC that Palestinian youngsters are routinely ill-treated by Israeli soldiers while in custody. The BBC website item included a video of a young Palestinian boy being arrested at night. Col. Efrati, who had left the army five months

⁷⁹⁸ Submission to the Mission, p. 6.

⁷⁹⁹ *The Independent*, "Bound, blindfolded and beaten – by Israeli troops", 9 June 2009.

⁸⁰⁰ Submission to the Mission.

⁸⁰¹ Defence for Children International, *Palestinian Child Prisoners: The systematic and institutionalised ill-treatment and torture of Palestinian children by Israeli authorities* (June 2009).

⁸⁰² Statement available at: http://www.unicef.org/oPt/1612_STATEMENT_JUNE_9.pdf. The Working Group is chaired by UNICEF and includes OCHA, OHCHR, UNRWA, WHO, Save the Children Alliance, Al-Mezan Centre for Human Rights, B'Tselem, Defence for Children International – Palestine Section and PC HR.

previously, said: “I never arrested anyone younger than nine or 10, but 14, 13, 11 for me, they're still kids. But they're arrested like adults. Every soldier who was in the Occupied Territories can tell you the same story. The first months after I left the army I dreamed about kids all the time. Jewish kids. Arab kids. Screaming.”⁸⁰³ He added, “Maybe [the kid is] blindfolded for him not to see the base and how we’re working... But I believe maybe we put the blindfold because we don't want to see his eyes. You don't want him to look at us - you know, beg us to stop, or cry in front of us. It's a lot easier if we don't see his eyes.”⁸⁰⁴

3. Members of the Palestinian Legislative Council

1467. In September 2005, i.e. some months before the Palestinian Legislative Council elections, the Israeli military conducted a two-day arrest campaign in which 450 persons affiliated with the political parties Hamas and Islamic Jihad were detained. These individuals had been involved in either, or both, the municipal elections or the Council elections. Most were kept in administrative detention and many were released just before or after the Palestinian Legislative Council elections on 25 January 2006. Some candidates were elected while in detention. A number of those released were subsequently rearrested.⁸⁰⁵

1468. Hamas had taken part in municipal elections in 2005 and in Council elections in mid-2005. While Hamas is considered an unlawful organization by Israel,⁸⁰⁶ its candidates participated under a list named “Change and Reform Bloc”, underlining the main election pledge of reforming the system. Not all candidates and elected persons on that list were members of Hamas; some independent candidates joined the list, including a number of Palestinian Christians.⁸⁰⁷

1469. Israel had not banned the Change and Reform Bloc from participating in the elections, which were supported by the international community.⁸⁰⁸ Reportedly, Israel had agreed the list of proposed candidates for the elections with the Palestinian Authority⁸⁰⁹ and facilitated voting on the day.⁸¹⁰ However, the mass arrests in September 2005 hampered campaigning and

⁸⁰³ BBC News, “Israeli troops accused of abuse”, 5 August 2009, available at: http://news.bbc.co.uk/2/hi/middle_east/8186522.stm.

⁸⁰⁴ BBC News, “Israeli troops ‘ill-treat kids’”, 6 August 2009, available at: http://news.bbc.co.uk/2/hi/middle_east/8186905.stm.

⁸⁰⁵ Addameer, “The arrest and detention of Palestinian Legislative Council Members”, fact sheet, available at: <http://addameer.info/?p=503>.

⁸⁰⁶ See State of Israel - Defence Ministry: List of Declarations and Orders, available in Hebrew at: <http://www.mod.gov.il/pages/general/pdfs/terror.pdf>. Hamas was declared a “terrorist group” by Israel on 22 June 1989 (applicable in Israel) and in the Occupied Palestinian Territory on 26 February 1996.

⁸⁰⁷ “The arrest and detention...”.

⁸⁰⁸ See, for instance, European Union “Javier SOLANA, EU High Representative for the CFSP, welcomes announcements by Israeli and Palestinian leaders on Palestinian Authorities elections”, statement, 16 January 2006.

⁸⁰⁹ Mission interview with Mr. Fadi Qawasme, 6 July 2009.

⁸¹⁰ Reportedly, by opening Israeli post offices in East Jerusalem as polling stations and transporting the ballot boxes to the Palestinian Authority’s counting offices at the end of the day. Mr. Fadi Qawasme, testimony at the public hearing in Geneva, 3 July 2009, and Mission interviews with Ms. Sahar Francis, 22 July 2009, and with Dr. Omar Abd al-Razeq, member of the Council, 16 July 2009.

organization, and candidates of all parties were banned by Israel from campaigning in Jerusalem. The Mission met Dr. Mustafa Barghouti, a member of the Council for the Palestinian National Initiative, who reported being arrested and beaten while attempting to campaign for the elections in Jerusalem.⁸¹¹

1470. Nevertheless, the “Change and Reform” list won the elections, gaining 74 seats out of 132, which is said to have come as a surprise to all involved. The tenth Government was inaugurated on 20 March 2006 and included a number of non-Hamas ministers.⁸¹²

1471. As referred to in chapters II and XVIII, on 24 June 2006, an Israeli soldier, Gilad Shalit, was captured by Palestinian armed groups based in Gaza. The Government of Israel held the Palestinian Authority fully responsible for his capture “with all this implies”. It made it clear that it would “take all necessary actions” to bring about his release and that “no person or organization will have immunity at this time”.⁸¹³ On 29 June, the Israeli armed forces arrested some 65 members of the Palestinian Legislative Council, mayors and ministers. Most were Hamas members.⁸¹⁴ They were taken from their homes during the night. Interviewees described situations where up to 20 jeeps surrounded a Council member’s home or where their homes were ransacked, and computers and papers taken.⁸¹⁵

1472. According to Mr. Fadi Qawasme, lawyer to most of the detained Council members, the members detained on 29 June were prevented from having access to lawyers for a week, during which time they were interrogated. Some refused to cooperate; others openly admitted that they were members of Change and Reform. Some were released; others were kept in detention and charged with “membership of a terrorist organization”,⁸¹⁶ or held under administrative detention orders. The prosecution requested that all should be remanded in custody pending trial, a period which took two years. Mr. Qawasme protested against the charges on the grounds that members of the Council should have immunity from prosecution; that they did not recognize the jurisdiction of the court (those arrested should have come under the jurisdiction of the Palestinian Authority according to the Oslo Accords) and argued that Israel had accepted the participation of Change and Reform in the elections.⁸¹⁷

1473. Also according to Mr. Qawasme, the Court initially accepted the arguments and proposed releasing all on bail. The prosecution appealed and rejected the lawyer’s arguments, claiming that Israel had not allowed Hamas to participate in the elections, and that “Change and Reform”

⁸¹¹ Mission meeting with Dr. Mustafa Barghouti, 3 July 2009.

⁸¹² See Institute for Middle East Understanding, “Meet the new Palestinian Authority Cabinet”, 20 March 2006, available at: <http://imeu.net/news/article00764.shtml>.

⁸¹³ Prime Minister’s Office, “Political-Security Cabinet convenes”, press release, 25 June 2006, available at: <http://www.pmo.gov.il/PMOEng/Archive/Press+Releases/2006/06/spokekab250606.htm>.

⁸¹⁴ Mr. Fadi Qawasme, testimony at the public hearing in Geneva, 3 July 2009, and PCHR, “Weekly report on Israeli human rights violations in the Occupied Palestinian Territory”, No. 26/2006 (29 June-5 July 2006), available at: http://www.pchrgaza.org/files/W_report/English/2006/06-07-2006.htm.

⁸¹⁵ Mission interview with Dr. Mariam Saleh, member of the Council and former detainee, 27 July 2009.

⁸¹⁶ Prevention of Terror Ordinance No. 33 of 1948.

⁸¹⁷ Mr. Fadi Qawasme, testimony at the public hearing, Geneva, 3 July 2009.

was in fact Hamas. In February 2007, a year after the election, Israel declared “Change and Reform” a prohibited organization.⁸¹⁸ All were held for at least two years and some were convicted of “membership of Change and Reform”, or “standing in election on behalf of Change and Reform”. The minimum sentence given to the Council members was 42 months, with longer sentences for higher-ranking members.

(a) Arrest, interrogation and detention conditions

1474. The Mission interviewed three members of the Palestinian Legislative Council who were detained by Israel.⁸¹⁹ Dr. Mariam Saleh related how, on the night of her arrest, around 20-25 military jeeps surrounded her house and masked men entered the house by force. Having locked Dr. Saleh and her family on the balcony, they ransacked the house before putting her in a military jeep. They drove her to her office, which they entered by force and from which they took her computer hard disc and many papers. She was then taken to al-Maskobiya (an interrogation centre in Jerusalem), where she was held for a month. She reported being interrogated for three-day stretches from 8 a.m. to 5 a.m. the next morning. Dr. Saleh further reported that her son and husband were brought to the interrogation centre in order to pressure her into confessing that she was a member of Hamas.⁸²⁰

1475. The interviewees related that, as most members were in their fifties or sixties, detention was hard to cope with and a particularly humiliating experience.⁸²¹ They spoke of a lack of access to medical assistance and proper medication, of ailments worsening because of the dire detention conditions, of a lack of adequate food, and of specific dietary adjustment for a diabetic patient for instance. They further spoke of humiliation by prison guards (who initially found it amusing to have, for example, a minister as prisoner), of attempts to gain confessions by collaborators, of the use of stress positions and of sleep deprivation. They further reported extremely difficult transport conditions, being enclosed in a car with a dog, for example, or being shackled hands and feet inside a bus for 12 hours at a time with no water or access to a toilet. The trips from prison to court and back could take many days, with the bus stopping at a number of different prisons on the way picking up and dropping off passengers, and the detainees being tied up and crammed for lengthy periods despite some being elderly and in poor health. One

⁸¹⁸ Change and Reform was declared an “unlawful association” by Israel on 22 February 2007 (applicable in Israel) and in the Occupied Palestinian Territory (by Israeli military order) on 22 July 2007.

⁸¹⁹ Dr. Mariam Saleh, Minister for Women in the 10th Palestinian Government, detained November 2007 and released June 2008; Dr. Omar Abd al-Razeq, Minister of Finance in the 10th Palestinian Government, detained 13 December 2005, released 13 March 2006, detained 29 June 2006, released 3 August 2008, detained 15 December 2008, released 28 April 2009; and WB/01, detained in 2007 and released in the past six months.

⁸²⁰ Mission interview with Dr. Mariam Saleh, 27 July 2009. A PCATI report details the frequent use of family members to pressure detainees, despite an Israeli High Court decision banning the practice. PCATI, “Family matters: Using family members to pressure detainees under GSS interrogation”, April 2008. See also B’Tselem, “Human rights organizations: Prohibit GSS use of family members to pressure interrogees”, petition, 16 April 2008, available at: http://www.btselem.org/english/Press_Releases/20080416.asp.

⁸²¹ According to PCATI, even seemingly innocuous measures such as cuffing (both hands and feet) are used in a deliberate way. Painful shackling is done for invalid and irrelevant reasons, which include causing pain and suffering, punishment, intimidation, and illegally eliciting information and confessions. The practice of shackling may be used by the various authorities as a tool for dehumanizing Palestinian detainees subject to the control of the occupying Power. PCATI, “Shackling as a form of torture and abuse”, Periodic Report, June 2009.

interviewee reported having spent altogether about 350 days, “almost a year”, on such multi-day trips.⁸²²

1476. Interviewees reported extremely limited family visits, with one being told his mother was not considered “immediate family” and not being allowed a visit from her for three years.⁸²³

1477. The former detainees interviewed by the Mission feared rearrest, at times had been rearrested, on the same charges, and reported trying to minimize their travel and public appearances.⁸²⁴ One interviewee reported that, during his last detention, he had been given a two-year suspended sentence, which would take him past any prospective election date. He added that, in any case, no one could stand in these elections for Hamas or Change and Reform, since doing so had become punishable and subject to three years’ imprisonment.⁸²⁵ All interviewees also reported family and friends receiving threats and being harassed by Palestinian Authority security forces.⁸²⁶

1478. According to B’Tselem, Israeli officials have made public statements relating the arrests of the Council members to political goals:

in an interview with [Associated Press] a few hours after the first wave of arrests, on 29 June 2006, Major-General Yair Naveh, OC Central Command, said that the decision to arrest senior Palestinian officials was made by the political echelon and that they would be released upon the release of Gilad Shalit. In an interview with the army radio station on 24 May 2007, the day that the second wave of arrests took place, the then Defense Minister, Amir Peretz, stated that “the arrest of those heads of Hamas is to show the military organizations that we demand that the firing stop.”⁸²⁷

1479. The Inter-Parliamentary Union has recently adopted a number of resolutions protesting against the arrest and detention of the Palestinian parliamentarians, including those from the Change and Reform Bloc. It notes that the Council members were sentenced to much longer periods in detention than persons convicted of military action and that “clearly, the intention was to keep them in prison for the rest of their parliamentary term.” It “considers that the rearrest of four Change and Reform parliamentarians following the failure of the negotiations regarding the release of Gilad Shalit and the simultaneous restrictions of the rights of political prisoners suggests that Israel is in fact holding the [Palestinian Legislative Council] members concerned as hostages.”⁸²⁸

⁸²² Mission interview with Dr. Omar Abd al-Razeq, 16 July 2009.

⁸²³ Ibid.

⁸²⁴ Mission interview with WB/01, 16 July 2009.

⁸²⁵ Mission interview with Dr. Omar Abd al-Razeq, 16 July 2009.

⁸²⁶ Mission interviews with Dr. Omar Abd al-Razeq, 16 July 2009, and Dr. Mariam Saleh, 27 July 2009.

⁸²⁷ B’Tselem, “Detention of senior Palestinian officials – wrongful infringement of fundamental rights”, press release, 1 August 2007.

⁸²⁸ Resolutions adopted unanimously by its Governing Council at its 184th session (Addis Ababa, 10 April 2009), see <http://www.ipu.org/conf-e/120/120.pdf>.

(b) Associated measures

1480. In May 2006, the Israeli Minister of Interior at the time, Roni Bar-On, decided to revoke the permanent residency status (i.e. the right to reside in Jerusalem under Israeli law) of four Council members (including the then Minister of Jerusalem Affairs). The letter received stated “Pursuant to [the Law of Entry into Israel], you are deemed to be a resident in the State of Israel. You are obliged to pay allegiance to the State of Israel. Nonetheless, your actions prove otherwise and indicate that your allegiance is paid to the Palestinian Authority.”⁸²⁹ The members petitioned the Israeli High Court, while ACRI and Adalah submitted an amicus curiae brief, arguing that the Jerusalemites’ reduction to permanent resident status of the city after it was annexed by Israel could not be removed. The human rights organizations argued that the residency status of the members was cancelled because the Government of Israel did not welcome the election result.⁸³⁰ The petition was filed at the Israeli High Court of Justice contesting the status removal or de facto exile, in 2006, but it is still pending.⁸³¹ Potentially, a ruling that Jerusalem residency can be revoked on the basis of a lack of loyalty to Israel could have extremely far-reaching consequences for the Palestinian residents of occupied East Jerusalem. Until now Israeli law has allowed the revocation of Jerusalem residency rights only of Palestinians who are unable to prove that their “centre of life” is in Jerusalem.⁸³²

(c) Recent developments

1481. In January 2009, during the Israeli operation in Gaza, the Israeli armed forces once again arrested a number of Hamas leaders on 1 and 9 January 2009.

1482. Addameer comments “the timing of the waves of arrests indicates that the arrests were intended to put pressure on the Palestinian people and its leadership.”⁸³³ Interviewees have indicated that the arrest campaigns effectively work as deterrence. They report having family members, colleagues and employees arrested by both Israel and the Palestinian Authority.

1483. In March, two Council members and former detainees interviewed by the Mission reported that a group of detainees associated with Hamas were given mobile telephones and asked to meet as a group and to intervene in the negotiations surrounding the release of Gilad Shalit. According to the interviewees, detainees were gathered from different prisons for this meeting in Ktziot prison in the Negev. Some detainees were brought out of solitary confinement for this purpose, while solitary confinement is normally imposed because allowing these specific

⁸²⁹ Al-Haq, “Attacking democracy: Recent Israeli attacks on Palestinian democratic institutions”, November 2006, available at: <http://www.alhaq.org/pdfs/Attacking%20Democracy.pdf>.

⁸³⁰ Adalah, “Israeli Supreme Court: Members of the Palestinian Legislative Council whose Jerusalem residency status was revoked must be given an opportunity to submit applications to reinstate it”.
press release, 17 September 2008.

⁸³¹ *Khalid Abu Arafah et al. v. Minister of Interior*, case No. 7803/06.

⁸³² See B’Tselem, “Revocation of residency in East Jerusalem”.

⁸³³ “The arrest and detention...”.

detainees to meet and speak with others is considered a security risk.⁸³⁴ On this occasion, the group of senior Hamas detainees (Council members and other leaders) were asked to call other Hamas leaders in Gaza and Damascus to influence the negotiations over Gilad Shalit and the prisoner exchange. However, they decided not to cooperate, stating that they were not free to confer or negotiate from detention.⁸³⁵

1484. According to Addameer, a few hours after Hamas declared an end to the negotiations for the release of Gilad Shalit, the Israeli armed forces conducted a series of raids into the West Bank towns of Nablus, Ramallah, Hebron and Bethlehem, and arrested four Council members, the former Deputy Prime Minister of the 10th Government, a university professor and a Hamas leader.⁸³⁶ For PCHR these arrests “could be acts of pressure exerted by Israel on the Hamas leadership in order to resolve the case of captured Israeli soldier Gilad Shalit, and conclude the prisoner exchange.”⁸³⁷ Ms. Sahar Francis of Addameer commented:

It is unthinkable that the Israeli Government first engages in a political process and negotiations with Hamas, and then kidnaps 10 political leaders, associated with the movement and uses them as bargaining chips. This is not only a form of collective punishment, which in itself is a violation of international humanitarian law, but also a politically counterproductive move.⁸³⁸

(d) The downgrading of Hamas prisoners’ detention conditions

1485. On 18 March 2009, the Israeli Justice Minister, Daniel Friedmann, established a committee to “work to reduce privileges afforded Hamas and Islamic Jihad security prisoners”.⁸³⁹ He reportedly announced in the media that the downgrade was intended “to match [these prisoners’] conditions of incarceration to those of Gilad Shalit”.⁸⁴⁰ The Mission interviewed two former Hamas detainees who confirmed that from the end of March they had stopped receiving newspapers and books and had their “recreation” time reduced to 3 hours per

⁸³⁴ According to human rights organizations, some prisoners have been held in isolation from between five months to 23 years. Physicians for Human Rights – Israel and Addameer, “The sounds of silence: Isolation and solitary confinement of Palestinians in Israeli detention”, July 2008.

⁸³⁵ Mission interviews with WB/01, and with Dr. Omar Abd al-Razeq, 16 July 2009.

⁸³⁶ Addameer, “Addameer condemns IOF’s abduction of 10 political leaders”, press release, 19 March 2009, available at: <http://addameer.info/?p=934>.

⁸³⁷ PCHR, “PCHR condemns IOF acts of reprisal on Hamas affiliated political leaders in the West Bank”, press release, 19 March 2009.

⁸³⁸ “Addameer condemns...”.

⁸³⁹ “The team will include representatives of the Attorney General’s office, the Israel Prison Service, the IDF and the ISA, and will work to reduce privileges afforded Hamas and Islamic Jihad security prisoners.” Cabinet communique, 22 March 2009, available at: http://www.mfa.gov.il/MFA/Government/Communiques/2009/Cabinet_communique_22-Mar-2009.

⁸⁴⁰ Quoted by HaMoked in its “Position paper regarding the proposal for downgrading the incarceration conditions of prisoners associated with Hamas”, available at: www.hamoked.org.il/items/111330_eng.pdf.

day.⁸⁴¹ According to HaMoked, the decision to create the committee “establishes the use of a large group of prisoners as ‘bargaining chips’ until the resolution of a matter to which they have no connection and which they cannot influence.”⁸⁴² According to Addameer, “on 29 March the Israeli Government accepted recommendations presented by a special Ministerial Committee aiming at downgrading detention conditions of prisoners identified with Hamas and Islamic Jihad.”⁸⁴³

(e) Effect of the detention of the Palestinian Legislative Council’s members: disabling the legislative and enabling the executive

1486. The detention of the Council’s members has meant that it has been unable to function for three years and no laws have been passed. According to ICHR, it has not been able to exercise its oversight function over the Government’s administrative and financial performance, “whether through the questioning, granting/withholding confidence, or holding the Government accountable, or inquiry of finding the facts in cases of grave violations of Palestinian human rights during 2008.”⁸⁴⁴

1487. Conversely, the executive authority in the West Bank has played a major role in legislative policymaking – where the Government has referred a number of laws to the President, and the President issued 11 decisions with the power of law in 2008.⁸⁴⁵ The Palestinian Basic Law provides that a caretaker government may, in exceptional circumstances which cannot be postponed, issue decisions with the power of law; however these must be submitted to the Council at the first available session and be approved or cease to have power of law. ICHR argues that some of the laws issued by the President of the Palestinian Authority represent a retreat from the legal guarantees for the protection of fundamental rights and freedoms of Palestinian citizens (see chap. XXIII).

B. Legal analysis and conclusions

1488. The detention practices mentioned in the introduction to this chapter have been found by various United Nations bodies to be in violation of international human rights and humanitarian law. In the analysis that follows, the Mission has restricted itself to analysing the specific violations relevant to its mandate.

⁸⁴¹ Note that these are normally paid for by the Palestinian Authority’s Ministry of Detainees’ and Ex-Detainees’ Affairs. “Recreation time” is the time detainees are able to leave their cells and, as such, includes time spent in the showers, meal times, etc.

⁸⁴² “Position paper regarding the proposal...”.

⁸⁴³ Addameer, “The continuous violation of Palestinian political prisoners’ rights”, *public statement*, 17 April 2009, available at: <http://addameer.info/?p=945>.

⁸⁴⁴ ICHR, *Fourteenth Annual Report*, p. 24.

⁸⁴⁵ *Ibid.*, p. 25.

1. The military court system and Israel's detention of Palestinians from the Occupied Palestinian Territory in general

1489. International law gives the occupying Power the right to detain members of the protected population both for criminal offences and for imperative security reasons (see below under “administrative detention”). According to international humanitarian law, as an exception to the preservation of legal conditions in the occupied territory, the occupying Power can “subject the population of the occupied territory to provisions which are essential to enable the occupying Power to fulfil its obligations under the present Convention” (article 64 of the Fourth Geneva Convention). It can establish military courts to prosecute local residents for violations of these provisions (art. 66), which should be “properly constituted, non-political”, a requirement intended to prevent the use of such courts for political or racist persecution, and they should “sit in the occupied territory”, a provision which is intended to ensure due process for detainees and accused persons brought before them.⁸⁴⁶

1490. Articles 67 to 75 of the Fourth Geneva Convention contain a number of fair trial guarantees the military courts should offer, including the right to choose a defence lawyer, who shall be able to visit freely (art. 72). However, based on information received by the Mission, even this most basic principle is not normally complied with in the Israeli military court system.

1491. Article 9 (3) of ICCPR requires anyone arrested or detained on a criminal charge to be brought promptly before a judge and to be brought to trial within a reasonable time or to be released. The provisions of Israeli Military Order No. 378 are not in line with this requirement.

2. The use of detention in the context of the Mission's mandate

1492. The detention of members of the Palestinian Legislative Council and their conviction for being members of a particular political party violate the prohibition on discrimination based on political belief, contrary to article 26 of ICCPR:

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, political or other opinion, national or social origin, property, birth or other status.

1493. In addition they violate article 25:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions: (a) to take part in the conduct of public affairs, directly or through freely chosen representatives; (b) to vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors [...].

⁸⁴⁶ Jean S. Pictet (ed.), *Commentary: The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva, ICRC, 1958), pp. 335-336.

1494. The Mission finds that the detentions, insofar as they were carried out in response to political events unrelated to the individual members detained, may amount to collective punishment, contrary to article 33 of the Fourth Geneva Convention:

No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.

[...]

Reprisals against protected persons and their property are prohibited.

1495. The facts gathered by the Mission also indicate a violation of the right not to be arbitrarily detained as protected by article 9 (1) of ICCPR:

Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

3. Detention of children

1496. Article 76 of the Fourth Geneva Convention requires that proper regard should be paid to the special treatment due to minors in detention. The facts gathered by the Mission indicate that Palestinian minors are not given the special treatment due to them, in particular minors aged 16 and 17, who are treated as adults.

1497. Article 37 (b) of the Convention on the Rights of the Child provides that “the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate time.” This requirement appears to have been violated by the detention of children in large numbers during or following demonstrations.

1498. The detention of large numbers of children and others participating in demonstrations may also be contrary to the provisions of the Declaration on Human Rights Defenders relating to the protection of the right to protest against violations of human rights.

1499. Reports of ill-treatment of children by Israeli security forces, described above, indicate violations of article 37 of the Convention on the Rights of the Child.

4. Additional legal issues

1500. The removal of residency status (of the Council members from East Jerusalem) based on their (implied) refusal to pay allegiance to Israel constitutes a violation of article 45 of the Hague Regulations which provides that “it is forbidden to compel the inhabitants of occupied territory to swear allegiance to the hostile Power,” which is also part of customary international law.

1501. The removal of residency status could additionally amount to deportation, which violates the Fourth Geneva Convention, article 49. In addition, it violates the individual’s freedom to choose his residency (article 12 of ICCPR), which, on the face of it, cannot be justifiably

curtailed under the exceptions foreseen by article 12 (3). If such curtailment is based on political belief it is prima facie inconsistent with articles 2 (non-discrimination) and 19 (freedom of opinion) of ICCPR. In addition, the revocation could constitute an unlawful interference with family life, contrary to article 17, as well as the right to family life in article 23, where residency status revocation means the family can no longer live together as one unit.⁸⁴⁷

1502. The systematic discrimination, both in law and in practice, against Palestinians in legislation (including the existence of an entirely separate legal and court system which offers systematically worse conditions than that applicable to Israelis) and practice during arrest, detention, trial and sentencing compared with Israeli citizens⁸⁴⁸ is contrary to ICCPR, article 2, and potentially in violation of the prohibition on persecution as a crime against humanity.⁸⁴⁹

5. Conclusions

1503. The Mission is concerned about the detention of children and adults on political grounds, in poor conditions and outside the occupied territory in violation of international humanitarian law. The Mission notes the very high number of Palestinians who have been detained since the beginning of the occupation (amounting to 40 per cent of the adult male population of the Occupied Palestinian Territory) according to a practice that appears to aim at exercising control, humiliating, instilling fear, deterring political activity and serving political interests.

1504. The Mission is equally concerned by the reports of coercion and torture during interrogations, trials based on coerced confessions or secret evidence, and the reportedly systematic and institutionalized ill-treatment in prisons.

1505. The Mission is particularly alarmed at the arrest and detention of hundreds of young children, and the rise in child detention during and following the Israeli military operations in Gaza. The ill-treatment of children and adults described to the Mission is disturbing in its seemingly deliberate cruelty.

1506. The legal instruments allowing for the indefinite detention of “unlawful combatants”, as well as enshrining the deficient due process regimes, the differential treatment of Palestinian and Israeli prisoners (including the differential definition of a “child”), and the exemptions de facto allowing for harsher interrogation techniques raise concerns about the legal system being a part of this practice, rendering it deliberate and systematic.

1507. The Mission notes with concern the arrest and lengthy detention of democratically elected Palestinian parliamentarians, which appears to be a deliberate act to interrupt the democratic functioning and self-governance of Palestinians.

⁸⁴⁷ On the revocation of Jerusalem residency rights generally, see B’Tselem, http://www.btselem.org/English/Jerusalem/Revocation_of_Residency.asp.

⁸⁴⁸ There is also discrimination between Jewish Israeli citizens and Palestinian Israeli citizens, in law and practice.

⁸⁴⁹ Article 7 of the Rome Statute.

XXII. ISRAELI VIOLATIONS OF THE RIGHT TO FREE MOVEMENT AND ACCESS

1508. In the West Bank, Israel has imposed a system of interlocking measures, only some of which are physical barriers that restrict the movement and access of Palestinians within the West Bank. This includes movement between Jerusalem and the rest of the West Bank, between the West Bank and Israel, between the West Bank and Gaza and between the West Bank and the outside world and vice versa.

1509. Movement is restricted by physical obstacles, such as roadblocks, checkpoints and the Wall, but also by administrative measures, such as identity cards, permits, assigned residence, laws on family reunification and policies on the right to enter from abroad and the right of return for refugees. The restriction on the ability to move freely, without obstacle or delay, or without another person's authorization, is often perceived as a humiliating experience.⁸⁵⁰

1510. Restrictions include denial access, mainly to Jerusalem for all Palestinians except those who are designated by Israel as Jerusalem residents,⁸⁵¹ citizens of Israel and special permit holders⁸⁵². Special permits are rarely granted.⁸⁵³

1511. Palestinians are denied access to areas expropriated for the building of the Wall and its infrastructure, for use by settlements,⁸⁵⁴ buffer zones, military bases and military training zones,⁸⁵⁵ and the roads built to connect these places. Many of the roads are "Israeli only"⁸⁵⁶ and

⁸⁵⁰ See the reports of Machsom Watch, a volunteer network of Israeli women who monitor checkpoints on a daily basis at www.machsomwatch.org/en. See also, "Ground to a halt: denial of Palestinians' freedom of movement in the West Bank", B'Tselem, August 2007 and the interview with Nadera Shalhoub-Kevorkian, on her book *Militarization and Violence against Women in Conflict Zones in the Middle East*, at www.opendemocracy.net/article/email/checkpoints-and-counter-spaces. Checkpoints are also sites of confrontation: see chap. XXI.

⁸⁵¹ Around 225,000 Palestinian with Jerusalem identity cards live in the part of Jerusalem between the Wall and the Green Line. A number of East Jerusalem areas and suburbs, however, now fall outside the Wall, such as Abu Dis, Kafr Aqab, and Shu'fat refugee camp. "Five years after the International Court of Justice advisory opinion: a summary of the humanitarian impact of the Barrier", Office for the Coordination of Humanitarian Affairs, July 2009.

⁸⁵² East Jerusalem Palestinians have identity cards showing their status as "permanent residents" of Israel. Palestinians living in the remainder of the West Bank have West Bank identity cards and need to apply for special permits to enter East Jerusalem.

⁸⁵³ Shawan Jabarin, General Director of Al-Haq, Geneva public hearing, 6 July 2009 (by videoconference).

⁸⁵⁴ Palestinians are normally not allowed to enter settlements, except for those employed in settlement industrial zones or in the settlements, who normally require permits. For a comprehensive overview of the settlement project, see "Land Grab, Israel's settlement policy in the West Bank", B'Tselem, September 2008; and "Access Denied: Israeli Measures to Deny Access to Land around Settlements", B'Tselem, May 2002.

⁸⁵⁵ This applies to much of the Jordan Valley. See "The Eastern Border: Palestinians of the Jordan Valley", Jordan Valley Solidarity, 15 February 2009., available at www.jordanvalleysolidarity.org/index.php?option=com_content&task=view&id=166&Itemid=9The Mission met with the Mayor of Al-Akaba village in the Jordan Valley, Mr. Sami Sadeq, who gave an account of his experience of living in a village surrounded by military training grounds, 3 July 2009.

⁸⁵⁶ Access also includes foreign citizens.

forbidden for Palestinian use.⁸⁵⁷ An example of an “Israeli only” road is Road 443, between Tel Aviv and Jerusalem, which passes through the West Bank. Once a major Palestinian traffic artery serving 33 villages, this stretch of the road has now been turned into a highway that Palestinians are forbidden to use. A number of tunnels have been built under the road to enable access, but movement is still extremely restricted for the villagers.⁸⁵⁸

1512. Movement between Gaza and the West Bank for Palestinians is virtually impossible.

1513. Generally speaking, Israelis can and do travel freely around the West Bank, with the exception of the main Palestinian cities, which are off limits to Israelis, according to Israeli law.⁸⁵⁹

1514. The Mission has reviewed claims that foreign passport holders, whether or not of Palestinian origin, can and are regularly denied entry to the West Bank by Israeli border authorities.⁸⁶⁰ According to a report of June 2009 received by the Mission, in the first six months of 2009, the number of entry denial cases reported increased relative to the last quarter of 2008, “raising concerns that Israel is again escalating its policy of arbitrary entry denial”.⁸⁶¹ Recent reports criticize the new “Palestinian Authority only” visas issued by Israel to foreign citizens.⁸⁶² These practices severely limit the ability of international humanitarian workers and human rights defenders to carry out their activities.⁸⁶³

⁸⁵⁷ See “Checkpoints, physical obstructions, and forbidden roads”, B’Tselem, at www.btselem.org/english/Freedom_of_Movement/Checkpoints_and_Forbidden_Roads.asp; and “Road 443, West Bank road for Israelis only”, B’Tselem at www.btselem.org/English/Freedom_of_Movement/Road_443.asp. See also Shawan Jabarin, Geneva public hearings, 6 July 2009 (by videoconference).

⁸⁵⁸ Other access restrictions are more difficult to grasp, such as access with usage restriction; for example on land and in urban areas where no building or agriculture is permitted, or where environmental pollution has made the land unusable. See testimony of Shawan Jabarin, Geneva public hearings, 6 July 2009 (by videoconference), and “Road 443, West Bank road for Israelis only”, B’Tselem; “The prohibited zone: Israeli planning policy in the Palestinian villages in area C”, Bimkom, at http://eng.bimkom.org/_Uploads/23ProhibitedZone.pdf; See also “Foul play: neglect of waste water treatment in the West Bank”, B’Tselem, www.btselem.org/English/Publications/Summaries/200906_Foul_Play.asp.

⁸⁵⁹ Israeli Military Order 378 “Order on the Security Provisions (Judea and Samaria) (No. 378) 1970 – Proclamation regarding Closing and Area (Prohibition of Entry and Stay) (Israelis) (Area A), issued 5 October 2000, signed by General Itzhak Eitan.

⁸⁶⁰ See the reports published by the Campaign on the Right to Entry at www.righttoenter.ps/. On 16 December 2008, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, was denied entry into Israel: see, www.righttoenter.ps/images/Press_Release_Richard_Falk.pdf and A/HRC10/20.

⁸⁶¹ Campaign for the right to enter the Occupied Palestinian Territory, situation update report, September 2008-June-2009.

⁸⁶² “Israel toughens entry for foreigners with West bank ties”, Amira Hass, *Ha’aretz*, 12 August 2009.

⁸⁶³ The practices also restrict the movement of foreign passport holders of Palestinian origin; see “Why is Israel limiting movement of Palestinian-Canadian businessman?”, Amira Hass, *Ha’aretz*, 19 August 2009.

A. Movement restrictions affecting the Mission's work

1515. At the public hearing in Geneva on 6 July 2009, Mr. Shawan Jabarin of Al-Haq reported that tens of thousands of Palestinians today are subject to a travel ban imposed by Israel, preventing them from travelling abroad. Mr. Jabarin, whom the Mission heard in Geneva by way of videoconference, had been subject to such a travel ban since he became the director of Al-Haq, the West Bank's oldest human rights organization. Mr Jabarin challenged his travel ban in the Israeli High Court after he was prevented from travelling to the Netherlands to receive a human rights prize, but the ban was upheld on the basis of 'secret evidence'.⁸⁶⁴ Mr. Jabarin believed that the ban was imposed as punishment. On 3 July 2009, the Mission also spoke with Khalida Jarrar, a member of the Palestinian Legislative Council for the Palestinian Liberation Front Party, by telephone conference, as she too was unable to travel out of the West Bank because of an Israeli-imposed travel ban. Ms Jarrar, who prior to her election to the Palestinian Legislative Council in 2006 directed the prisoners' rights organization Addameer, told the Mission that she had not been allowed to travel out of the West Bank since attending the Human Rights Defenders Summit in Paris in 1998.⁸⁶⁵

1516. The Mission has already referred to the fact that the Palestinian Minister for Justice, Dr. Ali Khashan, was unable to leave the West Bank to meet the Mission in Amman, Jordan he had been prevented from crossing the border.⁸⁶⁶

B. Movement and access and the Israeli military operations in Gaza

1517. The Mission received reports that, during the Israeli offensive in Gaza, movement restrictions in the West Bank were tightened. For several days, Israel imposed a "closure" on the West Bank, a restrictive measure in addition to those already in place. Given that it is an ad hoc measure, people cannot plan their movements around it.

1518. It was also reported to the Mission that, during and following the operations in Gaza, Israel tightened its hold on the West Bank through more expropriation, an increase in house demolitions, demolition orders and permits granted for homes built in settlements, and increased exploitation of the West bank's natural resources. Various policies and decisions implemented in the first six months of 2009 relating to settlements, and Jerusalem's demography, affected the access and movement of Palestinians, while increasing the overall control by Israel over the West Bank.

1519. Following the operations in Gaza, the Mission received reports that Israel had amended the regulations determining the ability of persons with a Gaza identity card to move to the West

⁸⁶⁴ For the Israeli High Court decision of 10 March 2009 (Al-Haq translation), see www.alhaq.org/pdfs/Shawan-abarin-v.pdf; see also "Travel ban on Al-Haq General Director upheld: once again, the Israeli judiciary demonstrates its subservience to the military and security authorities", Al-Haq Press Release, 11 March 2009; "Dutch Foreign Minister condemns travel ban imposed by Israel on Al-Haq General Director", statement of the Foreign Ministry of the Netherlands, 11 March 2009; A/HRC/11/41/Add.1.

⁸⁶⁵ For example E/CN.4/2006/95/Add.1.

⁸⁶⁶ See chap. I.

Bank, and vice versa, further entrenching the separation between the people of the West Bank and Gaza.

C. West Bank closures during the Israeli operations in Gaza

1520. Information received by the Mission showed that, in addition to the everyday restrictions on movement and access during the Israeli operations in Gaza, Israel implemented a full closure of the West Bank for six days.⁸⁶⁷ During a closure, Palestinians with West Bank identity cards (see below) and valid permits to enter East Jerusalem or Israel are prevented from doing so.⁸⁶⁸

1521. The closures affected thousands of workers, students, people needing to have access to Palestinian hospitals in East Jerusalem, worshippers and those visiting family and friends. Furthermore, according to reports received by the Mission, the number of checkpoints in the West Bank, including in East Jerusalem, was increased during the operations, most being “flying” checkpoints (ad hoc checkpoints operating for anything between one hour and the duration of the operations in Gaza).⁸⁶⁹ According to Shir Hever, an economist from the Alternative Information Centre, each day of closure costs the Palestinian economy \$ 4.5 million and 276 jobs and drives 646 people below the poverty line.⁸⁷⁰

1522. The Office for the Coordination of Humanitarian Affairs reports that, on 2 January 2009, the Israeli army prevented males aged between 16 and 50 from crossing Huwara checkpoint to travel south.⁸⁷¹ Huwara checkpoint is the main checkpoint on the main north-south route in the West Bank and lies between the cities of Jenin, Tulkarm, Qalqilia and Nablus in the north, and Ramallah, Jericho, Bethlehem and Hebron in the middle and south. Closing Huwara checkpoint effectively prevents Palestinians from this region from going south, as there are no other accessible roads.

1523. In addition, according to the Office for the Coordination of Humanitarian Affairs, in January 2009, Israel declared the area between the Wall and the Green line in Hebron, parts of Salfit, Ramallah, and in between the Wall and the Jerusalem municipality borders a “closed military area”, with serious consequences for the Palestinian population.⁸⁷² Prior to this, access to land beyond the Wall (the so-called “seam zone”, between the Wall and the Green Line⁸⁷³)

⁸⁶⁷ The dates were, 2, 3, 9,10, 16 and 17 January 2009. See Office for the Coordination of Humanitarian Affairs Weekly Report for 1-8 January 2009, 9-15 January and 16-20 January.

⁸⁶⁸ Shawan Jabarin, Geneva public hearings, 6 July 2009 (by videoconference).

⁸⁶⁹ Meeting with Al-Haq, and the Palestinian Centre for Human Rights, 2 July 2009.

⁸⁷⁰ Submission to the Mission by Shir Hever, Alternative Information Centre,.

⁸⁷¹ Office for the Coordination of Humanitarian Affairs Weekly Report, 1-8 January 2009.

⁸⁷² Office for the Coordination of Humanitarian Affairs, The Humanitarian Monitor No. 33, January 2009.

⁸⁷³ “Between Fences: The Enclaves Created by the Separation Barrier”, Bimkom, at http://eng.bimkom.org/_Uploads/4GderotEng.pdf. For a general picture see Office for the Coordination of Humanitarian Affairs Closure Map, June 2009, at www.ochaopt.org/documents/ocha_opt_closure_map_west_bank_june_2009.pdf; some 85 per cent of the route of the Wall lies inside the West Bank, the area between the Wall and the Green line amounts to 8.5 per cent of the West Bank (including East Jerusalem) See “Five years after the International Court of Justice advisory opinion: A summary of the humanitarian impact of the Barrier”, Office for the Coordination of Humanitarian Affairs, July 2009.

was already restricted as access required prior coordination with the Israeli army. The new measures meant that land owners had to provide proof of ownership (which is difficult to obtain) and apply for visitors' permits to be able to have access to their land. Applications for permits by farm labourers who are not land owners were routinely rejected. According to Mr. Shawan Jabarin, human rights monitors are not granted permits either.⁸⁷⁴ Fewer than 20 per cent of those who used to farm their lands in 67 localities in the northern West Bank, which had been declared closed previously, are now reportedly granted permits. Those who do obtain permits face long waiting times, restricted gate opening hours, physical searches and restrictions on the kinds of farming equipment allowed to pass. In addition, thousands of people reside in the areas now or previously declared "closed military zones". They now require permits to live in their own homes and must often pass through gates in order to have access to work, health care, education and other services. The area declared a closed military zone in January includes the Jerusalem suburb of Dahiet al-Barid. According to the Applied Research Institute of Jerusalem, around 14,000 Palestinians in this suburb stand to lose their Jerusalem residency status as well as municipal services.⁸⁷⁵

D. New measures to formalize the separation of Gaza and the West Bank

1524. The Mission received reports about measures that further formalize the separation of Gaza and the West Bank. Following HaMoked's petition to the High Court, a new Israeli Ministry of Defense procedure has been revealed detailing the very strict conditions under which a resident of the Gaza Strip may change her or his residency to that of the West Bank.⁸⁷⁶ The procedure of 8 March 2009 states:

Against the backdrop of the security/political situation in the Gaza Strip it has been decided on State level to limit the movement of residents between the Gaza Strip and the Judea and Samaria area to the necessary minimum, so that for all practical purposes entry of residents of Gaza into the Judea and Samaria areas shall only be allowed in the most exceptional humanitarian cases." ... "the Deputy Minister of Defence... established that in every case involving the settlement of Gaza residents in the Judea and Samaria Area one should adopt the most restrictive policy, which is derived a fortiori from the general policy of restricting movement between the two Areas. The Deputy Minister clarified that a family relationship, in and of itself, does not qualify as a humanitarian reason that would justify settlement by Gaza residents in the Judea and Samaria Area.

1525. In the terms of the procedure, as reviewed by the Mission, one of the situations envisaged by the regulations, is where

⁸⁷⁴ Shawan Jabarin, Geneva public hearings, 6 July 2009 (by videoconference).

⁸⁷⁵ "14,000 Palestinian Jerusalemites stand to lose their residency rights", Applied Research Institute, 5 January 2009 at http://www.poica.org/editor/case_studies/view.php?recordID=1802; for the issue of municipal services in East Jerusalem generally, see "Life in the garbage: a report on sanitation services in East Jerusalem", Association for Civil rights in Israel, June 2009 at www.acri.org.il/pdf/sanitationeng.pdf.

⁸⁷⁶ Translation of the procedure by Gisha and HaMoked available from the website www.gisha.org/UserFiles/File/Legal%20Documents%20WB_Gaza_Full_Procedure-Eng.pdf.

A minor resident of Gaza who is under 16 years old, where one of his parents, who was a resident of Gaza, passed away and the other parent is a resident of the Judea and Samaria Area and there is no other family relative who is a resident of Gaza who is able to take the minor under his wings. In the event that it is necessary, the nature and scope of the existing relationship with the parent who is a resident of the Judea and Samaria Area shall be examined in relation to the degree, nature and scope of the relationship with other family relatives in Gaza (para. 10 B).

1526. Furthermore, according to paragraph 15 of the procedure, a successful application is subject to periodic renewal and a seven-year “naturalization” period, after which there is an examination “as to whether to grant a permit of settlement in the Judea and Samaria Area and a change of the registered address in the copy of the file of the Palestinian population registry, which is in the possession of the Israeli side”.

1527. In the reports reviewed by the Mission, HaMoked and Gisha call this regulation an additional measure in a deliberate Israeli policy to deepen the separation between the West Bank and Gaza “in the pursuance by Israel of political goals at the expense of the civilian population, in blatant violation of international humanitarian law.” It also “undermines the possibility of a two state solution”, and “contradicts a long list of Israeli undertakings to conduct negotiations for the establishment of an independent, viable Palestinian State, including an explicit commitment in the Oslo Accords to preserve the status of the West Bank and Gaza Strip as a ‘single territorial unit’”.⁸⁷⁷

E. Movement and access, current situation

1528. According to information available the Mission, in the past eight months certain measures by the Government of Israel have improved freedom of movement in certain places, in particular access to the cities of Nablus, Tulkarm, Hebron and Ramallah. For example, the permit requirement was removed for vehicles entering Nablus, two junctions near Hebron were opened and a checkpoint was removed outside Tulkarm. In Ramallah, a “fabric of life”⁸⁷⁸ alternative route was opened for access from the West.⁸⁷⁹

1529. United Nations sources observe, however, that during this time the restrictions on Palestinian traffic and the ease of Israeli and settler traffic in the West Bank have become entrenched. Checkpoints have also been expanded and some temporary checkpoints have become more permanent (for example with gates instead of earth mounds). In addition, the improvement or opening of “fabric of life” roads alternative roads to closed main roads still necessitates the confiscation of land.

⁸⁷⁷ Gisha and HaMoked position paper, available at www.gisha.org/UserFiles/File/publications/WB_Gaza_Procedure-PositionP-Eng.pdf.

⁸⁷⁸ The concept of “fabric of life” was introduced by the Israeli army to denote alternative roads for Palestinians who are no longer allowed to use the “Israel only” main roads; see “Alternative roads for Palestinians”, B’Tselem, at www.btselem.org/english/Freedom_of_Movement/Alternative_Roads_for_Palestinians.asp.

⁸⁷⁹ Office for the Coordination of Humanitarian Affairs, West Bank Movement and Access update, June 2009, at www.ochaopt.org/documents/ocha_opt_movement_access_2009_june_english.pdf.

1530. The Office for the Coordination of Humanitarian affairs maps 613 physical obstacles, including 68 staffed checkpoints and 541 unstaffed obstacles such as roadblocks. This number excludes the 84 obstacles blocking Palestinian access and movement within the Israeli-controlled area of Hebron city (“H2”), 63 crossing points in the Wall and an average of 70 random (or “flying”) checkpoints deployed every week since the beginning of 2009.⁸⁸⁰ In addition to the road obstacles, the Wall continues to be built; large areas between the Wall and the Green Line (the “seam zone”) have been declared closed to Palestinians.⁸⁸¹

1531. Harsh military measures, such as prolonged curfews on individual villages in the northern West Bank, have further restricted movement, and approximately 28 per cent of the West Bank is now declared a closed military zone with recent stricter enforcement, especially affecting farmers and herders.

1532. The Mission has also received reports about the recent introduction by Israel of measures aimed at “modernizing” the access and movement restrictions which, by making monitoring and recording of movement of individuals easier, would have the effect of consolidating the restrictions. The measures include the introduction of magnetic cards for use in automated checkpoints, the privatization of checkpoints and access gates and the computerization of certain checkpoints on or near the Green Line as of 1st May 2009.⁸⁸² The measures have raised a concern that permits for politically active individuals will be more frequently cancelled. In addition, considering the current open debate in international law on the liability of private security contractors, the privatization of checkpoints raises concerns about accountability.⁸⁸³

1533. Therefore, while there have been some (albeit limited) positive developments in the period between September 2008 and March 2009, the measures taken during this and previous periods indicate a further entrenchment of the system of movement and access restrictions, with the result that “the space available for Palestinian development is increasingly constrained”.

1534. The Mission notes that it is misleading to look at the freedom of movement of the Palestinians of the West Bank without considering where they can actually. For example, recent reports have raised the Mission’s concern about broader policies leading to the “silent transfer” of Palestinians out of Jerusalem. The first six months of 2009 saw a dramatic rise in demolition

⁸⁸⁰ Compared with a weekly average of 60 for the first four months of 2008, and 87 per week for June to September (Office for the Coordination of Humanitarian Affairs closure update, 30 April 2008 – 31 September 2008, at http://www.ochaopt.org/documents/ocha_opt_closure_update_2008_09_english.pdf).

⁸⁸¹ In the Salfit, Ramallah, Bethlehem and Hebron governorates. See Office for the Coordination of Humanitarian Affairs, West Bank Movement and Access update, June 2009, at www.ochaopt.org/documents/ocha_opt_movement_access_2009_june_english.pdf.

⁸⁸² Shawan Jabarin, Geneva public hearings, 6 July 2009 (by videoconference). See Stop the Wall press release at <http://stopthewall.org/latestnews/1931.shtml>.

⁸⁸³ See “The Privatization of Checkpoints and the Late Occupation”, Eilat Maoz at www.whoprofits.org/Article%20Data.php?doc_id=705.

orders, including demolitions of entire villages and neighborhoods,⁸⁸⁴ and approvals for new settlement construction in both East Jerusalem and the rest of the West Bank.

F. Jerusalem: accelerating the “silent transfer”

1535. In May 2009, the *New York Times* reported that the Office Israeli Prime Minister of Israel and the Israeli-defined Jerusalem municipality, in cooperation with the Jerusalem Development Authority and settler organizations, were implementing an eight-year “confidential” plan to create a string of nine parks, pathways and sites, incorporating new or existing settlements in and around East Jerusalem. The NGO Peace Now concluded that “the completion of the Israeli plan will change dramatically the map of East Jerusalem and might prevent a permanent status agreement and a compromise in Jerusalem.”⁸⁸⁵

1536. In a report reviewed by the Mission, the Association for Civil Rights in Israel stated that, in Jerusalem “discrimination in planning and building, expropriation of lands, and minimal investment in physical infrastructure and government and municipal services - these are concrete expressions of an Israeli policy designed to secure a Jewish majority in Jerusalem and push Palestinian residents outside the city's borders.”⁸⁸⁶

1537. In a report of April 2009, addressing “the failure of the Israeli authorities to provide adequate planning for Palestinian neighborhoods”, the Office for the Coordination of Humanitarian affairs states that “some 60,000 Palestinians in East Jerusalem ... are at risk of having their homes demolished by the Israeli authorities. This is a conservative estimate and the actual number may be much higher.”⁸⁸⁷

G. New settlements, land expropriation and the demolition of villages in Area C

1538. In reports reviewed by the Mission, Peace Now stated in March 2009 that the Ministry of Housing and Planning was planning a further 73,000 settlement homes to be built in the West

⁸⁸⁴ For example, in the Jordan Valley, and a neighborhood in Jerusalem (al-Bustan in Silwan). On 4 June 2009, a village was almost entirely destroyed in the Jordan Valley. “Israeli authorities demolished 13 residential structures, 19 animal pens, and 18 traditional *taboun* ovens in the Bedouin community of Khirbet ar Ras al Ahmar in the Jordan Valley. A water tank, tractor, and trolley were also confiscated. Eighteen households were displaced, including at least 67 children”. Office for the Coordination of Humanitarian Affairs Protection of Civilians report (27 May-2 June 2009)

⁸⁸⁵ “Parks fortify Israel’s claims to Jerusalem”, *New York Times*, 9 May 2009.

⁸⁸⁶ The report concludes that “for decades, the legal possibility of issuing building permits for new construction on East Jerusalem has been practically non-existent. (...) The discrimination is clear, its purpose to limit legal construction in the Palestinian areas and constrict the space available for the development of Arab neighborhoods, The City’s Outline Plan, ‘Jerusalem 2000’, approved in 2006 (...) perpetuates the discriminatory policies by failing to provide adequate housing units, employment sources, and infrastructure in East Jerusalem”. “The state of human rights in East Jerusalem - Facts and Figures”, Association for Civil Rights in Israel report, May 2009.

⁸⁸⁷ “Special Focus: the planning crisis in East Jerusalem: understanding the phenomenon of ‘illegal’ construction”, Office for the Coordination of Humanitarian Affairs, April 2009. The United Nations Special Coordinator, Robert Serry, stated that these “actions harm ordinary Palestinians, heighten tensions in the city, undermine efforts to build trust and promote negotiations, and are contrary to international law and Israel’s commitments”, 22 April 2009.

Bank.⁸⁸⁸ According to Peace Now, the building of 15,000 of these homes had already been approved, and, if all the plans are realized, the number of settlers in the occupied Palestinian territory will double.⁸⁸⁹

1539. Construction works on Maskiyot, a new settlement, were reportedly commenced in the Jordan Valley as of May 2009.⁸⁹⁰ At the same time, Palestinians in the Jordan Valley and more generally in Area C are at risk of displacement. On 26 January 2009, the High Court of Justice of Israel rejected a petition submitted by the Association for Civil Rights in Israel and Rabbis for Human Rights on behalf of the Palestinian residents of Khirbet Tana, “effectively allowing the State to destroy all of the village's houses but one, despite the lack of viable planning alternatives for the area's Palestinian residents”.⁸⁹¹ In a recent report reviewed by the Mission, Bimkom concluded that the Israeli Civil Administration applied “a deliberate and consistent policy in Area C with the goal of restricting Palestinian construction and development and limiting its spatial dispersion”.⁸⁹²

H. Connecting the dots

1540. According to reports reviewed by the Mission, aside from the settlements themselves, much new infrastructure is being built to service the settlements, including roads, rail and tram lines, tunnels and waste dumps. Notable examples of these are the Jerusalem ring road (eastern section) a four-lane highway which will connect Israeli settlements in East Jerusalem and run through Palestinian neighborhoods, requiring the confiscation of many dunums⁸⁹³ of Palestinian land and demolitions of homes and businesses;⁸⁹⁴ and the Jerusalem light rail project and train line between Tel Aviv and Jerusalem part of which will run through the West Bank.⁸⁹⁵

1541. Observers have noted that Israeli control over the movement and access of the West Bank Palestinians is necessary to maintain control over the West Bank's land and natural resources.

⁸⁸⁸ “Ministry of Housing's plans for the West Bank”, Peace Now, March 2009 available at www.peacenow.org.il and on the website of the Israeli government at www.govmap.gov.il.

⁸⁸⁹ An increase of approximately 300,000 people, based on an average of four people in each housing unit. According to the report, there are plans to double the size of some settlements, including Beitar Illit, Ariel, Givat Ze'ev, Maaleh Adumim, Efrat and Geva Binyamin, and approximately 19,000 housing units are planned in settlements that are beyond the constructed path of the Wall.

⁸⁹⁰ “A new settlement starts to be constructed: Maskiyot” Peace Now, 18 June 2009. See also “Israel planning mass expansion of West Bank settlement bloc” *Ha'aretz*, 27 February 2009 and “Secret Israeli database reveals full extent of illegal settlement”, *Ha'aretz*, 1 February 2009.

⁸⁹¹ Press release, Association for Civil Rights in Israel, 5 February 2009.

⁸⁹² “The Prohibited Zone: Israeli planning policy in the Palestinian villages in Area C”, Bimkom.

⁸⁹³ One dunum is equivalent to one square kilometre.

⁸⁹⁴ “Carving up the Palestinian capital: The Israeli ring road around occupied East Jerusalem”, Negotiations Support Unit of the Palestine Liberation Organization fact sheet, February 2008, available at www.nad-plo.org/facts/jerusalem/ringroad.pdf. See also the campaign by the Al-Quds University Human Rights Clinic at www.stoptheringroad.net/q3.php and the briefing paper by Adalah available at www.adalah.org/features/land/Briefing%20Paper%20on%20the%20Eastern%20Ring%20Road.doc.

⁸⁹⁵ Peace Now “An objection to expansion of Israel Railway's Jerusalem-Tel-Aviv line” Peace Now, 11 May 2009.

Easing Palestinian access on alternative roads and the removal of some checkpoints would allow Israel to offer “transportational”, rather than territorial contiguity. At the same time, full Israeli access through the separate road system and full control over the border allow for a level of continuous population control. The increased movement and access limitations recently implemented by Israel in the West Bank, would seem to share with the military operations of December 2008 - January 2009 Israel’s objective of “getting rid of Gaza in order to consolidate its permanent hold on the West Bank”.⁸⁹⁶

I. Legal analysis and conclusions

1542. The occupying Power may restrict the right to free movement in certain circumstances, but it must safeguard the fundamental rights of the protected people at all times. Any movement restriction, to be lawful under international humanitarian law, however, must be necessary and proportionate to the harm caused to the protected people.

1543. The right to freedom of movement is enshrined in article 13 of the Universal Declaration of Human Rights, and in article 12 of the International Covenant on Civil and Political Rights. When the right is restricted, it affects the exercise of any number of other rights, including those set forth in the International Covenant on Economic, Social and Cultural Rights, such as the right to work (art. 6), the right to protection of family life (art. 10), the right to an adequate standard of living (art. 11), the right to health (art. 12) and the right to education (art. 13).

1544. If the decision to restrict movement is based on a person’s belonging to an ethnic or national group, this constitutes unlawful discrimination contrary to articles 1 and 2 of the Universal Declaration of Human Rights, article 2 of the International Covenant on Civil and Political Rights and article 75 of Additional Protocol I to the Geneva Conventions, which is part of customary international law. Israel allows Israeli citizens to move around the West Bank including the settlements, relatively freely. According to B’Tselem, the Israeli military has openly admitted that the restrictions on Palestinians are there to enable Jewish settlers to move about freely.⁸⁹⁷

1545. Where checkpoints become a site of humiliation of the protected population by military or civilian operators, this may entail a violation of article 75 (2) (b) of Additional Protocol I to the Geneva Conventions (which is part of customary international law), which outlaws “outrages upon personal dignity, in particular humiliating and degrading treatment”.

1546. Settlements are contrary to article 49 (6) of the Fourth Geneva Convention.⁸⁹⁸ Furthermore, they violate Palestinian property rights and the prohibition on the occupying Power of changing the nature and legal status of the Occupied Palestinian Territory (art. 55 of the Hague Regulations), may constitute direct discrimination against Palestinians, besides causing

⁸⁹⁶ Mission interview with Jeff Halper, Director of the Israeli Committee against House Demolition, 6 August 2009.

⁸⁹⁷ “Restrictions on Movement”, B’Tselem at www.btselem.org/English/Freedom_of_Movement/.

⁸⁹⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, advisory opinion, [2004], International Court of Justice, rep. 136, para. 120; Security Council resolutions 904 (1994), 465 (1980), 452 (1979), 446 (1979) and General Assembly resolutions ES10/6, ES10/14, and 61/118 and the Declaration of the Conference of High Contracting Parties to the Fourth Geneva Convention,, Geneva, 5 December 2001.

restriction of movement, hindering economic and social development, and access to health, education and social services. In addition, the extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly, amount to a “grave breach” of article 147 of the Geneva Convention. The Wall, which, to the extent it is built inside the West Bank is contrary to international law,⁸⁹⁹ the de facto annexation of the parts of the West Bank that fall on the “Israeli side” of the Wall (9.5 per cent of the West Bank),⁹⁰⁰ five years since the advisory opinion of the International Court of Justice that the Wall must be dismantled, now amount to the acquisition of territory by force, contrary to the Charter of the United Nations.⁹⁰¹

1547. From the facts ascertained by or available to it, the Mission believes that the movement and access restrictions to which West Bank Palestinians are subject are disproportionate to any military objective served, in general, particularly in light of the increased restrictions during and to some extent since the military operations in Gaza. The restrictions do not safeguard the fundamental rights of those protected as required by international humanitarian law and international human rights law.

1548. From the facts available to it, the Mission believes that in the movement and access policy there has been a violation of the right not to be discriminated against on the basis of race or national origin. The Mission is concerned about the steps taken recently to formalize the separation of Gaza from the West Bank, and, as such, of two parts of the Occupied Palestinian Territory. The Mission is also concerned that the increasingly entrenched array of movement and access restrictions, both physical and non-physical, amount to a deliberate policy of closely controlling a population in order to make use of areas of its land. From the facts available, the Mission believes that these restrictions constitute violations of fundamental rights.

1549. Insofar that movement and access restrictions, the settlements and their infrastructure, demographic policies with regards to Jerusalem and Area C, and the separation of Gaza from the West Bank prevent a viable, contiguous and sovereign Palestinian State from being created, they are in violation of the *jus cogens* right to self-determination.

XXIII. INTERNAL VIOLENCE, TARGETING OF HAMAS SUPPORTERS AND RESTRICTIONS ON FREEDOM OF ASSEMBLY AND EXPRESSION BY THE PALESTINIAN AUTHORITY

1550. The Mission has received allegations of violations relevant to its mandate committed by the Palestinian Authority in the period under inquiry. These include violations related to the treatment of (suspected) Hamas affiliates by the Preventive Security Service, the Military Intelligence and the General Intelligence, such as their unlawful arrest and detention, and ill-

⁸⁹⁹ The International Court of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, [2004] I.C.J. Rep. 136.

⁹⁰⁰ Office for the Coordination of Humanitarian Affairs, “Five years after the International Court of Justice Advisory Opinion: A summary of the humanitarian impact of the Barrier”, July 2009.

⁹⁰¹ Paragraph 121 of the advisory opinion states that the “Court considers that the construction of the wall and its associated régime create a “fait accompli” on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation”.

treatment of political opponents while in detention. Other allegations are the arbitrary closure of charities and associations affiliated with Hamas and other Islamic groups⁹⁰² or the revocation and non-renewal of their licences,⁹⁰³ the forcible replacement of board members of Islamic schools and other institutions and the dismissal of Hamas affiliated teachers.⁹⁰⁴

1551. There have also been allegations of the use of excessive force and the suppression by Palestinian security services of demonstrations, particularly those in support of the population of Gaza during the Israeli military operations.⁹⁰⁵ On these occasions the Palestinian Authority's security services allegedly arrested many individuals⁹⁰⁶ and prevented the media from covering the events, at times breaking cameras or erasing footage.⁹⁰⁷ The Mission also received allegations of harassment by Palestinian security services of journalists who expressed critical views of the Palestinian Authority.⁹⁰⁸

1552. The Mission noted the reluctance of some of the residents of the West Bank it approached to speak openly about these issues. A number of individuals expressed concern that there might be repercussions if they did so.⁹⁰⁹

1553. The Mission also received reports that highlight the lack of parliamentary oversight over acts and decisions by the executive. As noted in chapter XXIII, the arrest and detention by Israel of several members of the Palestinian Legislative Council has effectively curtailed such parliamentary oversight.⁹¹⁰ The executive has passed decrees and regulations⁹¹¹ to enable it to

⁹⁰² See, for instance, Al-Haq, "Overview of the internal human rights situation in the Occupied Palestinian Territory", June 2009; International Crisis Group, "Palestine divided", Middle East Briefing, No. 25, 17 December 2008, p. 12; ICHR, *Fourteenth Annual Report* (2008), pp. 152–168, PCHR, *Annual Report 2008*; Mission telephone interview with Al-Haq, 15 July 2009.

⁹⁰³ PCHR, *Annual Report 2008*, pp. 93-96; *The Financial Times*, "West Bank 'tsunami' hits Hamas and allies", 29 July 2009.

⁹⁰⁴ "Overview of the internal human rights situation..."; "Palestine divided...", p. 12; ICHR, *Fourteenth Annual Report*, pp. 103–111, PCHR, *Annual Report 2008*, p. 101; Mission telephone interview with Al-Haq, 15 July 2009.

⁹⁰⁵ OCHA, "Protection of civilians weekly reports", 24–30 December 2008, 1-8 January 2009, 9-15 January 2009, 16–20 January 2009; Mission telephone interview with Al-Haq, 15 July 2009; Mission telephone interview with WB/02, 16 July 2009; Mission meeting with ICHR, Amman; ICHR, "Monthly report on violations of human rights in the PNA-controlled territory", January 2009; Al-Haq, "Field report", January–March 2009.

⁹⁰⁶ Mission telephone interview with WB/02, 16 July 2009; Mission telephone interview with Al-Haq, 15 July 2009. Arrests reportedly include members or supporters of Islamic parties but also left-wing student leaders.

⁹⁰⁷ "Monthly report on violations...", January 2009; Palestinian Center for Development and Media Freedoms (MADA), "Violations of media freedoms in OPT during January 2009"; Mission telephone interview with Muhammad Jaradat, 16 July 2009.

⁹⁰⁸ See, for instance, MADA, *Annual Report: 257 Violations of Media Freedoms in OPT during 2008*, which includes affidavits.

⁹⁰⁹ Al-Haq notes in its "Field report" for January–March 2009 that there is a general reluctance on the part of West Bank Palestinians to testify on intra-Palestinian violence. Few complaints are filed, both because complainants have little confidence that the authorities will taken action (Mission telephone interview with WB/02, 16 July 2009) and because they fear negative repercussions.

⁹¹⁰ Mission interview with Ms. Khalida Jarrar, 30 July 2009; ICHR, *Fourteenth Annual Report*, p. 24.

continue its day-to-day operations. Palestinian human rights organizations have argued that this has resulted in the use of the security apparatus to suppress political opposition and of military courts to ignore any judicial challenge to arbitrary detention on political grounds.⁹¹²

1554. The Mission asked the Palestinian Authority for information about the above allegations; however its reply does not address these issues.⁹¹³

A. Crackdown by the Palestinian Authority on Hamas and other Islamic parties

1. Arrest and detention by the security forces

1555. Before the Israeli military operations in Gaza, domestic human rights organizations were already reporting a practice of arbitrary arrest by the Palestinian Authority of members and (suspected) supporters of Hamas in the West Bank.⁹¹⁴ The practice has reportedly continued. According to ICHR, over 400 persons arrested by the Palestinian Authority's security forces "primarily for reasons of political affiliation" were in detention, as of 31 May 2009. ICHR has confirmed the 400 cases individually through prison visits, but states that the total number is probably closer to 700,⁹¹⁵ The human rights NGO Al-Haq estimates that over 800 persons were being held as at mid-July 2009.⁹¹⁶ The Mission has asked the Palestinian Authority, inter alia, to confirm the numbers of persons held in detention by its Preventive Security Force, Military Intelligence and General Intelligence, and the legal basis for their detention, but has received no reply on this issue.

1556. The Palestinian Authority has a court system similar to most others, with civilian criminal and civil courts and a court of appeal, and military courts, which have jurisdiction over military matters.⁹¹⁷

⁹¹¹ The executive has passed decrees to grant the Minister for Local Government the right to dissolve the local council or dismiss its head (Presidential Decree No. 9) and to limit the right to strike for civil servants (Decree No. 5) (ICHR, *Fourteenth Annual Report*, pp. 25–26) and see PCHR, "PCHR has reservations about regulations adopted in the context of ongoing political fragmentation", position paper, 23 June 2009.

⁹¹² ICHR, *Fourteenth Annual Report*; Al-Haq, "Al-Haq calls upon the President of the Palestinian National Authority and the Higher Judiciary Council to restore exclusive civil jurisdiction over civilians", urgent call, 3 September 2008; ICHR, "The detention of civilians by Palestinian security agencies with a stamp of approval by the Military Judicial Commission", Special Report No. 64, December 2008; "Overview of the internal human rights situation...".

⁹¹³ Reply of the Palestinian Authority to the Mission, 5 August 2009.

⁹¹⁴ Al-Haq, "Field report", July–September 2008, and Mission interview with Al-Haq, 15 July 2009; PCHR, "PCHR gravely concerned over the deterioration of the human rights situation in the Occupied Palestinian Territory", press release, 30 July 2008.

⁹¹⁵ Mission telephone interview with ICHR, 30 July 2009.

⁹¹⁶ Mission telephone interview with Al-Haq, 15 July 2009. ICHR states that only a very small number of non-Hamas affiliated detainees are held by the Palestinian Authority's security forces (Mission telephone interview with ICHR, 30 July 2009).

⁹¹⁷ See, for instance, Birzeit University Institute of Law, "Legal system and legislative process in Palestine".

1557. The Mission has received reports that arrests are often carried out without an arrest warrant or with a warrant issued by the Military Judicial Commission (a military court) rather than by a civilian court.⁹¹⁸ The Amended Basic Law of 2003, article 101 (2), states that military courts “shall not have any jurisdiction beyond military affairs”. On 30 August 2008, the Palestinian High Court of Justice confirmed that the Military Attorney General⁹¹⁹ and the Military Judicial Commission had no jurisdiction over civilians. In addition, in the past year many of its decisions have supported this view in individual cases relating to the arrest or detention of civilians. However, these civilian court rulings have mostly been ignored by the security forces and the military judiciary.⁹²⁰

1558. Information received by the Mission suggests that detainees held by the security forces do not know when they will be released, normally without being charged and tried, rarely have access to a lawyer or are allowed family visits.⁹²¹

2. Torture and other ill-treatment

1559. Several Palestinian human rights organizations have reported that practices used by the Palestinian Authority’s security forces, particularly the Preventive Security Force, Military Intelligence and the General Intelligence service, against several people in the West Bank amount to torture and cruel, inhuman and degrading treatment and punishment. They have documented examples of such treatment during detention through testimonies of victims, some of whom have political affiliations with Hamas.⁹²² They have also reported a number of deaths

⁹¹⁸ ICHR, *Fourteenth Annual Report*.

⁹¹⁹ ICHR refers to this person in English as the “Chief of the Military Judicial Commission”.

⁹²⁰ “Al-Haq calls upon the President...”; “The detention of civilians...”; “Overview of the internal human rights situation...”.

⁹²¹ ICHR, *Fourteenth Annual Report*; “The detention of civilians...”.

⁹²² Various affidavits have been collected by Al-Haq, Addameer, PCHR and ICHR. For instance, Al-Haq’s testimony taken from Marwan Khaled Saleh al-Khalili reports ill-treatment he received at the hands of the Preventive Security force, which included the “shabeh”, a stress position involving a very small, slanted chair, to which he was bound for four days. He suffered two strokes and permanent injury, according to his testimony. He was released after being asked to sign a pledge to leave his work for the Hamas Social Committee (Al-Haq affidavit No. 4364/2008.). In another of Al-Haq’s testimonies, relating to October 2008, Muhammad Suleiman Mahmoud Dagher reports on the torture, death threats and beatings he and another man received at the hands of an unknown Palestinian Authority security agency. At one point during his detention, he was made to stand on a chair while his interrogator placed a rope, which was suspended from the ceiling, around his neck. The interrogator then reportedly said “if you do not confess, we will kill you”. He also had a gun put to his head and threatened (Al-Haq affidavit No. 4460/2008). An additional example of abuse and intimidation is recorded by a lawyer of the Addameer Prisoner Support and Human Rights Association, relating to a visit of a detainee who was also a lawyer. “They told him that when he will get out from the prison he will be handicapped and that ‘you are no better than Majd al-Barghouti’ [who died in General Intelligence Service (GIS) detention in February 2008] and also told him he should consider himself from now on fired from his work, and that his membership at the Bar association will be suspended. The interrogator reportedly said to X, ‘don’t you know that the President of the Bar Association is from Fatah?’” (affidavit received by the Mission from Addameer).

in detention to which it is suspected that torture and other ill-treatment may have contributed or which they may have caused.⁹²³

1560. According to these organizations, complaints of such practices have not been investigated and because of the failure of the competent authorities to oversee these agencies or hold them accountable for their practices, impunity for serious violations of human rights prevails. One organization asserts that, “Silence, connivance and a failure to prevent or oversee such acts all manifest a definitive presumption of the consent or acquiescence of public officials to inflict such pain and suffering.”⁹²⁴

3. Freedom of association

1561. There have been reports that freedom of association, which is protected by the Palestinian Basic Law, has been violated with respect to several organizations, on the basis of their political views and affiliations. Hamas-affiliated organizations have been particularly targeted since 2008.⁹²⁵ On 14 July 2008, PCHR issued a report describing the “interference of the Ministry of Interior and Security Forces in election affairs of the Women’s Arab Union.” The report described how a committee consisting of Ministry of Interior officials, Preventive Security and General Intelligence staff banned five candidates from standing for election to the board of the Union.⁹²⁶ It has reportedly become common for the Palestinian Authority to disapprove of the appointment of board members with specific political affiliations, to request their replacement with its own nominees, and to refuse the (re-)registration of associations that do not comply with this request.⁹²⁷ Human rights organizations are reportedly not exempt from interference by the Palestinian Authority’s security forces. The Mission heard from one organization’s staff member that he and his colleagues received physical threats from the security forces. Furthermore, reported complications in administrative processes, such as delays in the opening of bank

⁹²³ PCHR press releases: “PCHR calls for disclosure of circumstances of Palestinian death in custody in Jericho”, 7 October 2008; “PCHR calls upon the Government in Ramallah to investigate death of a detainee in Jenin Preventive Security Service Headquarters”, 9 February 2009; “Detainee dies in the GIS prison in Hebron”, 15 June 2009; “PCHR calls for investigation into death of Palestinian held in custody by the Preventive Security Service in Hebron”, 6 August 2009; “PCHR calls upon the Government in Ramallah to investigate death of Palestinian in GIS custody in Nablus”, 11 August 2009.

⁹²⁴ Al-Haq, *Torturing Each Other* (July 2008).

⁹²⁵ In July 2008, the *Financial Times* reported that “with almost the entire West Bank leadership of Hamas in jail, the [Palestinian Authority] and Israel have now taken aim at what is widely seen as a crucial source of the group’s political strength: the tight network of schools, orphanages, clinics, charities and businesses run by the Islamists” (“West Bank ‘tsunami’...”). Entire boards of NGOs have been replaced with committees appointed by the Palestinian Authority (“Palestine divided...”, p. 12.).

⁹²⁶ PCHR, “PCHR condemns interference of the Ministry of Interior and security forces in election affairs of the Women’s Arab Union in Nablus”, press release, 14 July 2008.

⁹²⁷ ICHR, *Fourteenth Annual Report*. PCHR reported the forceful closure on 10 August of a number of associations and printing workshops in Hebron (“PCHR condemns attacks on civil society organizations and the continued arrests against Hamas members in the West Bank”, press release, 10 August 2008). ICHR reports that, on March 16, the Palestinian Preventive Security agency closed the Scientific Medical Association, a 24-hour medical centre housing a pharmacy, laboratory, dental clinic, osteopaths, gynaecologists and paediatricians, which had been operating for 17 years (ICHR, “Monthly report on violations...”, March 2009).

accounts and in carrying out financial transactions, result in additional hindrances to the work of these organizations.⁹²⁸

4. Appointments

1562. According to ICHR, “the Caretaker Government continues to discharge a large number of civil and military service employees, or suspend their salaries, under the pretext of ‘non-adherence to the legitimate authority’ or ‘non-obtainment of security approval’ on their appointments, which has become a pre-requirement for enrolment in public service”.⁹²⁹ In effect, this measure excludes Hamas supporters or affiliates from public sector employment.⁹³⁰

1563. According to PCHR, at the start of the 2008 school year, “on 14 October, the Ministry of Education in Ramallah sent written notices to dozens of teachers, cancelling their employment contracts, and dismissing them without notice. The notices claimed that the Ministry of Education did not approve their employment any longer.”⁹³¹ Al-Haq reported that some teachers were asked to sign pledges to refrain from political activity.⁹³² ICHR reported that 200 teachers were dismissed (not reappointed) at this time. ICHR petitioned the Palestinian High Court of Justice to seek the reappointment of around 50 of them, and is still waiting for a decision.⁹³³

B. Freedom of the press, freedom of expression and opinion

1564. Allegations of violations of press freedom by the Palestinian Authority in the West Bank in the past year are linked to reports of arrests of journalists, the closure of media offices, the forcible changing of newspaper and news website headlines,⁹³⁴ attacks against photographers, some of whom have been forced to delete material and breaking or confiscating photographic equipment.⁹³⁵ The journalists’ association Palestinian Center for Development and Media Freedoms (MADA) reports a gradually worsening situation.⁹³⁶

⁹²⁸ Mission interview with Al-Haq, 2 July 2009.

⁹²⁹ ICHR, *Fourteenth Annual Report*, p. 21.

⁹³⁰ Mission telephone interview with ICHR, 30 July 2009.

⁹³¹ PCHR, “PCHR calls upon the Palestinian Government to reverse decision to dismiss dozens of West Bank teachers”, press release, 27 October 2008.

⁹³² Al-Haq affidavit No. 4439/2008, 27 October 2008.

⁹³³ Mission telephone interview with ICHR, 30 July 2009.

⁹³⁴ Mission telephone interview with Al-Haq, 15 July 2009.

⁹³⁵ PCHR press releases: “PCHR condemns continued detention of journalists by Preventive Security Service in the West Bank”, 12 February 2009; “Unknown persons shoot at offices of al-Hayat al-Jadeeda newspaper in al-Bireh, and car of Government official in Nablus”, 9 February 2009 <http://www.pchrgaza.org/files/PressR/English/2008/25-2009.html> 30-Nov. 2008; “PCHR condemns attacking journalists and media institutions in the West Bank and Gaza Strip”, 30 November 2008.

⁹³⁶ MADA, *Annual Report: 257 Violations of Media Freedoms in OPT during 2008*. There are many other examples; see, for instance, “PCHR gravely concerned over deterioration...”.

1565. The Mission received several reports of direct or indirect interference in media coverage of demonstrations in the West Bank during the Israeli military operations in Gaza. The Mission was informed, for example, that the Palestinian Authority censored television programmes and newspapers, and that editors were at times informed verbally not to use certain terms or words, or not to broadcast programmes that could be considered as incitement against the Palestinian Authority.⁹³⁷

1566. MADA reported that, on 2 January 2009, an Associated Press photographer covering a march in Ramallah in support of the people of Gaza was attacked by members of the Military Intelligence. The photographer said a security official in civilian clothing first shouted at him to stop taking pictures and then he was assaulted by two security agents and taken by force to a nearby building, where he was beaten until he lost consciousness. He was taken initially to the intelligence headquarters but then transferred to a hospital, where he was treated for a broken nose and subsequently released.⁹³⁸

1567. In another incident, on 18 January 2009, a well-known West Bank journalist was reportedly detained overnight at Preventive Security headquarters in Hebron and questioned about an interview he had given to the al-Quds Satellite Channel in which he was critical of the Palestinian Authority.⁹³⁹ According to his affidavit, he was then brought before the Director of the Preventive Security in Hebron, who he said encouraged him to exercise self-censorship.⁹⁴⁰

1568. Between 24 and 27 January 2009, four correspondents of al-Quds Satellite Channel were arrested by the Preventive Security Service, the Palestinian General Intelligence and the Palestinian Military Intelligence, and interrogated about their work.⁹⁴¹

1569. On 22 April 2009, PCHR noted the arrest by the police in Nablus of a professor of political science at An-Najah University in Nablus who had expressed support for Hamas on a programme of the al-Aqsa television channel when asked to comment on the recent attack against members of the Palestinian Legislative Council by the security forces.⁹⁴²

1570. On 16 July 2009, the Prime Minister issued a decision to close the international television channel al-Jazeera in the West Bank, because it broadcast an interview with a senior Fatah leader, who accused senior Palestinian Authority officials of being implicated in the death of former President Arafat.⁹⁴³ Although the ban was lifted on 18 July, the Prime Minister

⁹³⁷ Mission interview with Al-Haq, 2 July 2003.

⁹³⁸ “Violations of media freedoms...”.

⁹³⁹ Al-Haq affidavit No. 4634/2009, 22 January 2009.

⁹⁴⁰ Ibid. See also “Violations of media freedoms...”.

⁹⁴¹ “Violations of media freedoms...”.

⁹⁴² PCHR press releases: “PCHR notes with grave concern the arrest of Dr. Abdul Sattar Qasem by the Palestinian police in Nablus”, 22 April 2009; “PCHR condemns attack on [Palestinian Legislative Council] member Sheikh al-Beetawi”, 20 April 2009.

⁹⁴³ PCHR, “PCHR condemns decision to suspend al-Jazeera's work in the West Bank”, press release, 16 July 2009; Human Rights Watch, “Palestinian Authority: lift the ban on al-Jazeera”, 17 July 2009; International Federation of Journalists, “IFJ condemns Palestinian Authority over ban on al-Jazeera”, 16 July 2009.

announced that he would pursue legal action against the channel “for its continuous incitement against the Palestinian National Authority.”⁹⁴⁴

C. Freedom of assembly: repression of demonstrations during the Israeli military operations in Gaza of 27 December 2008-18 January 2009

1571. The Mission received information from various sources that demonstrations in support of Gaza were both prevented from taking place and, in some cases, violently repressed.⁹⁴⁵

1572. Security officers reportedly used excessive force during demonstrations on 2 January in Hebron and Ramallah. At both events, protestors suffered injuries after being beaten by security officers. Journalists at the Hebron protest were prevented from reporting on the event.⁹⁴⁶

1573. Al-Haq informed the Mission that a student demonstration at Birzeit on 5 January 2009, which had the stated aim of “showing the occupation forces that Palestinian students reject all aggression against Gaza”, saw a heavy deployment of Palestinian Preventive Security, General Intelligence and Military Intelligence services personnel. Many students were reportedly beaten;⁹⁴⁷ 50 were injured, 9 of whom were hospitalized. Many were also detained, although most were released later the same day. Ms. Khalida Jarrar, a member of the Palestinian Legislative Council, informed the Mission that she had received a call from one of the students asking her to come to the hospital and witness the injuries.⁹⁴⁸

1574. According to Al-Haq, on 26 January, after the end of the Israeli military operations in Gaza, a peaceful sit-in was held near the security forces’ headquarters in Hebron against detentions on political grounds. Reportedly, “security forces beat demonstrators, including children, with sticks. Although several demonstrators were injured, security forces impeded access of medical personnel.”⁹⁴⁹ The affidavit of one eyewitness states that “Palestinian security officers demanded that we disperse and take our banners down. As demonstrators refused to disband, a group of female security officers started beating them with sticks. The security officers addressed the demonstrators, saying: ‘You are Shiite. In Gaza, you shot the legs of Fatah activists. You stole food supplies in Gaza.’ Security officers also impeded access to a Palestinian ambulance and prevented medics from evacuating eight injured protestors.”⁹⁵⁰

1575. In another serious incident, a former student leader who used to be a well-known political activist informed the Mission that he was tortured by the Palestinian Authority’s security forces,

⁹⁴⁴ Al-Jazeera, “Al-Jazeera West Bank ban ‘revoked’”, 19 July 2009.

⁹⁴⁵ Mission interview with PCHR, 2 July 2009; Mission interview with ICHR, 2 July 2009; Mission Interview with Al-Haq, 2 July 2009; “Monthly report on violations...”, January 2009; “Field report”, January-March 2009.

⁹⁴⁶ “Monthly report on violations...”, January 2009.

⁹⁴⁷ Mission interview with Al-Haq, 2 July 2009; ICHR reported in similar terms on the event, Mission interview with ICHR, 2 July 2009.

⁹⁴⁸ Mission interview with WB/02, 16 July 2009.

⁹⁴⁹ “Field report”, January–March 2009.

⁹⁵⁰ Al-Haq affidavit No. 4692/2009, 7 February 2009; see also “Monthly report on violations...”, January 2009.

apparently because of his protest activities. During the Israeli military operations in Gaza, he took part in daily protests and was stopped several times by the security services. He reported that on 2 January 2009, after the Friday midday prayers, he was stopped by security personnel in plain clothes and in uniform in the centre of Ramallah. He was pushed into a car carrying the emblem of the Palestinian Authority, where electrical shocks were applied to his body. He was then taken to the Military Intelligence office and interrogated. He alleges that a high-ranking Military Intelligence official threatened him with six months' arrest under the emergency law and warned him not to criticize the Palestinian Authority and to refrain from talking about the resistance, Hamas and Gaza.⁹⁵¹

D. Legal analysis

1576. The Palestinian Authority, inasmuch as it exercises control over the territory and people, has an obligation to respect and enforce the protection of human rights.⁹⁵² When assessing the aforementioned alleged violations, the terms of international human rights law, to the extent that it forms part of customary international law, must be examined. Most provisions of the Universal Declaration of Human Rights are considered part of customary international law and would, therefore, apply. In addition, the Palestinian Authority has declared its commitment to respect international human rights law. The Palestinian Basic Law contains a number of articles protecting human rights as well as a commitment to abide by major human rights instruments.⁹⁵³ Article 10 (2) states that "The Palestinian National Authority shall work without delay to join regional and international declarations and covenants which protect human rights". The Basic Law itself broadly encompasses the rights enshrined in the Universal Declaration of Human Rights.

1577. According to information received by the Mission, which it considers to be reliable, the Palestinian Authority has carried out arbitrary and unlawful arrests and detentions of political opponents in the West Bank, and regularly denied political detainees access to legal representation and basic due process rights, including the right to be brought promptly before a court and charged with a recognizable criminal offence, contrary to the norms contained in articles 9 and 10 of the Universal Declaration of Human Rights. Arresting individuals based on their political opinions also constitutes a discriminatory practice contrary to article 1.

1578. Subjecting detainees to acts of torture, cruel, inhuman or degrading treatment is prohibited by the customary international law norm reflected in article 5 of the Universal Declaration, and constitutes a violation of their right to security of the person as contained in article 3. Insofar as torture or other cruel, inhuman or degrading treatment can be established, individual criminal responsibility attaches to the perpetrator and any one else ordering, assisting or participating in the commission of the crime.

⁹⁵¹ Mission telephone interview with WB/02, 16 July 2009.

⁹⁵² It is necessary to note in this respect that the Palestinian Authority's control and law enforcement ability extend only to "Area A", and that they are also subject to the ultimate control by the occupying Power, which thus retains overall control and responsibility (see Fourth Geneva Convention, art. 47).

⁹⁵³ See chap. IV.

1579. Death in detention as a result of wilful killing, torture or other forms of abuse constitutes a violation of the right to life reflected in article 3 of the Universal Declaration.

1580. Excessive force in policing demonstrations in the instances reported above contravenes the requirements of the United Nations Code of Conduct for Law Enforcement Officials (art. 3) and the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (principle 4) that law enforcement officials use force only when strictly necessary and to the extent required for the performance of their duty, and that they apply non-violent means first, using force only if other means remain ineffective or without any promise of achieving the intended result. In addition, it may violate the right to freedom of expression, the right to peaceful assembly (article 20 of the Universal Declaration of Human Rights) and the right not to be discriminated on the basis of political opinions.

1581. Reports that the Palestinian Authority interfered with the work of journalists and the media give rise to the concern that the right to freedom of opinion and expression has been interfered with. According to article 19 of the Universal Declaration of Human Rights, this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

1582. The Mission considers that the information it received about the requirement for security approval and recognition of the “legitimate authority” as a prerequisite for public office, as well as for teaching and other posts in public schools and membership on boards of associations, suggests a violation of the right to hold public office and of the right not to be discriminated on the basis of political beliefs.

1583. Interference with the constitution of boards of associations, or the registration of certain associations on grounds of political allegiance, would, if confirmed, indicate a violation of the right to form associations (article 20 of the Universal Declaration). Dismissal from public appointment on the basis of (presumed) political affiliation violates the right to work, to just and favourable conditions of work and to protection against unemployment (art. 23) and the right to non-discrimination (art. 1).

E. Conclusions

1584. From the information available to it, the Mission finds that there are features of the repressive measures against actual or perceived Hamas affiliates and supporters in the West Bank that would constitute violations of international law. Furthermore, in efforts to minimize the power and influence of Hamas, the protection and the promotion of human rights have generally been eroded. The Mission notes that these measures and their objectives are relevant to the context within which the Israeli offensive in Gaza was launched, as analysed in chapter II.⁹⁵⁴

1585. The Mission is concerned that, by failing to take action to put an end to the practices described above, the Palestinian executive and judicial authorities are contributing to the further

⁹⁵⁴ “Leading security figures have taken to referring to Hamas in front of Israeli counterparts as a ‘common enemy’ and speak in crudely violent terms of how they plan to treat it” (“Palestine divided...”).

deterioration of the fundamental rights and freedoms of Palestinians, the rule of law and the independence of the judiciary.

1586. It appears from the information the Mission received that the Palestinian Authority's actions against political opponents in the West Bank started in January 2006, intensified between 27 December 2008 and 18 January 2009, and is continuing until today.

1587. The Mission considers detentions on political grounds legally unacceptable for several reasons: the arrest and indefinite detention (without trial) by security services and under the military judiciary system are in violation of Palestinian law and international human rights law; and the arrests and detentions are apparently based on political affiliation, which would violate the right not to be arbitrarily detained, the right to a fair trial, and the right not to be discriminated against on the basis of one's political opinion, which are both part of customary international law. Moreover, the reports of torture and other forms of ill-treatment during arrest and detention, and the reports of deaths in detention raise further concerns and warrant proper investigation and accountability.

1588. The Mission is concerned about interference with the freedom of the media.

1589. It is a serious concern to the Mission that the normal system of checks and balances between the executive, the legislative and the judiciary branches in the area controlled by the Palestinian Authority appears to be flawed. There seems to be little evidence of a functioning accountability system to counter instances of torture and other forms of abuse of power. It is also of serious that, in the absence of governmental oversight, civil society organizations are receiving threats and being harassed and seeing their operations impeded by administrative obstacles.⁹⁵⁵

⁹⁵⁵ Mission interview with Al-Haq, 2 July 2009.

PART THREE: ISRAEL

1590. The Mission, in examining, as required by its mandate, alleged violations occurring in the context of the Israeli military operations conducted in Gaza from 27 December 2008 to 18 January 2009, whether before, during or after, also considered allegations of violations against Israeli citizens and residents. The Mission focused on two areas that it considered particularly relevant: (a) the launching of rockets and mortars from the Gaza Strip into southern Israel by Palestinian armed groups, and their effects on the civilian population; (b) the action taken by the Government of Israel to repress dissent among its citizens and residents vis-à-vis its military operations in Gaza, and to limit independent and critical reporting on it by human rights organizations and media.

Methodology

1591. One consequence of the lack of cooperation by Israel with the Mission was that it was unable to visit Israel to investigate alleged violations of international law, and in particular to visit relevant sites and interview victims and witnesses. The Mission has, however, received many reports and other relevant materials from Israeli organizations and individuals, including Palestinians living in Israel, and from international human rights organizations and institutions. The Mission, also, met with representatives of a number of Israeli human rights organizations (see annex). The Mission conducted telephone interviews with people either living in or working with communities in southern Israel, including the Bedouin Palestinian community in the unrecognized villages in the Negev. It also interviewed many people in relation to the other matters within its mandate. Israeli victims, witnesses, experts and representatives of southern Israel local authorities appeared at the public hearings held in Geneva on 6 July 2009. Representatives of Israeli civil society and non governmental organizations working on human rights inside Israel were contacted either via video link or telephone. The issue of rocket and mortar attacks on Israel was also covered in interviews conducted in Gaza in May and June 2009 and in communications with the Gaza authorities.

1592. Owing to the lack of access, the chapters in the section below rely more broadly on secondary information than the previous sections.

1593. The Mission found the witnesses it heard in relation to the situation in Israel to be credible and reliable. The Mission has also written to the Gaza authorities and the Government of Israel seeking information and official positions on, inter alia, the issues addressed in the section below. The information received by the Gaza authorities is taken into account in this chapter. The Government of Israel has not responded.

XXIV. THE IMPACT ON CIVILIANS OF ROCKET AND MORTAR ATTACKS BY PALESTINIAN ARMED GROUPS ON SOUTHERN ISRAEL

1594. The Mission conducted telephone interviews with people either living in or working with communities in southern Israel. Five residents of southern Israel appeared at the public hearings in Geneva on 6 July 2009 while three representatives of the Israel Trauma Center for Victims of Terror and War (NATAL) appeared via videolink from Tel Aviv. The issue of rocket and mortar attacks on Israel was also covered in interviews conducted in Gaza in May and June 2009 and in communications with the Gaza authorities.

1595. The Mission was unable to conduct on-site investigations owing to the decision of the Government of Israel not to cooperate with the Mission.

1596. The Mission addressed questions to the Government of Israel regarding individuals who have been affected by rocket and other fire from the Gaza Strip. The request of information included data about any psychological, social and economic harm caused by the rocket and mortar shells that have been launched into Israel. The Mission did not receive any reply to its questions.

1597. Since April 2001, Palestinian armed groups have launched more than 8,000 rockets and mortars from Gaza into southern Israel.⁹⁵⁶ Communities such as Sderot, the surrounding kibbutzim and some of the unrecognized villages in the Negev have been in range since that time. During the Israeli military operations in Gaza in December 2008 and January 2009, the range of the rockets and mortars increased significantly to nearly 40 kilometres from the Gaza border, encompassing the Israeli towns of Yavne 30 kilometres to the north and Beersheba 28 kilometres to the southeast.

1598. Since the rocket and mortar fire does not often hit populated areas, and because of the precautions taken by the Government of Israel, the rockets and mortars have caused relatively few fatalities and physical injuries among the residents of southern Israel. Property damage, while by no means insignificant, has not been extensive. More widespread, however, has been the psychological trauma and the feeling of insecurity that living under rocket fire has caused and continues to cause, to people living in the affected towns and villages, as well as the erosion of the economic, social and cultural life of these communities.

1599. Every death and injury is not only a tragedy but a matter of utmost concern to the Mission. The Mission wishes to emphasize that the issues of concern, and indeed the consequences of any attack affecting civilians, cannot be reduced to a recitation of statistics, nor should they be.

A. Summary of rocket and mortar fire from 18 June 2008 to 31 July 2009

1. 18 June 2008-26 December 2008

1600. According to Israeli sources,⁹⁵⁷ 230 rockets and 298 mortars were fired against Israel between 18 June and 26 December 2008; 227 rockets and 285 mortars struck territory inside the State of Israel. Media reports indicate that areas struck by rockets included the Western

⁹⁵⁶ Statistics taken from the Report of the Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center (IICC), "Summary of rocket fire and mortar shelling in 2008"; available at http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/ipc_e007.pdf.

⁹⁵⁷ These figures have been cross-referenced against those given in a report of the IICC entitled "The Six Months of the Lull Arrangement", December 2008. Available at http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/hamas_e017.pdf.

Negev,⁹⁵⁸ Sderot⁹⁵⁹ and Ashkelon.⁹⁶⁰ This includes the 157 rockets and 203 mortars that were fired during the ceasefire, which ended officially on 18 December 2008.⁹⁶¹

1601. The Mission notes that 92 per cent (212) of the rockets and 93 per cent (279) of the mortars fired between 18 June and 26 December 2008 were fired after 5 November 2008.⁹⁶²

1602. While there were no fatalities inside Israel, two young Palestinian girls, aged 5 and 12 years, were killed when a rocket fell short, landing in northern Gaza on 26 December 2008.⁹⁶³

1603. Media reports indicated that, during this period, six Israelis and one foreign worker were wounded as a result of rockets landing in built-up areas in southern Israel. Where rockets did not land in open space, property damage was sustained. As is discussed below, an unknown number of people in southern Israel were treated for shock following the sounding of the early warning system and the subsequent rocket strikes.⁹⁶⁴

2. 27 December 2008-18 January 2009

1604. According to the Israeli authorities, armed groups in Gaza fired approximately 570 rockets and 205 mortars into Israel during the 22 days of the military operations in Gaza.⁹⁶⁵ On their websites, the al-Qassam Brigades and Islamic Jihad claimed to have fired over 800 rockets into Israel during this time.⁹⁶⁶

1605. During the Israeli military operations in Gaza, the range of rocket and mortar fire increased dramatically, reaching towns such as Beersheba 28 kilometres to the south-east and Ashdod 24 kilometres to the north of the Gaza Strip. Rockets continued to fall in areas such as

⁹⁵⁸ On 24 June 2008, 3 Qassam rockets struck the Western Negev; see “End of Truce? 2 Kassam hit w. Negev”, *Jerusalem Post*, 24 June 2008. On 27 November 2008, a rocket struck and damaged a house on a kibbutz in the western Negev; see “Kassams continue to strike Negev”, *JTA*, 27 November 2008.

⁹⁵⁹ On 24 June 2008, a rocket hit the yard of a house in Sderot; see “Rockets ‘violated Gaza ceasefire’”, *BBC News*, 24 June 2008.

⁹⁶⁰ For example, on 14 November 2008, several rockets struck Ashkelon; *The Times*, “ Hamas militants step up rocket attacks on Israel”, 15 November 2008. Ashkelon is approximately 20 kilometres from the Gaza border.

⁹⁶¹ *Ibid.*

⁹⁶² On 5 November 2008, Israel made an incursion into Gaza claiming that its aim was to close a cross-border tunnel that Palestinian fighters intended to use to kidnap an Israeli soldier. During the incursion, a member of Hamas was killed and several Israeli soldiers were wounded. See “Gaza truce broken as Israeli raid kills six Hamas gunmen”, *The Guardian*, 5 November 2008.

⁹⁶³ ‘Palestinian rockets kill 2 schoolgirls in Gaza’, *Fox News.com*, 26 December 2008.

⁹⁶⁴ The Mission notes that the submission of 9 August 2009 by Magen David Adom (‘MDA’) detailed 407 stress-related injuries in Sderot alone from 1 June to 26 December 2008.

⁹⁶⁵ See, Israel Ministry of Foreign Affairs at <http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Missile+fire+from+Gaza+on+Israeli+civilian+targets+Aug+2007.htm>; see also “Rockets from Gaza”, Human Rights Watch, 6 August 2009, p.8. According to HRW, the IDF stated that 650 rockets had been launched from Gaza, but only 570 rockets had struck Israel.

⁹⁶⁶ HRW report of 6 August 2009, p. 2.

Sderot, the Eshkol Regional Council and the surrounding kibbutzim, which had experienced rockets strikes since 2001. A total of 90 rockets struck Sderot during the 22 days of military operations in Gaza.⁹⁶⁷

1606. During the period of the operations, three civilian fatalities and one military fatality were recorded in Israel resulting from the rocket and mortar strikes launched from Gaza. According to Magen David Adom, 918 people were injured (17 critically injured, 62 medium injuries and 829 lightly injured) in this time period.⁹⁶⁸ There were also 1,595 people inside Israel treated for stress-related injuries.⁹⁶⁹

3. 19 January 2009-31 July 2009

1607. According to the Israeli authorities, more than 100 rockets and 65 mortars were fired into Israel after 19 January 2009.⁹⁷⁰ No fatalities resulted from these rocket and mortar strikes. The Mission was unable to obtain any official statistics of civilians physically injured by rockets and mortars during this time. On 1 February 2009, one Israeli civilian was lightly wounded when mortar shells, fired from Gaza, exploded in the Sha'ar Hanegev region.

1608. The majority of the rockets and mortars were fired prior to 15 March 2009. On 12 March 2009, the Ministry of the Interior of the Gaza authorities stated that rockets were being “fired at the wrong time” and that the Gaza authorities were investigating those responsible.⁹⁷¹ On 20 April 2009, a member of Hamas called on other armed groups to stop firing rockets “in the interests of the Palestinian people”.⁹⁷² On 19 July 2009, Xinhua News reported that Hamas had arrested two members of Islamic Jihad firing mortars at Israeli forces.⁹⁷³

1609. In July 2009, Hamas declared that it was entering a period of “cultural resistance”, stating that it was suspending its use of rockets and shifting its focus to winning support at home and abroad through cultural initiatives and public relations.⁹⁷⁴

B. Relevant Palestinian armed groups

1610. The Palestinian armed factions operating in the Gaza Strip and claiming responsibility for the majority of the rocket and mortar launchings are the Izz al-Din al-Qassam Brigades⁹⁷⁵, the al Aqsa Martyrs' Brigades and Islamic Jihad. A brief description of each group is given below.

⁹⁶⁷ Ibid, p.8.

⁹⁶⁸ Submission to the Mission, 9 August 2009.

⁹⁶⁹ Ibid.

⁹⁷⁰ See, Israel Ministry of Foreign Affairs at http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Palestinian_ceasefire_violations_since_end_Operation_Cast_Lead.htm.

⁹⁷¹ “Hamas criticizes Gaza rocket fire”, *Al Jazeera* 13 March 2009.

⁹⁷² “Hamas discusses resistance regulation with Gaza groups”, *Xinhua News Agency*, 22 April 2009.

⁹⁷³ “Hamas reportedly arrests Gaza operatives firing at Israeli troops”, *Xinhua News Agency*, 19 July 2009.

⁹⁷⁴ The New York Times, “Hamas Shifts From Rockets to Culture War”, 23 July 2009, available at <http://www.nytimes.com/2009/07/24/world/middleeast/24gaza.html?scp=2&sq=hamas&st=cse>.

1611. The 'al Qassam Brigades' are the armed wing of the Hamas political movement. According to a June 2007 report of Human Rights Watch, the al-Qassam brigades initiated the manufacture of rockets, now generically known as "Qassams", inside the Gaza Strip.⁹⁷⁶ According to figures given on the Al-Qassam Brigades website, the group launched 335 Qassam rockets, 211 Grad rockets and 397 mortars into Israel during the Israeli military operations in Gaza.⁹⁷⁷

1612. The al-Aqsa Martyrs' Brigades were organized during the second intifada and claim affiliation with Fatah. This group too has claimed responsibility for rocket and mortar fire on Israel following the Egyptian brokered ceasefire (*tahdiya*), which started on 18 June 2008.

1613. Islamic Jihad wields considerably less political power than either Hamas or Fatah. Its military wing is known as Saraya al-Quds and the group calls the rockets it manufactures inside Gaza, 'al Quds'. Islamic Jihad has made numerous claims of responsibility for the launching of rockets into Israel,⁹⁷⁸ including the first spate of rocket fire after 18 June 2008.

1614. On its website, the Abu Ali Mustafa Brigades,⁹⁷⁹ the military wing of The Popular Front for the Liberation of Palestine also claimed responsibility for launching 177 rocket attacks and 115 mortars on several towns and villages inside Israel from 27 December 2008 to 18 January 2009.

1615. The al-Naser Salah ad-Din Brigades, the military wing of the Popular Resistance Committee has stated that it too has launched rockets into Israel.⁹⁸⁰ The Committee is a coalition of different armed factions who oppose what they perceive as the Palestinian Authority and Fatah's conciliatory approach to Israel.

C. Type of rockets and mortars held by Palestinian armed groups⁹⁸¹

1616. There is little independent confirmation of the types of weaponry held by Palestinian armed groups or the number of weapons that may be stockpiled. According to an Amnesty International report, of February 2009, the arsenals held by armed groups in the Gaza Strip include: al-Qassam (or al-Quds), 122mm Grad and 220 Fadjr-3 rockets as well as the al-Battar, the Banna 1 and Banna 2 anti-armour rockets.

⁹⁷⁵ The group was named after a Syrian who worked with displaced Palestinians in what is now northern Israel, and died in a clash with British troops in 1935, sparking the Palestinian revolt of 1936-9.

⁹⁷⁶ "Indiscriminate Fire", Human Rights Watch, 30 June 2007.

⁹⁷⁷ See <http://www.alqassam.ps/arabic/upload/forkan.pdf>.

⁹⁷⁸ According to statistics provided on its website, the Saraya al-Quds Brigades claimed responsibility for the firing of 235 mortar and rockets during the military operations, See <http://www.israj.net/vb/t1839/>.

⁹⁷⁹ See <http://www.kataebabuali.ps/inf2/articles-action-show-id-223.htm>.

⁹⁸⁰ During the operations in Gaza, the group claimed responsibility for launching 132 rockets and 88 mortars. See <http://www.moqawmh.com/moqa/view.php?view=1&id=300>.

⁹⁸¹ See the Amnesty International report "Fuelling the Conflict: Foreign arms supplies to Israel/Gaza", 23 February 2009; p. 15-16 and p. 30-31.

1. al-Qassams

1617. There are thought to be at least three generations of Qassam rockets: (a) the Qassam 1, developed in 2001, with a range of 4.5 kilometres and an explosive load of 0.5 kilograms; (b) the Qassam 2, developed in 2002, with a range of 8-9.5 kilometres and an explosive load of 5-9 kilogram; and (c) the Qassam 3, developed in 2005, and with a range of 10 kilometres and an explosive load of 20 kilograms.⁹⁸²

1618. The rockets manufactured in the Gaza Strip are fashioned from rudimentary materials, such as hollow metal pipes. They are relatively unsophisticated weapons and lack a guidance system, and so cannot be aimed at specific targets.⁹⁸³ Jane's Terrorism and Security Monitor has described them as "inaccurate, short-range and rarely lethal".⁹⁸⁴ Even so, Qassam rockets have inflicted both fatalities and injuries to residents of southern Israel.

2. 122 mm Grad rocket

1619. 122 mm Grad rocket is a Russian-designed missile with a range of approximately 20 to 25 kilometres. Given the higher level of technological sophistication and the fact that it is manufactured with material not easily (if at all) available in Gaza, it is likely that they are not made in Gaza.

1620. While most 122 mm Grad rockets have a range of about 20 kilometres, some have landed 40 kilometres inside Israel.⁹⁸⁵ Global Security has concluded that on the basis of photographs, that the rockets that struck open space near Yavne and Bnei Darom on 28 December 2008 were Chinese-manufactured 122 mm WeiShei-1E rockets, which can travel distances of 20 to 40 kilometres.⁹⁸⁶

3. 220 mm Fajr-3 rocket

1621. The 220 mm Fajr-3 rocket is Iranian designed and is also thought to be smuggled into Gaza.

4. Anti-armour rockets

1622. Palestinian armed groups are also alleged to possess Chinese-designed rockets that have been smuggled into Gaza.⁹⁸⁷ According to Jane's Defence Weekly, Hamas is also in possession

⁹⁸² Technical Report to the United Nations Fact-Finding Mission on the Gaza Conflict, Irish Defence Force Ordinance School, July 2009.

⁹⁸³ Ibid.

⁹⁸⁴ Rocket powered 'Hamastan, Jane's Terrorism and Security Monitor, "11 July 2007.

⁹⁸⁵ For example, in Beersheba on 30 and 31 December 2008: "Rockets reach Beersheba, cause damage", *Ynet News*, 30 December 2008.; "Rocket barrages hit Beersheba, Ashkelon; 5 lightly hurt", *Ynet News*, 31 December 2008.

⁹⁸⁶ "Hamas Rockets", Global Security, available at <http://www.globalsecurity.org/military/world/para/hamas-qassam.htm>.

⁹⁸⁷ "Hamas deploys rocket arsenal against Israel", Jane's Defence Weekly, 14 January 2009.

of several home-made anti–armour rockets, including the al-Battar, the Banna 1 and the Banna 2.⁹⁸⁸

5. Mortars

1623. Mortars are short-range weapons that are generally more accurate than rockets manufactured inside the Gaza Strip.⁹⁸⁹ Mortars have rudimentary aiming systems, in which the coordinates of previous strikes can be used to better target subsequent launches. Most mortars have a range of 2 kilometres; according to the Jaffa Centre for Strategic Studies, however, the Palestinian Sariya-1 is a 240 mm mortar with 15 kilometre range.⁹⁹⁰

D. Rocket and mortar attacks by the Palestinian armed groups on Israel⁹⁹¹

1624. The Mission is providing a brief history of rocket and mortars attacks, as it is relevant to an understanding of the breadth and depth of the psychological trauma suffered by residents of communities closest to the border, such as Sderot, that have been in range since 2001.

1625. The first recorded rocket launch took place on 16 April 2001. On 10 February 2002, the first rocket struck territory inside Israel, when a Qassam 2 rocket fired from Gaza landed in a field six kilometres from the border, near Kibbutz Sa'ad, in the Negev.⁹⁹² The first recorded strike of a rocket from Gaza on an Israeli city was on 5 March 2002, when two rockets struck Sderot.⁹⁹³

1626. According to statistics compiled by the Intelligence and Terrorism Information Centre at the Israel Heritage & Commemoration Center an organization with links to the Government of Israel, 3,455 rockets and 3,742 mortar shells were fired into Israel from Gaza from 16 April 2001 to 18 June 2008.

1627. The first civilian casualties from rocket fire were recorded on 28 June 2004 in Sderot, when Afik Zahavi (4 years old) and Mordehai Yosef (49 years old) were killed by a Qassam rocket. Afik's mother, Ruthie Zahavi (28 years old) was critically injured and nine others were wounded. Hamas claimed responsibility.⁹⁹⁴

⁹⁸⁸ Ibid.

⁹⁸⁹ Technical Report to the United Nations Fact-Finding Mission on the Gaza Conflict, Irish Defence Force Ordinance School, July 2009.

⁹⁹⁰ <http://www.weaponsurvey.com/missilesrockets.htm>.

⁹⁹¹ Statistics are taken from the report by Intelligence and Terrorism Information Center at the Israel Intelligence Heritage & Commemoration Center, "Summary of rocket fire and mortar shelling in 2008".

⁹⁹² "The homemade rocket that could change the Mideast", *The Times*, 11 February 2002. .Note, however, that the al-Qassam Brigades website posted a press release on 26 October 2001, in which the group claimed responsibility for a rocket attack against an Israeli town inside Israel: <http://www.alqassam.ps/arabic/sinaat.php?id=16>.

⁹⁹³ <http://www.israelemb.org/articles/2002/March/2002030500.html>.

⁹⁹⁴ "Israel steps up military action after Hamas rocket attack from Gaza strikes nursery", *The Independent*, 29 June 2004.

1628. From 28 June 2004, when the first fatalities from rocket fire were recorded, to 17 June 2008, 21 Israeli citizens, including two Palestinian citizens of Israel, two Palestinians and one foreign worker were killed inside Israel as a result of rocket attacks and mortar fire. In addition, a Palestinian was killed in Gaza when a rocket landed short of the border, and 20 Palestinians were killed when a vehicle transporting rockets exploded in Jabaliya refugee camp. Eleven of those killed inside Israel were killed in Sderot, a town of just over 20,000 people situated just over a kilometre from the Gaza Strip border.

E. Statements by Palestinian armed groups concerning their launching of rockets into Israel

1629. The al-Qassam Brigades, al-Aqsa Brigades, Islamic Jihad and Popular Resistance Committee all claimed responsibility for rocket and mortar attacks during the time period under review by the Mission. Palestinian armed groups generally justify these attacks as a legitimate form of resistance to Israeli occupation and as acts of self-defence and reprisals for Israeli attacks.⁹⁹⁵

1630. On 5 January 2009, Hamas member Mahmoud Zahar was quoted as saying that “the Israeli enemy ... shelled everyone in Gaza. They shelled children and hospitals and mosques, and in doing so, they gave us legitimacy to strike them in the same way”.⁹⁹⁶

1631. On 6 January 2009, during the Israeli military operations in Gaza, Khaled Mashal, Chairman of the Hamas Political Bureau wrote in an open letter that the demand to stop the Palestinian resistance was ‘absurd ... our modest home made-rockets are our cry of protest to the world’⁹⁹⁷. Hamas, in a press release published on 28 December 2008,⁹⁹⁸ declared:

We appeal to all factions of the Palestinian resistance and its military arm, especially the Brigades of the Martyr Izz el-Din al-Qassam to declare a state of general alert ... and take upon themselves the responsibility to protect the Palestinian people, by striking with all the strength it has the Zionists enemy, its military barracks and colonies, and by using all forms of resistance ... including the martyrdom operations and striking the Zionist depths...”

⁹⁹⁵ For example, on 24 June 2008, Islamic Jihad fired three Qassam rockets from Gaza into the Western Negev following the targeted assassination of one of its members, Tarek Abu Ghally and another in Nablus earlier that day. Islamic Jihad stated “we cannot keep our hands tied when this is happening to our brother in the West Bank” (The Jerusalem Post, 24 June 2008). See also chap. III.

⁹⁹⁶ HRW report of 6 August 2009, p. 2.

⁹⁹⁷ “This brutality will never break our will to be free” *The Guardian*, 6 January 2009. It should be noted that couple of month after the end of OCL and in an interview with *the New York Times*, Mashal stated that “not firing the rockets currently is part of an evaluation from the movement which serves the Palestinians’ interest. After all, the firing is a method, not a goal. Resistance is a legitimate right, but practicing such a right comes under evaluation by the movement’s leaders”. See <http://www.nytimes.com/2009/05/05/world/middleeast/05meshal.html>.

⁹⁹⁸ Press release, available at: <http://www.palestine-info.info/Ar/default.aspx?xyz=U6Qq7k%2bcOd87MDI46m9rUxJEpMO%2bi1s7qWPRV4XDeu2%2fQ%2bDRjgQnm%2f7wZogCTxIzGTevVWJc5MsXTUO3OLNIY3YA5siKloAlZ6oS1ivXknPx%2fFTToxPOB%2f8FLcGJbXOfO%2fHKW97wLT20%3d>.

1632. A spokesperson for the Popular Front for the Liberation of Palestine (PFLP) stated two days before the end of the operations in Gaza that “the rockets are both practical and a symbolic representation of our resistance to the occupier”.⁹⁹⁹

1633. On 25 May 2009, the Gaza authorities denied that they were preventing rocket attacks on Israel. A spokesman stated “we don’t make such decision without agreeing with all the resistance factions in a national consensus...The factions have the right to respond to any Zionist crime using any sort of resistance and there is no lull with the [Israeli] occupation”.¹⁰⁰⁰

F. Statements by the Gaza authorities to the Mission

1634. In a meeting with the Mission on 1 June 2008, the Gaza authorities stated that they had taken the initiative to spare civilian lives when they renounced suicide attacks in April 2006.¹⁰⁰¹ At the same meeting, a Government spokesperson stated that the resistance factions did not aim their rockets at civilians but rather at IDF artillery and other positions from which attacks against Gaza were launched.

1635. In response to questions by the Mission, on 29 July 2009, the Gaza authorities stated that they had “nothing to do, directly or indirectly, with al-Qassam or other resistance factions” and stated that they were able to exercise a degree of persuasion over the armed factions in relation to proposed ceasefires. While noting that the weaponry used by the armed factions was not accurate, the Gaza authorities discouraged the targeting of civilians.

1636. Despite various attempts, the Mission was unable to contact members of armed factions operating within the Gaza Strip.

G. Precautionary measures in effect in southern Israel

1. The Tseva Adom early warning system

1637. The *Tseva Adom* (or ‘Red Colour’) is an early warning radar system installed by the Israeli armed forces in towns in southern Israel. It was installed in Sderot in 2002 and in different areas of Ashkelon in 2005 and 2006.

1638. When the early warning system detects the signature of a rocket launch originating in Gaza, it automatically activates the public broadcast warning system in nearby Israeli communities and military bases. A two-tone electronic audio alert is broadcast twice, followed by a recorded female voice intoning the words “*Tseva Adom*”. The entire programme is repeated until all rockets have hit and launches are no longer detected. During the public hearings held in Geneva on 6 July 2009, Noam Bedein of the Sderot Media Center screened footage of the

⁹⁹⁹ <http://www.pflp.ps/english/?q=pflp-interview-ma-news-agency-israeli-aggression-g>.

¹⁰⁰⁰ Xinhua News, 25 May 2005.

¹⁰⁰¹ The statement was widely reported in the international media. See, “*Hamas in call to end suicide bombings*”, *The Guardian*, 9 April 2006.

sounding of the early warning system in Sderot and its effect on the community, for the benefit of the Mission.¹⁰⁰²

1639. In Sderot, the system gives residents a warning of approximately 15 seconds before an incoming missile strikes. The further residents are from the Gaza Strip, the longer the warning period. Residents of Ashkelon interviewed by the Mission estimated that the system gives them a 20 second warning, while residents of the more northern city of Ashdod or of the town of Beersheba in the Negev estimate that the system gives them a warning of approximately 40 to 45 seconds.

1640. It should be noted that the *Tseva Adom* system is not 100 per cent effective; according to Noam Bedein, the system failed to detect a rocket that struck Sderot on 21 May 2007, killing one and wounding two others.¹⁰⁰³ Moreover, the system may also give false alerts, a fact which led authorities in Ashkelon to switch off the system in May 2008. Consequently, no warning was given when a rocket struck a shopping centre on 14 May 2008, seriously injuring three people (including Dr. Emilia Siderer, who appeared before the Mission at the public hearings held in Geneva on 6 July 2009).

1641. The sounding of the *Tseva Adom* system and the knowledge that it does not provide a guaranteed forewarning of a rocket strike, have, according to organizations providing mental health services, also had a profound, adverse psychological effect on the communities living within the range of rocket and mortar fire. This issue is discussed in detail below.

2. Construction of fortifications and shelters

1642. In recent years, the Government of Israel has fortified towns in southern Israel with bomb shelters. Some residential homes contain “secure rooms”. In March 2008, the Government fortified 120 bus-stops in Sderot¹⁰⁰⁴ and, by January 2009, all schools in Sderot had been fortified against rocket attacks.

1643. According to an article published in *Haaretz*, approximately 5,000 residents of southern Israel, mostly elderly immigrants from the former Soviet Union, lacked proper reinforced rooms or reasonable access to public shelters.¹⁰⁰⁵ In interviews with residents of the affected communities in southern Israel, the Mission received reports of families abandoning the upper floors of their homes and living together in a room on the ground floor for fear of the failure of the early warning system and/or not being able to descend from the upper floors quickly enough reach a shelter.¹⁰⁰⁶

¹⁰⁰² “15 Seconds in Sderot”, available at <http://www.youtube.com/watch?v=ygb6VrW8WZw>; “First day of School”, available at http://www.youtube.com/watch?v=mFss6p5sTPE&feature=channel_page.

¹⁰⁰³ Telephone interview with Noam Bedein/ Sderot Media Centre, 28 June 2009. See also , ‘Woman killed, two wounded in Qassam rocket strike on Sderot’, *Haaretz*, 28 May 2007.

¹⁰⁰⁴ “Gov't places 120 fortified bus stops in rocket-plagued Sderot”, *Haaretz*, 5 March 2008.

¹⁰⁰⁵ “5000 southerners, mostly elderly, lack access to rocket shelter”, *Haaretz*, 4 February 2009,

¹⁰⁰⁶ Telephone interviews with Eric Yalin, 30 June 2009; Rachel Perez, 30 June 2009; Rachel Sushan, 30 June 2009; Naomi Benbassat- Lifshitz, 2 July 2009; Dina Cohen, 5 July 2009; Stewart Ganulin (Hope for Sderot), 8 July 2009.

1644. In March 2009, Sderot inaugurated a reinforced children's recreation centre, designed to provide a rocket-proof place for children to play.¹⁰⁰⁷ There are fortified playgrounds in Sderot, with concrete tunnels painted to look like caterpillars.¹⁰⁰⁸

1645. The Government of Israel has stated that, on current information, spending on fortifications and shelters between 2005 and 2011 will amount to approximately \$ 460 million.¹⁰⁰⁹ It should be noted, however, that the fortifications do not necessarily prevent rockets penetrating these buildings; for instance, on 3 January 2009, a Grad rocket penetrated the fortification of a school in Ashkelon, striking an empty classroom.¹⁰¹⁰

1646. The Mission is concerned about the lack of provision of public shelters and fortifications in the unrecognized villages in the Negev and in some of the recognized towns and villages populated by Palestinian citizens of Israel, living within the range of rocket and mortar fire (see paragraph X below).

H. Impact of rocket and mortar fire on communities in southern Israel

1647. The Mission notes that the impact on communities is greater than the numbers of fatalities and injuries actually sustained. The Mission also notes the information in the Government of Israel paper of July 2009, in which an article from *the Guardian* article was cited, stating that as at July 2009, 92 per cent of Sderot residents had seen or heard a rocket impact, 56 per cent had had shrapnel fall on their homes and 65 per cent knew someone who had been injured.¹⁰¹¹

1. Fatalities

1648. Between 18 June 2008 and 31 July 2009, there were four fatalities in Israel as a consequence of rocket and mortar fire from Gaza, of which there were three civilian and one military casualties.

1649. On 27 December 2008, Beber Vaknin, 58 years of age, of Netivot was killed when a rocket fired from Gaza hit an apartment building in Netivot.

1650. On 29 December 2008, Hani al-Mahdi, 27 years of age, of Aroar, a Bedouin settlement in the Negev, was killed when a Grad-type missile fired from Gaza exploded at a construction site in Ashkelon. On the same day, in a separate incident, Irit Sheetrit, 39 years of age, was killed and several wounded when a Grad rocket exploded in the centre of Ashdod. The al-Qassam Brigades claimed responsibility for the attack.

¹⁰⁰⁷ “An Israeli playground, fortified against rockets”, *The New York Times*, 12 March 2009.

¹⁰⁰⁸ , “On Israel-Gaza border, teens learn legacy of hate”, *Tampa Bay News*, 8 February 2009.

¹⁰⁰⁹ Government of Israel, “The Operation in Gaza: 27 December 2008 – 18 January 2009, Factual and Legal Aspects”, July 2009”, para. 43 and fn. 23.

¹⁰¹⁰ “Experts: Grads in Ashkelon were advanced”, *Ynet News*, 1 March 2009.

¹⁰¹¹ “The operation in Gaza...”, para. 46, citing statistics appearing in “Middle East Conflict”, *the Guardian*, 15 July 2009.

1651. On 29 December 2008, a member of the military, Warrant Officer Lutfi Nasraladin, 38 years of age, of the Druze town of Daliat el-Carmel, was killed by a mortar attack on a military base near Nahal Oz.

2. Physical injuries

1652. According to Magen David Adom (MDA), during the period of the Israeli military operations in Gaza, a total of 918 civilians were wounded by rocket attacks. This figure includes 27 critically wounded, 62 moderately wounded and 829 lightly wounded.¹⁰¹² From 19 January to 19 March 2009, 10 people physically injured from rocket fire were treated by MDA.¹⁰¹³

3. Psychological trauma/ mental health

1653. In interviews with both residents of southern Israel and the organizations dealing with mental health issues, the issue of psychological trauma suffered by adults and children living in the zone of rocket fire was repeatedly raised. While news articles sometimes report on people being treated for shock following a rocket strike, both individuals and organizations have voiced a real frustration with the lack of focus on what they termed the “invisible damage” caused by rockets. According to MDA, 1,596 people were treated by health facilities in Israel between 27 December 2008 and 18 January 2009.¹⁰¹⁴ From 19 January to 2 August 2009, 549 people from Sderot alone were treated for stress-related injuries.¹⁰¹⁵

1654. A study of October 2007, commissioned by NATAL, on the impact of the ongoing traumatic stress conditions on Sderot¹⁰¹⁶ found that 28.4 per cent of adults and between 72 and 94 per cent of children in Sderot reported signs indicative of post-traumatic stress disorder.¹⁰¹⁷ The study also found that children under the age of 12 years showed a high frequency of reported

¹⁰¹² MDA communication to the Mission, 9 August 2009. The Mission notes the figures given in the HRW report of August 2009 which outlined the number of people treated by MDA: 770 people including 3 fatalities, 4 severely wounded, 11 moderately wounded and 167 lightly wounded. See HRW report of August 2009, p. 8.

¹⁰¹³ HRW report of August 2009, p. 8.

¹⁰¹⁴ MDA communication to the Mission, 9 August 2009. Human Rights Watch quotes reports from MDA that it had itself treated 570 cases of people suffering from stress-related injuries: see HRW report of August 2009, p. 8. This figure was confirmed in a meeting between MDA and representatives of the Mission in Geneva on 22 July 2009.

¹⁰¹⁵ Ibid.

¹⁰¹⁶ Available at <http://www.theisraelproject.org/atf/cf/%7B84dc5887-741e-4056-8d91-a389164bc94e%7D/NATAL%20STATS%20FOR%20WEB.PPT#353,1>, The Impact of the Ongoing Traumatic Stress Conditions on Sderot Research Survey for NATAL – The Israel Trauma Center for Victims of Terror and War: Initial Findings & Recommendations. See also “Study: Most Sderot kids exhibit post-traumatic stress symptoms” *Haaretz*, 17 January 2008.

¹⁰¹⁷ Telephone interview with Orly Gal, NATAL, 28 June 2009; See also, “Study: Most Sderot kids exhibit post-traumatic stress symptoms”, *Haaretz*, 17 January 2008; These findings were confirmed by Dr. Rony Berger who spoke at the public hearings in Geneva on 6 July 2009. Dr Berger also stated that consumption of tranquillisers was 2.5 times as high in Sderot than in communities of similar size and socio-economic status that did not live under bombardment. The Mission notes also the 29 July 2009 submission by Dr. Yechiel Lasry, Mayor of Ashdod in which he detailed similar symptoms in children in Ashdod following the rocket attacks on Ashdod during the military operations in Gaza.

symptoms including fear, avoidance, behavioural problems, problems at school, somatic problems, regression and difficulty in sleeping.¹⁰¹⁸

1655. In a submission to the Mission, Dr. Rony Berger, a clinical psychologist and Director of Community Services described a January 2009 visit to a family in Ofakim, a town 12-15 kilometres from the Gaza border, in the following terms:

The family was referred to the Community Staff for treatment by the father, who works at one of the factories in the south. He said that his house had “turned into a madhouse”, and that the level of stress was so high that “you could cut the air with a knife”....When I reached the family home in Ofakim, I found a house full of children (12 children, aged one year to 22 years). It was a large house, and full of life; perhaps more accurately – frantic. I arrived exactly as the siren was sounding, and I saw a range of anxiety-related responses, some of which were certainly extreme. The mother was screaming at the top of her voice, her sister turned completely white, the younger children cried, the eldest daughter (22) froze and had difficulty moving towards the secure room, while her younger brother (14) seemed almost catatonic. The father, who had called me, moved towards the reinforced room slowly and apathetically, as he turned towards me, pointing towards his family members, and said: “You see what I have to deal with every day.” His daughter urged him, screaming, to move faster, but it seemed that the louder she shouted, the slower he moved towards the reinforced room. They started arguing very loudly, while all the rest of the family joined into the fray.¹⁰¹⁹

1656. Dalia Yosef of the Sderot Resiliency Center stated that the Center’s 18 therapists provided counselling to over 300 people in Sderot during the military operations in Gaza and noted that trauma symptoms were particularly noticeable in children. Ms. Yosef stated that trauma was triggered not only by the rocket strikes but also by the sounding of the early warning system alerts, even where no rocket strike subsequently occurred.¹⁰²⁰

1657. The observations made by the organizations dealing with treating trauma were borne out in the descriptions of daily life made in the interviews held with residents in the affected communities.¹⁰²¹ The Community Manager of Kibbutz Gevim, near Sderot, stated that 60 per cent of children in the kibbutz were in touch with psychological services.¹⁰²² A resident of

¹⁰¹⁸ At a meeting with the Mission on 22 July 2009, MDA described similar symptoms of stress-related injuries that their paramedics had observed and treated when called out following rocket and mortar attacks in southern Israel.

¹⁰¹⁹ Submission by NATAL, ‘Description of a recent home visit by NATAL’s Dr Rony Berger to a family in Ofakim – January 2009, submitted to the Mission on 3 July 2009.

¹⁰²⁰ Telephone interview with Dalia Yosef, Sderot Resiliency Center, 2 July 2009.

¹⁰²¹ For example, Ofer Shinar during the public hearings in Geneva on 6 July 2009 described his observation of psychological trauma of civilians, including his students, in Sderot following rocket attacks during the time of the operation in Gaza.

¹⁰²² Telephone interview with Avi Kadosh, 26 June 2009.

Beersheba described how she was unable to sleep in her apartment because of panic attacks and how she now lived with relatives.¹⁰²³

1658. In a telephone interview on 29 July 2009, Avirama Golan, a journalist for *Haaretz* who lived in Sderot from April 2008 to May 2009, commented on the psychological impact of living under rocket fire:

You get used to it in a sense but it changes your perception of the world, of the way that the world functions. Your sense of what is normal becomes skewed. You cannot be sure of anything. All the authorities that children have - their mother, their father - they don't count. Nothing can keep you safe.

4. Damage to property

1659. Where rockets have landed in towns and villages in southern Israel, they have caused localized property damage. This has included private houses¹⁰²⁴ and cars.¹⁰²⁵ During the operations in Gaza, a total of nine schools and kindergartens in Sderot, Beersheba, Ashdod, Ashkelon and Kiryat Ha Hinoch were hit and damaged by rockets.¹⁰²⁶ Two kindergartens were struck and damaged by rocket fire in Ashdod.¹⁰²⁷ On 8 January 2009, a Grad rocket hit a school in Ashkelon.¹⁰²⁸

1660. On 26 February 2009, a rocket launched from Gaza damaged two houses in Sderot.¹⁰²⁹ On 5 March 2009, a rocket hit a synagogue in Netivot, causing light damage.¹⁰³⁰

1661. The Mission was not able to obtain an estimate of the financial cost of the damage to property caused by rocket and mortar fire. In its paper of July 2009, the Government of Israel stated, "for direct damage caused to buildings or property as a result of rocket or mortar attacks 2,400 claims, amounting to a total of 31 million NIS (\$7.95 million) were submitted in 2008, in

¹⁰²³ Telephone interview with Rachel Perez, 30 June 2009.

¹⁰²⁴ For example, a house in a kibbutz in the Negev was damaged by a rocket on 27 November 2008; see, "Kassams continue to strike Negev", *JTA*, 27 November 2008.

¹⁰²⁵ On 17 December 2008, a rocket landed in the carpark of a shopping centre in Sderot, injuring three people and causing serious damage to a supermarket and to cars. See "Three injured in Kassam attack", *JTA*, 17 December 2008.

¹⁰²⁶ Report of the Secretary-General on Children and Armed Conflict, delivered to the 63rd Session of the General Assembly, UN Doc S/2009/158, para. 90, dated 26 March 2009. Details of the damage to Ashkelon schools were also given by Benny Vaknin, mayor of Ashkelon and Dr. Alan Marcus, Director of Strategic Planning, in their presentation to the Mission at the public hearings in Geneva on 6 July 2009.

¹⁰²⁷ "Rocket slams into Ashdod kindergarten", *Jerusalem Post*, 6 January 2009.

¹⁰²⁸ "4 troops hurt in mortar attack; Grad hits Ashkelon school", *Ynet News*, 8 January 2009; Testimony of Benny Vaknin, mayor of Ashkelon and Dr. Alan Marcus, Director of Strategic Planning, to the Mission at the public hearings in Geneva on 6 July 2009.

¹⁰²⁹ "Kassam damages two Sderot home", *JTA*, 26 February 2009.

¹⁰³⁰ "Rocket hits synagogue in Netivot; IAF destroys Gaza tunnels", *Haaretz*, 9 March 2009.

addition to 2,300 additional claims between January and July 2009, of which a total of approximately 25 million NIS (\$6.4 million) was granted thus far".¹⁰³¹

5. Impact on the right to education

1662. The combination of the early warning systems alarms (and the move to the shelters), the rockets strikes and the ongoing psychological trauma caused by the alerts and the strikes had an adverse impact on the right to education of children and young adults in the affected communities in southern Israel.¹⁰³²

1663. Most obvious is the disruption caused to education caused by the closure of schools during heightened hostilities. During the operations in Gaza, educational institutions in Sderot, Ashkelon and Ashdod and across areas within rocket range were closed.

1664. Even when classes are held in more peaceful times, education is disrupted by students having to move to secure areas every time that the early warning system sounds, at time from 10 to 20 times a day, making it virtually impossible for classes to be held. When interviewed on 24 June 2009, Merav Moshe, a lecturer at Sapir College near Sderot, told the Mission:

At Sapir, the atmosphere is tense. Both the faculty and the students are in a state of fear and are perpetually anxious. It is impossible to teach or for students to concentrate on their studies when they have to run back and forth to the shelters. Even in classes that are protected, the students need to move forward and herd in the front of the room away from the windows. It is not a good learning or teaching environment.

1665. Commenting on the impact of the education of children in the kibbutzim near Sderot, Avi Kadosh, during a telephone interview on 29 June 2009, stated

Children here can't run around and play. They have to stay close to a secure place. The older ones have grown up with it and know the drills. They know they have 15 seconds to get inside to a protected place. Some children have been born into it and for them; they clap their hands and run to the safety room. It is also difficult for them to get to class. The rockets are disruptive and the atmosphere is not conducive to learning.

1666. Those who are experiencing symptoms of post-traumatic stress disorder have a diminished ability to learn. In a telephone interview on 29 June 2009, Batya Katar, the Director of the Parents' Committee concerned with schools and kindergartens in Sderot, told the Mission

¹⁰³¹ "The operation in Gaza...", footnote 27.

¹⁰³² According to the Government of Israel, there were a total of 196,444 students within the rocket range; "The operation in Gaza...", para. 50.

It is difficult to describe the suffering of the children when they hear the red alert. They do not even need to see the Qassam, just the alert is enough. Children start to cry, to wet themselves. Sometimes it is like people are having an epileptic fit: they start shaking uncontrollably. Immediately, when there is an alert near a school, a group of psychologists usually come to speak to the students.¹⁰³³

1667. In their interviews, three lecturers at Sapir College spoke of students who, following repeated rocket attacks on the school, felt unable to continue their studies.¹⁰³⁴ Ofer Shinar, during the public hearings in Geneva on 6 July 2009, gave a description of a student at Sapir College who had assisted in escorting residents of Sderot during the time of the military operations in Gaza, and later suffered from psychological trauma and stopped attending most of her classes. The issue of students either dropping out of their courses or transferring to colleges outside rocket range has had significant financial implications for Sapir College, which depends, in part, on student fees to fund itself.¹⁰³⁵

1668. Similar statements were made during a telephone interview on 26 June 2009, by the Community Director of Kibbutz Nir-Am and Kibbutz Gevim, Avi Kadosh, who stated that families with young children were increasingly leaving their homes in the kibbutzim to move to safer places and that this made it increasingly difficult to run the education system on the kibbutz.

1669. During a telephone interview on 2 July 2009, Dalia Yosef of the Sderot Resiliency Center stated:

The children do not have a routine life, in a safe place, and it affects their ability to learn and to be educated. Schools are not safe places for them, nor are their homes. The stress affects their behaviour and how it impacts them. There is increasing violence in the schools as the children act out. There is a lot of stress in the air and it is difficult to exist for a long time in this situation without being affected. It is of course the same for the children in Gaza. They do not have a chance to have a normal life.

6. Impact on the economic and social life of communities

1670. In the interviews conducted by the Mission, it was clear that the impact on communities that had only recently come under the effect of rocket and mortar fire was different to that on those that had been living in that situation for the past five to eight years.

1671. In towns such as Ashdod, Yavne and Beersheba, which experienced rocket strikes for the first time during the military operations in Gaza, there was temporary displacement of some of its residents, who chose to move northwards out of the range of fire for the duration of the

¹⁰³³ Mission also notes the submission of 29 July 2009 by Dr, Yechiel Lasry, mayor of Ashdod which quotes the head of the Ashdod Psychology Center, Mr. Haviv Galili, as saying that it took 6-8 weeks for a number of a classes “to return to stability and normal life”.

¹⁰³⁴ Telephone interviews with Ofer Shinar and Julie Chaitin, 25 June 2009; Merav Moshe, 28 June 2009.

¹⁰³⁵ Telephone interview with Merav Moshe, 28 June 2009.

operations. In these towns, brief disruption to the economic and social life of the communities was experienced.

1672. In towns closer to the Gaza border, such as Sderot, the recent rocket fire has merely consolidated an exodus started in the previous years. In an interview with the Mission, Eli Moyal, former mayor of Sderot, stated:

Over 15 per cent of the people living in Sderot have left, moved away permanently. Mainly it was the people who could afford to move and it meant that a lot of business closed down – almost half the businesses that existed in 2001 have closed down. It also meant that the municipality was losing its tax base and it made it much more difficult to supply the services that we are supposed to. This includes kindergartens and other educational services.

1673. Stewart Ganulin, on behalf of Hope for Sderot, a non-profit organization which assists, financially and practically, those injured by rocket fire and families who have lost a member, stated to the Mission on 8 July 2009, that the organization alone was helping 576 people from 133 families of the 3000 families on welfare in Sderot.

1674. The kibbutzim surrounding Sderot have also been particularly affected because tourists from abroad and other parts of Israel no longer come to stay there. Yeela Ranan, interviewed on 9 July 2009, stated that house prices in Sderot had fallen by 50 per cent. Both residents of Sderot and the surrounding kibbutzim commented on the downturn in their livelihood resulting from living in a community under rocket and mortar fire.

7. The unrecognized Palestinian Arab Bedouin villages of the Negev

1675. The unrecognized villages in the Negev are Palestinian Arab Bedouin villages that are not recognized by Israel¹⁰³⁶ and have been subjected to demolitions by the Israeli authorities. They are not marked on any commercial maps and are ineligible for municipal services such as connection to the electricity grid, water mains or for garbage collection. According to the Director of the Regional Council for the Unrecognized Villages, Atwa Abu Fraih, in an interview on 30 July 2009, approximately 90,000 people live in these villages, including 17,000 schoolchildren.

1676. According to Physicians for Human Rights - Israel, these villages are in range of rocket fire but have no early warning system, nor have any shelters been built to protect the residents who live there.¹⁰³⁷ As much was confirmed by the Director of the Regional Council of Unrecognized Villages, Atwa Abu Fraih, who told the Mission that most of the structures in the

¹⁰³⁶ Between 1948 and 1966, Israel imposed a military administration on Palestinian Israelis in the region and designated 85 per cent of the Negev as "State land." All Bedouin habitation was retroactively termed illegal and consequently remains, with few exceptions, unrecognized under Israeli planning criteria and therefore subject to demolition and appropriation into regional plans under Jewish Agency criteria; (i.e., exclusively for "Jewish nationals").

¹⁰³⁷ Telephone interview with Wasim Abas, Physicians for Human Rights – Israel, 8 July 2009. See also "Israeli Arabs on Gaza firing line lack shelter", *MSNBC.com*, 4 January 2009.

villages were made of zinc, including all the schools and that none of the unrecognized villages had any shelters from rocket or mortar fire. He also pointed out that none of the unrecognized villages was equipped with the early warning alarm system though seven recognized villages did. Unrecognized villages close to either recognized villages with an early warning system or Jewish Israeli towns could hear the alarms. He stated, however, that the early warning system was of little use if there were no shelters. The Director of the Regional Council stated that, if a rocket landed in the unrecognized villages, the consequences would be “disastrous”.

1677. While no fatalities or injuries have been recorded in these communities, Physicians for Human Rights – Israel has confirmed that a number of the residents of these villages have been referred for psychological treatment in the aftermath of rocket and mortar strikes.

8. Recognized Palestinian towns and villages in southern Israel

1678. Where the towns and villages predominantly populated by Palestinian citizens of Israel are recognized (and consequently eligible for municipal services such as electricity), they still lack the public shelters commonly found in towns and villages populated predominantly by Israel’s Jewish citizens.

1679. Rahat is located 24 kilometres from Gaza and has a population of 45,000 residents. It has no public shelters and few houses have secure rooms. On 30 January 2009, a rocket exploded approximately half a mile from Rahat. The Government of Israel, in a report in the *Associated Press*, stated that it was conducting a public information campaign in Arabic in the broadcast and print media; according to residents, however, this was of little use if public shelters were not made available.¹⁰³⁸

1680. In its recent paper, “The Operation in Gaza: Factual and Legal Aspects”, the Government of Israel stated that the

Israeli authorities took a variety of measures to protect its citizens and to reduce the risk to civilians, with special attention being given to sensitive facilities, such as educational institutions and hospitals. These efforts included the establishment of public shelters and fortifications of public institutions, as well as the instruction of the population in risk how to act in times of emergency.¹⁰³⁹

1681. The Mission is concerned about the disparity in treatment of Jewish and Palestinian citizens by the Government of Israel in the installation of early warning systems and provision of public shelters and fortified schools between its Jewish and Palestinian citizens. This is particularly noticeable in the case of the unrecognized villages, some of which are within the now increased zone of rocket fire, and which have no means of protection from rocket and mortar attacks.

¹⁰³⁸ “Israeli Arabs on Gaza firing line lack shelter”, *MSNBC.com*, 4 January 2009.

¹⁰³⁹ “The operation in Gaza...”, para. 42.

I. Legal analysis and conclusions

1682. The Mission emphasizes the obligation of the Gaza authorities to respect international law (see chap. IV above), and is of the view that this requires the prevention and prosecution of violations of international law occurring within its area of de facto governmental authority.¹⁰⁴⁰ The issue of accountability is discussed below. The Mission considers that the international humanitarian law norms referred to below are relevant to an analysis of the situation described above.

1683. International law attributes a duty to parties to hostilities to protect and respect civilians. Such a duty is part of customary international law and is codified in treaty law through article 27, paragraph 1, of Geneva Convention IV. Furthermore, combatants have an obligation, under article 48 of Additional Protocol I, to distinguish between civilians and combatants and civilian objects and military objects during the conduct of hostilities. Article 51 (4) of Additional Protocol I explicitly prohibits indiscriminate attacks. Article 51 (6) of Additional Protocol I strictly prohibits reprisals against civilians. The relevant legal provisions are set out above in chapter XVI.

1684. Article 51(2) of Additional Protocol I prohibits “acts or threats of violence the primary purpose of which is to spread terror among the civilian population”. Article 13 (2) of Additional Protocol II contains a similar prohibition. Article 4 (2) (d) of Additional Protocol II prohibits acts of terrorism as a violation of the “fundamental guarantees” of humane treatment under the Additional Protocol.¹⁰⁴¹ The same rule is considered a rule of customary law in international and non international armed conflicts.¹⁰⁴² Such a crime has been charged in indictments both before the International Criminal Tribunal for the former Yugoslavia and the Special Court for Sierra Leone.

1685. At the Special Court for Sierra Leone, Trial Chamber 1, in the case of *Prosecutor v. Sesay et al.*, held that the elements of the above-mentioned offence were as follows:

- (i) Acts or threats of violence;
- (ii) The Accused wilfully made the civilian population or individual civilians not taking direct part in hostilities the objects of those acts or threats of violence;

¹⁰⁴⁰ The Mission draws attention to the ‘Trail Smelter’ arbitration in which the arbitration tribunal found that “under the principles of international law...no state has the right to use or permit the use of its territory in such a manner as to cause injury [by fumes] in or to the territory or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence”; Trail Smelter Arbitration, (1938/1941) 3 R.I.A.A. 1905.

¹⁰⁴¹ This prohibition was, in turn, based on article 33 of Geneva Convention IV, which prohibited “all measures of intimidation or of terrorism” of or against protected persons.

¹⁰⁴² Study on international humanitarian law, ICRC, Vol. 1, Rule 2.

- (iii) The acts or threats of violence were carried out with the specific intent of spreading terror among the civilian population.¹⁰⁴³

1686. The Appeals Chamber of the ICTY in *Prosecutor v. Galic* held that:

The acts or threats of violence constitutive of the crime of terror shall not however be limited to direct attacks against civilians or threats thereof but may include indiscriminate or disproportionate attacks or threats thereof. The nature of the acts or threats of violence directed against the civilian population can vary; the primary concern [...] is that those acts or threats of violence be committed with the specific intent to spread terror among the civilian population.¹⁰⁴⁴

J. Findings

1687. There is no justification in international law for the launching of rockets and mortars that cannot be directed at specific military targets into areas where civilian populations are located. Indeed, Palestinian armed groups, among them Hamas, have publicly expressed their intention to target Israel civilians. The al-Qassam Brigades, on their website, claimed responsibility for the deaths of each of the Israeli civilians killed by rocket fire during the operations in Gaza.¹⁰⁴⁵

1688. From the facts it ascertained, the Mission finds that the Palestinian armed groups have failed in their duty to protect and respect civilians. Even though the al-Qassam Brigades and other armed groups in Gaza have recently claimed that they do not intend to harm civilians, the fact that they continue to launch rockets at populated areas without any definite military targets and are aware of the consequences to civilians indicates an intent to target civilians. Furthermore, the launching of unguided rockets and mortars breaches the fundamental principle of distinction: an attack must distinguish between military and civilian targets. Where there is no intended military target and the rockets and mortars are launched into civilian areas, they constitute a deliberate attack against the civilian population.

1689. Given the apparent inability of the Palestinian armed groups to aim rockets and mortars at specific targets and, the fact that the attacks have caused very little damage to Israeli military assets, it is plausible that one of the primary purposes of these continued attacks is to spread terror – prohibited under international humanitarian law – among the civilian population of southern Israel.

¹⁰⁴³ *Prosecutor v. Sesay et al.*, Trial Judgment, 2 March 2009. See also *Prosecutor v. Galic*, Trial Judgment, 5 December 2003 at para. 133 and Appeal Judgment, 30 November 2006 at para. 104. The *Galic* Judgments use the words “with the primary purpose”, rather than with the “specific intent”.

¹⁰⁴⁴ *Prosecutor v. Galic*, Appeal Judgment, 30 November 2006, para. 102. This position was endorsed by the Appeals Chamber of the SCSL in *Prosecutor v. Fofana et al.*, Appeal Judgment, 28 May 2008, para. 351.

¹⁰⁴⁵ <http://www.alqassam.ps/arabic/statments1.php?id=4066>;
<http://www.alqassam.ps/arabic/statments1.php?id=4088>; <http://www.alqassam.ps/arabic/statments1.php?id=4098>.
 See also, “South under fire; 2 Israelis killed”, Ynet News, “29 December 2008.

1690. The above view is supported by public statements of the armed groups, such as that made by Hamas on 5 November 2008. Following an Israeli raid in Gaza¹⁰⁴⁶ which resulted in the death of five Hamas militants¹⁰⁴⁷, a Hamas spokesman stated “The Israelis began this tension and they must pay an expensive price... They cannot leave us drowning in blood while they sleep soundly in their beds”.¹⁰⁴⁸ As noted in chapter XVI, reprisal attacks cannot be carried out against a civilian population.

1691. From the facts available, the Mission finds that the rocket and mortars attacks, launched by Palestinian armed groups in Gaza, have caused terror in the affected communities of southern Israel and in Israel as a whole. Furthermore, it is the Mission’s view that the mortars and rockets are uncontrolled and uncontrollable, respectively. This indicates the commission of an indiscriminate attack on the civilian population of southern Israel, a war crime, and may amount to crimes against humanity. These attacks have caused loss of life and physical and mental injury to civilians and damage to private houses, religious buildings and property and have eroded the economic and cultural life of the affected communities.

XXV. REPRESSION OF DISSENT IN ISRAEL, RIGHT TO ACCESS TO INFORMATION AND TREATMENT OF HUMAN RIGHTS DEFENDERS

1692. In the course of its investigations, including in meetings, submissions and public testimonies, the Mission received allegations that sources of criticism of actions by Israel during and following the military operations of December 2008-January 2009 from inside Israel were subjected to attempted or actual repression, and that the rights of freedom of association and expression for individuals and groups had been violated. In this regard, concerns were also raised about the denial of access to the media and to human rights monitors prior, during and after the military operations in Gaza.

1693. The Mission conducted telephone interviews with people who participated in protests or who worked for non-governmental organizations working on human rights inside Israel. Shir Hever of the Alternative Information Center appeared at the public hearings held in Geneva on 6 July 2009 to speak specifically about the issue of repression of dissent inside Israel. This issue was also discussed in meetings with and submissions by human rights organizations, journalists and other relevant individuals.

1694. The Mission was unable to conduct on-site investigations owing to the decision by the Government of Israel not to cooperate with the Mission. Accordingly, it was not able possible to obtain the views of the police and other State authorities involved in some of the incidents. The Mission has taken this into account in its assessment of the available information.

¹⁰⁴⁶ The Israeli forces declared that the incursion was aim at destroying a tunnel which they believed was being dug to kidnap Israeli soldiers.

¹⁰⁴⁷ One militant was killed in the fighting while four others were killed following an Israeli air strike on rocket launchers after 30 Qassam rockets had been launched into Israel following the Israeli incursion.

¹⁰⁴⁸ “Six die in Israeli attack over Hamas tunnel under border to kidnap soldier”, *The Times*, 6 November 2008.

1695. The Mission addressed questions to the Government of Israel regarding Israeli citizens arrested during or as result of demonstrations during the military operations in Gaza. The Mission did not receive any reply to its questions.

1696. The Mission has identified five areas warranting further examination: (a) the matters arising from protests inside Israel; (b) the judicial responses to these actions; (c) the interrogation of political activists by the General Security Services (*Shabak*); (d) freedom of association and the treatment of human rights organizations inside Israel and (e) access of the media and of human rights monitors to Gaza prior to, during and after the military operations.

A. Protests inside Israel

1. General

1697. While the majority of Jewish citizens in Israel supported military action in Gaza,¹⁰⁴⁹ demonstrations and vigils were held across Israel – daily in some areas - against the military operations. As might be expected, smaller protests took place on weekdays, while larger ones were held on on the weekends. Protests took place in numerous towns and villages across Israel, the most important being: the demonstration of 150,000 people in Sakhnin,¹⁰⁵⁰ the largest demonstration of Palestinian Israelis since 1948; a 100,000-strong protest in Baqa al Gharbiyah in the “Triangle”;¹⁰⁵¹ a demonstration of 15,000 people in Naqab; a protest by more than 10,000 people in Tel Aviv and protests of a similar size in Haifa. Protests were also witnessed in southern localities, including Beersheba and Ararah.¹⁰⁵² Daily protests took place not only in towns and villages populated mainly by Palestinian citizens of Israel, but also in Haifa¹⁰⁵³ and Tel Aviv.

1698. According to information received by the Mission, the protests against the Israeli military operations in Gaza were, in the main, attended by Palestinian Israelis; even though protests usually also included Jewish Israelis. In Tel Aviv, Jewish Israelis reportedly made up 30 to 40 per cent of the larger weekend demonstrations.¹⁰⁵⁴ The Mission took note of reports that in areas where mainly Jewish Israelis resided, such as Tel Aviv and Beersheba, counter protests were sometimes organized or spontaneously formed. While there were verbal confrontations between the two groups of protesters, physical violence was rare.

¹⁰⁴⁹ “Poll shows most Israelis back IDF action in Gaza”, *Haaretz*, 15 January 2009; “Israeli Arabs Recoil at Attacks on Gaza as Allegiance to Their Country Is Strained”, *New York Times*, 20 January 2009.

¹⁰⁵⁰ “Worldwide protests denounce Israel”, *Al Jazeera*, 3 January 2009.

¹⁰⁵¹ The area commonly known as the “Triangle” is a concentration of Palestinian Israeli towns and villages adjacent to the [Green Line](#), located in the eastern [Sharon plain](#). From the air, the towns and villages form a triangle, thus the name.

¹⁰⁵² Telephone interviews with Leah Shakdiel, 24 June 2009; Atwa Abu Fraih, 30 July 2009.

¹⁰⁵³ Significantly, Haifa has a sizeable Palestinian Israel population. In 2003, the Israeli Central Bureau of Statistics found that 9 per cent of the population of Haifa was Palestinian Israeli; see www.cbs.gov.il/statistical/arab_pop03e.pdf.

¹⁰⁵⁴ Telephone interview with Haggai Matar, 24 July 2009.

2. Police conduct

1699. According to information received by the Mission, in areas of northern Israel populated mainly by Israel's Palestinian citizens (such as Sakhnin, Nazareth and Baqa al-Gharbiyah), the police did not enter the town during the protests but remained on the outskirts. This decision was apparently taken in coordination with town authorities,¹⁰⁵⁵ on the agreed view that the protests would be more orderly if the police remained out of sight.

1700. In Tel Aviv and Haifa, the police tended to be visible to protesters.¹⁰⁵⁶ With a few exceptions (see below) police interference was limited. In Haifa, smaller demonstrations were attended by almost as many police officers as protesters, and the number of cameras being used by the police to record the protest had an intimidating effect.¹⁰⁵⁷ Police blocked off streets around the demonstrations in both cities, with the consequence that protests took place in near deserted areas; one protester remarked that "it was as though we were demonstrating to ourselves".¹⁰⁵⁸ While the media had free access, the Mission's attention was drawn to the fact that there was little coverage of the protests by the international or Israeli media.

1701. In the south, in towns populated by Palestinian Israelis, police action mirrored that taken in the North; remaining on the outskirts of the town while the protests continued inside. There were reports, however, of significant difficulties for protesters in obtaining permits, even where the protests were being staged in areas outside the military zone in effect in the areas around Gaza. This compared unfavourably with reports from Tel Aviv and Haifa, where police generally allowed protests, regardless of whether permits had been obtained.

1702. In areas in the south populated by Jewish Israelis, such as Beersheba, police maintained a presence near the demonstrators and were apparently less tolerant of the protests against the military operations in Gaza than their colleagues policing protests in the north. One protester stated that this was because dissent in the south was an embarrassment to Israel, which claimed that the military operations in Gaza were motivated by the need to defend southern Israel.¹⁰⁵⁹ It should be noted, however, that there were significant episodes of counter protest in Beersheba, which had come under rocket fire during the operations in Gaza.¹⁰⁶⁰

¹⁰⁵⁵ Telephone interviews with Ameer Makhoul, 27 July 2009; Hassan Tabaja, 29 July 2009; "Israeli Arabs Recoil at Attacks on Gaza as Allegiance to Their Country Is Strained", *New York Times*, 20 January 2009.

¹⁰⁵⁶ Telephone interviews with Ameer Makhoul, 27 July 2009; Sahar Abdo, 26 July 2009; Hakim Bishara, 29 July 2009.

¹⁰⁵⁷ Telephone interview with Sahar Abdo, 26 July 2009.

¹⁰⁵⁸ Telephone interview with Ronen Shamir, 22 July 2009. The Mission acknowledges that there may be legitimate public security and order concerns that require such action but has not been able to discuss them with the police authorities owing to the refusal of Israel to cooperate with the Mission.

¹⁰⁵⁹ Telephone interview with Haggai Matar, 24 July 2009.

¹⁰⁶⁰ Telephone interviews with Leah Shakdiel, 24 June 2009; Merav Moshe, 28 June 2009.

3. Arrests of protesters

1703. According to statistics that Adalah obtained from the police, 715 protesters were arrested inside Israel.¹⁰⁶¹ This number included 277 people arrested in Jerusalem. Unfortunately, the statistics make no distinction between East and West Jerusalem.¹⁰⁶²

1704. The Mission notes that, given the large number of people involved in the demonstrations, which it estimates to be in the hundreds of thousands, relatively few arrests were made. It was, however, struck by reports that no arrests seem to have been made of people participating in counter-demonstrations supporting the military operations in the Gaza Strip.

1705. According to the police statistics obtained by Adalah, 34 per cent of those arrested were under the age of 18.¹⁰⁶³ Of those charged with an offence, the majority were charged with “attacking police officers”, “unlawful assembly” and “disturbing public order”.¹⁰⁶⁴ While Adalah noted that only in a few cases were those arrested charged with “endangering life on a public road”,¹⁰⁶⁵ the Meezan Center for Human Rights in Nazareth noted that a large number of those arrested in the northern areas mainly populated by Palestinian Israelis had been charged with that offence.¹⁰⁶⁶

4. Physical violence against protesters

1706. The Mission received several submissions about the beating of protesters by the police. These incidents appeared to have been a disproportionate response by the police either when they believed that the protesters were not complying, or not complying fast enough, with their orders and, in some instances, where protesters were themselves breaking the law (for example, by throwing stones at the police).

Ben Gurion street, Haifa, 1 January 2009

1707. On 1 January 2009, a silent candle-light vigil was held on Ben Gurion street in Haifa. A number of prominent Palestinian Israeli actors were present at the vigil, including Hanan Helu and Saleh Bakri. In a telephone interview on 29 July 2009, Mr. Bakri stated that, the police and members of the Israeli special forces requested that the group move, which it did before sitting further down the street. Protesters were then confronted by the police and beaten about their lower bodies; some of them were arrested.¹⁰⁶⁷ According to Adalah, the police refused to provide

¹⁰⁶¹ Adalah, “Protest Prohibited: Restricting the Freedom of Speech by Law Enforcement Authorities during the Gaza Military Operation”, (Hebrew), August 2009 (the “August 2009 Adalah report”), p. 2.

¹⁰⁶² The Mission considers East Jerusalem part of the Occupied Palestinian Territories, with the consequence that had the Mission been able to distinguish arrests in East Jerusalem from those in West Jerusalem, the former would have been included in the statistics of arrest in protests occurring in the West Bank.

¹⁰⁶³ Adalah report of August 2009, p. 6.

¹⁰⁶⁴ Ibid.

¹⁰⁶⁵ Ibid, p. 2.

¹⁰⁶⁶ Telephone interview with Hassan Tabaja, 29 July 2009.

¹⁰⁶⁷ Telephone interview with Saleh Bakri, 29 July 2009.

medical assistance to the injured protesters who were detained.¹⁰⁶⁸ Those who were arrested and taken to the police station reported that the police verbally abused them and made sexual comments about female members of their families. At the police station, Mr. Bakri, well known in Israeli and Palestinian public life, was made to stand without moving for 30 minutes facing the Israeli flag while police officers took photographs and filmed him.¹⁰⁶⁹

Egyptian embassy, Tel Aviv, 29 December 2008

1708. On 29 December 2008, approximately 120 people protested in the vicinity of the Egyptian embassy in Tel Aviv. They were protesting against what they believed to be Egyptian support for the action by Israel in Gaza. The demonstration was being held in a designated area, as indicated both by Israeli police and, reportedly, members of the Israeli special forces at the scene.¹⁰⁷⁰ According to one protester, soon after the protest started, people passing by started to verbally abuse the protesters and waved Israeli flags at them. The police and members of the special forces asked the protesters to leave.¹⁰⁷¹ According to the same protester, the police started to hit the other protesters about the lower body with sticks in an apparent effort to disperse them.¹⁰⁷² Another protester stated that she had been released by the police once they realized that she was Jewish, while the Palestinian Israeli protesters were arrested.¹⁰⁷³

Kofor Cana and Umm al-Fahem (dates unknown)

1709. During the Israeli military operations in Gaza, protests were held in Kofor Cana¹⁰⁷⁴ and Umm al-Fahem,¹⁰⁷⁵ both throughout the week and on weekends. According to Hassan Tabaja, a lawyer at the Meezan Center for Human Rights, in both places there were instances of police violence and use of tear gas in reaction to stone throwing by some of the younger protesters. There were reports that the police also beat bystanders.¹⁰⁷⁶ Those arrested reported having been beaten both in police vans and at the police station, subjected to racial abuse and sexual comments made about female members of their families.¹⁰⁷⁷

¹⁰⁶⁸ Adalah, news update, 2 January 2009.

¹⁰⁶⁹ Telephone interview with Saleh Bakri, 29 July 2009.

¹⁰⁷⁰ Telephone interview with Sahar Abdo, 26 July 2009.

¹⁰⁷¹ Telephone interview with Sahar Abdo, 26 July 2009.

¹⁰⁷² Telephone interview with Sahar Abdo, 26 July 2009; see also “6 demonstrators protesting Israeli Gaza op arrested in Tel Aviv”, *Haaretz*, available at <http://www.haaretz.com/hasen/spages/1050980.html>.

¹⁰⁷³ “6 demonstrators protesting Israeli Gaza op arrested in Tel Aviv”, *Haaretz*.

¹⁰⁷⁴ A Palestinian Israeli town in the Galilee with a population of approximately 20,000 people.

¹⁰⁷⁵ A Palestinian Israeli town in the Haifa District with a population of just under 45,000 people.

¹⁰⁷⁶ Telephone interview with Hassan Tabaja, 29 July 2009. Mr. Tabaja, as part of his work with the Meezan Center for Human Rights, helped arrange representation for those arrested.

¹⁰⁷⁷ Telephone interview with Hassan Tabaja, 29 July 2009.

5. Other inappropriate conduct

1710. The Mission was informed that permission was denied for or attempts were made to prevent demonstrations, such as the “Critical Mass” bicycle protest on 1 January 2009 in Tel Aviv which was barred from moving beyond Rabin Square;¹⁰⁷⁸ in another instance, a bus in which protesters were travelling to participate in demonstrations was prevented by the police from reaching its destinations in Tel Aviv;¹⁰⁷⁹ the bus driver was intimidated by the police, his licence confiscated and the bus was impounded. On 16 January 2009, two buses of protesters accompanying a truck of medical supplies for Gaza donated by Physicians for Human Rights Israel were stopped near Ashkelon and prevented from entering the military zone, where gatherings of more than four people were not permitted for security reasons. The police, however, confiscated the drivers’ licences, told the drivers to follow them and took the licences to Tel Aviv, where the drivers could collect them.¹⁰⁸⁰ The drivers were reportedly told that, if they proceeded further, they would lose their licences.

1711. In the case of one demonstration planned in Tel Aviv, the police had placed a condition that no Palestinian flags would be allowed at the demonstration. The organizers approached the Court on the grounds that there was no such restriction in the law. The police issued a permit before the case was decided, and the demonstration was held with Palestinian flags.¹⁰⁸¹ Other demonstrations with protesters holding Palestinian flags were also held in Tel Aviv without any interference by the police.¹⁰⁸²

B. Judicial responses following the arrests of protesters

1. Detention pending trial

1712. In his public testimony before the Mission, Shir Hever of the Alternative Information Center highlighted a worrying new trend in the way that arrests of protestors were dealt with in the Israeli legal system. In many cases, the Prosecutor requests that the Court order that the protester be detained pending conviction or release and that these submissions are generally accepted by the courts. According to Hever, detention pending trial is usually reserved for defendants thought to be dangerous, not for people arrested during protests. This has resulted in protesters being detained for weeks and months at a time.¹⁰⁸³

1713. Hassan Tabaja stated that those arrested often faced “super-charged” indictments, where the most serious possible charge had been selected by the Prosecution.¹⁰⁸⁴ For example, for protesting on a road, instead of being charged with disturbing the peace or an illegal gathering,

¹⁰⁷⁸ Telephone interview with Haggai Matar, 24 July 2009.

¹⁰⁷⁹ Telephone interview with Sahar Abdo, 26 July 2009.

¹⁰⁸⁰ Telephone interview with Ran Yaron, 22 July 2009.

¹⁰⁸¹ Telephone interviews with Haggai Matar, 24 July 2009; Avner Pinchuk (ACRI), 29 July 2009.

¹⁰⁸² Telephone interview with Hakim Bishara, 29 July 2009.

¹⁰⁸³ Testimony of Shir Hever, Alternative Information Centre, Geneva Public Hearings, 6 July 2009; Yesh Gvul.

¹⁰⁸⁴ Telephone interview with Hassan Tabaja, 29 July 2009.

people were sometimes charged with “endangering life on a public road”, a charge that carries a sentence of 20 years. The severity of the charge greatly increases the chance of being detained pending trial.

1714. On 12 January 2009, the Israeli Supreme Court decided that, given the ongoing military operations in Gaza, it could not allow certain persons to be released on bail.¹⁰⁸⁵ This decision was subsequently followed by those of the lower courts, where petitions demanding the release of individuals arrested in connection with the demonstrations were refused.¹⁰⁸⁶

1715. It is clear from statistics obtained by Adalah from the Israeli police that, of all the protesters arrested; it was the Palestinian Israelis who were disproportionately held in detention pending trial. For example, of the 60 people arrested in the Northern District of Israel (mainly populated by Palestinian Israelis), all were detained pending trial; in Tel Aviv, of the 27 people arrested, none were detained pending trial. According to the Meezan Center for Human Rights in Nazareth, there are still people being detained pending trial following their arrest at the protests against the military operations in Gaza.¹⁰⁸⁷

2. Bail conditions

1716. Where people were released, the courts sometimes set bail conditions that affected not only the individual’s ability to attend protests, but also, in the case of students, their right to education.

1717. Ran Tzoref, arrested at a protest in Beersheba on 14 January 2009, was reportedly released on the condition that he did not leave his village in northern Israel for two to three months. Not only could he not attend subsequent protests, he could not attend classes at his university either.¹⁰⁸⁸

1718. One of the protesters arrested in the demonstration near the Egyptian embassy in Tel Aviv on 29 December 2008 was a student from Tel Aviv University. As part of her bail conditions, the Mission was told that she was not allowed to enter Tel Aviv for one month, resulting in her being unable to attend classes.¹⁰⁸⁹

C. The interrogation of political activists by the General Security Services

1719. During the Israeli military operations in Gaza, members of Arab political parties and activists in various non-governmental organizations were invited in for interrogation by the General Security Services, commonly known as the Shabak.

¹⁰⁸⁵ The State of Israel v. Anonymous, 12 January 2009, Supreme Court Decision, 459-09; August 2009 Adalah report, p. 35.

¹⁰⁸⁶ August 2009 Adalah report, p. 15.

¹⁰⁸⁷ Telephone interview with Hassan Tabaja, 29 July 2009.

¹⁰⁸⁸ Telephone interview with Haggai Matar, 24 July 2009.

¹⁰⁸⁹ Telephone interview with Sahar Abdo, 26 July 2009.

1720. According to Adalah, the Shabak incorrectly informed those invited that they were required by law to come. Ameer Makhoul, the Director of Ittijah and Chairperson of the Popular Committee for the Protection of Political Freedoms, declined the invitation to the interrogation because he was not legally required to do so. He stated that, shortly afterwards, police officers arrived at his office and took him to the interview.¹⁰⁹⁰

1721. Mr. Makhoul was taken to the Shabak headquarters in Tel Aviv, where he was kept for four hours, during which time, he was questioned about the people he knew and their whereabouts. , On refusing to answer, he was told that, if he continued his political activities, he would be sent to prison and that, if he wished to go to Gaza, arrangements could be made to send him there. During his interview, it became apparent that the Shabak was aware of his address, and the car he drove, and referred to a speech that he had made in Haifa on 29 December 2008.

1722. The Mission received reports of 20 prominent activists and political figures within the Palestinian community being called in for interrogation by the Shabak and being questioned about their political activities.¹⁰⁹¹ It has also received reports of younger political activists having been taken for interview and asked to collaborate with the Israeli authorities. In the case of student activists, the offer of collaboration was accompanied by the threat of arrest or of future difficulties in continuing their studies.¹⁰⁹²

1723. According to those interviewed, the summoning and indeed taking of activists for interrogation by the Shabak created a climate of intimidation against dissent in Israel. Many activists appear to have been “invited” for interview following their attendance at protests against the military operations in Gaza and their presence at protests was noted by those interviewing them.¹⁰⁹³

D. Freedom of association and treatment of human rights organizations inside Israel

1. New Profile

1724. Israeli authorities initiated an investigation into activists working with New Profile, a non-governmental feminist organization, accusing them of inciting Israelis to avoid military service. While “incitement to draft dodging” is an offence under Israeli law, it was the first time that any group had been investigated for that offence.¹⁰⁹⁴

1725. On 26 April 2009, Israeli authorities raided the homes of six activists and seized their computers, detaining the activists and summoning 10 others for interrogation.¹⁰⁹⁵ Some activists

¹⁰⁹⁰ Telephone interview with Ameer Makhoul, 27 July 2009; *Adalah*, news update, 2 January 2009.

¹⁰⁹¹ Telephone interview with Ameer Makhoul, 27 July 2009.

¹⁰⁹² Telephone interview with Ameer Makhoul, 27 July 2009.

¹⁰⁹³ Telephone interview with Ameer Makhoul, 27 July 2009. See also *Adalah* news update, 2 January 2009.

¹⁰⁹⁴ “Web site for IDF draft dodgers faces criminal probe”, *Haaretz*, 15 September 2008.

¹⁰⁹⁵ “Israel’s war against youth”, *The Guardian*, 5 May 2009.

were detained and interrogated about their ideological and political views; some were released on the condition that they have no contact with other members of their organization.¹⁰⁹⁶

1726. As part of their investigation into New Profile, a search warrant was issued for the offices of HaMoked, a non-governmental human rights legal organization, for which a member of New Profile had previously worked. According to a published letter from New Profile's attorney to the Deputy Attorney General of Israel, the breadth of the warrant meant that the investigators were able to search through legally privileged material.¹⁰⁹⁷

2. Breaking the Silence

1727. On 15 July 2009, Breaking the Silence, an Israeli non-governmental organization of veteran Israeli soldiers that collects the testimonies of soldiers who serve in the occupied territories, published a booklet entitled "Soldiers' Testimonies from Operation Cast Lead, Gaza, 2009". The booklet contained testimonies of 54 soldiers who had served in Gaza during the military operations. On its website, Breaking the Silence, stated that the testimonies revealed "gaps between the reports given by the army following January's events; the needless destruction of houses; firing phosphorous in populated areas and an atmosphere that encouraged shooting anywhere."¹⁰⁹⁸

1728. Breaking the Silence's publication was widely reported in the media.¹⁰⁹⁹ The Government of Israel, through the IDF Spokesman Unit, stated that the report comprised "anonymous and general testimonies, without investigating their details or credibility", and that "a considerable number of the testimonies in this report are also based on hearsay and word of mouth".¹¹⁰⁰ The Unit stated that the Israeli military authorities were committed to investigating thoroughly any claims made, where there was sufficient information to do so, and that "from testimonies which have been published, including those in this report, and from the investigations conducted by the IDF into the operation, it is clear that IDF soldiers operated in accord with international law and the orders they received, despite the complex and difficult fighting."¹¹⁰¹

1729. On 17 July 2009, the *Jerusalem Post* reported that Breaking the Silence's published donor list included several European Governments.¹¹⁰² Later that week, *Haaretz* reported that the Israeli Ambassador to the Netherlands had met with the Director-General of the Foreign Ministry of the Netherlands to complain about that country's funding of Breaking the Silence, urging that the funding be terminated.¹¹⁰³ On 29 July 2009, *Haaretz* reported that, in a meeting with the

¹⁰⁹⁶ Letter to the Deputy State Prosecutor, New Profile, 27 April 2009.

¹⁰⁹⁷ Letter to the Deputy State Prosecutor, New Profile, 27 April 2009.

¹⁰⁹⁸ http://www.breakingthesilence.org.il/oferet/news_item_e.asp?id=1.

¹⁰⁹⁹ For example, "Breaking the silence on Gaza abuses", *BBC News*, 15 July 2009,; "Report claims Israelis used Palestinians as human shields", *CNN*, 15 July 2009.

¹¹⁰⁰ www.mfa.gov.il/MFA/Government/Communiques/2009/Reaction_to_Breaking_Silence_report_15_Jul_2009.

¹¹⁰¹ Ibid.

¹¹⁰² "Europeans funding 'Breaking the Silence'", *Jerusalem Post*, 17 July 2009.

¹¹⁰³ "Group that exposed 'IDF crimes' in Gaza slams Israel bid to choke off its funds", *Haaretz*, 26 July 2009.

Ambassador of the United Kingdom to Israel, the Deputy Director-General of the Foreign Ministry of Israel asked “the reasons behind Britain's funding of the group and whether the money was used to fund the recent report on Operation Cast Lead.”¹¹⁰⁴

1730. On 31 July 2009, the Jerusalem Post published an article in which it reported that senior Israeli officials were looking into whether it would be possible to ban donations from foreign governments to political NGOs.¹¹⁰⁵ On 2 August 2009, *Haaretz* reported that Israel had asked the Government of Spain to terminate its funding of Breaking the Silence.¹¹⁰⁶

1731. Breaking the Silence issued a statement in which it accused the Foreign Ministry of a “witch-hunt”, saying that it testified to the erosion of the “democratic culture” in Israel.¹¹⁰⁷

1732. The Mission is concerned that the actions of the Government of Israel with regard to these organizations may have the effect of intimidating other Israeli organizations working on documenting and reporting human rights violations. The Mission underlines the importance that these organizations, who carry out essential work in a difficult environment, be able to operate freely.

E. The access of the media and human rights monitors to Gaza prior to, during and after the military operations

1733. The decision by Israel to deny access to the media and international human rights monitors to Gaza during -and indeed prior- to the start of its military operations in Gaza on 27 December 2008, created a storm of protest from the international media and human rights NGOs.¹¹⁰⁸ Some human rights organizations, including Human Rights Watch and B'Tselem, are still denied access to Gaza to this day.¹¹⁰⁹

1734. The Mission notes that, during the military operations in Gaza, there were a number of Palestinian human rights organizations conducting independent monitoring of international human rights and international humanitarian law. As noted elsewhere in the present report, the Mission found the work of these organizations to be of very a high professional standard and one that deserved recognition given the extremely difficult circumstances under which they usually operated, particularly during the Israeli military operations. The Mission is of the view that the presence of international human rights monitors would have been of great assistance in not only investigating and reporting but also in the publicizing of events on the ground.

¹¹⁰⁴ “Israel targets U.K. funding of group that exposed 'IDF crimes' in Gaza”, *Haaretz*, 29 July 2009.

¹¹⁰⁵ “Israel aims to outlaw foreign gov’t funds for subversive NGOs”, *Jerusalem Post*, 31 July 2009.

¹¹⁰⁶ “Israel asks Spain to stop funding group that reported IDF 'crimes' in Gaza”, *Haaretz*, 2 August 2009.

¹¹⁰⁷ “Israel aims to outlaw foreign gov’t funds for subversive NGOs”, *Jerusalem Post*, 31 July 2009.

¹¹⁰⁸ For example, “Israel: allow media and rights monitors Access into Gaza”, Human Rights Watch, 5 January 2009; “Israel puts Media Clamp on Gaza”, *The New York Times*, 7 January 2009; and “Media Frustration over Gaza ban grows”, *The Guardian*, 14 January 2009.

¹¹⁰⁹ “Israel: end ban on human rights monitors”, B’Tselem press release, 22 February 2009; Email communication between the Mission and Human Rights Watch, 2 August 2009.

1. Media

1735. Israeli military authorities stopped allowing foreign journalists into the Gaza Strip, without prior notification to media organizations, on 5 November 2008 when hostilities escalated.¹¹¹⁰ Israeli citizens, including journalists, have been barred from entering the Gaza strip since the abduction in 2006 of Gilad Shalit, on security grounds. One journalist, Amira Hass, has been arrested on two occasions, in December 2008 and in May 2009, for being in Gaza illegally.¹¹¹¹

1736. After the closure, on 5 November 2008, of the Gaza Strip to journalists (among other groups, including human rights monitors), there was international and domestic protest; the ban was lifted briefly on 4 December 2008, but reinstated the following day. At the start of the military operations in Gaza, Israeli defence officials indicated that there would be a complete ban on access of the media to Gaza for the duration of the operations. On 27 December 2008, the day military operations started, the Israeli authorities imposed a closed military zone inside Gaza and through a 2-kilometre strip around its perimeter.

1737. On 19 November 2008, the heads of many international news organizations, including the BBC, CNN and Reuters, protested against the ban on media access to Gaza in a letter to the then President Ehud Olmert.¹¹¹² On 24 November 2008, the Foreign Press Association petitioned the Supreme Court to rule on the legality of such a ban.¹¹¹³

1738. In an open letter, dated 29 December 2008, the Foreign Press Association stated that the denial of media access to Gaza was

an unprecedented restriction of press freedom. As a result, the world's media is unable to accurately report on events inside Gaza at this critical time... Despite our protests, the Israeli authorities have refused to let journalists in... Never before have journalists been prevented from doing their work in this way. We believe it is vital that journalists be allowed to find out for themselves what is going on in Gaza. Israel controls access to Gaza. Israel must allow professional journalists access to this important story.¹¹¹⁴

1739. On 31 December 2008, the Supreme Court ruled on the Association's petition, ordering that the Government of Israel to grant 12 journalists entry into Gaza each time the Erez crossing opened.¹¹¹⁵ On 2 January 2009, the Court amended its order to state that eight journalists, rather than 12, should be admitted whenever the Erez crossing opened.¹¹¹⁶

¹¹¹⁰ "CPJ urges Israel to examine Gaza limits, military strikes", Committee to Protect Journalists, 2 April 2009.

¹¹¹¹ "Haaretz journalist Amira Hass arrested for illegal stay in Gaza", *Haaretz*, 2 December 2008; and "Haaretz reporter Amira Hass arrested upon leaving Gaza", *Haaretz*, 12 May 2009.

¹¹¹² "Israel: allow media and rights monitors access into Gaza", Human Rights Watch, 5 January 2009.

¹¹¹³ "CPJ urges Israel to examine Gaza limits, military strikes", Committee to Protect Journalists, 2 April 2009.

¹¹¹⁴ Open Letter, Foreign Press Association, 29 December 2008, available at <http://www.fpa.org.il/?categoryId=414>

¹¹¹⁵ "Israel: allow media and rights monitors access into Gaza", Human Rights Watch, 5 January 2009.

¹¹¹⁶ "CPJ urges Israel to examine Gaza limits, military strikes", Committee to Protect Journalists, 2 April 2009.

1740. On 8 January 2009, the Israeli authorities briefly gave the BBC and two Israeli channels access to accompany Israeli forces into Gaza. On 22 January 2009, access was granted to eight journalists to accompany Israeli forces into Gaza. The media and non-governmental organizations continued to complain about the lack of independent, unfettered access to Gaza.¹¹¹⁷ On the same day, the United Nations Chief of Communications and Public Information called on the Government of Israel to ensure immediate access to the international media to Gaza, stressing the need for “full and independent” coverage of events.¹¹¹⁸

1741. On 23 January 2009, five days after its unilateral ceasefire, Israel removed all restrictions put in place in early November 2008 and the media was given free access to Gaza.

1742. On 25 January 2009, the Supreme Court of Israel issued its final ruling, overturning the blanket ban and stating that reporters should have access to Gaza “unless the security situation changes drastically in such a way that the Erez crossing has to be closed completely for security reasons, and we assume that this will happen only in dire circumstances of concrete danger”.¹¹¹⁹

1743. There have been various explanations from the Government of Israel. A spokesman from the Embassy of Israel in London, speaking to *Press Gazette*, stated “Gaza is a war zone and so it is very difficult to allow people who are not soldiers in. Their presence might endanger both themselves and our operations there”.¹¹²⁰

1744. The Director of Press Office of the Government of Israel, Daniel Seaman, stated “Any journalist who enters Gaza becomes a fig leaf and front for the Hamas terror organization, and I see no reason why we should help that”.¹¹²¹ He was later quoted in the Associated Press as saying for foreign journalists were “unprofessional” and took “questionable reports at face value without checking”.¹¹²²

1745. On 7 January 2009, the Ambassador for Israel to the United Kingdom, Ron Proser, claimed that infighting at the Foreign Press Association about which journalists should be admitted was responsible for the press not entering Gaza,¹¹²³ this was categorically denied by the Association.¹¹²⁴ On 22 January 2009, *Haaretz* reported a split in the Government of Israel over press access to Gaza, stating the Ministry of Defense and the army had withdrawn their

¹¹¹⁷ “Allow the news media into the Gaza Strip! Appeal by the world’s media and Reporters Without Borders to the Israeli authorities”, Reporters Without Borders, 9 January 2009.

¹¹¹⁸ “UN calls on Israel for immediate media access to Gaza”, *Merco Press*, 9 January 2009.

¹¹¹⁹ “CPJ urges Israel to examine Gaza limits, military strikes”, Committee to Protect Journalists, 2 April 2009.

¹¹²⁰ “Foreign Journalists continue to fight for Gaza access”, *Press Gazette*, 7 January 2009.

¹¹²¹ “Israel puts media clamp on Gaza”, *The New York Times*, 7 January 2009.

¹¹²² “Foreign Journalists continue to fight for Gaza access”, *Press Gazette*, 7 January 2009.

¹¹²³ “CPJ urges Israel to examine Gaza limits, military strikes”, Committee to Protect Journalists, 2 April 2009.

¹¹²⁴ Foreign Press Association, 13 January 2009, available at <http://www.fpa.org.il/?categoryId=406>.

opposition to media entry into Gaza, but that the Prime Minister's Office had ordered that the media ban be maintained.¹¹²⁵

1746. The media ban, coupled with the comments made by the Director of the Government's Press Office have raised concerns, aired in the media, that the ban was aimed at controlling the narrative of the conflict for political reasons.¹¹²⁶

2. International human rights monitors

1747. The denial of access to Gaza had an impact not only on the media, but also international human rights monitors, who required access to report violations and, like journalists, make events in Gaza known to the public. The Mission also notes that the presence of international human rights monitors is likely to have a deterrent effect, dissuading parties to a conflict from engaging in violations of international law.

1748. On 31 December 2008, Amnesty International issued a statement calling for Israel to allow "humanitarian workers and observers" immediate access to Gaza.¹¹²⁷

1749. Human Rights Watch requested permission from the Israel military authorities to enter Gaza on 5 January 2009. The request was rejected on 9 February 2009 on the grounds that Human Rights Watch was not registered with the Ministry of Social Affairs.¹¹²⁸ Human Rights Watch asked for clarification, given that it had never heard of such a requirement, even though it had received permission to enter Gaza on previous occasions, and was unsure of the basis in Israeli law or regulation for such a requirement. To date, Human Rights Watch has yet to receive a response from the Israeli authorities.¹¹²⁹ At 2 August 2009, it had still not been granted permission by the Israeli authorities to enter Gaza to conduct investigations.¹¹³⁰

1750. On 20 January 2009, B'Tselem requested permission from the Israel military authorities for its fieldwork director to enter Gaza; the application was rejected on 29 January 2009.¹¹³¹ In a news update dated 19 January 2009, Amnesty International stated that it had made numerous applications to the Israeli authorities to enter Gaza, but had received no response.¹¹³²

¹¹²⁵ "CPJ urges Israel to examine Gaza limits, military strikes", Committee to Protect Journalists, 2 April 2009.

¹¹²⁶ For example, "Israel puts media clamp on Gaza", *The New York Times*, 7 January 2009; and "Media frustration over Gaza ban grows", *The Guardian*, 14 January 2009.

¹¹²⁷ "Israel/ OPT: Immediate access to humanitarian workers and observers essential", Amnesty International, 31 December 2008.

¹¹²⁸ "Israel: End ban on human rights monitors", B'Tselem press release, 22 February 2009; and Email communication between the Mission and Human Rights Watch, 2 August 2009.

¹¹²⁹ *Ibid.*

¹¹³⁰ *Ibid.*

¹¹³¹ *Ibid.*

¹¹³² "Amnesty International team gains access to Gaza", Amnesty International, 19 January 2009.

1751. To date, Amnesty International, Human Rights Watch and B'Tselem have been denied access to Gaza to collect data for their independent investigations into allegation of war crimes committed by both the Israeli forces and Palestinian armed groups.

F. Legal analysis and conclusions

1752. International human rights law, applicable during armed conflict, upholds the right to freedom of expression.

International Covenant on Civil and Political Rights

1753. Article 19 of the International Covenant on Civil and Political Rights (ICCPR) provides that

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

1754. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

1. For respect of the rights or reputations of others.
2. For the protection of national security or of public order (ordre public), or of public health or morals.

1755. Articles 21 and 22 of ICCPR recognize the right to peaceful assembly and the right to freedom of association, respectively.

1756. Furthermore, article 10 provides that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”

Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms

1757. This Declaration is also known by its abbreviated name “The Declaration on Human Rights Defenders”.

1758. Article 5 of the Declaration recognizes the right (a) to meet or assemble peacefully; (b) to form, join and participate in non-governmental organizations, associations or groups; (c) to communicate with non-governmental or intergovernmental organizations.

1759. Article 6 states that

Everyone has the right, individually and in association with others:

- (a) To know, seek, obtain, receive and hold information about all human rights and fundamental freedoms, including having access to information as to how those rights and freedoms are given effect in domestic legislative, judicial or administrative systems;
- (b) As provided for in human rights and other applicable international instruments, freely to publish, impart or disseminate to others views, information and knowledge on all human rights and fundamental freedoms;
- (c) To study, discuss, form and hold opinions on the observance, both in law and in practice, of all human rights and fundamental freedoms and, through these and other appropriate means, to draw public attention to those matters.

1760. Article 12 states

1. Everyone has the right, individually and in association with others, to participate in peaceful activities against violations of human rights and fundamental freedoms.
2. The State shall take all necessary measures to ensure the protection by the competent authorities of everyone, individually and in association with others, against any violence, threats, retaliation, de facto or de jure adverse discrimination, pressure or any other arbitrary action as a consequence of his or her legitimate exercise of the rights referred to in the present Declaration.
3. In this connection, everyone is entitled, individually and in association with others, to be protected effectively under national law in reacting against or opposing, through peaceful means, activities and acts, including those by omission, attributable to States that result in violations of human rights and fundamental freedoms, as well as acts of violence perpetrated by groups or individuals that affect the enjoyment of human rights and fundamental freedoms.

1761. Article 13 of the Declaration recognizes that “Everyone has the right, individually and in association with others, to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means, in accordance with article 3 of the present Declaration.”

1. Protests

1762. The information received by the Mission indicates that there was no systematic policy to prevent street demonstrations against the military action being pursued in Gaza. The Mission notes, however, that there were occasions when protesters, reportedly, had difficulty in obtaining permits, particularly in areas populated mainly by Palestinian Israelis, and where the police placed obstacles in the way of protesters seeking to exercise their right to peaceful assembly and freedom of speech.

1763. Owing to the failure to cooperate by the Government of Israel, the Mission does not have sufficient information to determine whether there were sound public order or security reasons for the decisions made by the police. It however takes note of the reports received and urges the Government of Israel to ensure that the police authorities, throughout Israel, respect the rights of all its citizens, without discrimination, including the freedom of expression and the right to peaceful assembly, as guaranteed to them by the International Covenant on Civil and Political Rights.

1764. The Mission views with particular concern the reported instances of physical violence against protesters and other forms of humiliation suffered by protesters at the hands of the police. It reminds the Government of Israel that those deprived of their liberty shall, as provided by article 10 of ICCPR, be treated with humanity and respect for the inherent dignity of the human person.

2. Judicial responses

1765. The Mission does not have sufficient information about individual cases brought to its attention to come to a definitive finding. Nevertheless, the element of discrimination between the and differential treatment of Palestinian and Jewish citizens of Israel by the judicial authorities, as reflected in the reports received, is a substantial cause for concern.

3. Interrogations by the General Security Services

1766. The Mission is concerned about activists being compelled to attend interviews with the General Security Services, in the absence of any legal obligation to do so. More broadly, the Mission expresses its concern at the alleged interrogation of political activists about their political activities. Of the interviews conducted by the Mission, the issue of interrogation by the Shabak was cited most prominently as creating intolerance of dissent in Israel.

4. Freedom of association and treatment of human rights organizations

1767. The Mission is greatly concerned about allegations of hostile retaliatory actions taken against civil society organizations for criticism of the Israeli authorities and for exposing alleged violations of international human rights and humanitarian law during the military operations.

1768. In the case of alleged attempts to interfere with the funding of Breaking the Silence, the Declaration on Human Rights Defenders guarantees the right “to solicit, receive and utilize resources for the express purpose of promoting and protecting human rights and fundamental freedoms through peaceful means”. While lobbying foreign Governments to terminate funding does not directly violate this right, such an action, if motivated by a reaction to the organization’s exercise of its freedom of expression, would be contrary to the spirit of the Declaration.

5. Access to information: access of media and human rights monitors to Gaza

1769. With regard to the denial of media access to Gaza during the military operations there and the continued denial of access to Gaza to various international human rights monitors to the present day, the Mission notes that the presence of journalists and international human rights monitors aides the investigation and broad public reporting on the conduct of the parties to the conflict and that their presence can dissuade misconduct.

1770. According to the 1995 Johannesburg Principles on National Security, Freedom of Expression and Access to Information¹¹³³, Governments

may not prevent journalists or representatives of intergovernmental or non-governmental organizations which monitor adherence to human rights or humanitarian standards from entering areas where there are reasonable grounds to believe that violations of human rights or humanitarian law are being, or have been, committed. Governments may not exclude journalists or representatives of such organizations from areas that are experiencing violence or armed conflict, except where their presence would pose a clear risk to the safety of others.

1771. The Mission is concerned about the near total exclusion of the media and human rights monitors from Gaza since 5 November 2008. While the media have been permitted access since 23 January 2009, the Mission is very concerned that groups such as Human Rights Watch, Amnesty International and B'Tselem continue to be denied access to the Gaza Strip by the Israeli military authorities and therefore are obstructed in their investigations into alleged violations of law during the military operations. The Mission can see no viable reason for this denial of access.

1772. The Mission observes that Israel, in its actions against political activists, NGOs and the media, has attempted to minimise public scrutiny of its conduct both during its military operations in Gaza and the consequences that these operations have had for the residents of Gaza. The perception that the Israeli authorities, by denying access to the media and human rights monitors, sought to prevent investigation and reporting of the conduct of the operations by the Israeli military seems warranted. The burden of dispelling such a perception rests on the Government of Israel.

¹¹³³ The Principles (E/CN.4/1996/31) were endorsed by the United Nations Special Rapporteur on freedom of opinion and expression, in his reports to the Commission on Human Rights at its fifty-second, fifty-fourth, fifty-fifth and fifty-seventh sessions, and referred to by the Commission in its annual resolutions on freedom of expression every year from 1996.

PART FOUR: ACCOUNTABILITY AND JUDICIAL REMEDIES**XXVI. PROCEEDINGS AND RESPONSES BY ISRAEL TO ALLEGATIONS OF VIOLATIONS BY ITS ARMED FORCES AGAINST PALESTINIANS**

1773. Investigations and, if appropriate, prosecutions of those suspected of serious violations are necessary if respect for human rights and humanitarian law is to be ensured and to prevent the development of a climate of impunity. States have a duty under international law to investigate allegations of violations.

1774. As seen in the preceding chapters, the Mission has investigated a large number of allegations of violations and has found that many of them have substance. The Mission was thus obliged to consider the extent to which Israel has complied with its obligations under international law to investigate those alleged violations. The Mission requested information from the Government of Israel on any inquiry it had conducted into the incidents the Mission had investigated, and the conclusions of such inquiries, if any, but did not receive any reply.

1775. Allegations concerning alleged serious violations of human rights law and international humanitarian law emerged almost as soon as the military operations began. Israel claims to have carried out limited investigations into these allegations, some of which are ongoing.

1776. In the aftermath of the military operations, a group of eight Israeli NGOs wrote to the Attorney General, Mr. Meni Mazuz, requesting the establishment of an independent and effective mechanism to investigate allegations of grave violations of the laws of war during the Gaza offensive. They requested that the investigation should also address “the legality of the actual orders and directives given to forces in the field” and held that the Military Advocate General’s office was not in a position to carry out a proper investigation because of his personal involvement and that of his office’s personnel “during stages of decision-making” in the conflict, which would compromise the neutrality and independence of the investigation.¹¹³⁴

1777. In replying to the letter, the office of the Attorney General explained that after the conclusion of the military operations “the IDF began to carry out its operational briefings”, which would also examine various events in which civilians were harmed. It did not accept the assertion that the Military Advocate General’s dual position, as legal adviser to the military authorities and as a person tasked with ensuring that military personnel charged with breaking the law are tried, disqualified him from participating in the investigation.¹¹³⁵

1778. The NGOs sent another letter,¹¹³⁶ but this time the Attorney General did not reply.

¹¹³⁴ ACRI letter to the Attorney General of Israel, Mr. Menachem Mazuz, on behalf of nine human rights organizations, dated 20 January 2009, available at: <http://www.acri.org.il/pdf/Gaza200109.pdf>.

¹¹³⁵ Reply of Attorney Raz Nizri on behalf of the Attorney General of Israel, dated 24 February 2009, available at: <http://www.acri.org.il/pdf/Gaza240209.pdf>.

¹¹³⁶ Second letter to the Attorney General, on behalf of 11 human rights organizations, dated 19 March 2009, available at: <http://www.acri.org.il/pdf/gaza190309.pdf>.

1779. On 5 February 2009, a group of Israeli scholars and jurists wrote to the Attorney General also requesting the establishment of an independent body to investigate the actions that had taken place during the military operations. The Mission is not aware that they received any reply.

1780. The Mission also saw press statements regarding the opening of investigations into allegations reportedly made by soldiers at the “Rabin” Preparation Program. On 19 March 2009, the Military Advocate General, Brig. Gen. Avichai Mendelblit, instructed the Criminal Investigation Division of the military police to investigate alleged actions by soldiers during the military operations. The decision came in response to a letter sent to him a few weeks earlier by the head of the Rabin program reporting claims made by soldiers about firing at civilians.¹¹³⁷ Eleven days later the investigation was closed on the basis that the crucial components of the allegations “were based on hearsay and not supported by facts”. According to the Israeli armed forces, the investigation found that the soldiers in question had not actually witnessed the alleged events.¹¹³⁸ In a report released by the Government of Israel in July 2009, two of the incidents investigated were briefly discussed. Not having had access to the outcome of these investigations, the Mission is unable to evaluate the report.¹¹³⁹

1781. On 22 April the Israeli armed forces released publicly the results of five investigations carried out by teams headed by officers of the rank of colonel. The same information was later reproduced in the report issued by the Government of Israel.¹¹⁴⁰ The Israeli armed forces stated that the members of the team had had no direct involvement in the chain of command during the military operations in Gaza and had acted with independence, enjoying full access to information, persons and evidence. The process was described as involving “a series of operational investigations”.¹¹⁴¹

1782. According to the same source, the five investigations addressed:

- (a) Claims regarding incidents where United Nations and international facilities were fired upon and damaged;
- (b) Incidents involving shooting at medical facilities, buildings, vehicles and crews;
- (c) Claims regarding incidents in which many uninvolved civilians were harmed;
- (d) The use of weaponry containing phosphorous;
- (e) Damage to infrastructure and destruction of buildings by ground forces.

¹¹³⁷ “The IDF Chief of the General Staff refers to claims made at the Rabin preparation center”, 23 March 2009; “The IDF Chief Advocate general orders investigation of claims made at the Rabin preparation center”, 19 March 2009; both available at <http://dover.idf.il/IDF/English/Press+Releases/default.htm>.

¹¹³⁸ “Military Police investigation concerning statements made at the Rabin Center: Based on hearsay”, 30 March 2009, available at <http://dover.idf.il/IDF/English/Press+Releases/default.htm>.

¹¹³⁹ “The operation in Gaza...”, paras. 324-329.

¹¹⁴⁰ Ibid., paras. 318-320.

¹¹⁴¹ “Conclusion of investigations...”.

1783. The observations and conclusions of these investigations have been addressed elsewhere in this report. The conclusion, as stated in the Israeli armed forces' press release, was that "throughout the fighting in Gaza, the IDF operated in accordance with international law". However, the "investigations revealed a very small number of incidents in which intelligence or operational errors took place during the fighting".

1784. The Israeli armed forces stated that the investigation was lengthy and that some specific issues were still being checked and additional allegations were being investigated. The "experts' investigations", it was emphasized, were not a replacement for the central Israeli armed forces' operational investigation into the entire operation, which was under way and to be concluded in June 2009.

1785. In its response to a report by Amnesty International,¹¹⁴² the Israeli armed forces recalled the "number of investigations" it has conducted following the military operations. In addition to those ordered by the Chief of the General Staff, Lt. Gen. Gabi Ashkenazi, the Israeli armed forces stated it was looking at complaints from various sources, and that "in certain cases, the Chief Military Advocate has already ordered the opening of a criminal investigation".¹¹⁴³

1786. On 30 July 2009 there were media reports that the Military Advocate General had ordered the military police to launch criminal investigations into 14 cases out of nearly 100 complaints against soldiers about criminal conduct during the military operations. An official comprehensive report publicly released on the same day spoke of 13 cases, but no details of the cases were offered.¹¹⁴⁴

1787. The Mission is not aware of any other investigation or of any other action taken either by the Military Advocate General or the Attorney General in connection with the military operations.

1788. Regarding violence against Palestinians outside the Gaza Strip but in relation to the military operations of December 2008 – January 2009, the Mission has been unable to gather information about any investigations that may be taking place.

A. Israel's system of investigation and prosecution

1789. The Mission considers that in assessing Israel's fulfilment of its duty to investigate regard should be had to its internal legal and judicial systems. In cases of suspected wrongdoing the Israeli armed forces may, by law, carry out investigations through: (a) disciplinary proceedings; (b) operational debriefings (also known as "operational investigations"); (c) special

¹¹⁴² *Israel/Gaza: Operation "Cast Lead": 22 days....*

¹¹⁴³ "IDF response to Amnesty report", 2 July 2009, available at: <http://www.reliefweb.int/rw/rwb.nsf/db900SID/MUMA-7TL866?OpenDocument>.

¹¹⁴⁴ *The Jerusalem Post*, "IDF orders criminal probes into 14 cases of alleged misconduct", 30 July 2009; "The operation in Gaza...", para. 12.

investigations, by a senior officer at the request of the chief of staff; and (d) military police investigations, by the Criminal Investigation Division of the military police.¹¹⁴⁵

1. Disciplinary proceedings

1790. Disciplinary proceedings are usually instituted for minor infractions of military discipline and rules, and do not apply to investigations into serious violations of human rights or humanitarian law. They are not relevant to the alleged violations with which the Mission is concerned.

1791. Several actors play a role in this system of investigation and prosecution: the army, the military police, the Military Advocate General and the courts martial.

1792. The Israeli armed forces officially describe the mission of the Military Advocate General's corps as follows:

The Military Advocate General's Corps' supervises and enforces the rule of law throughout the IDF and provides legal advice to the Chief of Staff and all divisions of the IDF in areas relating to military, domestic and international law. Its mission is to instil the general principles of law and the values of justice in the IDF.¹¹⁴⁶

1793. The Mission notes that the Military Advocate General is a military officer, who provides legal advice to the military and at the same time investigates and prosecutes these same military. It also notes that the Government of Israel insists that, despite being part of the military corps, the Military Advocate General acts with full functional independence.

2. Operational debriefings

1794. Article 539 (A) (a) of the Law on Military Justice defines an operational debriefing as: "a procedure held by the army, according to the army orders and regulations, with respect to an incident that has taken place during a training or a military operation or with connection to them".

1795. The debriefings are reviews of incidents and operations conducted by soldiers from the same unit or line of command together with a superior officer. They are meant to serve operational purposes. Following every military operation "of any kind, a field investigation is conducted in order to examine the performance of the forces and to learn what aspects should be preserved and what aspects should be improved".¹¹⁴⁷ They are supposed to be confidential so that soldiers speak openly. The findings are forwarded to the Military Advocate General's office, which may or may not find that there are grounds to suspect that a crime has been committed and order a full criminal investigation. However, if a criminal investigation is opened and the case

¹¹⁴⁵ Law on Military Justice 1954/1955. See also Human Rights Watch, *Promoting Impunity: The Israeli Military's Failure to Investigate Wrongdoing* (June 2005), pp. 39 ff.

¹¹⁴⁶ <http://dover.idf.il/IDF/English/units/other/advocate/Mission/default.htm>.

¹¹⁴⁷ "The operation in Gaza...", para. 291.

goes to trial the debriefing cannot be used as evidence in subsequent proceedings (article 539 (A) of the Military Justice Act).

1796. The use of military debriefings as a regular tool to address incidents emerging from military operations became the rule after an official change of policy was introduced in 2000.¹¹⁴⁸ The new policy was consistent with a shift to armed conflict paradigm in addressing the intifada. This change of policy meant that criminal investigations were not necessarily the first step even in the face of credible allegations of serious offences committed by military personnel.

1797. The office of the Military Advocate General can consult the operational debriefing and if it considers that a criminal investigation is warranted on the basis of the testimony of soldiers during the debriefing, it can issue orders to that effect. A criminal investigation must start de novo.

3. Special investigations

1798. The Minister of Defense and the Chief of the General Staff may also appoint an officer or group of officers – often high-ranking officers – to investigate high-profile or sensitive matters. The material gathered in special investigations also remains confidential and may not be used as evidence in court proceedings. However, the special investigator makes findings and formulates recommendations. Criminal investigations can be initiated only after the special investigator's work is complete.

4. Criminal investigations

1799. The Military Advocate General may order the Criminal Investigation Division to open a criminal investigation if he finds that there is “reasonable suspicion” that an offence may have been committed by military personnel.

1800. A summary of the operational debriefings is normally sent to the Military Advocate General's office, but he may ask to view the full notes. To order the opening of a criminal investigation, the Military Advocate General normally consults with a major general (article 539 (A)(b)(4)(b) of the Law on Military Justice). The materials of the operational debriefing will not serve in such a criminal investigation and will remain confidential from the investigative authorities (art. 539 (A)(b)(4)).

1801. A decision by the Military Advocate General to open or not to open a criminal investigation and his decision to indict or not to indict the suspects may be reviewed by the Attorney General. A complainant or an NGO can trigger this process by simply sending a letter

¹¹⁴⁸ Mission interview with Col. (ret.) Daniel Reisner in Geneva, on 6 July 2009. See also an interview with him when he was Assistant Military Advocate General for international law and head of the Israeli armed forces' International Law Department, in *Promoting Impunity...*, p. 41; see also B'Tselem, “Military police investigations during the al-Aqsa intifada”, available at: http://www.btselem.org/English/Accountability/Investigatin_of_Complaints.asp

directly to the Attorney General. The Supreme Court may be petitioned to review the Military Advocate General's or the Attorney General's decisions.¹¹⁴⁹

1802. The investigation by the Criminal Investigation Division should produce a file, which is sent to the Military Advocate General's office for completion. The Military Advocate General may decide to close the file for lack of evidence, return it for further investigation or issue an indictment. If an indictment is issued, the case proceeds to a court martial before the district and the special military courts, which are formed by three to five judges, the majority of whom have to be officers. Decisions are taken by majority vote and need not be reasoned "unless the Military Justice Law prescribes otherwise" (arts. 392–393).

1803. A decision by a district or special court martial can be appealed to the Military Court of Appeals, whose final decision may need to be confirmed by the Chief of General Staff after consultation with the Military Advocate General. Israel reported that in the past the Chief of General Staff had confirmed all sentences presented to him.¹¹⁵⁰ Victims or their legal representatives may appeal decisions not to indict to the Military Advocate General and, if unsuccessful, to the High Court of Justice.

B. Legal assessment

1804. Both international humanitarian law and international human rights law establish a clear obligation for States to investigate and, if appropriate, prosecute allegations of serious violations by military personnel whether during military operations or not. This rule finds expression in articles 49 of the First Geneva Convention, article 50 of the Second Geneva Convention, article 129 of the Third Geneva Convention and article 146 of the Fourth Geneva Convention; in articles 2 and 6 of ICCPR and article 6 of the Convention against Torture. The Mission considers the obligations on States to investigate and, if appropriate, to prosecute war crimes and other crimes allegedly committed by their armed forces or in their territory as a norm of international customary law.¹¹⁵¹

1805. International humanitarian law contains an obligation to investigate grave breaches of the Geneva Conventions. This obligation flows generally from their common article 1, but more specifically from their foregoing provisions. Article 146 (2) of the Fourth Geneva Convention provides that each High Contracting Party shall be under the obligation "to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts...".

1806. There is a parallel obligation to investigate under international human rights law. Article 2 of ICCPR requires a State party to respect and ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in it and also to ensure an effective remedy for any person whose rights have been violated. Failure to ensure the rights as required by article 2 would give rise to an independent violation,

¹¹⁴⁹ "The operation in Gaza...", para. 300.

¹¹⁵⁰ Ibid.

¹¹⁵¹ *Customary International Humanitarian Law...*, rule 158, p. 607; E/CN/4/2006/53, paras. 33-43.

... as a result of States parties' permitting or failing to take appropriate measures or to exercise due diligence to prevent, punish, investigate or redress the harm caused by such acts by private persons or entities.

[...]

A failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant...¹¹⁵²

1807. In several decisions on individual communications concerning offences against the right to life and physical integrity, the Human Rights Committee has held that the failure to investigate and punish the perpetrators constitutes a violation of the Covenant. For instance, in *Bautista de Arellana v. Colombia*, the Committee held:

... that the State party is under a duty to investigate thoroughly alleged violations of human rights, and in particular forced disappearances of persons and violations of the right to life, and to prosecute criminally, try and punish those held responsible for such violations. This duty applies a fortiori in cases in which the perpetrators of such violations have been identified.¹¹⁵³

1808. This obligation to investigate under human rights law applies equally to actions that take place during armed conflict. In *Isayeva v. Russia*, a case concerning a woman whose relatives were killed by indiscriminate shelling in Chechnya by Russian forces, the European Court of Human Rights held that the requirements of article 2 of the European Convention applied. This provision, read with article 1 (“to secure to everyone... the rights and freedoms defined in [the] Convention”) would require “by implication that there should be some form of effective judicial investigation when individuals have been killed as a result of the use of force”.¹¹⁵⁴

1809. The Court laid down a series of principles which such an investigation should observe: inter alia, that authorities must act on their own motion, act with independence, be effective and prompt.

1810. The Inter-American Court of Human Rights has established similar jurisprudence.¹¹⁵⁵

1811. The Mission holds the view that the duty to investigate allegations of serious violations of the right to life and physical integrity under ICCPR extends equally to allegations about acts committed in the context of armed conflict.

¹¹⁵² Human Rights Committee, general comment 31 (2004), paras. 8 and 15.

¹¹⁵³ *Bautista de Arellana v. Colombia*, communication No. 563/1993, views of 27 October 1995, para 8.6; See also, *José Vicente and Amado Villafañe Chaparro, Luis Napoleón Torres Crespo, Angel María Torres Arroyo and Antonio Hugues Chaparro Torres v. Colombia*, communication No. 612/1995, views of 29 July 1995, para 8.8; *Rajapakse v. Sri Lanka*, communication No. 1250/2004, views of 14 July 2006, para. 9.3.

¹¹⁵⁴ Case *Isayeva v. Russia*, application no. 57950/00, Judgement of 24 February 2005, para. 209.

¹¹⁵⁵ See *Case of the Ituango Massacres v. Colombia*, *Case of the Mapiripán Massacre v. Colombia*,

1812. The State's duty to investigate is also firmly established in the jurisprudence of the Supreme Court of Israel. Thus, in the *Targeted killings* case, which addresses the use of armed force in a context regarded as armed conflict, it held:

... after an attack on a civilian suspected of taking an active part, at such time, in hostilities, a thorough investigation regarding the precision of the identification of the target and the circumstances of the attack upon him is to be performed (retroactively). That investigation must be independent¹¹⁵⁶

1813. The Mission notes that Israel does not question its duty to investigate allegations of serious offences by its armed forces. On the contrary, it has repeatedly stated that the investigation system that it has put in place is effective.¹¹⁵⁷

1814. It remains to be considered whether, in carrying out its duty to investigate allegations of serious violations, Israel has observed the universal principles of independence, effectiveness, promptness and impartiality. These principles have been developed in the jurisprudence of international courts of human rights and are agreed upon by the States represented within the relevant United Nations bodies.¹¹⁵⁸

1815. The Mission finds that the system put in place by Israel, and described above, to deal with allegations of serious wrongdoing by armed forces personnel does not comply with all those principles.

1816. The system is not effective in addressing the violations and uncovering the truth. In this respect the Mission recalls the statements of Col. (res.) Ilan Katz, until March 2003 the Deputy Military Advocate General, criticizing the use of operational debriefings by commanders in order to prevent criminal investigations. In a meeting of the Israel Bar Association's Military and Security Committee, Col. (res.) Katz was reported to have stated:

From the beginning of the uprising and as of August 2004, about 90 [Military Police Criminal Investigation Division] investigations were opened into the injuries and deaths of Palestinians. About 70 investigations were opened in the last year alone. That shows that they saw that the Operational Debriefing did not lead to uncovering the truth and then the [Military Advocate General] gave an order to begin [Military Police Criminal Investigation Division] investigations. I used to be part of the policy that allowed the Army to use the military debriefing, but the Army did not use the Operational Debriefing appropriately because of a failure to comply with regulations and orders. That tool did not prove itself.

¹¹⁵⁶ *Public Committee against Torture in Israel et al. v. Government of Israel et al.*, case No. 769/02, 13 December 2006, para. 40.

¹¹⁵⁷ "The operation in Gaza...", paras. 283 ff.

¹¹⁵⁸ *Principles on the Effective Prevention and Investigation of Extrajudicial, Arbitrary and Summary Executions* (Economic and Social Council resolution 1989/65, annex), and *the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (General Assembly resolution 55/89, annex).

1817. Col. (res.) Katz appears to admit that the system does not comply with the requirement of promptness. Even if a decision is made by the Military Advocate General to order the opening of criminal investigations, investigation is usually nearly impossible at that point:

The reason is that when the commanders conduct an operational debriefing they destroy the scene of the crime, and months later it is difficult to find traces of evidence on the ground. You cannot even check the gun from which the shots were fired because by the time the [Military Police Criminal Investigation Division] investigation begins many more shots have been fired by the same gun, or in some cases the gun changes hands and it is very hard to trace it. The debriefing law has a certain logic because it raises the level of credibility of the operational debriefings, but the way it is exploited by commanders in order to prevent [Military Police Criminal Investigation Division] investigations is not reasonable.¹¹⁵⁹

1818. The Mission notes that the report in which the above statements appear has not been contradicted by the Government of Israel. The statements are also consistent with other assessments. Human Rights Watch studied the cases that were investigated between 2000 and 2004, and concluded that very few had actually gone to full criminal investigations and that even fewer had ended in indictments. When convictions did follow, the penalties were noticeably more lenient than those imposed on Palestinian offenders. The organization Yesh Din came to similar conclusions in its study of cases from 2000 to the end of 2007.¹¹⁶⁰

1819. Operational debriefing, to review operational performance, is not an appropriate tool to conduct investigations of allegations of serious violations of human rights and humanitarian law. It appears to the Mission that established methods of criminal investigations such as visits to the crime scene, interviews with witnesses and victims, and assessment by reference to established legal standards have not been adopted. The operational debriefings as well as the five “expert” investigations carried out by the Israeli armed forces into events during the December–January military operations in Gaza appear to have relied exclusively on interviews with Israeli officers and soldiers. As such, these investigations did not comply with required legal standards.

1820. The Israeli armed forces stated that it had conducted more than 100 “military investigations” into allegations of wrongdoing during the military operations in Gaza. Some 13 criminal investigations have been opened. On the basis of the facts available to it and on the circumstances, the Mission finds that a delay of six months to start these criminal investigations constitutes undue delay in the face of the serious allegations that have been made by many people and organizations.

1821. Amnesty International has said about the public outcomes of Israeli armed forces’ investigations into events during the military operations:

¹¹⁵⁹ *Maariv*, “The MPCID does not know how to do its job”, 1 January 2005, cited in Yesh Din: Volunteers for Human Rights, *Exceptions: Prosecution of IDF Soldiers during and after the Second Intifada, 2000–2007* (September 2008), p. 23.

¹¹⁶⁰ *Promoting Impunity...*, pp. 100 ff.; *Exceptions: Prosecution...*, pp. 33 ff.; see also B’Tselem, “Military police investigations during the al-Aqsa intifada”, available at: http://www.btselem.org/English/Accountability/Investigatin_of_Complaints.asp.

The information made public only refers to a handful of cases and lacks crucial details. It mostly repeats claims made by the army and the authorities many times since the early days of Operation “Cast Lead”, but does not provide evidence to back up the allegations. It does not even attempt to explain the overwhelming majority of civilian deaths nor the massive destruction caused to civilian buildings in Gaza.¹¹⁶¹

1822. In this regard, the Mission recalls the recommendations made to Israel by the Committee against Torture to “conduct an independent inquiry to ensure a prompt, independent and full investigation” into the responsibility of the State and non-State actors during the war. This recommendation was issued after Israel released the results of five “special investigations” in April 2009.¹¹⁶²

1823. On the basis of the information before it and the above considerations the Mission finds that the failure of Israel to open prompt, independent and impartial criminal investigations even after six months have elapsed constitute a violation of its obligation to genuinely investigate allegations of war crimes and other crimes, and other serious violations of international law.

1824. The obligation on Israel to prevent, investigate and punish violations of human rights applies also to its actions or omissions in the West Bank. Such obligation includes the duty to take appropriate measures or to exercise due diligence to prevent, investigate or redress harm caused by private persons.¹¹⁶³ As stated above, the Mission has not received any information indicating the initiation of criminal or other investigations into violence against Palestinians in the West Bank, including East Jerusalem, related to the military operations in the Gaza Strip. Israel appears to do little to protect Palestinians from settler violence and, if investigations into such violence are opened, they are reported to be prolonged and usually result in no action. Yesh Din reports that over 90 per cent of investigations into settler violence are closed without an indictment being filed.

1825. If settlers are convicted, the sentences are reported to be very light.¹¹⁶⁴ This practice should be contrasted with the harsh treatment and punishment meted out to Palestinians who harm Israelis. This has been described as a discriminatory policy.¹¹⁶⁵ Similarly, action against members of security forces who commit acts of violence, including killings, serious injuries and other abuses, against Palestinians is very rare. Information available to the Mission points to a systematic lack of accountability of members of the security forces for such acts.¹¹⁶⁶

1826. The Government of Israel also reports that, in October 2007, the Office of the Military Advocate for Operational Affairs was established to investigate cases of operational misconduct

¹¹⁶¹ *Israel/Gaza: Operation “Cast Lead”: 22 days...*, p. 93.

¹¹⁶² CAT/C/ISR/CO/4, para. 29.

¹¹⁶³ Human Rights Committee, general comment No. 31 (2004), para. 8.

¹¹⁶⁴ Yesh Din, “Law enforcement upon Israeli civilians in the OPT: Yesh Din’s monitoring”, data sheet, July 2008.

¹¹⁶⁵ B’Tselem, “Handling of complaints of settler violence”, available at: http://www.btselem.org/english/Settler_Violence/Law_Enforcement.asp

¹¹⁶⁶ See chap. XXI.

by Israeli armed forces soldiers against Palestinian civilians. This special military prosecution unit allows the automatic opening of criminal investigations in all cases. As a result, the Government reports, the numbers of criminal investigations launched in 2007 and 2008 in relation to abuse against Palestinians have more than doubled, from 152 in 2006 to 351 in 2007 and 323 in 2008.¹¹⁶⁷ However, no figures are provided about how many of those investigations resulted in indictments and in convictions, and the offence for which the concerned persons were finally convicted.

1827. The same paper by the Government of Israel states that, in military courts as a whole, from January 2002 to December 2008 inclusive, there have been 1,467 criminal investigations, leading to 140 indictments. As of December 2008, 103 defendants had been convicted and 10 cases were still pending. During the first six months of 2009, 123 criminal investigations were opened, leading to 10 indictments so far.¹¹⁶⁸ This information is contradicted, in addition to being incomplete.

1828. Yesh Din points out that the limited number of indictments leads, in practice, to even fewer convictions. Most of those convictions are for offences that do not reflect the degree of gravity of the action. For instance, from September 2000 to the end of 2007, only 135 soldiers were indicted, of whom some 113 had been convicted by mid-2008. Only 22 underwent full criminal trials in courts martial and 95 were convicted on the basis of their confessions. But as many as 73 confessed to amended indictments and were therefore convicted of less serious offences than the original charges. This situation has been attributed partially to the system of plea-bargaining officially used in Israel and to the willingness of the Military Prosecutor to agree to lesser offences and penalties having due regard, inter alia, to the difficulties encountered in gathering sufficient evidence to back up the original charge.¹¹⁶⁹

1829. Another contributing factor is the unprofessional way in which criminal investigations are carried out, making it virtually impossible to prove the charges beyond reasonable doubt. Courts martial have criticized those investigations on several occasions. Military criminal investigators do not seem interested in interviewing victims or witnesses and the quality of evidence gathered is low.¹¹⁷⁰

1830. The change of policy instituted in 2000 determining that full criminal investigations are possible only after “operational debriefings” have been carried out means that in practice criminal investigations do not begin before six months after the events in question. By that time evidence may be corrupted or no longer available.

1831. The Mission holds the view that a tool designed for the review of performance and to learn lessons can hardly be an effective and impartial investigation mechanism that should be instituted after every military operation where allegations of serious violations have been made. It does not comply with internationally recognized principles of independence, impartiality,

¹¹⁶⁷ “The operation in Gaza...”, paras. 294-295.

¹¹⁶⁸ *Ibid.*, para. 293.

¹¹⁶⁹ *Exceptions: Prosecution...*, pp. 33-35.

¹¹⁷⁰ *Ibid.*, pp. 27-28.

effectiveness and promptness in investigations. The fact that proper criminal investigations can start only after the “operational debriefing” is over is a major flaw in the Israeli system of investigation.

1832. The Mission concludes that there are serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, independent, prompt and effective way as required by international law. The Mission is also of the view that the Israeli system presents inherently discriminatory features that have proven to make the pursuit of justice for Palestinian victims very difficult.

1833. In this context, the Mission notes that on 21 January 2009 the Office of the Prosecutor of the International Criminal Court received a declaration in the following terms:

‘Pursuant to the provisions of article 12, paragraph 3, of the Statute of the International Criminal Court, the Government of Palestine hereby recognizes the jurisdiction of the Court for the purposes of identifying, prosecuting and judging the authors and accomplices of acts committed in the territory of Palestine since 1 July 2002.’

1834. Article 12 of the Rome Statute - Preconditions to the exercise of jurisdiction - reads as follows:

1. A State which becomes a Party to this Statute thereby accepts the jurisdiction of the Court with respect to the crimes referred to in article 5.
2. In the case of article 13, paragraph (a) or (c), the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court in accordance with paragraph 3:
 - (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft;
 - (b) The State of which the person accused of the crime is a national.
3. If the acceptance of a State which is not a Party to this Statute is required under paragraph 2, that State may, by declaration lodged with the Registrar, accept the exercise of jurisdiction by the Court with respect to the crime in question. The accepting State shall cooperate with the Court without any delay or exception in accordance with Part 9.

1835. The Prosecutor may determine that for the purposes of article 12, paragraph 3, under customary international law, Palestine qualifies as “a State”.

XXVII. PROCEEDINGS BY PALESTINIAN AUTHORITIES

A. Proceedings related to actions in the Gaza Strip

1836. The Gaza authorities are responsible for ensuring that effective measures for accountability for violations of IHRL and IHL committed by armed groups acting in or from the

Gaza Strip are established. The Mission points out that such responsibility would continue to rest on any authority exercising government-like functions in the Gaza Strip.

1837. ICHR reports that actions in the Gaza Strip in respect of accountability are limited to the formation of committees to monitor and report on a number of human rights violations.¹¹⁷¹

1838. However, there is no evidence of any system of public monitoring or accountability for serious IHL and IHRL violations. The Mission has heard credible reports of such violations that are discussed in other parts of this report. In particular, the Mission is concerned about the consistent disregard of IHL with which all armed groups in the Gaza Strip conduct their armed activities directed against Israel.

1839. The Mission notes that:

(a) On 10 July 2008, it was reported by BBC that “ Hamas security forces” had arrested two members of al-Aqsa Martyrs’ Brigades who had launched rocket attacks on Israel the day before.¹¹⁷² According to the same report, al-Aqsa Martyrs’ Brigades said members of Hamas’ security forces had chased and “abducted” two of their members. Reuters, later on 10 July 2008, reported that an additional four members of al-Aqsa Martyrs’ Brigades were arrested by Hamas as they tried to fire rockets into Israel;¹¹⁷³

(b) On 9 March 2009, Islamic Jihad stated that the Internal Security had arrested 10 of its members and forced them to sign statements prior to their being released pledging that they would cease rocket fire on Israel;¹¹⁷⁴

(c) On 13 March 2009, an official of the Gaza authorities was reported as saying that security forces would track and arrest anyone suspected of firing rockets into Israel, stating “the rockets have been fired at the wrong time”;¹¹⁷⁵

¹¹⁷¹ ICHR, *Fourteenth Annual Report*, pp. 179 ff. In relation to internal violence, Al-Mezan pointed out that “previous commissions of inquiry that were established to investigate these violations failed to make public their findings, which has contributed to the reoccurrence of violations” (“Al-Mezan welcomes decision of Prime Minister in Gaza to approve Commission of Inquiry recommendation to dismiss and bring to justice perpetrators of law and human rights violations”, 1 April 2009). Similarly, PCHR lamented “the failure of the Palestinian authorities to take any action to prosecute the perpetrators or to make available the results of any investigations. This contributes to the proliferation of such crimes” (“PCHR demands investigation into death of a civilian tortured by members of the Intelligence Services in Gaza”, press release, 25 March 2009).

¹¹⁷² BBC News, “Gaza militants fire two rockets”, 10 July 2008, available at: http://news.bbc.co.uk/2/hi/middle_east/7500322.stm.

¹¹⁷³ Reuters, “ Hamas arrests militants after rocket fire”, 10 July 2008, available at: <http://www.reuters.com/article/latestCrisis/idUSL103182282>.

¹¹⁷⁴ Ynet News, “Islamic Jihad: Hamas arrested 10 of our men”, 9 March 2009, available at: <http://www.ynetnews.com/articles/0,7340,L-3683385,00.html>; see also BBC News, “ Hamas threatens rocket militants”, 12 March 2009, available at: http://news.bbc.co.uk/2/hi/middle_east/7940371.stm.

¹¹⁷⁵ *World Tribune*, “ Hamas cracks down on the unauthorized, random firing of rockets at Israel”, 13 March 2009.

(d) On 11 July 2009, the Islamic Jihad released a statement in which asserted that two of its members had been arrested by “interior security officials” as they had been preparing to fire mortars into Israel.¹¹⁷⁶

1840. As far as incidents of killing, torture and mistreatment within the Gaza Strip in connection with or in the context of the military operations are concerned,¹¹⁷⁷ the Gaza authorities stated that they had investigated allegations of abuse and found that the incidents were “family revenge cases” or individual acts motivated by revenge. Through its competent agencies, the authorities stated that they “had opened investigations into these events immediately after the war” and submitted charges before the competent courts.¹¹⁷⁸ Notwithstanding this statement and any action that the Gaza authorities may have taken, of which the Mission is unaware, the Mission considers that allegations in this respect have gone largely without investigation.

1841. The Mission has taken into account the media reports referred to above, but remains unconvinced that any genuine and effective initiatives have been taken by the authorities to address the serious issues of violation of IHL in the conduct of armed activities by militant groups in the Gaza Strip. The Mission was also given no evidence of any arrests, investigation or prosecution connected with the serious violations of the peremptory norms of international law that have been alleged in information presented in other parts of this report, be these against Palestinian civilians in Gaza or against Israeli civilians.

1842. The Mission is aware that Hamas continues to view all armed activities directed against Israel as resistance to occupation and practices of the occupation, and, therefore, a legitimate right of the Palestinian people. The Mission fully recognizes the Palestinian people’s right to self-determination, in accordance with the Charter of the United Nations and international human rights conventions. It also acknowledges that United Nations bodies and others have repeatedly pointed out practices of the Israeli occupation that deprive Palestinians of their human rights and fundamental freedoms. Nevertheless, the Mission forcefully reiterates that the peremptory norms of customary international law, both of human rights law and humanitarian law, apply to all actions that may be undertaken in response to, or to oppose, human rights violations.

B. Proceedings related to actions in the West Bank

1843. The Palestinian Authority has a duty to respect and ensure respect for human rights and humanitarian law in the areas under its authority and control. The duty to investigate and, if appropriate, prosecute alleged perpetrators of serious crimes is also incumbent upon it. It has a general duty to provide an effective remedy to those who allege that their rights have been infringed.

1844. Article 32 of the Palestinian Basic Law provides:

¹¹⁷⁶ *Haaretz*, “ Hamas nabs two Islamic Jihad preparing to fire mortars at Israel”, 11 July 2009.

¹¹⁷⁷ See chap. XX.

¹¹⁷⁸ Written reply to list of questions formulated by the Mission, July 2009, on file with the Mission secretariat.

Any violation of any personal freedom, of the sanctity of the private life of human beings, or of any of the rights or liberties that have been guaranteed by the law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations may not be subject to any statute of limitations. The National Authority shall guarantee a fair remedy to those who suffer from such damage.

1845. In its 2008 report, ICHR addresses the system of accountability in the Occupied Palestinian Territory, including the West Bank and the Gaza Strip. Victims of violations may submit a petition to the Attorney General, who should start investigations according to the law. Compensation can also be requested and obtained from the Palestinian Authority through a civil suit. The 1960 Jordanian Penal Code still applies in the West Bank. There is also provision for the enforceability of judicial rulings and sentences (article 106 of the Basic Law).

1846. The Basic Law grants the Palestinian Legislative Council the power to set up fact-finding committees to inquire into any matter of public concern (art. 58), including human rights and freedoms. ICHR observes that, of the few committees established to address human rights issues, none has found its recommendations or findings translated into criminal prosecutions.¹¹⁷⁹ With few exceptions, it appears that there has been a degree of tolerance towards human rights violations against political opponents, which has resulted in a lack of accountability for such actions.¹¹⁸⁰

1847. The Ministry of Interior has also ignored the High Court's decisions to release a number of detainees or to reopen some associations closed by the administration. The police put in place an internal disciplinary mechanism under which a total of 430 police were sanctioned during 2008. But the Preventive Security agencies and the General Intelligence agencies have not taken any similar measures.¹¹⁸¹

1848. The Mission requested information from the Palestinian Authority about any investigation it had initiated into allegations of violations by members of Palestinian security forces in areas under its jurisdiction. In its reply to the list of questions formulated by the Mission, the Palestinian Authority did not provide any information in this respect. In the circumstances, the Mission is unable to consider the measures taken by the Palestinian Authority as meaningful for holding to account perpetrators of serious violations of international law and believes that the responsibility for protecting the rights of the people inherent in the authority assumed by the Palestinian Authority must be fulfilled with greater commitment.

XXVIII. UNIVERSAL JURISDICTION

1849. In their search for justice, victims of serious violations of human rights have often looked for accountability mechanisms in other countries when there were none at home or the existing ones did not offer an effective remedy. The principle of universality, which says that international crimes that violate fundamental human values are a concern for the entire

¹¹⁷⁹ ICHR, *Fourteenth Annual Report*, p. 182.

¹¹⁸⁰ See chap. XXIII.

¹¹⁸¹ ICHR, *Fourteenth Annual Report*, p. 185.

international community, underpins the exercise of criminal jurisdiction in many States. The exercise of criminal jurisdiction on the basis of the universality principle concerns especially serious crimes regardless of the place of commission, the nationality of the perpetrator or the nationality of the victim. This form of jurisdiction is concurrent with others based on more traditional principles of territoriality, active and passive nationality, and it is not subsidiary to them.

1850. It is uncontroversial today that States may confer upon their courts the right to exercise universal jurisdiction over international crimes, including war crimes, crimes against humanity and genocide.¹¹⁸² However, there is lingering controversy about the conditions or requirements for the exercise of that jurisdiction and, in particular, about whether the alleged perpetrator should be physically in the territory of the prosecuting State or not.

1851. Universal jurisdiction is also established under certain conventions as an obligation for their States parties. Such is the case of the Fourth Geneva Convention, whose article 146 requires each high contracting party “to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches” and to bring such persons, regardless of their nationality, before its own courts.

1852. Article 5 of the Convention against Torture requires States parties to take measures to establish jurisdiction over the offence of torture and of complicity or participation in torture when the alleged offender is in a territory under its jurisdiction.

1853. Many countries around the world incorporate the principle of universal jurisdiction into their national legislation, including Australia, Bangladesh, Belgium, Costa Rica and Spain.

1854. In connection with past events in the Occupied Palestinian Territory, the Mission is aware of one case pending before the Spanish courts. It concerns the killing of Hamas leader Salah Shehadeh on 22 July 2002 by a one-ton bomb fired from an Israeli F-16 aircraft. The strike also killed a number of other people in the same house and in the house next door. The investigating judge admitted the case for investigation on the basis of the universality principle and after determining that the Israeli internal investigation system did not satisfy the requirements of the right to an effective remedy. This decision was overturned by the Appeals Chamber, whose decision is, in turn, being appealed now to the Supreme Court.¹¹⁸³

1855. There are other cases pending before national courts of several European States, such as the Netherlands¹¹⁸⁴ and Norway.¹¹⁸⁵ In South Africa, a request for prosecution is being considered by the National Prosecuting Authority.¹¹⁸⁶

¹¹⁸² See *Customary International Humanitarian Law...*, rule 157, p. 604.

¹¹⁸³ Auto, 4 May 2009, Juzgado Central de Instrucción No. 4, Audiencia Nacional; Auto No. 1/09, 9 July 2009, Sala de lo Penal Pleno, Audiencia Nacional.

¹¹⁸⁴ PCHR, “Torture victim seeks prosecution of former head of Israeli general security services”, press release, 6 October 2008, available at <http://www.pchrgaza.org/files/PressR/English/2008/92-2008.html>. This case is brought under articles 6 and 7 of the Convention against Torture.

1856. Criminal investigations and prosecutions by countries other than Israel are possible on the basis of the principle of nationality of the offender. Several countries provide their courts with jurisdiction over their own nationals regardless of the place where the offence has been committed. For instance, article 5 of the Convention against Torture requires States parties to establish jurisdiction over offences defined in it when the offender is a national.

1857. It is the view of the Mission that universal jurisdiction is a potentially efficient tool for enforcing international humanitarian law and international human rights law, preventing impunity and promoting international accountability. In the context of increasing unwillingness on the part of Israel to open criminal investigations that comply with international standards and establish judicial accountability over its military actions in the Occupied Palestinian Territory, and until such a time as clarity is achieved as to whether the International Criminal Court will exercise jurisdiction over alleged crimes committed in the Occupied Palestinian Territory, including in Gaza, the Mission supports the reliance on universal jurisdiction as an avenue for States to investigate violations of grave breach provisions of the Geneva Convention of 1949, prevent impunity and promote international accountability.

XXIX. REPARATION

1858. The extent of the damage and destruction inflicted on Palestinian lives and property, and on Palestinian civilian objects has been substantial. The Palestinian Authority estimated the total cost of early recovery and reconstruction at US\$ 1,326 million in March 2009.¹¹⁸⁷ To this amount should be added the indirect costs of the impact on human and animal health, the environment and market opportunities. These losses are still to be estimated.

1859. The international community, bilateral donors and multilateral agencies (including the United Nations specialized agencies, programmes and funds) have been responsive to the urgent needs of the Palestinian people in the Gaza Strip. A number of development NGOs operating in the Gaza Strip have redoubled their efforts. The Gaza Flash Appeal 2009,¹¹⁸⁸ prepared by aid agencies operating in the Gaza Strip, called for US\$ 613 million to meet the requirements of urgent life-saving projects and initial crucial repairs to infrastructure over a period of nine months. By the middle of 2009 only a fraction of those requirements had been met. The United Nations Resident/Humanitarian Coordinator in the Occupied Palestinian Territory has said that although donor countries had pledged billions of dollars for Gaza's reconstruction, it cannot begin because of the ongoing Israeli blockade.¹¹⁸⁹ In addition, some international donors are

¹¹⁸⁵ Spiegel Online International, "War crimes in Gaza? Palestinian lawyers take on Israel", 6 May 2009, available at: <http://www.spiegel.de/international/world/0,1518,628773,00.html>. Lawyers in Norway are seeking an arrest warrant against several senior Israeli officials.

¹¹⁸⁶ The request, against more than 70 persons, was submitted by civil society organizations under a South African law which gives effect to the Rome Statute and makes the prosecution of war crimes and crimes against humanity a legal obligation.

¹¹⁸⁷ *Palestinian National Early Recovery and Reconstruction Plan...*, p. 11.

¹¹⁸⁸ Occupied Palestinian Territory: Gaza Flash Appeal, Consolidated Appeal Process, 2009.

¹¹⁸⁹ United Nations News Centre, "Unresolved Gaza crisis hampering efforts to advance Mid-East peace – UN envoy", 23 June 2009.

reluctant to disburse funds in the current climate of uncertainty created by the rift between the two rival Palestinian political groups in Gaza and the West Bank.¹¹⁹⁰

1860. Notwithstanding the response by the Palestinian Authority and the international community to the crisis resulting from the combined effect of the blockade and the military operations of December 2008–January 2009, the Mission is more concerned about the individuals (women, men, children and the elderly) and their families, and their ability to rebuild their lives after this traumatic experience. The Mission is conscious that rebuilding Palestinian lives and livelihoods will not be fully possible until the effects of the occupation, the blockade and successive military incursions are eliminated. One should not lose sight, however, of the individual human dimension. That dimension flows from the right to a remedy and reparation that the Palestinian people and individual Palestinians have under international law. Palestinian lives, physical integrity and health have been affected, in many cases very seriously and irreparably. In addition to the loss of life and limb, considerable mental harm has been inflicted on many people who have lost relatives and often financial support. The psychological harm caused to the Palestinians in Gaza is still to be assessed and also requires reparation measures; so, too, the destruction of houses and private property.

A. The right to a remedy and reparation under international

1861. The obligation to make full reparation for the loss or injury caused is an international obligation incumbent upon a State responsible for an unlawful act. International law also recognizes victims' rights to an effective remedy and reparations for damage or loss resulting from violations of their human rights. This obligation and these rights are recognized in international treaties and customary international law.

1862. As early as 1927, the Permanent Court of International Justice established the provision of reparation for the injury caused by an international wrongful act as a principle of international law: "Reparation therefore is the indispensable complement of a failure to apply a convention and there is no necessity for this to be stated in the convention itself".¹¹⁹¹

1863. This principle was codified by the International Law Commission in article 31 of its draft articles on responsibility of States for internationally wrongful acts.¹¹⁹²

1864. The principle that a State responsible for breaching an international obligation should repair the damage or loss caused can also be found in international humanitarian law conventions and human rights treaties. These include article 3 of the 1907 Fourth Hague Convention, article 51 of the First Geneva Convention, article 52 of the Second Geneva Convention, article 131 of the Third Geneva Convention and article 148 of the Fourth Geneva Convention. A similar rule is provided for in article 91 of Additional Protocol I to the Geneva Conventions.

¹¹⁹⁰ *The New York Times*, "Makeshift repairs not enough for battered Gaza", 17 August 2009.

¹¹⁹¹ *Chorzów Factory case*, 1927, P.C.I.J. (Ser. A) No. 9, p. 21.

¹¹⁹² General Assembly resolution 56/83, annex; see also *Customary International Humanitarian Law...*, rule 150, p. 537.

1865. Reparation as part of the right to a remedy has been enshrined in article 2 (3) of ICCPR, article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination, article 14 of the Convention against Torture and article 39 of the Convention on the Rights of the Child. The Rome Statute also provides for the right of victims to participation in the proceedings (art. 68 (3)) and to reparations (art. 75).¹¹⁹³

1866. Reparation can take the form of restitution, compensation or satisfaction, but may also include measures of rehabilitation of victims and guarantees of non-repetition.¹¹⁹⁴

B. Compensation and reparations to the Palestinian people in the Gaza Strip

1867. According to news reports, UNDP and the Palestinian Authority signed an agreement allocating US\$ 270 million for the restoration of the agricultural sector in Gaza. This will allow for the payment of a compensation package to Palestinian farmers for property damaged during the most recent military operations in Gaza, repair of the damaged infrastructure, damaged orchards, fisheries, livestock, greenhouses, irrigation networks and roads.¹¹⁹⁵ Cash assistance was also to be provided to some 10,000 non-refugee Palestinians whose houses have been destroyed or damaged.¹¹⁹⁶ While in Gaza City, the Mission learnt that such compensation schemes were being implemented.

1868. These assistance and compensation schemes notwithstanding, the Mission is of the view that international law requires the State responsible for the internationally wrongful act to provide reparation and compensation to the victim. To the Mission's knowledge, Israel has to date considered compensation to be paid only to the United Nations for the damage inflicted on United Nations personnel and facilities, without acknowledging responsibility.¹¹⁹⁷ At the very least, similar compensation should be offered to Palestinian individuals.

1869. In its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice affirmed that "Israel has the

¹¹⁹³ See also principle 11 of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law (General Assembly resolution 60/147):

Remedies for gross violations of international human rights law and serious violations of international humanitarian law include the victim's right to the following as provided for under international law:

- (a) Equal and effective access to justice;
- (b) Adequate, effective and prompt reparation for harm suffered;
- (c) Access to relevant information concerning violations and reparation mechanisms.

¹¹⁹⁴ See article 34 of the draft articles on responsibility of States for internationally wrongful acts. Rehabilitation and guarantees of non-repetition are listed as forms of reparation in the above-mentioned Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.

¹¹⁹⁵ UNDP, "Farmers to receive compensation for damaged property in Gaza", news release, 26 February 2009.

¹¹⁹⁶ UNDP, "10,000 families in Gaza to receive cash assistance for damaged homes", news release, 10 February 2009.

¹¹⁹⁷ Agence France-Presse, "Israel offering compensation for UN Gaza damage: official", 3 July 2009.

obligation to make reparation for the damage caused to all natural and legal persons concerned.”¹¹⁹⁸ The United Nations has established the United Nations Registry of Damages, which collects data on damage caused to Palestinians by the construction of the Wall.¹¹⁹⁹ Domestic law of Israel would be one vehicle to make possible reparations for affected Palestinians.

1870. The possibilities for obtaining reparation and compensation in the Israeli legal system have been limited. A 2001 amendment to the Civil Wrongs Act extended the definition of “acts of war” and set procedural limitations on Palestinians’ ability to bring claims against Israel. These limitations include the shortening of the period before the statute of limitations applies and the requirement to submit a “notice” of damage to the Israeli Defense Minister in advance of the claim and within two months after the damage occurred.¹²⁰⁰ Additional amendments passed in 2002 and 2005 prevent the courts from hearing claims relating to actions by security forces in “conflict zones” proclaimed as such by the Minister of Defense, and give immunity to the State against claims by subjects of enemy States or members of “terrorist organizations”.¹²⁰¹ Under the last two amendments the character of the harmful act, the circumstances under which harm was suffered and the causality link between the perpetrator and the harm have become irrelevant. The Mission received information that the amendments allowed the Minister of Defense to declare areas in the Occupied Palestinian Territory as “conflict zones” retroactively.

1871. The 2005 amendment No. 7 was challenged before the Supreme Court of Israel, which ruled in 2006 that section 5C of the Civil Wrongs Law (as amended in 2005) was not constitutional. Therefore, the provision that makes Israel immune from civil liability for acts of security forces in declared “zones of conflict” was struck down. However, the ruling did not pronounce on the constitutionality of section 5B of the Law, which grants immunity to the State against civil claims brought by subjects of a State enemy of Israel and persons active in or members of a terrorist organization.¹²⁰² At the same time, other amendments passed prior to 2005 have not been challenged and stand as law in force in the land.

1872. The Mission is concerned that the possibilities for civil compensation for damage and loss of property suffered by Palestinians during military operations are limited in Israeli domestic law since that damage is generally seen as the result of “acts of war” regardless of the nature of the action. In a recent decision concerning a claim on behalf of a Palestinian killed by helicopter fire on 16 April 2002 during the so-called Operation Defensive Shield, in Nablus, the Court ruled that this was an “act of war” designed to “vanquish the terrorist infrastructure”. The Jerusalem Magistrate’s Court held that an air strike is clearly an act of war “that the legislator intended to

¹¹⁹⁸ *Legal Consequences ...*, para. 152.

¹¹⁹⁹ Its mandate is limited to the registration of the damage or loss suffered as a result of the construction of the Wall in the Occupied Palestinian Territory.

¹²⁰⁰ Civil Wrongs (Liability of the State) (Amendment – Claims Arising from Activity of Security Forces in Judea and Samaria and the Gaza Strip) Law, 2001, sections 2 and 3, available at: www.hamoked.org.il.

¹²⁰¹ Civil Wrongs (Liability of the State) (Amendment No. 5) (Filing of Claims against the State by a Subject of an Enemy State or Resident of a Zone of Conflict) Law, 2002, and Civil Wrongs (Liability of the State) (Amendment No. 7) Law, 2005, sections 5B and 5C.

¹²⁰² *Adalah et al. v. Minister of Defense et al.*, case No. 8276/05, Judgement of 12 December 2006.

make immune to prosecution” even when the plaintiffs showed that the victim was a civilian standing on the roof of his house.¹²⁰³

1873. It is the view of the Mission that the current constitutional structure and legislation in Israel leaves very little room, if any, for Palestinians to seek compensation. The international community needs to provide an additional or alternative mechanism of compensation by Israel for damage or loss incurred by Palestinian civilians during the military operations. In this regard, the Mission notes that the International Commission of Inquiry on Darfur and the Commission of Inquiry on Lebanon expressed similar concerns about the need for compensation for the victims.¹²⁰⁴

¹²⁰³ *Odah et al. v. The State of Israel*, case No. C/007798/04, Judgement of June 2009 not yet reported.

¹²⁰⁴ “Report of the International Commission of Inquiry on Darfur to the United Nations Secretary-general, pursuant to Security Council resolution 1564 of 18 September 2004”, para. 601; “Report of the Commission of Inquiry on Lebanon pursuant to Human Rights Council resolution S-2/1” (A/HRC/3/2, para. 349).

PART FIVE: CONCLUSIONS AND RECOMMENDATIONS

XXX. CONCLUSIONS

A. Concluding observations

1874. **An objective assessment of the events it investigated and their causes and context is crucial for the success of any effort to achieve justice for victims of violations and peace and security in the region, and as such is in the interest of all concerned and affected by this situation, including the parties to the continuing hostilities. It is in this spirit, and with full appreciation of the complexity of its task, that the Mission received and implemented its mandate.**

1875. **The international community as well as Israel and, to the extent determined by their authority and means, Palestinian authorities, have the responsibility to protect victims of violations and ensure that they do not continue to suffer the scourge of war or the oppression and humiliations of occupation or indiscriminate rocket attacks. People of Palestine have the right to freely determine their own political and economic system, including the right to resist forcible deprivation of their right to self-determination and the right to live, in peace and freedom, in their own State. The people of Israel have the right to live in peace and security. Both peoples are entitled to justice in accordance with international law.**

1876. **In carrying out its mandate, the Mission had regard, as its only guides, for general international law, international human rights and humanitarian law, and the obligations they place on States, the obligations they place on non-State actors and, above all, the rights and entitlements they bestow on individuals. This in no way implies equating the position of Israel as the occupying Power with that of the occupied Palestinian population or entities representing it. The differences with regard to the power and capacity to inflict harm or to protect, including by securing justice when violations occur, are obvious and a comparison is neither possible nor necessary. What requires equal attention and effort, however, is the protection of all victims in accordance with international law.**

B. **The Israeli military operations in Gaza: relevance to and links with Israel's policies vis-à-vis the Occupied Palestinian Territory**

1877. **The Mission is of the view that Israel's military operation in Gaza between 27 December 2008 and 18 January 2009 and its impact cannot be understood or assessed in isolation from developments prior and subsequent to it. The operation fits into a continuum of policies aimed at pursuing Israel's political objectives with regard to Gaza and the Occupied Palestinian Territory as a whole. Many such policies are based on or result in violations of international human rights and humanitarian law. Military objectives as stated by the Government of Israel do not explain the facts ascertained by the Mission, nor are they congruous with the patterns identified by the Mission during the investigation.**

1878. **The continuum is evident most immediately with the policy of blockade that preceded the operations and that in the Mission's view amounts to collective punishment**

intentionally inflicted by the Government of Israel on the people of the Gaza Strip. When the operations began, the Gaza Strip had been under a severe regime of closures and restrictions on the movement of people, goods and services for almost three years. This included basic necessities of life, such as food and medical supplies, and products required for the conduct of daily life, such as fuel, electricity, school items, and repair and construction material. These measures were imposed by Israel purportedly to isolate and weaken Hamas after its electoral victory in view of the perceived continuing threat to Israel's security that it represented. Their effect was compounded by the withholding of financial and other assistance by some donors on similar grounds. Adding hardship to the already difficult situation in the Gaza Strip, the effects of the prolonged blockade did not spare any aspect of the life of Gazans. Prior to the military operation, the Gaza economy had been depleted, the health sector beleaguered, the population had been made dependent on humanitarian assistance for survival and the conduct of daily life. Men, women and children were psychologically suffering from long-standing poverty, insecurity and violence, and enforced confinement in a heavily overcrowded territory. The dignity of the people of Gaza had been severely eroded. This was the situation in the Gaza Strip when the Israeli armed forces launched their offensive in December 2008. The military operations and the manner in which they were conducted considerably exacerbated the aforementioned effects of the blockade. The result, in a very short time, was unprecedented long-term damage both to the people and to their development and recovery prospects.

1879. An analysis of the modalities and impact of the December-January military operations also sets them, in the Mission's view, in a continuum with a number of other pre-existing Israeli policies with regard to the Occupied Palestinian Territory. The progressive isolation and separation of the Gaza Strip from the West Bank, a policy that began much earlier and which was consolidated in particular with the imposition of tight closures, restrictions on movement and eventually the blockade, are among the most apparent. Several measures adopted by Israel in the West Bank during and following the military operations in Gaza also further deepen Israel's control over the West Bank, including East Jerusalem, and point to a convergence of objectives with the Gaza military operations. Such measures include increased land expropriation, house demolitions, demolition orders and permits to build homes in settlements, greater and more formalized access and movement restrictions on Palestinians, new and stricter procedures for residents of the Gaza Strip to change their residency to the West Bank. Systematic efforts to hinder and control Palestinian self-determined democratic processes, not least through the detention of elected political representatives and members of Government and the punishment of the Gaza population for its perceived support for Hamas, culminated in the attacks on government buildings during the Gaza offensive, most prominently the Palestinian Legislative Council. The cumulative impact of these policies and actions make prospects for political and economic integration between Gaza and the West Bank more remote.

C. Nature, objectives and targets of the Israeli military operations in Gaza

1880. Both Palestinians and Israelis whom the Mission met repeatedly stressed that the military operations carried out by Israel in Gaza from 27 December 2008 until 18 January 2009 were qualitatively different from any previous military action by Israel in the Occupied Palestinian Territory. Despite the hard conditions that have long been prevailing

in the Gaza Strip, victims and long-time observers stated that the operations were unprecedented in their severity and that their consequences would be long-lasting.

1881. When the Mission conducted its first visit to the Gaza Strip in early June 2009, almost five months had passed since the end of the Israeli military operations. The devastating effects of the operations on the population were, however, unequivocally manifest. In addition to the visible destruction of houses, factories, wells, schools, hospitals, police stations and other public buildings, the sight of families, including the elderly and children, still living amid the rubble of their former dwellings – no reconstruction possible due to the continuing blockade – was evidence of the protracted impact of the operations on the living conditions of the Gaza population. Reports of the trauma suffered during the attacks, the stress due to the uncertainty about the future, the hardship of life and the fear of further attacks, pointed to less tangible but not less real long-term effects.

1882. Women were affected in significant ways. Their situation must be given specific attention in any effort to address the consequences of the blockade, of the continuing occupation and of the latest Israeli military operations.

1883. The Gaza military operations were, according to the Israeli Government, thoroughly and extensively planned. While the Israeli Government has sought to portray its operations as essentially a response to rocket attacks in the exercise of its right to self-defence, the Mission considers the plan to have been directed, at least in part, at a different target: the people of Gaza as a whole.

1884. In this respect, the operations were in furtherance of an overall policy aimed at punishing the Gaza population for its resilience and for its apparent support for Hamas, and possibly with the intent of forcing a change in such support. The Mission considers this position to be firmly based in fact, bearing in mind what it saw and heard on the ground, what it read in the accounts of soldiers who served in the campaign, and what it heard and read from current and former military officers and political leaders whom the Mission considers to be representative of the thinking that informed the policy and strategy of the military operations.

1885. The Mission recognizes that the principal focus in the aftermath of military operations will often be on the people who have been killed – more than 1,400 in just three weeks. This is rightly so. Part of the functions of reports such as this is to attempt, albeit in a very small way, to restore the dignity of those whose rights have been violated in the most fundamental way of all – the arbitrary deprivation of life. It is important that the international community asserts formally and unequivocally that such violence to the most basic fundamental rights and freedoms of individuals should not be overlooked and should be condemned.

1886. In this respect, the Mission recognizes that not all deaths constitute violations of international humanitarian law. The principle of proportionality acknowledges that, under certain strict conditions, actions resulting in the loss of civilian life may not be unlawful. What makes the application and assessment of proportionality difficult in respect of many of the events investigated by the Mission is that deeds by the Israeli armed forces and words of military and political leaders prior to and during the operations indicate that, as a

whole, they were premised on a deliberate policy of disproportionate force aimed not at the enemy but at the “supporting infrastructure.” In practice, this appears to have meant the civilian population.

1887. The timing of the first Israeli attack, at 11.30 a.m. on a weekday, when children were returning from school and the streets of Gaza were crowded with people going about their daily business, appears to have been calculated to create the greatest disruption and widespread panic among the civilian population. The treatment of many civilians detained or even killed while trying to surrender is one manifestation of the way in which the effective rules of engagement, standard operating procedures and instructions to the troops on the ground appear to have been framed in order to create an environment in which due regard for civilian lives and basic human dignity was replaced with disregard for basic international humanitarian law and human rights norms.

1888. The Mission recognizes fully that the Israeli armed forces, like any army attempting to act within the parameters of international law, must avoid taking undue risks with their soldiers’ lives, but neither can they transfer that risk onto the lives of civilian men, women and children. The fundamental principles of distinction and proportionality apply on the battlefield, whether that battlefield is a built-up urban area or an open field.

1889. The repeated failure to distinguish between combatants and civilians appears to the Mission to have been the result of deliberate guidance issued to soldiers, as described by some of them, and not the result of occasional lapses.

1890. The Mission recognizes that some of those killed were combatants directly engaged in hostilities against Israel, but many were not. The outcome and the modalities of the operations indicate, in the Mission’s view, that they were only partially aimed at killing leaders and members of Hamas, al-Qassam Brigades and other armed groups. They were also to a large degree aimed at destroying or incapacitating civilian property and the means of subsistence of the civilian population.

1891. It is clear from evidence gathered by the Mission that the destruction of food supply installations, water sanitation systems, concrete factories and residential houses was the result of a deliberate and systematic policy by the Israeli armed forces. It was not carried out because those objects presented a military threat or opportunity, but to make the daily process of living, and dignified living, more difficult for the civilian population.

1892. Allied to the systematic destruction of the economic capacity of the Gaza Strip, there appears also to have been an assault on the dignity of the people. This was seen not only in the use of human shields and unlawful detentions sometimes in unacceptable conditions, but also in the vandalizing of houses when occupied and the way in which people were treated when their houses were entered. The graffiti on the walls, the obscenities and often racist slogans, all constituted an overall image of humiliation and dehumanization of the Palestinian population.

1893. The operations were carefully planned in all their phases. Legal opinions and advice were given throughout the planning stages and at certain operational levels during the campaign. There were almost no mistakes made according to the Government of Israel. It

is in these circumstances that the Mission concludes that what occurred in just over three weeks at the end of 2008 and the beginning of 2009 was a deliberately disproportionate attack designed to punish, humiliate and terrorize a civilian population, radically diminish its local economic capacity both to work and to provide for itself, and to force upon it an ever increasing sense of dependency and vulnerability.

1894. The Mission has noted with concern public statements by Israeli officials, including senior military officials, to the effect that the use of disproportionate force, attacks on civilian population and the destruction of civilian property are legitimate means to achieve Israel's military and political objectives. The Mission believes that such statements not only undermine the entire regime of international law, they are inconsistent with the spirit of the Charter of the United Nations and, therefore, deserve to be categorically denounced.

1895. Whatever violations of international humanitarian and human rights law may have been committed, the systematic and deliberate nature of the activities described in this report leave the Mission in no doubt that responsibility lies in the first place with those who designed, planned, ordered and oversaw the operations.

D. Occupation, resilience and civil society

1896. The accounts of more severe violence during the recent military operations did not obscure the fact that the concept of "normalcy" in the Gaza Strip has long been redefined owing to the protracted situation of abuse and lack of protection deriving from the decades-long occupation.

1897. As the Mission focused on investigating and analysing the specific matters within its mandate, Israel's continuing occupation of the Gaza Strip and the West Bank emerged as the fundamental factor underlying violations of international humanitarian and human rights law against the protected population and undermining prospects for development and peace. Israel's failure to acknowledge and exercise its responsibilities as the occupying Power further exacerbated the effects of occupation on the Palestinian people, and continue to do so. Furthermore, the harsh and unlawful practices of occupation, far from quelling resistance, breed it, including its violent manifestations. The Mission is of the view that ending occupation is a prerequisite for the return of a dignified life for Palestinians, as well as development and a peaceful solution to the conflict.

1898. The Mission was struck by the resilience and dignity shown by people in the face of dire circumstances. UNRWA Director of Operations, John Ging, relayed to the Mission the answer of a Gaza teacher during a discussion after the end of the Israeli military operations about strengthening human rights education in schools. Rather than expressing scepticism at the relevance of teaching human rights in a context of renewed denial of rights, the teacher unhesitatingly supported the resumption of human rights education: "This is a war of values, and we are not going to lose it".

1899. The assiduous work of Palestinian non-governmental and civil society organizations in providing support to the population in such extreme circumstances, and in giving voice to the suffering and expectations of victims of violations deserves to be fully acknowledged. Their role in helping to sustain the resilience and dignity of the population cannot be

overstated. The Mission heard many accounts of NGO workers, doctors, ambulance drivers, journalists, human rights monitors, who, at the height of the military operations, risked their lives to be of service to people in need. They frequently relayed the anxiety of having to choose between remaining close to their own families or continuing to work to assist others in need, thereby often being cut off from news about the safety or whereabouts of family members. The Mission wishes to pay tribute to the courage and work of the numerous individuals who so contributed to alleviating the suffering of the population and to report on the events in Gaza.

E. Rocket and mortar attacks in Israel

1900. Palestinian armed groups have launched thousands of rockets and mortars into Israel since April 2001. These have succeeded in causing terror within Israel's civilian population, as evidenced by the high rates of psychological trauma within the affected communities. The attacks have also led to an erosion of the social, cultural and economic lives of the communities in southern Israel, and have affected the rights to education of the tens of thousands of children and young adults who attend classes in the affected areas.

1901. Between 27 December 2008 and 18 January 2009, these attacks left four people dead and hundreds injured. That there have not been more casualties is due to a combination of luck and measures taken by the Israeli Government, including the fortification of public buildings, the construction of shelters and, in times of escalated hostilities, the closure of schools.

1902. The Mission notes, with concern, that Israel has not provided the same level of protection from rockets and mortars to affected Palestinian citizens as it has to Jewish citizens. In particular, it has failed to provide public shelters or fortification of schools, for example, to the Palestinian communities living in the unrecognized villages and some of the recognized villages. It ought to go without saying that the thousands of Palestinian Israelis—including a significant number of children – who live within the range of rocket fire, deserve the same protection as the Israeli Government provides to its Jewish citizens.

F. Dissenting voices in Israel

1903. While the Israeli military offensive in Gaza was widely supported by the Israeli public, there were also dissenting voices, which expressed themselves through demonstrations, protests, as well as public reporting on Israel's conduct. The Mission is of the view that actions of the Israeli Government during and following the military operations in the Gaza Strip, including interrogation of political activists, repression of criticism and sources of potential criticism of Israeli military actions, in particular NGOs, have contributed significantly to a political climate in which dissent with the Government and its actions in the Occupied Palestinian Territory is not tolerated. The denial of media access to Gaza and the continuing denial of access to human rights monitors are, in the Mission's view, an attempt both to remove the Government's actions in the Occupied Palestinian Territory from public scrutiny and to impede investigations and reporting of the conduct of the parties to the conflict in the Gaza Strip.

1904. In this context of increased intolerance for dissenting opinions in Israel, the Mission wishes to acknowledge the difficult work of NGOs in Israel, which courageously continue to express criticism of Government action that violates international human rights and humanitarian law. The work of these organizations is essential not only to ensure independent information to the Israeli and international public, but also to encourage a facts-based debate about these issues within Israeli society.

G. The impact of dehumanization

1905. As in many conflicts, one of the features of the Palestinian-Israeli conflict is the dehumanization of the other, and of victims in particular. Palestinian psychiatrist Dr. Iyad al-Sarraj explained the cycle of aggression and victimization through which “the Palestinian in the eyes of the Israeli soldier is not an equal human being. Sometimes [...] even becomes a demon [...]” This “culture of demonization and dehumanization” adds to a state of paranoia. “Paranoia has two sides, the side of victimization, I am a victim of this world, the whole world is against me and on the other side, I am superior to this world and I can oppress it. This leads to what is called the arrogance of power.” As Palestinians, “we look in general to the Israelis as demons and that we can hate them, that what we do is a reaction, and we say that the Israelis can only understand the language of power. The same thing that we say about the Israelis they say about us, that we only understand the language of violence or force. There we see the arrogance of power and [the Israeli] uses it without thinking of humanity at all. In my view we are seeing not only a state of war but also a state that is cultural and psychological and I hope, I wish that the Israelis would start, and there are many, many Jews in the world and in Israel that look into themselves, have an insight that would make them, alleviate the fear that they have because there’s a state of fear in Israel, in spite of all the power, and that they would start to walk on the road of dealing with the consequences of their own victimization and to start dealing with the Palestinian as a human being, a full human being who’s equal in rights with the Israeli and also the other way around, the Palestinian must deal with himself, must respect himself and respect his own differences in order to be able to stand before the Israeli also as a full human being with equal rights and obligations. This is the real road for justice and for peace.”

1906. Israeli college teacher Ofer Shinar offered a similar analysis: “Israeli society’s problem is that, because of the conflict, Israeli society feels itself to be a victim and to a large extent that’s justified and it’s very difficult for Israeli society to move and to feel that it can also see the other side and to understand that the other side is also a victim. This I think is the greatest tragedy of the conflict and it’s terribly difficult to overcome it [...] I think that the initiative that you’ve taken in listening to [...] people [...] is very important. The message that you’re giving Israeli society is absolutely unambiguous that you are impartial that you should be able to see that the feeling of being a victim is something that characterizes both sides. What requires you to take this responsibility is the fact that you have to understand how difficult it is to get this message through to Israeli society, how closed the Israeli society is, how difficult it is for Israeli society to understand that the other side is not just the party which is infringing our own human rights, but how they are having their human rights infringed, how they are suffering as well.”

1907. **The Mission, in fulfilling its mandate to investigate alleged violations of international law that occurred in the context of the December 2008 – January 2009 military operations in Gaza, spoke predominantly to those most affected by the most recent events in a conflict that has spanned decades. As may be expected, the Mission found societies scarred by living in conflict with significant psychological trauma stemming from a life that may rightly seem to those living in more peaceful countries to be unbearable.**

1908. **Both the Palestinians and the Israelis are legitimately angered at the lives that they are forced to lead. For the Palestinians, the anger about individual events – the civilian casualties, injuries and destruction in Gaza following from military attacks, the blockade, the continued construction of the Wall outside of the 1967 borders – feed into an underlying anger about the continuing Israeli occupation, its daily humiliations and their as-yet-unfulfilled right to self-determination. For the Israelis, the public statements of Palestinian armed groups celebrating rocket and mortar attacks on civilians strengthen a deep-rooted concern that negotiation will yield little and that their nation remains under existential threat from which only it can protect its people. In this way, both the Israelis and the Palestinians share a secret fear – for some, a belief – that each has no intention of accepting the other’s right to a country of their own. This anger and fear are unfortunately ably represented by many politicians.**

1909. **Some Israelis pointed out to the Mission that policies of the Israeli Government relating to the isolation of the Gaza Strip and the tighter restrictions on the movement of Palestinians within the Occupied Palestinian Territory and between the Occupied Palestinian Territory and Israel, have contributed to increasing the distance between Palestinians and Israelis, reducing the opportunities to interact other than in situations of control and coercion such as checkpoints and military posts.**

1910. **In this context, the Mission was encouraged by reports of exchange and cooperation between Palestinians and Israelis, for example with regard to mental health specialists working with Palestinians from Gaza and southern Israel’s communities, and with regard to cooperation between Magen David Adom and the Palestinian Red Crescent Society, especially in the West Bank, as they fulfil a shared commitment to providing humanitarian assistance to the communities in which they work, regardless of the ethnicity of the patient who lies before them.**

H. The intra-Palestinian situation

1911. **The division and violence between Fatah and Hamas, which culminated in the establishment of parallel governance entities and structures in the Gaza Strip and the West Bank, is having adverse consequences for the human rights of the Palestinian population in both areas, as well as contributing to erode the rule of law in the Occupied Palestinian Territory in addition to the threats already linked to foreign occupation. Even with the narrow focus of the Mission on violations relevant to the context of the December-January military operations, the diminishing protections for Palestinians are evident from the cases of arbitrary deprivation of life, arbitrary detention of political activists or sympathizers, limitations on freedom of expression and association, and abuses by security forces. The situation is compounded by the ever reducing role of the judiciary in ensuring the rule of law and legal remedies for violations. A resolution of the internal divisions based on the**

free will and decisions of Palestinians and without external interference would strengthen the ability of Palestinian authorities and institutions to protect the rights of the people under their responsibility.

I. The need for protection and the role of the international community

1912. International law sets obligations on States not only to respect but also to ensure respect for international humanitarian law. The International Court of Justice stated in its Advisory Opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* that “all States parties to the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 have in addition the obligation, while respecting the United Nations Charter and international law, to ensure compliance by Israel with international humanitarian law as embodied in that Convention”.

1913. The 2005 World Summit Outcome document recognized that the international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help protect populations from, inter alia, war crimes and crimes against humanity. The document stressed that the Members of the United Nations are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In 2009, the Secretary-General, in his report on implementing the responsibility to protect, noted that the enumeration of these crimes did not “detract in any way from the much broader range of obligations existing under international humanitarian law, international human rights law, refugee law and international criminal law.”

1914. After decades of sustained conflict, the level of threat to which both Palestinians and Israelis are subjected has not abated, but if anything increased with continued escalations of violence, death and suffering for the civilian population, of which the December-January military operations in Gaza are only the most recent occurrence. Israel is therefore also failing to protect its own citizens by refusing to acknowledge the futility of resorting to violent means and military power.

1915. Israeli incursions and military actions in the Gaza Strip did not stop after the end of the military operations of December – January.

1916. The Security Council has placed the protection of civilian populations on its agenda as a regular item, recognizing it as a matter falling within its responsibility. The Mission notes that the international community has been largely silent and has to date failed to act to ensure the protection of the civilian population in the Gaza Strip and generally the Occupied Palestinian Territory. Suffice it to notice the lack of adequate reaction to the blockade and its consequences, to the Gaza military operations and, in their aftermath, to the continuing obstacles to reconstruction. The Mission also considers that the isolation of the Gaza authorities and the sanctions against the Gaza Strip have had a negative impact on the protection of the population. Immediate action to enable reconstruction in Gaza is

no doubt required. However, it also needs to be accompanied by a firmer and principled stance by the international community on violations of international humanitarian and human rights law and long delayed action to end them. Protection of civilian populations requires respect for international law and accountability for violations. When the international community does not live up to its own legal standards, the threat to the international rule of law is obvious and potentially far-reaching in its consequences.

1917. The Mission acknowledges and emphasizes the impressive and essential role played by the staff of the numerous United Nations agencies and bodies working to assist the population of the Occupied Palestinian Territory in all aspects of daily life. An additional disturbing feature of the December-January military operations was the disregard in several incidents, some of which are documented in this report, for the inviolability of United Nations premises, facilities and staff. It ought to go without saying that attacks on the United Nations are unacceptable and undermine its ability to fulfil its protection and assistance role vis-à-vis a population that so badly needs it.

J. Summary of legal findings

1918. Detailed legal findings by the Mission are included in each of the chapters of the report where specific facts and events are analysed. The following is a summary of those findings.

1. Actions by Israel in Gaza in the context of the military operations of 27 December 2008 to 18 January 2009

(a) Precautions in launching attacks

1919. The Mission finds that in a number of cases Israel failed to take feasible precautions required by customary law reflected in article 57 (2) (a) (ii) of Additional Protocol I to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. The firing of white phosphorus shells over the UNRWA compound in Gaza City is one of such cases in which precautions were not taken in the choice of weapons and methods in the attack, and these facts were compounded by reckless disregard for the consequences. The intentional strike at al-Quds hospital using high-explosive artillery shells and white phosphorous in and around the hospital also violated articles 18 and 19 of the Fourth Geneva Convention. With regard to the attack against al-Wafa hospital, the Mission found a violation of the same provisions, as well as a violation of the customary law prohibition against attacks which may be expected to cause excessive damage to civilians and civilian objects.

1920. The Mission finds that the different kinds of warnings issued by Israel in Gaza cannot be considered as sufficiently effective in the circumstances to comply with customary law as reflected in Additional Protocol I, article 57 (2) (c). While some of the leaflet warnings were specific in nature, the Mission does not consider that general messages telling people to leave wherever they were and go to city centres, in the particular circumstances of the military campaign, meet the threshold of effectiveness. Firing missiles into or on top of buildings as a “warning” is essentially a dangerous practice and a form of attack rather than a warning.

(b) Incidents involving the killing of civilians

1921. The Mission found numerous instances of deliberate attacks on civilians and civilian objects (individuals, whole families, houses, mosques) in violation of the fundamental international humanitarian law principle of distinction, resulting in deaths and serious injuries. In these cases the Mission found that the protected status of civilians was not respected and the attacks were intentional, in clear violation of customary law reflected in article 51 (2) and 75 of Additional Protocol I, article 27 of the Fourth Geneva Convention and articles 6 and 7 of the International Covenant on Civil and Political Rights. In some cases the Mission additionally concluded that the attack was also launched with the intention of spreading terror among the civilian population. Moreover, in several of the incidents investigated, the Israeli armed forces not only did not use their best efforts to permit humanitarian organizations access to the wounded and medical relief, as required by customary international law reflected in article 10 (2) of Additional Protocol I, but they arbitrarily withheld such access.

1922. With regard to one incident investigated, involving the death of at least 35 Palestinians, the Mission finds that the Israeli armed forces launched an attack which a reasonable commander would have expected to cause excessive loss of civilian life in relation to the military advantage sought, in violation of customary international humanitarian law as reflected in Additional Protocol I, articles 57 (2) (a) (ii) and (iii). The Mission finds a violation of the right to life (ICCPR, article 6) of the civilians killed in this incident.

1923. The Mission also concludes that Israel, by deliberately attacking police stations and killing large numbers of policemen (99 in the incidents investigated by the Mission) during the first minutes of the military operations, failed to respect the principle of proportionality between the military advantage anticipated by killing some policemen who might have been members of Palestinian armed groups and the loss of civilian life (the majority of policemen and members of the public present in the police stations or nearby during the attack). Therefore, these were disproportionate attacks in violation of customary international law. The Mission finds a violation of the right to life (ICCPR, article 6) of the policemen killed in these attacks who were not members of Palestinian armed groups.

(c) Certain weapons used by the Israeli armed forces

1924. In relation to the weapons used by the Israeli armed forces during military operations, the Mission accepts that white phosphorous, flechettes and heavy metal (such as tungsten) are not currently proscribed under international law. Their use is, however, restricted or even prohibited in certain circumstances by virtue of the principles of proportionality and precautions necessary in the attack. Flechettes, as an area weapon, are particularly unsuitable for use in urban settings, while, in the Mission's view, the use of white phosphorous as an obscurant at least should be banned because of the number and variety of hazards that attach to the use of such a pyrophoric chemical.

(d) Treatment of Palestinians in the hands of the Israeli armed forces

(i) Use of human shields

1925. The Mission investigated several incidents in which the Israeli armed forces used local Palestinian residents to enter houses which might be booby-trapped or harbour enemy combatants (this practice, known in the West Bank as “neighbour procedure”, was called “Johnnie procedure” during the military operations in Gaza). The Mission found that the practice constitutes the use of human shields prohibited by international humanitarian law. It further constitutes a violation of the right to life, protected in article 6 of ICCPR, and of the prohibition against cruel and inhuman treatment in its article 7.

1926. The questioning of Palestinian civilians under threat of death or injury to extract information about Hamas and Palestinian combatants and tunnels constitutes a violation of article 31 of the Fourth Geneva Convention, which prohibits physical or moral coercion against protected persons.

(ii) Detention

1927. The Mission found that the Israeli armed forces in Gaza rounded up and detained large groups of persons protected under the Fourth Geneva Convention. The Mission finds that their detention cannot be justified either as detention of “unlawful combatants” or as internment of civilians for imperative reasons of security. The Mission considers that the severe beatings, constant humiliating and degrading treatment and detention in foul conditions allegedly suffered by individuals in the Gaza Strip under the control of the Israeli armed forces and in detention in Israel, constitute a failure to treat protected persons humanely in violation of article 27 of the Fourth Geneva Convention, as well as violations of articles 7 and 10 of the International Covenant on Civil and Political Rights regarding torture and the treatment of persons in detention, and of its article 14 with regard to due process guarantees. The treatment of women during detention was contrary to the special respect for women required under customary law as reflected in the article 76 of Additional Protocol I. The Mission finds that the rounding-up of large groups of civilians and their prolonged detention under the circumstances described in this report constitute a collective penalty on those persons in violation of article 33 of the Fourth Geneva Convention and article 50 of the Hague Regulations. Such treatment amounts to measures of intimidation or terror prohibited by article 33 of the Fourth Geneva Convention.

(e) Destruction of property

1928. The Mission finds that the attacks against the Palestinian Legislative Council building and the main prison in Gaza constituted deliberate attacks on civilian objects in violation of the rule of customary international humanitarian law whereby attacks must be strictly limited to military objectives.

1929. The Mission also finds that the Israeli armed forces unlawfully and wantonly attacked and destroyed without military necessity a number of food production or food-processing objects and facilities (including mills, land and greenhouses), drinking-water installations, farms and animals in violation of the principle of distinction. From the facts

ascertained by it, the Mission finds that this destruction was carried out with the purpose of denying sustenance to the civilian population, in violation of customary law reflected in article 54 (2) of the First Additional Protocol. The Mission further concludes that the Israeli armed forces carried out widespread destruction of private residential houses, water wells and water tanks unlawfully and wantonly.

1930. In addition to being violations of international humanitarian law, these extensive wanton acts of destruction amount to violations of Israel's duties to respect the right to an adequate standard of living of the people in the Gaza Strip, which includes the rights to food, water and housing, as well as the right to the highest attainable standard of health, protected under articles 11 and 12 of the International Covenant on Economic, Social and Cultural Rights.

(f) Impact of the blockade and the military operations on the Gaza population

1931. The Mission concludes that the blockade policies implemented by Israel against the Gaza Strip, in particular the closure of or restrictions imposed on border crossings in the immediate period before the military operations, subjected the local population to extreme hardship and deprivations that amounted to a violation of Israel's obligations as an occupying Power under the Fourth Geneva Convention. These measures led to a severe deterioration and regression in the levels of realization of economic and social rights of Palestinians in the Gaza Strip and weakened its social and economic fabric, leaving health, education, sanitation and other essential services in a very vulnerable position to cope with the immediate effects of the military operations.

1932. The Mission finds that, despite the information circulated by Israel about the humanitarian relief schemes in place during the military operations, Israel has essentially violated its obligation to allow free passage of all consignments of medical and hospital objects, food and clothing that were needed to meet the urgent humanitarian needs of the civilian population in the context of the military operations, which is in violation of article 23 of the Fourth Geneva Convention.

1933. In addition to the above general findings, the Mission also considers that Israel has violated its specific obligations under the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women, including the rights to peace and security, free movement, livelihood and health.

1934. The Mission concludes that the conditions resulting from deliberate actions of the Israeli armed forces and the declared policies of the Government with regard to the Gaza Strip before, during and after the military operation cumulatively indicate the intention to inflict collective punishment on the people of the Gaza Strip. The Mission, therefore, finds a violation of the provisions of article 33 of the Fourth Geneva Convention.

(g) Grave breaches of the Geneva Conventions and acts raising individual criminal responsibility under international criminal law

1935. From the facts gathered, the Mission found that the following grave breaches of the Fourth Geneva Convention were committed by the Israeli armed forces in Gaza: wilful

killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, and extensive destruction of property, not justified by military necessity and carried out unlawfully and wantonly. As grave breaches these acts give rise to individual criminal responsibility. The Mission notes that the use of human shields also constitutes a war crime under the Rome Statute of the International Criminal Court.

1936. The Mission further considers that the series of acts that deprive Palestinians in the Gaza Strip of their means of subsistence, employment, housing and water, that deny their freedom of movement and their right to leave and enter their own country, that limit their rights to access a court of law and an effective remedy, could lead a competent court to find that the crime of persecution, a crime against humanity, has been committed.

2. Actions by Israel in the West Bank in the context of the military operations in Gaza from 27 December 2008 to 18 January 2009

(a) Treatment of Palestinians in the West Bank by Israeli security forces, including use of excessive or lethal force during demonstrations

1937. With regard to acts of violence by settlers against Palestinians, the Mission concludes that Israel has failed to fulfil its international obligations to protect the Palestinians from violence by private individuals under both international human rights law and international humanitarian law. In some instances security forces acquiesced to the acts of violence in violation of the prohibition against cruel, inhuman or degrading treatment. When this acquiescence occurs only in respect of violence against Palestinians by settlers and not vice versa, it would amount to discrimination on the basis of national origin, prohibited under ICCPR.

1938. Israel also violated a series of human rights by unlawfully repressing peaceful public demonstrations and using excessive force against demonstrators. The use of firearms, including live ammunitions, and the use of snipers resulting in the death of demonstrators are a violation of article 6 of ICCPR as an arbitrary deprivation of life and, in the circumstances examined by the Mission, appear to indicate an intention or at least a recklessness towards causing harm to civilians which may amount to wilful killing.

1939. Excessive use of force that resulted in injury rather than death constitutes violations of a number of standards, including articles 7 and 9 of ICCPR. These violations are compounded by the seemingly discriminatory “open fire regulations” for security forces dealing with demonstrations, based on the presence of persons with a particular nationality, violating the principle of non-discrimination in ICCPR (art. 2) as well as under article 27 of the Fourth Geneva Convention.

1940. The Mission finds that Israel failed to investigate, and when appropriate prosecute, acts by its agents or by third parties involving serious violations of international humanitarian law and human rights law.

1941. The Mission was alarmed at the reported increase in settler violence in the past year and the failure of the Israeli security forces to prevent settlers’ attacks against Palestinian civilians and their property. These are accompanied by a series of violations by Israeli

forces or acquiesced by them, including the removal of residential status from Palestinians, which could eventually lead to a situation of virtual deportation and entail additional violations of other rights.

(b) Detention of Palestinians by Israel

1942. The Mission analysed information it received on the detention of Palestinians in Israeli prisons during or in the context of the military operations of December 2008–January 2009 and found those practices generally inconsistent with human rights and international humanitarian law. The military court system to which Palestinians from the Occupied Palestinian Territory are subjected deprives them of due process guarantees in keeping with international law.

1943. The Mission finds that the detention of members of the Palestinian Legislative Council by Israel violates the right not to be arbitrarily detained, as protected by article 9 of ICCPR. Insofar as it is based on political affiliation and prevents those members from participating in the conduct of public affairs, it is also in violation of its articles 25 recognizing the right to take part in public affairs and 26, which provides for the right to equal protection under the law. Insofar as their detention is unrelated to their individual behaviour, it constitutes collective punishment, prohibited by article 33 of the Fourth Geneva Convention. Information on the detention of large numbers of children and their treatment by Israeli security forces point to violations of their rights under ICCPR and the Convention on the Rights of the Child.

(c) Violations of the right to free movement and access

1944. The Mission finds that the extensive restrictions imposed by Israel on the movement and access of Palestinians in the West Bank are disproportionate to any legitimate objective served and in violation of article 27 of the Fourth Geneva Convention and article 12 of ICCPR, guaranteeing freedom of movement.

1945. Where checkpoints become a site of humiliation of the protected population by military or civilian operators, this may entail a violation of the customary law rule reflected in article 75 (2) (b) of Additional Protocol I.

1946. The continued construction of settlements in occupied territory constitutes a violation of article 49 of the Fourth Geneva Convention. The extensive destruction and appropriation of property, including land confiscation and house demolitions in the West Bank, including East Jerusalem, not justified by military necessity and carried out unlawfully and wantonly, amounts to a grave breach under article 147 of the Fourth Geneva Convention.

1947. Insofar as movement and access restrictions, the settlements and their infrastructure, demographic policies vis-à-vis Jerusalem and “Area C” of the West Bank, as well as the separation of Gaza from the West Bank, prevent a viable, contiguous and sovereign Palestinian State from arising, they are in violation of the *jus cogens* right to self-determination.

3. Actions by Israel in Israel

1948. In relation to alleged violations within Israel, the Mission concludes that, although there does not appear to be a policy in this respect, there were occasions when reportedly the authorities placed obstacles in the way of protesters seeking to exercise their right to peaceful assembly and freedom of speech to criticize Israel's military actions in the Gaza Strip. These rights are protected by the International Covenant on Civil and Political Rights. Instances of physical violence against protesters and other humiliations, not rising to the level of physical violence, of the protesters by the police violated Israel's obligations under article 10 of the Covenant. The Mission is also concerned about activists being compelled to attend interviews with the General Security Services (*Shabak*), which reportedly creates an atmosphere intolerant of dissent within Israel. Hostile retaliatory actions against civil society organizations by the Government of Israel for criticisms of the Israeli authorities and for exposing alleged violations of international human rights law and international humanitarian law during the military operations are inconsistent with the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms.

1949. The Mission finds that the imposition of a near blanket exclusion of the media and human rights monitors from Gaza since 5 November 2008 and throughout the operations is inconsistent with Israel's obligations with regard to the right to access to information.

4. Actions by Palestinian armed groups

1950. In relation to the firing of rockets and mortars into southern Israel by Palestinian armed groups operating in the Gaza Strip, the Mission finds that the Palestinian armed groups fail to distinguish between military targets and the civilian population and civilian objects in southern Israel. The launching of rockets and mortars which cannot be aimed with sufficient precisions at military targets breaches the fundamental principle of distinction. Where there is no intended military target and the rockets and mortars are launched into civilian areas, they constitute a deliberate attack against the civilian population. These actions would constitute war crimes and may amount to crimes against humanity.

1951. The Mission concludes that the rocket and mortars attacks, launched by Palestinian armed groups operating from Gaza, have caused terror in the affected communities of southern Israel. The attacks have caused loss of life and physical and mental injury to civilians as well as damaging private houses, religious buildings and property, and eroded the economic and cultural life of the affected communities and severely affected economic and social rights of the population.

1952. With regard to the continuing detention of Israeli soldier Gilad Shalit, the Mission finds that, as a soldier who belongs to the Israeli armed forces and who was captured during an enemy incursion into Israel, Gilad Shalit meets the requirements for prisoner-of-war status under the Third Geneva Convention and should be protected, treated humanely and be allowed external communication as appropriate according to that Convention.

1953. The Mission also examined whether the Palestinian armed groups complied with their obligations under international humanitarian law to take constant care to minimize the risk of harm to the civilian population in Gaza among whom the hostilities were being conducted. The conduct of hostilities in built-up areas does not, of itself, constitute a violation of international law. However, launching attacks – whether of rockets and mortars at the population of southern Israel or at the Israeli armed forces inside Gaza – close to civilian or protected buildings constitutes a failure to take all feasible precautions. In cases where this occurred, the Palestinian armed groups would have unnecessarily exposed the civilian population of Gaza to the inherent dangers of the military operations taking place around them. The Mission found no evidence to suggest that Palestinian armed groups either directed civilians to areas where attacks were being launched or that they forced civilians to remain within the vicinity of the attacks. The Mission also found no evidence that members of Palestinian armed groups engaged in combat in civilian dress. Although in the one incident of an Israeli attack on a mosque it investigated the Mission found that there was no indication that that mosque was used for military purposes or to shield military activities, the Mission cannot exclude that this might have occurred in other cases.

5. Actions by responsible Palestinian authorities

1954. Although the Gaza authorities deny any control over armed groups and responsibility for their acts, in the Mission's view, if they failed to take the necessary measures to prevent the Palestinian armed groups from endangering the civilian population, the Gaza authorities would bear responsibility for the damage arising to the civilians living in Gaza.

1955. The Mission finds that security services under the control of the Gaza authorities carried out extrajudicial executions, arbitrary arrests, detentions and ill-treatment of people, in particular political opponents, which constitute serious violations of the human rights to life, to liberty and security of the person, to freedom from torture or cruel, inhuman or degrading treatment or punishment, to be protected against arbitrary arrest and detention, to a fair and impartial legal proceeding; and to freedom of opinion and expression, including freedom to hold opinions without interference.

1956. The Mission also concludes that the Palestinian Authority's actions against political opponents in the West Bank, which started in January 2006 and intensified during the period between 27 December 2008 and 18 January 2009, constitute violations of human rights and of the Palestinians' own Basic Law. Detentions on political grounds violate the rights to liberty and security of person, to a fair trial and the right not to be discriminated against on the basis of one's political opinion, which are all part of customary international law. Reports of torture and other forms of ill-treatment during arrest and detention and of death in detention require prompt investigation and accountability.

K. The need for accountability

1957. The Mission was struck by the repeated comment of Palestinian victims, human rights defenders, civil society interlocutors and officials that they hoped that this would be the last investigative mission of its kind, because action for justice would follow from it. It

was struck, as well, by the comment that every time a report is published and no action follows, this “emboldens Israel and her conviction of being untouchable”. To deny modes of accountability reinforces impunity, and tarnishes the credibility of the United Nations and of the international community. The Mission believes these comments ought to be at the forefront in the consideration by Members States and United Nations bodies of its findings and recommendations and action consequent upon them.

1958. The Mission is firmly convinced that justice and respect for the rule of law are the indispensable basis for peace. The prolonged situation of impunity has created a justice crisis in the Occupied Palestinian Territory that warrants action.

1959. After reviewing Israel’s system of investigation and prosecution of serious violations of human rights and humanitarian law, in particular of suspected war crimes and crimes against humanity, the Mission found major structural flaws that, in its view, make the system inconsistent with international standards. With military “operational debriefings” at the core of the system, there is no effective and impartial investigation mechanism and victims of such alleged violations are deprived of any effective or prompt remedy. Furthermore, such investigations, being internal to the Israeli military authority, do not comply with international standards of independence and impartiality. The Mission believes that the few investigations conducted by the Israeli authorities on alleged serious violations of international human rights and humanitarian law and, in particular, alleged war crimes, in the context of the military operations in Gaza between 27 December 2008 and 18 January 2009, are affected by the defects in the system, have been unduly delayed despite the gravity of the allegations, and, therefore, lack the required credibility and conformity with international standards. The Mission is concerned that investigations of relatively less serious violations that the Government of Israel claims to be investigating have also been unduly protracted.

1960. The Mission noted the pattern of delays, inaction or otherwise unsatisfactory handling by Israeli authorities of investigations, prosecutions and convictions of military personnel and settlers for violence and offences against Palestinians, including in the West Bank, as well as their discriminatory outcome. Additionally, the current constitutional and legal framework in Israel provides very few possibilities, if any, for Palestinians to seek compensation and reparations.

1961. In the light of the information it reviewed and its analysis, the Mission concludes that there are serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, independent, prompt and effective way as required by international law. The Mission is also of the view that the system presents inherently discriminatory features that make the pursuit of justice for Palestinian victims extremely difficult.

1962. With regard to allegations of violations of international humanitarian law falling within the jurisdiction of responsible Palestinian authorities in Gaza, the Mission finds that these allegations have not been investigated.

1963. The Mission notes that the responsibility to investigate violations of international human rights and humanitarian law, prosecute if appropriate and try perpetrators belongs in the first place to domestic authorities and institutions. This is a legal obligation

incumbent on States and State-like entities. However, where domestic authorities are unable or unwilling to comply with this obligation, international justice mechanisms must be activated to prevent impunity.

1964. The Mission believes that, in the circumstances, there is little potential for accountability for serious violations of international humanitarian and human rights law through domestic institutions in Israel and even less in Gaza. The Mission is of the view that long-standing impunity has been a key factor in the perpetuation of violence in the region and in the reoccurrence of violations, as well as in the erosion of confidence among Palestinians and many Israelis concerning prospects for justice and a peaceful solution to the conflict.

1965. The Mission considers that several of the violations referred to in this report amount to grave breaches of the Fourth Geneva Convention. It notes that there is a duty imposed by the Geneva Conventions on all high contracting parties to search for and bring before their courts those responsible for the alleged violations.

1966. The Mission considers that the serious violations of international humanitarian law recounted in this report fall within the subject-matter jurisdiction of the International Criminal Court. The Mission notes that the United Nations Security Council has long recognized the impact of the situation in the Middle East, including the Palestinian question, on international peace and security, and that it regularly considers and reviews this situation. The Mission is persuaded that, in the light of the long-standing nature of the conflict, the frequent and consistent allegations of violations of international humanitarian law against all parties, the apparent increase in intensity of such violations in the recent military operations, and the regrettable possibility of a return to further violence, meaningful and practical steps to end impunity for such violations would offer an effective way to deter such violations recurring in the future. The Mission is of the view that the prosecution of persons responsible for serious violations of international humanitarian law would contribute to ending such violations, to the protection of civilians and to the restoration and maintenance of peace.

XXXI. RECOMMENDATIONS

1967. The Mission makes the following recommendations related to:

- (a) Accountability for serious violations of international humanitarian law;**
- (b) Reparations;**
- (c) Serious violations of human rights law;**
- (d) The blockade and reconstruction;**
- (e) The use of weapons and military procedures;**
- (f) The protection of human rights organizations and defenders;**
- (g) Follow-up to the Mission's recommendations.**

1968. **To the Human Rights Council,**

(a) **The Mission recommends that the United Nations Human Rights Council should endorse the recommendations contained in this report, take appropriate action to implement them as recommended by the Mission and through other means as it may deem appropriate, and continue to review their implementation in future sessions;**

(b) **In view of the gravity of the violations of international human rights and humanitarian law and possible war crimes and crimes against humanity that it has reported, the Mission recommends that the United Nations Human Rights Council should request the United Nations Secretary-General to bring this report to the attention of the United Nations Security Council under Article 99 of the Charter of the United Nations so that the Security Council may consider action according to the Mission's relevant recommendations below;**

(c) **The Mission further recommends that the United Nations Human Rights Council should formally submit this report to the Prosecutor of the International Criminal Court;**

(d) **The Mission recommends that the Human Rights Council should submit this report to the General Assembly with a request that it should be considered;**

(e) **The Mission recommends that the Human Rights Council should bring the Mission's recommendations to the attention of the relevant United Nations human rights treaty bodies so that they may include review of progress in their implementation, as may be relevant to their mandate and procedures, in their periodic review of compliance by Israel with its human rights obligations. The Mission further recommends that the Human Rights Council should consider review of progress as part of its universal periodic review process.**

1969. **To the United Nations Security Council,**

(a) **The Mission recommends that the Security Council should require the Government of Israel, under Article 40 of the Charter of the United Nations:**

(i) **To take all appropriate steps, within a period of three months, to launch appropriate investigations that are independent and in conformity with international standards, into the serious violations of international humanitarian and international human rights law reported by the Mission and any other serious allegations that might come to its attention;**

(ii) **To inform the Security Council, within a further period of three months, of actions taken, or in process of being taken, by the Government of Israel to inquire into, investigate and prosecute such serious violations;**

(b) **The Mission further recommends that the Security Council should at the same time establish an independent committee of experts in international humanitarian and human rights law to monitor and report on any domestic legal or other proceedings undertaken by the Government of Israel in relation to the aforesaid investigations. Such**

committee of experts should report at the end of the six-month period to the Security Council on its assessment of relevant domestic proceedings initiated by the Government of Israel, including their progress, effectiveness and genuineness, so that the Security Council may assess whether appropriate action to ensure justice for victims and accountability for perpetrators has been or is being taken at the domestic level. The Security Council should request the committee to report to it at determined intervals, as may be necessary. The committee should be appropriately supported by the Office of the United Nations High Commissioner for Human Rights;

(c) The Mission recommends that, upon receipt of the committee's report, the Security Council should consider the situation and, in the absence of good-faith investigations that are independent and in conformity with international standards having been undertaken or being under way within six months of the date of its resolution under Article 40 by the appropriate authorities of the State of Israel, again acting under Chapter VII of the Charter of the United Nations, refer the situation in Gaza to the Prosecutor of the International Criminal Court pursuant to article 13 (b) of the Rome Statute;

(d) The Mission recommends that the Security Council should require the independent committee of experts referred to in subparagraph (b) to monitor and report on any domestic legal or other proceedings undertaken by the relevant authorities in the Gaza Strip in relation to the aforesaid investigations. The committee should report at the end of the six-month period to the Security Council on its assessment of relevant domestic proceedings initiated by the relevant authorities in Gaza, including their progress, effectiveness and genuineness, so that the Security Council may assess whether appropriate action to ensure justice for victims and accountability for perpetrators has been taken or is being taken at the domestic level. The Security Council should request the committee to report to it at determined intervals, as may be necessary;

(e) The Mission recommends that, upon receipt of the committee's report, the Security Council should consider the situation and, in the absence of good-faith investigations that are independent and in conformity with international standards having been undertaken or being under way within six months of the date of its resolution under Article 40 by the appropriate authorities in Gaza, acting under Chapter VII of the Charter of the United Nations, refer the situation in Gaza to the Prosecutor of the International Criminal Court pursuant to article 13 (b) of the Rome Statute;

(f) The Mission recommends that lack of cooperation by the Government of Israel or the Gaza authorities with the work of the committee should be regarded by the Security Council to be obstruction of the work of the committee.

1970. To the Prosecutor of the International Criminal Court, with reference to the declaration under article 12 (3) received by the Office of the Prosecutor of the International Criminal Court from the Government of Palestine, the Mission considers that accountability for victims and the interests of peace and justice in the region require that the Prosecutor should make the required legal determination as expeditiously as possible.

1971. To the General Assembly,

(a) The Mission recommends that the General Assembly should request the Security Council to report to it on measures taken with regard to ensuring accountability for serious violations of international humanitarian law and human rights in relation to the facts in this report and any other relevant facts in the context of the military operations in Gaza, including the implementation of the Mission's recommendations. The General Assembly may remain appraised of the matter until it is satisfied that appropriate action is taken at the domestic or international level in order to ensure justice for victims and accountability for perpetrators. The General Assembly may consider whether additional action within its powers is required in the interests of justice, including under its resolution 377 (V) on uniting for peace;

(b) The Mission recommends that the General Assembly should establish an escrow fund to be used to pay adequate compensation to Palestinians who have suffered loss and damage as a result of unlawful acts attributable to Israel during the December–January military operation and actions in connection with it, and that the Government of Israel should pay the required amounts into such fund. The Mission further recommends that the General Assembly should ask the Office of the United Nations High Commissioner for Human Rights to provide expert advice on the appropriate modalities to establish the escrow fund;

(c) The Mission recommends that the General Assembly should ask the Government of Switzerland to convene a conference of the high contracting parties to the Fourth Geneva Convention of 1949 on measures to enforce the Convention in the Occupied Palestinian Territory and to ensure its respect in accordance with its article 1;

(d) The Mission recommends that the General Assembly should promote an urgent discussion on the future legality of the use of certain munitions referred to in this report, and in particular white phosphorous, flechettes and heavy metal such as tungsten. In such discussion the General Assembly should draw inter alia on the expertise of the International Committee of the Red Cross (ICRC). The Mission further recommends that the Government of Israel should undertake a moratorium on the use of such weapons in the light of the human suffering and damage they have caused in the Gaza Strip.

1972. To the State of Israel,

(a) The Mission recommends that Israel should immediately cease the border closures and restrictions on passage through border crossings with the Gaza Strip and allow the passage of goods necessary and sufficient to meet the needs of the population, for the recovery and reconstruction of housing and essential services, and for the resumption of meaningful economic activity in the Gaza Strip;

(b) The Mission recommends that Israel should cease the restrictions on access to the sea for fishing purposes imposed on the Gaza Strip and allow such fishing activities within the 20 nautical miles as provided for in the Oslo Accords. It further recommends that Israel should allow the resumption of agricultural activity within the Gaza Strip, including within areas in the vicinity of the borders with Israel;

(c) Israel should initiate a review of the rules of engagement, standard operating procedures, open fire regulations and other guidance for military and security personnel. The Mission recommends that Israel should avail itself of the expertise of the International Committee of the Red Cross, the Office of the United Nations High Commissioner for Human Rights and other relevant bodies, and Israeli experts, civil society organizations with the relevant expertise and specialization, in order to ensure compliance in this respect with international humanitarian law and international human rights law. In particular such rules of engagement should ensure that the principles of proportionality, distinction, precaution and non-discrimination are effectively integrated in all such guidance and in any oral briefings provided to officers, soldiers and security forces, so as to avoid the recurrence of Palestinian civilian deaths, destruction and affronts on human dignity in violation of international law;

(d) The Mission recommends that Israel should allow freedom of movement for Palestinians within the Occupied Palestinian Territory - within the West Bank, including East Jerusalem, between the Gaza Strip and the West Bank, and between the Occupied Palestinian Territory and the outside world - in accordance with international human rights standards and international commitments entered into by Israel and the representatives of the Palestinian people. The Mission further recommends that Israel should forthwith lift travel bans currently placed on Palestinians by reason of their human rights or political activities;

(e) The Mission recommends that Israel should release Palestinians who are detained in Israeli prisons in connection with the occupation. The release of children should be an utmost priority. The Mission further recommends that Israel should cease the discriminatory treatment of Palestinian detainees. Family visits for prisoners from Gaza should resume;

(f) The Mission recommends that Israel should forthwith cease interference with national political processes in the Occupied Palestinian Territory, and as a first step release all members of the Palestinian Legislative Council currently in detention and allow all members of the Council to move between Gaza and the West Bank so that it may resume functioning;

(g) The Mission recommends that the Government of Israel should cease actions aimed at limiting the expression of criticism by civil society and members of the public concerning Israel's policies and conduct during the military operations in the Gaza Strip. The Mission also recommends that Israel should set up an independent inquiry to assess whether the treatment by Israeli judicial authorities of Palestinian and Jewish Israelis expressing dissent in connection with the offensive was discriminatory, in terms of both charges and detention pending trial. The results of the inquiry should be made public and, subject to the findings, appropriate remedial action should be taken;

(h) The Mission recommends that the Government of Israel should refrain from any action of reprisal against Palestinian and Israeli individuals and organizations that have cooperated with the United Nations Fact Finding Mission on the Gaza Conflict, in particular individuals who have appeared at the public hearings held by the Mission in Gaza and Geneva and expressed criticism of actions by Israel;

(i) The Mission recommends that Israel should reiterate its commitment to respecting the inviolability of United Nations premises and personnel and that it should undertake all appropriate measures to ensure that there is no repetition of violations in the future. It further recommends that reparation to the United Nations should be provided fully and without further delay by Israel, and that the General Assembly should consider this matter.

1973. To Palestinian armed groups,

(a) The Mission recommends that Palestinian armed groups should undertake forthwith to respect international humanitarian law, in particular by renouncing attacks on Israeli civilians and civilian objects, and take all feasible precautionary measures to avoid harm to Palestinian civilians during hostilities;

(b) The Mission recommends that Palestinian armed groups who hold Israeli soldier Gilad Shalit in detention should release him on humanitarian grounds. Pending such release they should recognize his status as prisoner of war, treat him as such, and allow him ICRC visits.

1974. To responsible Palestinian authorities,

(a) The Mission recommends that the Palestinian Authority should issue clear instructions to security forces under its command to abide by human rights norms as enshrined in the Palestinian Basic Law and international instruments, ensure prompt and independent investigation of all allegations of serious human rights violations by security forces under its control, and end resort to military justice to deal with cases involving civilians;

(b) The Mission recommends that the Palestinian Authority and the Gaza authorities should release without delay all political detainees currently in their power and refrain from further arrests on political grounds and in violation of international human rights law;

(c) The Mission recommends that the Palestinian Authority and the Gaza authorities should continue to enable the free and independent operation of Palestinian non-governmental organizations, including human rights organizations, and of the Independent Commission for Human Rights.

1975. To the international community,

(a) The Mission recommends that the States parties to the Geneva Conventions of 1949 should start criminal investigations in national courts, using universal jurisdiction, where there is sufficient evidence of the commission of grave breaches of the Geneva Conventions of 1949. Where so warranted following investigation, alleged perpetrators should be arrested and prosecuted in accordance with internationally recognized standards of justice;

(b) International aid providers should step up financial and technical assistance for organizations providing psychological support and mental health services to the Palestinian population;

(c) In view of their crucial function, the Mission recommends that donor countries/assistance providers should continue to support the work of Palestinian and Israeli human rights organizations in documenting and publicly reporting on violations of human rights and international humanitarian law, and advising relevant authorities on their compliance with international law;

(d) The Mission recommends that States involved in peace negotiations between Israel and representatives of the Palestinian people, especially the Quartet, should ensure that respect for the rule of law, international law and human rights assumes a central role in internationally sponsored peace initiatives;

(e) In view of the allegations and reports about long-term environmental damage that may have been created by certain munitions or debris from munitions, the Mission recommends that a programme of environmental monitoring should take place under the auspices of the United Nations, for as long as deemed necessary. The programme should include the Gaza Strip and areas within southern Israel close to impact sites. The environmental monitoring programme should be in accordance with the recommendations of an independent body, and samples and analyses should be analysed by one or more independent expert institutions. Such recommendations, at least at the outset, should include measurement mechanisms which address the fears of the population of Gaza and southern Israel at this time and should at a minimum be in a position to determine the presences of heavy metals of all varieties, white phosphorous, tungsten micro-shrapnel and granules and such other chemicals as may be revealed by the investigation.

1976. To the international community and responsible Palestinian authorities,

(a) The Mission recommends that appropriate mechanisms should be established to ensure that the funds pledged by international donors for reconstruction activities in the Gaza Strip are smoothly and efficiently disbursed, and urgently put to use for the benefit of the population of Gaza;

(b) In view of the consequences of the military operations, the Mission recommends that responsible Palestinian authorities as well as international aid providers should pay special attention to the needs of persons with disabilities. In addition, the Mission recommends that medical follow-up should be ensured by relevant international and Palestinian structures with regard to patients who suffered amputations or were otherwise injured by munitions, the nature of which has not been clarified, in order to monitor any possible long-term impact on their health. Financial and technical assistance should be provided to ensure adequate medical follow-up to Palestinian patients.

1977. To the international community, Israel and Palestinian authorities,

(a) The Mission recommends that Israel and representatives of the Palestinian people, and international actors involved in the peace process, should involve Israeli and

Palestinian civil society in devising sustainable peace agreements based on respect for international law. The participation of women should be ensured in accordance with Security Council resolution 1325 (2000);

(b) The Mission recommends that attention should be given to the position of women and steps be taken to ensure their access to compensation, legal assistance and economic security.

1978. To the United Nations Secretary-General, the Mission recommends that the Secretary-General should develop a policy to integrate human rights in peace initiatives in which the United Nations is involved, especially the Quartet, and request the United Nations High Commissioner for Human Rights to provide the expertise required to implement this recommendation.

1979. To the Office of the United Nations High Commissioner for Human Rights,

(a) The Mission recommends that the Office of the United Nations High Commissioner for Human Rights should monitor the situation of persons who have cooperated with the United Nations Fact Finding Mission on the Gaza Conflict and periodically update the Human Rights Council through its public reports and in other ways as it may deem appropriate;

(b) The Mission recommends that the Office of the High Commissioner for Human Rights should give attention to the Mission's recommendations in its periodic reporting on the Occupied Palestinian Territory to the Human Rights Council.

Annex I

List of meetings held by the United Nations Fact Finding Mission on the Gaza Conflict

Diplomatic Missions

- Diplomatic Community in the Gaza Strip, West Bank and East Jerusalem¹²⁰⁵
- Permanent Mission of the Arab Republic of Egypt to the United Nations in Geneva, chair of the African Group
- Permanent Mission of France to the United Nations in Geneva
- Permanent Mission of the Islamic Republic of Pakistan to the United Nations in Geneva, chair of the Organisation of the Islamic Conference Group
- Permanent Mission of the Kingdom of Great Britain and Northern Ireland to the United Nations in Geneva
- Permanent Observer Mission of Palestine to the United Nations in Geneva
- Permanent Mission of the Republic of Cuba to the United Nations in Geneva, chair of the Non-aligned Movement Group
- Permanent Mission of the Republic of Yemen to the United Nations in Geneva, chair of the Arab Group
- Permanent Mission of the Russian Federation to the United Nations in Geneva
- Permanent Mission of Sweden to the United Nations in Geneva
- Permanent Mission of Switzerland to the United Nations in Geneva
- Permanent Mission of the United States of America to the United Nations in Geneva

Domestic authorities

- Palestinian Authority, Minister of Health
- Palestinian Authority, Negotiation Support Unit
- Members of the Palestinian Legislative Council (PLC)
- Gaza authorities

United Nations and International Organizations

- International Committee of the Red Cross

¹²⁰⁵ Australia, Austria, Belgium, Canada, Chile, Egypt, Germany, Ireland, Italy, Netherlands, Norway, Poland, Spain, Sweden, Switzerland and United Kingdom.

- League of Arab States Gaza Fact Finding Mission
- United Nations High Commissioner for Human Rights
- Office of the High Commissioner for Human Rights (OHCHR), Director, Field Operations and Technical Cooperation Division
- Office of the High Commissioner for Human Rights (OHCHR), Middle East and North Africa Unit
- Office of the High Commissioner for Human Rights (OHCHR), OPT
- Office of the High Commissioner for Human Rights (OHCHR), New York Office
- United Nations Special Coordinator for the Middle East Peace Process and UNSCO staff
- United Nations Country Team in the Gaza Strip¹²⁰⁶
- United Nations Department of Safety and Security (UNDSS)
- United Nations Development Programme (UNDP)
- United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip between 27 December 2008 and 19 January 2009, Head
- United Nations Human Rights Council, President
- United Nations Institute for Training and Research (UNITAR) Operational Satellite Applications Programme (UNOSAT)
- United Nations Secretary General
- United Nations Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967
- United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Commissioner General
- United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Director Gaza Operations
- United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Field Legal Office, Gaza
- Special Representative of the United Nations' Secretary General on Children in Armed Conflict
- World Health Organization (WHO)

Non-governmental organizations

- Town hall meeting with Geneva based NGOs¹²⁰⁷

¹²⁰⁶ FAO, OCHA, OHCHR, UNDP, UNESCO, UNFPA, UNICEF, UNIFEM, UNSCO, UNOPS, UNRWA, WHO and WFP.

- AlAtaa Charitable Association
- Al-Dameer Association for Human Rights
- Adalah, The Legal Centre for Arab Minority Rights in Israel
- Addameer, Prisoners Support and Human Rights Association
- Agricultural Development Association (PARC)
- Al-Haq
- Al-Mezan Center for Human Rights
- Alternative Information Centre
- Amnesty International
- B'Tselem, the Israeli Information Center for Human Rights in the Occupied Territories
- Center for Women's Legal Research and Consulting
- Culture and Free Thought Association
- Defense of Children International – Palestine Section (DCI)
- Gaza Mental Health Program (GMHP)
- General Union of Palestinian Women
- Gisha, Legal Center for Freedom of Movement
- Human Rights Watch
- Ma'an Development Center
- Magen David Adom in Israel
- Mandela Institute
- Palestinian Agricultural Development Society
- Palestinian Center for Human Rights (PCHR)
- Palestinian International Campaign to End the Siege on Gaza
- Palestinian Medical Relief Society

¹²⁰⁷ The following NGOs confirmed participation: Al-Hakim Foundation to ONUG, Amnesty International, Arab Commission for Human Rights, Asian Forum for Human Rights and Development, CETIM Centre Europe-tiers monde, Defence for Children International, EAFORD, Genève peoples, Human Rights Watch, ICTJ Geneva and Program on Peace and Justice, International Alliance Women, International Commission of Jurists, International Council of Jewish Women, International Secretariat of the Conference of NGOs, International Service for Human Rights, Istituto Internazionale Maria Ausiliatrice and VIDES, Lawyers' Rights Watch Canada, Mouvement contre le racisme et pour l'amitié entre les peuples, Oxfam International Geneva, Pax Christi International, , The Lutheran World Federation, UN WATCH, WFW, WILPF, Women's International League for Peace and Freedom, World Alliance of YMCAs, WVI, WWSF.

- Palestinian Network of NGOs
- Palestinian Red Crescent Society (PRCS)
- Palestinian Woman Developmental Studies Association
- Palestinian Woman Information and Media Centre
- Physicians for Human Rights – Israel
- Society for Disabled in the Gaza Strip
- Stop the Wall
- Yesh Gvul
- Union of Agricultural Work Committees
- Union of Health Care Committees
- Union of Health Work Committees
- Women's Affairs Centre

National human rights institutions

- Palestinian Independent Commission for Human Rights (ICHR)

Other organizations

- General Syndicate of Fishers
- Palestinian Bar Association in Gaza
- Palestinian Businessmen Association
- Palestinian Federation of Industry
- Palestinian Trade Center

Annex II

Correspondence between the United Nations Fact Finding Mission on the Gaza Conflict and the Government of Israel regarding Access and Cooperation

NATIONS UNIES



UNITED NATIONS

HUMAN RIGHTS COUNCIL
INTERNATIONAL INDEPENDENT FACT FINDING MISSION ESTABLISHED BY
RESOLUTION S-9/1

Téléfax: (41-22) 928 9003
Address: Palais des Nations, Geneva
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E-mail : fmarotta@ohchr.org

3 April 2009

Dear Ambassador,

I was hoping to have the opportunity of meeting with you this morning and especially prior to the press conference at which the Members of the Fact Finding Mission are to be announced. I am disappointed to learn that this will not be possible.

I wished personally to assure you that prior to considering the invitation to lead the Mission, I satisfied myself that it would be given unbiased and even-handed terms of reference. In particular, it seemed to me that it was crucial, in order to assess the military actions conducted by Israel, and in particular to investigate the effects on Israeli citizens of the rocket attacks that emanated from Gaza. It is also clearly necessary to take into account all relevant contextual facts that might be relevant to assess the actions that were taken by Israel in response to the attacks.

It is my earnest wish that the Mission should visit the areas that were effected by the rocket attacks and, if possible, to meet with some of the victims of those attacks, to ascertain the physical damage caused by them, as well as the effect that they had on an ongoing basis upon the civilian population in the effected areas of Israel. I need hardly add that it would also be important for the Mission to have access to the relevant officials in the Israeli Government and, of course, relevant military officials.


As a completely independent body, the Mission will now be determining its own terms of reference. I would hope that I could consult with the Government of Israel and take into account its views with regard to the terms of reference. Your advice in this regard would be much appreciated.

H.E. Ambassador Aharon Leshno-Yaar
Permanent Representative of Israel
To the United Nations in Geneva
Avenue de la Pais 1-3
1202 Geneva

I am willing to come to Geneva to meet with you at a mutually convenient time or, if that would be more helpful, to travel to Jerusalem to meet with Israeli Government officials there.

I do hope that you will find it possible to respond to this communication at your earliest convenience.

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read "Richard Goldstone". The signature is written in a cursive style with a horizontal line underneath.

Richard Goldstone
Head of the Fact-Finding Mission
established under HRC resolution S-9/1

0041227160555



Mission permanente d'Israël
auprès de l'Office des Nations Unies
et des Organisations Internationales à Genève

משלחת ישראל
ליד משרד האומות המאוחדות
והארגונים הבינלאומיים בג'נבה

Justice Richard Goldstone
OHCHR
Palais des Nations
1211 Geneva 10
Fax 022 928 9003

Geneva, 7 April 2009

Dear Justice Goldstone,

Thank you for your letter dated April 3, 2009, concerning the HRC Fact-Finding Mission.

It is with regret that I have to inform you that Israel will not be able to cooperate with the proposed Fact-Finding Mission. While I appreciate your efforts to obtain assurances that the Mission would be unbiased and even-handed, it remains the fact that the legal basis of the mission is HRC Resolution S-9/1. This grossly politicized resolution prejudices the issue at hand, determining at the outset that Israel has perpetrated grave violations of human rights and implying that Israel has deliberately targeted civilians and medical facilities, and systematically destroyed the cultural heritage of the Palestinian people. It calls for urgent international action directed only against Israel and, as regards the proposed Fact-Finding Mission, makes clear that it regards its mandate as exclusively focused on Israeli violations of human rights and humanitarian law. The fact that several distinguished individuals approached to head the Mission declined reflects the problematic nature of the Mission and its mandate.

The hopelessly one-sided nature of the HRC resolution was reflected in the Explanations of Vote of numerous states, including the European Union - which stated that it found the mandate of the proposed Mission to be unbalanced, and noted that investigations were currently being conducted under the leadership of the UN Secretary-General, as well as by Israel. Indeed, as you may be aware, Israel is engaged in a series of far-reaching investigations regarding many aspects of the "Cast Lead" Operation, and has cooperated intensively with the UN Secretary-General's Board of Inquiry.

I have no doubts regarding your genuine desire to ensure that the proposed HRC Mission would be balanced, but am concerned that neither your own commitment to ensure impartiality nor any assurance given to you by any individual have the force to change its legal basis. Even if the Mission were to choose to operate in accordance with its own terms of reference, resolution S-9/1 would still provide the basis for the Council's treatment of the Mission's report and any subsequent proceedings.

...2/

0041227160555

I wish to stress that Israel's decision in this matter is not intended in any way to reflect on its sincere respect for you personally, or on your longstanding commitment to ensuring respect for the rights and welfare of Israelis and Palestinians alike. Rather it derives solely from a reluctant recognition of the politicization that has so deeply infected the Human Rights Council.

With sincere best wishes,



Aharon Meshno Yaar
Ambassador
Permanent Representative

NATIONS UNIES



UNITED NATIONS

HUMAN RIGHTS COUNCIL
INTERNATIONAL INDEPENDENT FACT FINDING MISSION

Téléfax: (41-22) 928 9003
Address: Palais des Nations, Geneva
Telephone : (41 22) 928 9205
E-mail : finarotta@ohchr.org

8 April 2009

Dear Ambassador,

I wish to thank you for your letter of 7 April, 2009. I have taken note of the arguments put forward in the letter on the basis of which your Government is of the view that it is prevented from cooperating with the Fact Finding Mission that I have been designated to lead. In this respect, I would like to point out that the Mission has been requested and established by the President of the UN HRC to "investigate all violations of International Human Rights Law and International Humanitarian Law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after." As such, the scope of the Mission's investigation is not the result of its own deliberations or personal convictions, however legitimate or authoritative. It is a clear mandate, legally and formally given to it.


As I mentioned in my previous letter, the Fact Finding Mission will be guided by its mandate, and conduct its work independently and impartially. I also respectfully submit that it would be in the interest of the Government of Israel and of Israeli victims to cooperate with the Mission so that its and their views, concerns and submissions could receive appropriate attention and consideration and be reflected in the outcome of the Mission's work.

H.E. Ambassador Aharon Leshno-Yaar
Permanent Representative of Israel
To the United Nations in Geneva
Avenue de la Paix 1-3
1202 Geneva

I would greatly appreciate it if this letter could be brought to the attention of your Government, and your Government's position reconsidered in light of the above clarifications.

I remain available for any further discussions and meetings with you or other Government representatives as may be appropriate.

Please accept, Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read 'Richard Goldstone', with a horizontal line underneath the name.

Richard Goldstone
Head of the International Independent
Fact-Finding Mission

cc: H.E. Ambassador Martin Ihoeghian Uhomobhi
President of the Human Rights Council

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UNITED NATIONS FACT FINDING MISSION ON THE GAZA CONFLICT

Fax: (41-22) 928 9003, Telephone: (41 22) 928 9205, E-mail: fmarotta@ohchr.org

GFFM/O-10/090429RG

29 April 2009

Dear Ambassador,

I am writing to you in my capacity as Head of the United Nations Fact-finding Mission established by the President of the Human Rights Council, Ambassador Martin Ihoeghian Uhomobhi, to investigate all violations of International Human Rights Law and International Humanitarian Law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after. As you are aware, Professor Christine Chinkin, Ms. Hina Jilani, and Colonel (retired) Desmond Travers are the other Members of the Mission.

The Fact Finding Mission will convene in Geneva during the first week of May to start its work. We would appreciate the opportunity of meeting with you to discuss any issue of relevance to the implementation of the Mission's mandate. We also look forward to discussing the contents of our previous correspondence on this issue.

Should this be convenient to you, I would like to propose Tuesday 5 May at 9:00 AM.

Please accept, Your Excellency, the assurances of my highest consideration

A handwritten signature in black ink, appearing to read "Richard Goldstone".

Richard Goldstone
Head of the United Nations
Fact-Finding Mission on the Gaza Conflict

H.E. Ambassador Aharon Leshno-Yaar
Permanent Representative of Israel
To the United Nations in Geneva
Avenue de la Paix 1-3
1202 Geneva

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UNITED NATIONS FACT FINDING MISSION ON THE GAZA CONFLICT

Fax: (41-22) 928 9003, Telephone: (41 22) 928 9205, E-mail: fmarotta@ohchr.org

GFFM/O-23/090429FM

The Secretariat of the United Nations Fact Finding Mission on the Gaza Conflict presents its compliments to the Permanent Mission of Israel and has the honour to forward herewith a letter from the Head of the United Nations Fact Finding Mission on the Gaza Conflict, Justice Richard Goldstone addressed to His Excellency, Mr. Benjamin Netanyahu, Prime Minister of the Government of Israel.

The Secretariat of the United Nations Fact Finding Mission on the Gaza Conflict should be grateful if the Permanent Mission could transmit the attached letter to His Excellency, the Prime Minister.

Geneva, 5 May 2009

A handwritten signature in black ink, appearing to be 'el'.

Permanent Mission of Israël
Avenue de la Paix 1-3
1202 Geneva

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UNITED NATIONS FACT FINDING MISSION ON THE GAZA CONFLICT

Fax: (41-22) 928 9003, Telephone: (41 22) 928 9205, E-mail: finarotta@ohchr.org

GFFM/O-22/090429RG

4 May 2009

Dear Mr. Prime Minister,

I am writing to you in my capacity as Head of the United Nations Fact-finding Mission on the Gaza conflict appointed on 3 April 2009 by the President of the Human Rights Council, Ambassador Martin Shoeghian Uhomibhi. Professor Christine Chinkin, Ms. Hina Jilani, and Colonel (retired) Desmond Travers are the other Members of the Mission.

The Fact Finding Mission is mandated to investigate all violations of International Human Rights Law and International Humanitarian Law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after. The Mission will conduct its work independently and impartially.

Since the official announcement of its establishment, the Mission has received numerous attestations of support by international scholars and legal practitioners, academic and professional institutions, international and domestic human rights and civil society organisations - including Israeli and Palestinian organisations - as well as member states of the United Nations.

I am writing to seek your Government's cooperation in the implementation of the Mission's mandate, including by providing access to Israel, the Gaza Strip, the West Bank including East Jerusalem to enable the Mission to meet with victims of alleged violations and relevant authorities, including military officials, and access to documentation relevant to our inquiry.

I believe that it is crucial, in order to assess the military actions conducted by Israel, including the investigation of the effects on Israeli citizens of the rocket attacks that emanated from Gaza, that the Mission should visit the areas that were effected by those attacks. It is the earnest wish of the Mission to meet, if possible, with some of the victims of the rocket attacks, to ascertain the physical damage, as well as the effect that they had on an on-going basis upon the civilian population in the effected areas of Israel.

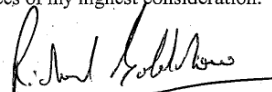
I also respectfully submit that it would be in the interest of the Government of Israel and of Israeli victims to cooperate with the Mission so that its and their views, concerns and submissions could receive appropriate attention and consideration and be reflected in the outcome of the Mission's work.

His Excellency Benjamin Netanyahu
Prime Minister
Jerusalem, Israel

We would also respectfully seek an opportunity to meet with you and with other relevant members of your Government.

I look forward to hearing from you and your support for the implementation of our tasks.

Please accept, Mr. Prime Minister, the assurances of my highest consideration.



Richard Goldstone
Head of the United Nations
Fact-Finding Mission on
the Gaza Conflict

cc: H.E. Ambassador Aharon Leshno-Yaar Permanent Representative of Israel to the United Nations in Geneva
H.E. Ambassador Martin I. Uhomobhi, President of the Human Rights Council
Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights
Prof Christine Chinkin, United Nations Fact-finding Mission on the Gaza Conflict
Ms. Hina Jilani, United Nations Fact-finding Mission on the Gaza Conflict
Col (retired) Desmond Travers, United Nations Fact-finding Mission on the Gaza Conflict

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UNITED NATIONS FACT FINDING MISSION ON THE GAZA CONFLICT

Fax: (41-22) 928 9003, Telephone: (41 22) 928 9205, E-mail: fmarotta@ohchr.org

GFFM/O-33/090520RG

Geneva, 20 May 2009

Dear Ambassador,

I refer to our previous correspondence with regard to the United Nations Fact Finding Mission on the Gaza Conflict, that was established by the President of the Human Rights Council, Ambassador Martin Ihoeghian Uhomobhi, and that I am heading. As you are aware, the Mission is mandated to investigate all violations of International Human Rights Law and International Humanitarian Law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period from 27 December 2008 and 18 January 2009, whether before, during or after.

In my letters of 3 and 8 April 2009 addressed to you, and in my letter of 4 May 2009 addressed to Prime Minister Netanyahu, I requested the cooperation of the Government of Israel in the implementation of the Mission's mandate, including by providing access to Israel, the Gaza Strip and the West Bank, including East Jerusalem, to enable the Mission to meet with victims of alleged violations and relevant authorities. I also requested access to documentation relevant to our inquiry.

To-date, I have received no reply to my request. I had hoped to be able to discuss this issue during the first meeting of the Fact Finding Mission in Geneva in early May; however my letter of 29 April 2009 inviting you to meet with the Mission Members went unanswered.

The Mission is required to submit its report by early August, and is thus working under a very tight timeline. In order to accomplish our task within the expected deadline, we are planning to complete field investigations by end June. Accordingly, we need to proceed expeditiously in the implementation of the various phases of our work.

In view of the lack of answers to my various communications, and in order to be able to fulfil the mandate entrusted to the Fact Finding Mission, I have sought the assistance of the Government of Egypt to facilitate entry into Gaza through the Rafah crossing.

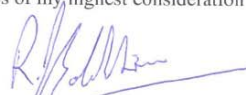
I would like to reiterate that the Mission's preferred option would be to carry out field investigations in Israel, the West Bank and Gaza. We are also planning to hold public hearings of victims of alleged violations and experts and would like to hold those on-site. Should this not be possible due to a refusal of the Government of Israel to cooperate, or even to provide access to its territory, the West Bank and Gaza, we will however proceed with alternative arrangements. These will include arranging for meetings with victims from Israel and the West Bank and for public hearings outside Israel and the Occupied Palestinian Territory.

H.E. Ambassador Aharon Leshno-Yaar
Permanent Representative of Israel
To the United Nations in Geneva
Avenue de la Pais 1-3
1202 Geneva

I would appreciate receiving a reply to my request by Friday 21st May, failing which the Mission will proceed with alternative arrangements.

I would like to underline again that the Mission would very much regret not to be able to meet with victims of alleged violations and visit relevant sites as we firmly believe that it would be in the interest of Israeli and Palestinian victims alike for us to be able to do so.

Please accept, Your Excellency, the assurances of my highest consideration



Richard Goldstone
Head of the United Nations
Fact-Finding Mission on the Gaza Conflict

cc: H.E. Ambassador Martin I. Uhomobhi, President of the Human Rights Council
Ms. Navanethem Pillay, United Nations High Commissioner for Human Rights
Prof Christine Chinkin, United Nations Fact-finding Mission on the Gaza Conflict
Ms. Hina Jilani, United Nations Fact-finding Mission on the Gaza Conflict
Col (retired) Desmond Travers, United Nations Fact-finding Mission on the Gaza Conflict



Mission permanente d'Israël
auprès de l'Office des Nations Unies
et des Organisations Internationales à Genève

משלחת ישראל
ליד משרד האומות המאוחדות
והארגונים הבינלאומיים בג'נבה

Justice Richard Goldstone
Head of the UN Fact-Finding Mission
On the Gaza Conflict
OHCHR
Palais des Nations
1211 Geneva 10

Geneva, 2 July 2009

Dear Justice Goldstone,

Thank you for your letter dated 20 May 2009. I have been asked in this response to respond also to your letter dated 4 May 2009 to Prime Minister Netanyahu.

I regret your impression that you have received no reply to your request for cooperation with the proposed Mission. I reiterate the official response to your request contained in my previous letter to you, dated 7 April 2007, that regrettably Israel will not be able to cooperate with the proposed Mission.

I also reiterate that this decision does not reflect in any way on you personally or the regard with which you are held in Israel. It is simply a recognition that the legal basis of the proposed mission is HRC Resolution S-9/1. This resolution, beyond its inflammatory and prejudicial language, clearly provides that the mandate of the Mission is limited to investigating "violations" by "the occupying Power, Israel against the Palestinian people" (OP14).

You will understand Israel's reluctance to cooperate with or give legitimacy to a Mission mandated to investigate the lawful use of force by a State to protect its citizens, yet required to ignore the illegal use of force by terrorist groups which made such action necessary.

Indeed it was this prejudicial and one-sided mandate which prompted many States, including the European Union, Canada, Japan and Switzerland, to refuse to support the Resolution and which led a distinguished list of human rights experts to decline the invitation to head the proposed Mission. As Mary Robinson, former High Commissioner for Human Rights, stated in explaining her refusal to serve as Head of the Mission:

"I am afraid the resolution is not balanced because it focuses on what Israel did, without calling for an investigation on the launch of the rockets by Hamas. This is unfortunately a practice by the Council: adopting resolutions guided not by human rights but by politics. This is very regrettable." (*Le Temps*, 4 February 2009).

I note your assurances that the mandate of the Mission as expressed to you by the President of the Council is not as set out in the Council Resolution. I note also that you yourself have distanced yourself from this text. (In our correspondence you have ceased signing your letters as Head of the "Fact-finding Mission **established under HRC Resolution S-9/1**" and now use the term "International Independent Fact Finding Mission" or United Nations Fact Finding Mission on the Gaza Conflict" - though the term "Gaza Conflict" would itself seem to exclude the relevance of attacks on Southern Israel.)

However, as a matter of law, no statement by any individual, including the President of the Council, has the force to change the mandate of the Mission. Moreover, even subsequent to his supposed clarifications, in a press conference on 16 April 2009, Ambassador Uhomoibhi stated clearly that it is operative paragraph 14 of Resolution S-9/1 which "spells out the mandate".

This accords with the provisions of the UN General Assembly's Declaration on Fact-finding by the United Nations in the Field of the Maintenance of International Peace and Security (A/RES/46/59) which provides that: "The decision by the competent United Nations organ to undertake fact-finding **should always contain a clear mandate for the fact-finding Mission**" (para. 17, emphasis added). And indeed Resolution S-9/1 does contain a clear mandate, albeit one which is hard to reconcile with the Declaration on Fact-finding's requirement that "Fact-finding should be comprehensive, objective, impartial and timely" (para.3).

I also note that, even should the Mission choose to operate in accordance with terms of reference which it has devised for itself, the Council's treatment of its report and any subsequent proceedings would still be based on the terms of Resolution S-9/1. And indeed there is nothing in the practice of the Council as it relates to Israel to date, that suggests it would not continue with its wholly one-sided approach.

Israel's decision not to cooperate with the Mission is, I should emphasize, without prejudice to its conviction that any allegations of wrongdoing by Israeli forces in the course of the conflict must be investigated, and where appropriate, prosecuted. It is for this reason that the IDF initiated a series of far-reaching command investigations into a wide range of incidents and operational aspects of the conflict. In the past such investigations have led to criminal prosecutions. The findings are currently being examined by the Military Advocate General, and will also be examined by the Attorney General. Both the decisions of the Military Advocate General and of the Attorney General can be appealed – by Israelis or Palestinians alike – to the Supreme Court sitting as the High Court of Justice.

Israel's decision was prompted purely by the legal basis of the Mission and its mandate, and without regard to the personalities involved. (In passing, however, I am obliged to register serious concern that one member of the Mission was signatory during the conflict to a public letter which made a number of clearly political and

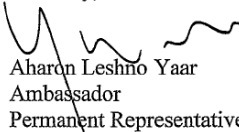
prejudgmental assertions, including that "the rocket attacks on Israel by Hamas do not amount to an armed attack entitling Israel to rely on self-defence(!)" [*Sunday Times Letters Page*, 11, January 2009]).

Some aspects of the conduct of the Mission have, in Israel's view, supported its decision not to cooperate with this initiative. Reports that the members of the Mission were accompanied at every stage of their visit to Gaza by Hamas officials gives serious reason to doubt that any true picture of the situation in Gaza, and especially of the cynical abuse of the civilian population by Hamas, can possibly emerge.

Israel is also concerned and confused by the decision to hold public hearings, broadcast on television and internet, as part of the fact-finding process. As you yourself have noted, this procedure is unprecedented as part of fact-finding operations. The very point of a fact-finding mission is that a team of experts bring their experience and judgment to bear in assessing the available evidence and drawing responsible conclusions – not that raw evidence, perhaps of questionable authenticity, is directly broadcast into the public arena. Such a trial by public opinion, which of necessity cannot give any weight to confidential or sensitive information, can serve little purpose in ascertaining the truth, and is only likely to prejudice public opinion in advance of any other conclusions.

I take this opportunity to emphasize once again that Israel's decision should not be interpreted in any way as an aspersion on your own integrity or commitment to impartiality. To the contrary, your involvement prompted Israel to give closer and more considered thought to its response to this initiative and increases our regret that it is not one we can cooperate with or support.

Sincerely,



Aharon Leshno Yaar
Ambassador
Permanent Representative

NATIONS UNIES



UNITED NATIONS

UNITED NATIONS FACT FINDING MISSION ON THE GAZA CONFLICT

Fax: (41-22) 928 9003, Telephone: (41 22) 928 9205, E-mail: factfindinggaza@ohchr.org

GFFM/O-80/090717RG

17 July 2009

Dear Ambassador Yaar,

Thank you for your letter dated 2 July 2009.

At the outset, I would like to record that the reason for my impression that no final word was given by your Government to my request for its cooperation was the terms of sometimes conflicting statements coming from your Foreign Office and the lack of response to my letters to Prime Minister Netanyahu of 4 May 2009 and to you of 8 April and 20 May 2009.

I had hoped that the terms of the mandate that I received from the President of the Human Rights Council and the absence of objections by the Human Rights Council when informed of this mandate would constitute a reason for Israel to support this opportunity, rather than undermine it. Governments that were unhappy with the terms of Resolution S-9/1 subsequently offered their support to the mandate given to my Mission.

In the light of the decision of your Government not to cooperate, there is little point in my responding to all the issues raised in your letter. I must, however, categorically deny the allegation that Hamas officials accompanied the Members of the Fact Finding Mission at all, let alone "at every stage of their visit to Gaza". Reports to that effect are denial of truth, as I have already publicly stated. I would have found this to be quite unacceptable.

I have made public the motivation for holding public hearings. The fact that this kind of hearing is unprecedented is hardly a reason for criticism and it is incorrect to suggest that it is 'trial by public opinion'. The hearings are no more than an attempt to allow the voices and faces of victims from all sides to be heard and seen by the public and especially in Israel and the occupied Palestinian territory, including Gaza and the West Bank. The facts that might emerge from the hearings are one part of our fact finding activities and will be evaluated in the same way as will all other information obtained by the Mission.

H.E. Ambassador Aharon Leshmo-Yaar
Permanent Representative of Israel
To the United Nations in Geneva
Avenue de la Paix 1-3
1202 Geneva

Notwithstanding the decision by your Government not to cooperate, we have sent you for onward transmission to your Government a series of questions on issues that concern our Mission, based on information gathered during the course of our work. I would welcome a response from your Government to our letter of 10 July 2009. We are similarly transmitting questions on matters of concern to the Palestinian Authority and to the Gaza authorities.

I am appreciative of your Government's acknowledgement of my personal commitment to impartiality with regard to all aspects of the Mission's work. This commitment is shared by all Members of the Mission and will be fully reflected in our report. It is my hope and assumption that the Human Rights Council will accept it accordingly.

Please accept, Your Excellency, the assurances of my highest consideration.

A handwritten signature in black ink, appearing to read "Richard Goldstone", with a horizontal line underneath it.

Richard Goldstone
Head
United Nations Fact Finding Mission on the Gaza Conflict

Annex III

Replies to Mission's Call for Submissions of 8 June 2009¹²⁰⁸

- 1) Al Mezan, Gaza
- 2) Adalah ; ACRI ; Gisha ; HaMoked ; Physicians for Human Rights ; PCATI ; Yesh Din (Joint Submission), Israel
- 3) Alternative Information Center, Israel
- 4) Australia Lawyer Group, Australia
- 5) B'nai B'rith International, United States of America
- 6) Busby, Chris, United Kingdom
- 7) Central Committee for Documentation and Pursuit of Israeli War Criminals – *Tawtheq*, Gaza
- 8) Centre on Housing Rights and Evictions COHRE, Geneva
- 9) Defence for Children International (DCI) – Palestine, Jerusalem
- 10) Diakonia – Humanitarian Law, Jerusalem
- 11) Eyre, Peter (location unknown)
- 12) Euro-Mediterranean Human Rights Network (EMHRN), Brussels
- 13) Green, Yvonne, United Kingdom
- 14) Housing and Land Rights Network – Habitat International Coalition, Egypt
- 15) Inge Genefke and Bent Sorensen Anti-Torture Support Foundation, Brussels
- 16) Iranian Islamic Human Rights Commission (IHRC), Tehran
- 17) Jerusalem Centre for Public Affairs, Jerusalem
- 18) Lacey, Ian, Australia
- 19) Leas, James Marc, United States of America
- 20) Matas, David, Winnipeg
- 21) National Lawyers Guild, New York
- 22) National Lawyers Guild, New York
- 23) NGO Monitor, Jerusalem
- 24) Ostroff, Maurice (location unknown)
- 25) Ostroff, Maurice (location unknown)
- 26) Richter, Elihu, Israel

¹²⁰⁸ The list only includes information formally submitted to the Mission in reply to the Call for Submission of 8 June 2009. The list is not inclusive of other information and material provided to the Mission by organizations and individuals.

- 27) Richter, Elihu, Israel
- 28) Shinar, Ofer, Israel
- 29) Take-a-Pen, Israel
- 30) The 1612 Working Group on Grave Violations against Children established for Israel and the Occupied Palestinian Territory
- 31) World Health Organization-West Bank and Gaza, Jerusalem.



General Assembly

Distr.: General
1 December 2009

Sixty-fourth session
Agenda item 64

Resolution adopted by the General Assembly on 5 November 2009

[without reference to a Main Committee (A/64/L.11 and Add.1)]

64/10. Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict

The General Assembly,

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

Recalling the relevant rules and principles of international law, including international humanitarian and human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,¹ which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the Universal Declaration of Human Rights² and the other human rights covenants, including the International Covenant on Civil and Political Rights,³ the International Covenant on Economic, Social and Cultural Rights³ and the Convention on the Rights of the Child,⁴

Recalling further its relevant resolutions, including resolution ES-10/18 of 16 January 2009 of its tenth emergency special session,

Recalling the relevant Security Council resolutions, including resolution 1860 (2009) of 8 January 2009,

Recalling also the relevant resolutions of the Human Rights Council, including resolution S-12/1 of 16 October 2009,

Expressing its appreciation to the United Nations Fact-Finding Mission on the Gaza Conflict, led by Justice Richard Goldstone, for its comprehensive report,⁵

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

¹ United Nations, *Treaty Series*, vol. 75, No. 973.

² Resolution 217 A (III).

³ See resolution 2200 A (XXI), annex.

⁴ United Nations, *Treaty Series*, vol. 1577, No. 27531.

⁵ A/HRC/12/48.



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

Gravely concerned by reports regarding serious human rights violations and grave breaches of international humanitarian law committed during the Israeli military operations in the Gaza Strip that were launched on 27 December 2008, including the findings of the Fact-Finding Mission and of the Board of Inquiry convened by the Secretary-General,⁶

Condemning all targeting of civilians and civilian infrastructure and institutions, including United Nations facilities,

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

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

1. *Endorses* the report of the Human Rights Council on its twelfth special session, held on 15 and 16 October 2009;⁷

2. *Requests* the Secretary-General to transmit the report of the United Nations Fact-Finding Mission on the Gaza Conflict⁵ to the Security Council;

3. *Calls upon* the Government of Israel to take all appropriate steps, within a period of three months, to undertake investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice;

4. *Urges*, in line with the recommendation of the Fact-Finding Mission, the undertaking by the Palestinian side, within a period of three months, of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice;

5. *Recommends* that the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War,¹ undertake as soon as possible the steps necessary to reconvene a Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with article 1;

6. *Requests* the Secretary-General to report to the General Assembly, within a period of three months, on the implementation of the present resolution, with a view to the consideration of further action, if necessary, by the relevant United Nations organs and bodies, including the Security Council;

⁶ A/63/855-S/2009/250.

⁷ A/64/53/Add.1.

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

*39th plenary meeting
5 November 2009*



General Assembly

Distr.: General
25 March 2010

Sixty-fourth session
Agenda item 64

Resolution adopted by the General Assembly on 26 February 2010

[without reference to a Main Committee (A/64/L.48 and Add.1)]

64/254. Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict

The General Assembly,

Recalling its relevant resolutions, including resolution 64/10, adopted on 5 November 2009, in follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict,¹

Recalling also the relevant rules and principles of international law, including international humanitarian and human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,² which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling further the Universal Declaration of Human Rights³ and the other human rights covenants, including the International Covenant on Civil and Political Rights,⁴ the International Covenant on Economic, Social and Cultural Rights⁴ and the Convention on the Rights of the Child,⁵

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

Reiterating the importance of the safety and well-being of all civilians, and reaffirming the obligations under international law regarding the protection of civilians in armed conflict,

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

¹ A/HRC/12/48.

² United Nations, *Treaty Series*, vol. 75, No. 973.

³ Resolution 217 A (III).

⁴ See resolution 2200 A (XXI), annex.

⁵ United Nations, *Treaty Series*, vol. 1577, No. 27531.



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

1. *Takes note* of the report of the Secretary-General of 4 February 2010,⁶ submitted pursuant to paragraph 6 of its resolution 64/10;
2. *Reiterates its call upon* the Government of Israel to conduct investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the United Nations Fact-Finding Mission on the Gaza Conflict, towards ensuring accountability and justice;
3. *Reiterates its urging* for the conduct by the Palestinian side of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice;
4. *Reiterates its recommendation* to the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War,² to reconvene as soon as possible a Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with article 1, bearing in mind the convening of such a Conference and the statement adopted on 15 July 1999 as well as the reconvening of the Conference and the declaration adopted on 5 December 2001;
5. *Requests* the Secretary-General to report to the General Assembly, within a period of five months, on the implementation of the present resolution, with a view to the consideration of further action, if necessary, by the relevant United Nations organs and bodies, including the Security Council;
6. *Decides* to remain seized of the matter.

*72nd plenary meeting
26 February 2010*

⁶ A/64/651.



General Assembly

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Agenda item 64

Report of the Human Rights Council**Follow-up to the report of the United Nations Fact-Finding
Mission on the Gaza Conflict****Report of the Secretary-General***Summary*

The present report is submitted pursuant to General Assembly resolution 64/10 of 5 November 2009. On 3 December 2009, the Secretary-General sent notes verbales to the Permanent Mission of Israel to the United Nations, the Permanent Observer Mission of Palestine to the United Nations and the Permanent Mission of Switzerland to the United Nations, drawing their attention to the relevant provisions of resolution 64/10, and requesting written information by 29 January 2010 concerning any steps that may have been taken or were in the process of being taken in relation to their implementation. The full text of the materials received by the Secretariat in reply to those requests is attached as annexes. The report also contains the observations of the Secretary-General.



I. Introduction

1. The present report is submitted in pursuance of paragraph 6 of General Assembly resolution 64/10 of 5 November 2009 on the follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict, in which the Secretary-General was requested to report to the General Assembly, within a period of three months, on the implementation of the resolution. To fulfil this request, it was therefore necessary to ascertain what steps the parties named in paragraphs 3, 4 and 5 had taken.

2. On 3 December 2009, the Secretary-General drew the attention of the Permanent Mission of Israel to the United Nations to resolution 64/10, with the request that the Permanent Mission provide the Secretariat with written information by 29 January 2010 of any steps that the Government of Israel may have taken or was in the process of taking further to the call of the General Assembly in paragraph 3 of the resolution.

3. On 29 January 2010, the Secretariat received a document from the State of Israel entitled "Gaza operation investigations: an update". The full text of the document is attached as annex I to the present report.

4. On 3 December 2009, the Secretary-General drew the attention of the Permanent Observer Mission of Palestine to the United Nations to resolution 64/10, with the request that the Permanent Observer Mission provide the Secretariat with written information by 29 January 2010 of any steps that the Palestinian side may have taken or was in the process of taking further to the exhortation of the General Assembly in paragraph 4 of the resolution.

5. On 29 January 2010, the Secretary-General received a letter of the same date from the Permanent Observer Mission of Palestine to the United Nations conveying a letter dated 27 January 2010 from the Prime Minister of the Palestinian Authority, Salam Fayyad. The full text of the letters is attached as annex II to the present report.

6. On 3 December 2009, the Secretary-General drew the attention of the Permanent Mission of Switzerland to the United Nations to resolution 64/10, with the request that the Permanent Mission provide the Secretariat with written information by 29 January 2010 of any steps that the Government of Switzerland may have taken or was in the process of taking further to the recommendation of the General Assembly in paragraph 5 of the resolution.

7. On 29 January 2010, the Secretary-General received a letter of the same date from the Permanent Mission of Switzerland concerning the steps taken in connection with General Assembly resolution 64/10 on the follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict. The full text of the letter is attached as annex III to the present report.

II. Observations

8. At the beginning of 2009, I visited both Gaza and southern Israel in order to help to end the fighting and to show my respect and concern for the deaths and injuries of so many people during the conflict in and around Gaza. I was, and remain, deeply affected by the widespread death, destruction and suffering in the

Gaza Strip, as well as moved by the plight of civilians in southern Israel who have been subject to indiscriminate rocket and mortar fire.

9. I believe that, as a matter of principle, international humanitarian law needs to be fully respected and civilians must be protected in all situations and circumstances. Accordingly, on several occasions, I have called upon all of the parties to carry out credible domestic investigations into the conduct of the Gaza conflict. I hope that such steps will be taken wherever there are credible allegations of human rights abuses.

10. It is my sincere hope that General Assembly resolution 64/10 has served to encourage investigations by the Government of Israel and the Palestinian side that are independent, credible and in conformity with international standards.

11. I note from the materials received that the processes initiated by the Government of Israel and the Government of Switzerland are ongoing, and that the Palestinian side initiated its process on 25 January 2010. As such, no determination can be made on the implementation of the resolution by the parties concerned.

Annex I

[Original: English]

Gaza operation investigations: an update

January 2010

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EXECUTIVE SUMMARY

1. This Paper describes Israel's process for investigating alleged violations of the Law of Armed Conflict. It focuses in particular on investigations, legal proceedings, and lessons learned in relation to the actions of the Israeli Defence Forces (IDF) in Gaza from 27 December 2008 through 18 January 2009 (the "Gaza Operation," also known as "Operation Cast Lead").
2. The Paper supplements and updates a paper Israel released in July 2009, *The Operation in Gaza: Factual and Legal Aspects*,¹ which addressed a range of factual and legal issues related to the Gaza Operation. The earlier paper included detailed accounts of Hamas's incessant mortar and rocket attacks on Israel's civilians (some 12,000 such attacks in the 8 years prior to the Operation) and the steadily increasing range of such attacks; Hamas's suicide bomb attacks; and Hamas's smuggling of weaponry and ammunition through tunnels under the Egyptian-Gaza border, as well as Israel's attempts to address these threats through non-military means, including diplomatic overtures and urgent appeals to the United Nations.
3. *The Operation in Gaza* also set out the legal framework governing the use of force and the principles – including the principles of distinction and proportionality – that apply in such a conflict. It also described the IDF's efforts to ensure compliance with these principles during the Gaza Operation and the *modus operandi* of Hamas, in particular its abuses of civilian protections that created such acute operational dilemmas.
4. *The Operation in Gaza* also included preliminary findings of a number of the investigations established following the operation, although such investigations were, and remain, works in progress. For this reason, six months after the publication of the original paper, it is appropriate once again to take stock publicly regarding the progress made and the current findings of the investigative process. While many of these investigations are still underway, this Paper aims to present a clear and up-to-date picture of the current status of Israel's investigations.
5. Israel's system for investigating alleged violations of the Law of Armed Conflict is comparable to the systems adopted by other democratic nations, including the United Kingdom, the United States, Australia, and Canada. The Paper notes that Israel has demonstrated its ability and its commitment to pursue serious criminal charges to uphold

¹ *The Operation in Gaza: Factual and Legal Aspects*, available at http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Operation_in_Gaza-Factual_and_Legal_Aspects.htm.

the Law of Armed Conflict, a commitment which has been confirmed by outside observers and foreign legal systems.

6. Israel's investigative system has multiple layers of review to ensure impartiality and independence. These include the Military Advocate General's Corps (MAG), which determines whether to initiate criminal investigations and file charges against IDF soldiers. The Military Advocate General is legally independent from the military chain of command. Israel's Attorney General provides civilian oversight, as any decision of the Military Advocate General on whether or not to investigate or indict may be subject to his review. Further review is available through Israel's Supreme Court either as an appeals court, or exercising judicial review over any decision of the Military Advocate General or the civilian Attorney General. Such review can be – and frequently is – initiated by a petition of any interested party, including non-governmental organisations, Palestinians, and other non-citizens.
7. The Paper describes the structure and process of operation of these various elements of Israel's investigative system in some detail, particularly in order to correct misrepresentations and inaccuracies in recent reports describing these mechanisms.²
8. Describing the application of these mechanisms to the Gaza Operation, the Paper notes that the IDF to date has launched investigations of 150 separate incidents arising from the Gaza Operation. A number of these were opened at the IDF's own initiative. Others were opened in response to complaints and reports from Palestinian civilians, local and international non-governmental organisations, and U.N. and media reports.
9. Of the 150 incidents, so far 36 have been referred for criminal investigation. To date, criminal investigators have taken evidence from almost 100 Palestinian complainants and witnesses, along with approximately 500 IDF soldiers and commanders. The Paper describes some of the challenges encountered in the conduct of the investigations, including accessing evidence from battlefield situations and the need to make arrangements, together with non-governmental organisations such as B'Tselem, to locate and interview Palestinian witnesses. To address these challenges, special investigative teams have been appointed and are currently investigating complaints arising from the Gaza Operation.

² Numerous assertions made by the Human Rights Council's Report of the U.N. Fact-Finding Mission on the Gaza Conflict – for example, that criminal investigations must await the completion of a military command investigation or that all command investigators are within the direct chain of command – are incorrect.

10. The Paper relates to all investigations initiated following the Gaza Operation and does not limit itself to those incidents in the Human Rights Council's Report of the U.N. Fact-Finding Mission on the Gaza Conflict, chaired by Justice Richard Goldstone (the "Human Rights Council Fact-Finding Report" or "Report"). As Israel has clarified before, Israel disagrees with the findings and recommendations of the Report, which reflect many misunderstandings and fundamental mistakes with regard to the Gaza Operation, its purposes, and Israel's legal system. This Paper, however, is not intended as a comprehensive response to the Report or a catalogue of the Report's serious inaccuracies and misstatements.
11. With respect to the incidents described in the Human Rights Council Fact-Finding Report, the Paper notes that, prior to the publication of the Report, Israel was investigating 22 of the 34 incidents it addresses. The remaining 12 incidents, none of which had previously been brought to the attention of the Israeli authorities, were promptly referred for investigation upon the Report's publication. The Paper details the various stages of investigation of these incidents. It also notes that in some cases, after reviewing all the evidence available, the Military Advocate General has concluded that there was no basis for criminal investigations. The Paper gives detailed accounts of a number of these incidents.
12. The Paper also provides updated information regarding the special command investigations initiated by the IDF Chief of General Staff after the conclusion of hostilities in Gaza. As noted in *The Operation in Gaza*, shortly after the close of the Operation, the Chief of General Staff appointed five senior field commanders to investigate the most serious allegations of wrongdoing. The Chief of General Staff recently adopted a recommendation by the Military Advocate General and initiated a sixth special investigation, to consider additional allegations and to re-examine a complaint that a command investigator could not substantiate.
13. The Paper provides updates regarding the findings of these investigations, which have, in addition to prompting criminal inquiries, further command investigations, and disciplinary proceedings, also yielded operational lessons resulting in changes already made or underway.
14. The Paper concludes by recognizing the importance of conducting the investigative process in a timely manner. At the same time, it notes the need to ensure that legal processes are conducted thoroughly and with full due process, and in a manner comparable with that of other states guided by a respect for the rule of law.

I. INTRODUCTION

1. This Paper describes Israel's process for investigating alleged violations of the Law of Armed Conflict.¹ It focuses in particular on investigations, legal proceedings, and lessons learned in relation to the actions of the Israeli Defence Forces (IDF) in Gaza from 27 December 2008 through 18 January 2009 (the "Gaza Operation," also known as "Operation Cast Lead").
2. The Gaza Operation represented a striking example of the complex and challenging asymmetric conflicts in which states are increasingly finding themselves. In such conflicts, states are forced to confront non-state actors which do not regard themselves as bound by legal or humanitarian obligations. Such actors frequently abuse these principles as a deliberate strategy, placing both their own civilian population and that of the defending state at greater risk.
3. Faced with such challenges, and the acute real-time dilemmas created by militants operating from within and behind civilian areas, the importance of legal guidance and full compliance with legal and humanitarian obligations is paramount. At the international level, this requires close dialogue and consultation between states confronting similar threats in order to share experience and to consider how established principles of law can best be applied in such complex circumstances. At the national level, it requires continuous efforts to ensure that the principles of the Law of Armed Conflict are an integral part of the training of soldiers and commanders, and that these principles guide planning and operational decisions.
4. Beyond these measures, which are generally taken prior to and during operations, extreme importance must also be given to reviewing the operation after the fact. This should include the thorough investigation of all incidents that raise questions regarding the appropriateness or lawfulness of measures used or decisions made. The complexity and scale of such operations means that inevitably there are tragic instances, mistakes, and errors of judgment.² Tragic results, including civilian death and damage to property do not necessarily mean that violations of international law have occurred. At the same time, in

¹ This Paper uses the term "Law of Armed Conflict" in its ordinary sense – describing the legal obligations of parties to an armed conflict in the course of their military operations. The term "International Humanitarian Law" is used by many commentators and countries as an interchangeable term. Israel, like many other countries, prefers the term Law of Armed Conflict.

² A harsh reminder for Israel of this reality is the fact that nearly half of its soldiers killed during the Gaza Operation were killed by IDF fire mistakenly directed towards them.

instances in which evidence indicates that violations have taken place, this must be fully investigated and prosecuted.

5. Israel is committed to ensuring that every such incident is fully and fairly investigated, to ensure that lessons can be learned and that, if justified, criminal or disciplinary proceedings initiated. To this end the IDF policy requires that every allegation of wrongdoing be investigated, irrespective of its source. The 150 separate incidents investigated following the Gaza Operation include, as detailed later in this Paper, not only investigations opened as a result of Israel's own concerns about certain incidents but also investigations in response to complaints and reports from Palestinian residents, local and international non-governmental organisations and UN and media reports.
6. Parts II and III of this Paper provide an overview of Israel's mechanisms for investigating alleged violations of the Law of Armed Conflict. These include mechanisms operating within the IDF, but independently of the military chain of command as well as civilian oversight mechanisms including the Attorney General and the Supreme Court sitting as the High Court of Justice, with power of judicial review over every decision to prosecute or not prosecute alleged offenders. Israel's system of investigation and prosecution is comparable to that of many democratic states confronting similar challenges, and in the course of Part III reference is made to the systems other states have developed in this regard.
7. Part IV focuses specifically on the investigation of complaints alleging violations of the Law of Armed Conflict during the Gaza Operation and sets out where the investigations opened currently stand. It also addresses some of the lessons that have already been learned, including changes to operational procedures, as a result of the findings of the investigations conducted so far.

II. OVERVIEW OF ISRAEL'S SYSTEM FOR REVIEWING MISCONDUCT ALLEGATIONS

8. Israel is a democracy, with a well-developed legal system. Even though it has confronted constant and existential threats from neighbouring states and non-state actors, Israel stands committed to the rule of law. As Israel's Supreme Court has recognized:

“This is the destiny of a democracy – it does not see all means as acceptable, and the ways of its enemies are not always open before it. A democracy must sometimes fight with one hand tied behind its back. Even so, a democracy has the upper hand. The rule of law and the liberty of an individual constitute important components in its understanding of security. At the end of the day, they strengthen its spirit and this strength allows it to overcome its difficulties.”³

9. Under Israel's Basic Law for the Military, the IDF is subordinate and accountable to the civilian Government. Like any other governmental authority, it is subject to the rule of law, including the applicable rules of international law. The Israeli system of justice holds the Government, including the IDF, to its legal obligations.
10. First and foremost, Israel is committed to educating state agents – in this case, IDF commanders and soldiers – of their duties and restrictions. This includes the widespread dissemination of relevant Law of Armed Conflict principles across the ranks of the IDF.⁴ When violations of those principles are suspected, the Israeli justice system is designed not only to mete out punishment and deter future violations but also to provide the opportunity for redress to parties injured by state offences. The lawlessness of an adversary, or the severity of the threat they pose, is not and cannot be an excuse for unlawful or improper conduct.
11. To ensure compliance with the rule of law, including international law and the Law of Armed Conflict, the IDF has established a system to investigate and pursue allegations of misconduct. This system, like its counterparts in many states, includes multiple components and layers of review – an internal military disciplinary procedure, a network of military police, prosecutors, and courts, and a process for oversight by civilian authorities and the judiciary. While individual components of this system – like any

³ *Public Committee Against Torture in Israel v. State of Israel*, HCJ 5100/94 ¶ 39 (6 September 1999).

⁴ This dissemination is particularly important since Israeli law forbids a soldier from complying with an order that is manifestly unlawful.

governmental organisation – may not always work as intended, numerous checks and balances ensure that the rule of law is upheld.

A. The Military Justice System

12. Israel's military justice system, like those of many other democracies, is part of the state's military forces but is professionally independent. Israel's Military Justice Law of 1955 established the Court Martial system and governs the investigation, indictment, and prosecution of those accused of misconduct. This military justice system deals with all allegations of offences or violations of law committed by IDF personnel, including allegations of improper conduct on the battlefield.
13. The military justice system includes three main components: the Military Advocate General's Corps, the Military Police Criminal Investigation Division (MPCID), and the Military Courts.

(1) The Military Advocate General's Corps

14. The Military Advocate General's Corps is comprised of highly professional and trained lawyers, and is responsible for enforcing the rule of law throughout the IDF.⁵ It also provides advice on military, domestic, and international law to the Chief of General Staff and all divisions of the IDF.⁶ The decisions and legal opinions of the Military Advocate General are binding on all components of the military.⁷
15. Although he serves on the General Staff of the IDF, the Military Advocate General is legally independent. IDF Supreme Command Orders state that in executing his powers and authority, the Military Advocate General is "subject to no authority but the law."⁸ Thus, the Chief of General Staff has no authority over him regarding legal matters. The Military Advocate General is not subject to direct orders of any superior officers, excluding the Chief of Staff in non-legal matters. As a former Military Advocate General has explained, the Military Advocate General has a unique status in the military:

⁵ Military Justice Law, § 178(2), (4); IDF Supreme Command Order 2.0613(2)(a).

⁶ Military Justice Law, § 178(1); IDF Supreme Command Order 2.0613(2)(b)(4).

⁷ See *Avivit Atiyah v. Attorney General*, HCJ 4723/96 ¶ 11 (29 July 1997).

⁸ IDF Supreme Command Order 2.0613(9)(A).

“Members of the Military Advocate are not subject to the functional command orders of the command ranks that they serve, and the decisions that they make are in their exclusive discretion. The MAG is not subordinate to the Chief of Staff in respect of the exercise of his powers and is not under any command whatsoever – de jure or de facto.”⁹

16. The independence of the Military Advocate General extends to every officer within the Military Advocate General’s Corps. Each is subordinate only to the Military Advocate General and is not subject to direct orders by commanders outside the Corps.
17. The manner in which the Military Advocate General is appointed further evidences his independence. Under the Military Justice Law, the Minister of Defence appoints the Military Advocate General, upon a recommendation of the Chief of General Staff of the IDF.¹⁰ Most other senior officers in the IDF are appointed directly by the Chief of General Staff.
18. The Military Advocate General’s dual enforcement and advisory responsibilities parallel those of chief military lawyers in other countries, such as the United Kingdom.¹¹ The units within the Military Advocate General’s Corps that issue legal guidance to the IDF and that examine and prosecute alleged crimes by IDF forces are separate from one another. The latter function of the Military Advocate General’s Corps is conducted by the Chief Military Prosecutor, Military Advocates (who head regional and other prosecution units), and military prosecutors (collectively, “the military prosecution”).
19. The military justice system empowers the Military Advocate General, the Chief Military Prosecutor, and the Military Advocates to direct the prosecution of soldiers for military offences identified in the Military Justice Law (such as absence without leave, conduct unbecoming an officer, and pillage), as well as criminal offences under Israel’s general Penal Law.¹² When the evidence establishes a reasonable likelihood that a crime or infraction has been committed, a Military Advocate may order a prosecutor to file an indictment in the Military Courts or order a commander to hold a disciplinary hearing.

⁹ Menachem Finkelstein and Yifat Tomer, *The Israeli Military Legal System – An Overview of the Current Situation and a Glimpse Into the Future*, 52 AIR FORCE L. REV. 137, 140 (2002) (footnotes omitted), available at http://findarticles.com/p/articles/mi_m6007/is_2002_Wntr/ai_103136516/?tag=content;coll.

¹⁰ Military Justice Law, § 177(a).

¹¹ See Part III.E below.

¹² Military Justice Law, § 280.

Like any criminal proceeding, this process requires military prosecutors to examine the evidence carefully and to file an indictment only if there is sufficient evidence.¹³

20. In 2007, the Military Advocate General established a specialized unit within the military prosecution, the Office of the Military Advocate for Operational Affairs, to oversee all investigations and to conduct all prosecutions of alleged operational misconduct – particularly, alleged misconduct by IDF soldiers against Palestinian civilians during military operations. The mandate of the Office includes investigation and prosecution of alleged violations of the Law of Armed Conflict. The prosecutors assigned specifically to the Office have special training and expertise to address the unique difficulties in investigating and trying these kinds of cases. When necessary, prosecutors from other units supplement this unit.

(2) The Military Police Criminal Investigation Division (MPCID)

21. The MPCID is the primary entity within the IDF for investigating alleged crimes committed by soldiers. It has hundreds of trained investigators, including reservists, who are posted in different regional and specialized units. The training course of each investigator lasts about six months, including legal studies at the IDF's School of Military Law, which is under the authority of the Military Advocate General. After concluding this training, each soldier is required to pass an examination conducted by a Military Advocate before he or she is authorized to serve as an MPCID investigator.¹⁴
22. The scope of the MPCID's activities is substantial. In the last five years, the unit opened almost 3,300 investigations on average each year and collected more than 11,000 testimonies. The MPCID investigates an average of 5,500 suspects and arrests an average of 1,400 people per year. In 2009, seven percent of these investigations involved Palestinian complainants.
23. Criminal investigators who handle complaints by Palestinians undergo specialized training, including training in international law. Some of these investigators are Arabic speakers, while others use Arabic interpreters, who participate in interviews with Palestinian complainants and witnesses.

¹³ Under Israeli Supreme Court precedent, a criminal indictment may only be filed where a "reasonable chance to convict" exists in light of all evidence collected, including exculpatory evidence. *See, e.g., Yahav v. State Attorney*, HCJ 2534/97 (30 June 1997).

¹⁴ Military Justice Law, § 252(A)(3).

24. As necessary, MPCID investigators consult with prosecutors from the Military Advocate General's Corps regarding the proper handling of an investigation. In addition, the Military Advocate General appointed a legal officer from the Military Advocate General's Corps to serve as the legal adviser of the MPCID. The legal adviser works to ensure that legal policy is assimilated in MPCID standing orders and regulations.
25. At the conclusion of an investigation, the MPCID reports to the military prosecution and transfers the file for review by a prosecutor. In many cases, the military prosecution returns the file to MPCID with concrete instructions to conduct a supplemental investigation. If no supplement is needed, a Military Advocate or the Chief Military Prosecutor decides whether to initiate criminal or disciplinary proceedings, based on the evidence available and the nature of the alleged misconduct. In cases of heightened complexity or sensitivity, this decision is made in consultation with the Military Advocate General.

(3) The Military Courts

26. The Military Courts adjudicate charges against IDF soldiers for military and other criminal offences through a Court Martial. The Courts, which include the Military Court of Appeals and several regional courts, are composed of both professional military judges and regular officers (who must have no connection to the cases they hear). Every Court Martial must include at least one professional military judge, and professionals must comprise a majority of any appellate panel.¹⁵ The Military Justice Law provides that “[i]n judicial matters, a military judge is not subject to any authority save that of the law, and is not subject in any way to the authority of his commanders.”¹⁶
27. Military commanders do not appoint professional military judges. Rather, an independent commission comprised of the Minister of Defence, the Minister of Justice, members of the Israeli Supreme Court and the Military Court of Appeals, and a representative of the Israeli Bar Association (among others), makes the appointments.¹⁷ Professional military judges serve in a separate military courts unit, headed by the President of the Military Court of Appeals. The cadre of professional military judges includes many civilian judges, who

¹⁵ Military Justice Law, §§ 202, 216.

¹⁶ Military Justice Law, § 184. The Israeli Supreme Court has noted that the participation of regular officers in Courts Martial serves “to emphasize the common responsibility of all of those who serve in the military regarding what happens in the military.” *Katz v. President of the Court Martial, Central Jurisdictional District*, HCJ 142/79 ¶ 6 (10 June 1979).

¹⁷ See Military Justice Law, § 187(a).

may preside over military proceedings as part of their military reservist duties.¹⁸ Professional military judges can be removed only for gross misconduct, under a special procedure.

28. Even though the Military Courts are located within military bases, their proceedings are generally open to the public. Military Courts may conduct proceedings *in camera* only in limited circumstances, such as when an open proceeding would jeopardize the security of the state.¹⁹ The news media can and does cover Military Court proceedings, and many judgments of the Military Courts are published on the official website of the Israeli judiciary, as well as on various public online databases. In general, the rules of evidence in the Military Courts are practically identical to the rules applicable in civilian criminal proceedings.²⁰
29. Prosecutors have the right to appeal a sentence they regard as too lenient. Traditionally, the Military Courts have dealt sternly with soldiers convicted of offences against civilians. For example, in *Military Prosecutor v. Sgt Ilin*, the Military Court of Appeals increased the sentence of a soldier convicted of looting. The court observed:

“A soldier committing prohibited acts during armed conflict inflicts injury upon the human dignity of the conquered as well as upon the humanity of the conqueror. . . . It is clear therefore that the thunder of war and the heat of the battle actually demand reinforcement and amplification of the voice of morality”²¹

30. Likewise, in *Military Prosecutor v. Corp. Lior and Corp. Roi*, the Military Court of Appeals raised the sentences of two soldiers serving in the Military Police who were convicted of assaulting Palestinian detainees. The court concluded:

“The respondents grossly violated their obligations as human beings, citizens of the State of Israel, as soldiers and as police officers. The respondents are part of the Israeli society, soldiers in the IDF and members of the Military Police. In their actions, they harmed each and every person who is a part of these groups. The damage of their actions

¹⁸ See Military Justice Law, §§ 185(b), 187C.

¹⁹ See Military Justice Law, § 324.

²⁰ See Military Justice Law, § 476 (establishing that evidence law applicable to criminal proceedings in civilian courts shall apply in Military Courts unless a specific provision states differently). Rules of evidence that are unique to the Military Courts must be interpreted in light of similar provisions and the principles of general evidence law. See *Isascharov v. Military Prosecutor General*, Cr.A. 5121/98 (4 May 2006).

²¹ *Military Prosecutor v. Sgt. Ilin*, C/62/03 ¶ E (23 May 2003).

is not limited to the ugly act they committed. It radiates in a circular pattern – similar to a rock thrown down a well – on its entire surrounding.”²²

B. Civilian Supervision Over the Military Justice System

(1) Attorney General of Israel

31. The decision of the Military Advocate General whether or not to open a criminal investigation, as well as his decision whether or not to file an indictment, may be subject to further review by the Attorney General of the State of Israel, an independent figure of high authority.
32. For example, in *Avivit Atiyah v. Attorney General*, the Israeli Supreme Court ruled that the Attorney General could order the Military Advocate General’s Corps to change its position concerning whether to file a criminal indictment. The Court ruling has been interpreted as follows:

“[T]he power of the Attorney General to impose his opinion on the MAG will, in those cases, include the cancellation of and the filing of a charge in a court-martial. In other words, even if the MAG thinks, in these cases, that a charge ought not be filed, and the matter is brought before the Attorney General ... the Attorney General shall be authorized to decide that a charge should be filed, and his decision shall prevail.”²³

33. A complainant or non-governmental organisation may trigger the review of the Attorney General by simply sending a letter to the Attorney General, requesting further review of the matter.

(2) Supreme Court of Israel

34. Civilian judicial review of the military system occurs in two ways. First, the Supreme Court of Israel has discretion to hear direct appeals from judgments of the Military Court of Appeals “concerning an important, difficult, or innovative legal question.”²⁴ Second, the

²² *Military Prosecutor v. Corp. Lior and Corp. Roi*, C/128/03 and C/146/03 ¶ 17 (21 August 2003).

²³ Finkelstein and Tomer, *supra*, at 163 (referring to precedent set in *Avivit Atiyah v. Attorney General*, HCJ 4723/96 (29 July 1997)).

²⁴ Military Justice Law, § 440I(a),(b).

Supreme Court, sitting as the High Court of Justice, can review and reverse a decision of the Military Advocate General, the military prosecution, and/or the Attorney General whether to investigate or file a criminal indictment concerning alleged misconduct by soldiers.

35. Any interested party (including non-governmental organisations) or any person (including non-citizens and non-residents) affected or potentially affected by a government action can petition the Supreme Court, sitting as the High Court of Justice, on a claim that the action is *ultra vires*, unlawful, or substantially unreasonable. When warranted, the Supreme Court can enjoin the Government or grant other relief. Under Israel's legal system, a ruling of the Supreme Court against the IDF or another government agency is final and binding.
36. Palestinian residents, as well as non-governmental organisations or persons representing their interests, have filed successful petitions challenging the Military Advocate General's exercise of prosecutorial discretion. Some examples include:
 - The Supreme Court reversed the Military Advocate General's decision not to file criminal charges against a high-ranking field commander, and the commander ultimately was convicted on those charges.²⁵
 - During a Supreme Court hearing, the Military Advocate General's Corps consented to opening a military criminal investigation into an incident that had only previously been examined by a command investigation.²⁶
 - The Supreme Court intervened in the Military Advocate General's decision to indict a soldier and a commander for "unbecoming conduct" (rather than more serious offences), in connection with the alleged firing of a rubber bullet at the feet of a detainee.²⁷ Following the judgment, the Military Advocate General's Corps amended the indictment, charging the commander and the soldier with more serious offences.²⁸

²⁵ See *Jamal Abed al Kader Mahmoud Zofnan v. Military Advocate General*, HCJ 425/89 (27 December 1989).

²⁶ See *Brian Avery v. Military Advocate General*, HCJ 11343/04 (1 March 2005).

²⁷ *Ashraf Abu Rahma v. Military Advocate General*, HCJ 7195/08 (1 July 2009) ("The military justice system, which is in charge of implementing the IDF's values of conduct, must send out a determined message of consistent and decisive defence of the basic values of the society and the army, and of uncompromising enforcement in all levels – educational, commanding authority and punitive – of the fundamental principles that are shared by the Israeli society and the Israeli army and give them their ethical and humane character.").

²⁸ The amended indictment charged the commander with the offence of threats under Section 192 of Israel's Penal Law and the soldier with the crime of illegal use of a firearm in accordance with Section 85

[Footnote continued on next page]

37. In other cases, the Supreme Court has affirmed the Military Advocate General's decisions not to file charges, corroborating the Court's authority to approve, as well as disapprove, those decisions.²⁹
38. As noted above, the Court has enforced the obligation of the state and the IDF to abide by applicable law (including international law) and humanitarian standards, notwithstanding the reality and constant threat of terrorist attacks.³⁰ For example, the Court held in 2006:
- “Israel is not an isolated island. It is a member of an international system.’ ... The combat activities of the IDF are not conducted in a legal void. There are legal norms – some from customary international law, some from international law entrenched in conventions to which Israel is party, and some in the fundamental principles of Israeli law – which determine rules about how combat activities should be conducted.”³¹
39. The Israeli Supreme Court has demonstrated that it can and will intercede in actual hostilities between the IDF and Palestinian terrorist organisations – including the Gaza Operation. In January 2009, while IDF forces were still fighting Hamas in Gaza, the Court reviewed two petitions by human rights groups challenging the IDF's efforts to satisfy humanitarian obligations to Palestinian civilians.³² The Court “endeavour[ed] to examine the claims in real time, so that it may grant effective relief or arrive at an agreed settlement.”³³ In doing

[Footnote continued from previous page]

of the Military Justice Law. Both were also charged with the offence of conduct unbecoming an officer. The case is pending in Military Court.

²⁹ See, e.g., *Iman Atrash v. Military Advocate General*, HCJ 10682/06 (18 June 2007).

³⁰ Official English translations of over 25 cases that address this issue are available at the website of Israel's Supreme Court, <http://elyon1.court.gov.il/VerdictsSearch/EnglishStaticVerdicts.html>. See, e.g., *Public Committee Against Torture in Israel v. State of Israel*, HCJ 5100/94 (6 September 1999); *Iad Ashak Mahmud Marab v. IDF Commander in West Bank*, HCJ 3239/02 (6 February 2003); *Beit Sourik Village Council v. State of Israel*, HCJ 2056/04 (30 June 2004); *Zaharan Yunis Muhammad Mara'aba v. Prime Minister of Israel*, HCJ 7957/04 (15 September 2005); *Ahmad Issa Abdalla Yassin, Bil'in Village Council Chairman v. State of Israel*, HCJ 8414/05 (15 December 2008); *Public Committee Against Torture in Israel v. State of Israel*, HCJ 769/02 (14 December 2006); *Adalah - The Legal Center for Arab Minority Rights in Israel v. GOC Central Command, IDF*, HCJ 3799/02 (6 October 2005).

³¹ *Public Committee Against Torture in Israel v. State of Israel*, HCJ 769/02 ¶ 17 (14 December 2006) (quoting *Physicians for Human Rights v. Commander of IDF Forces in Gaza*, HCJ 4764/04 (30 May 2004)).

³² *Physicians for Human Rights v. Prime Minister of Israel*, HCJ 201/09 and 248/09 (19 January 2009). After examining the steps taken by the IDF and high command authorities, the Court determined that they had indeed complied with international law.

³³ *Id.* ¶ 13.

so, the President of the Court affirmed the Court's jurisdiction to hear such petitions even in the midst of combat:

“Cases in which the court examines the legality of military operations while they are happening are not uncommon occurrences, in view of the reality of our lives in which we are constantly confronting terrorism that is directed against the civilian population of Israel, and in view of the need to respond to it while discharging the duties imposed by law even in times of combat. . . . [I]t is the role of the court, even in times of combat, to determine whether within the framework of the combat operations the obligation to act in accordance with legal guidelines – both within the context of Israeli law and within the context of international humanitarian law – is being upheld.”³⁴

40. Israel's Supreme Court has earned international respect for its jurisprudence and its independence in enforcing international law. Its rulings balancing security and individual rights are highly regarded by jurists and academic scholars of international law, and have been cited favourably by foreign courts, including the Supreme Court of Canada, the House of Lords in the United Kingdom, and the European Court of Justice.³⁵

³⁴ *Id.* ¶ 12. Also during the Gaza Operation, the Supreme Court considered a petition from foreign journalists seeking to enter Gaza at military checkpoints. *Foreign Press Association in Israel v. OC Southern Command*, HCJ 9910/08 (2 January 2009). The Court affirmed that “the freedom of speech and the freedom of the press . . . have an all the more special importance” during armed hostilities, *id.* ¶ 5, but the Gaza Operation ended before the dispute was completely resolved. *Foreign Press Association in Israel v. OC Southern Command*, HCJ 643/09 (25 January 2009).

³⁵ *See, e.g., Application Under S. 83.28 of Criminal Code*, 2004 SCC 42 ¶ 7 (Supreme Court of Canada 2004) (citing the “eloquent” statements of Israel's Supreme Court on the importance of responding to terrorism within the rule of law); *Suresh v. Canada*, [2002] 1 S.C.R. 3, 2002 SCC (“we note that the Supreme Court of Israel sitting as the High Court of Justice and the House of Lords have rejected torture as a legitimate tool to use in combating terrorism and protecting national security”); *A and Others v. Secretary of State for Home Department*, 2 A.C. 221 ¶ 150 (U.K. House of Lords 2005) (emphasizing importance of the United Kingdom “retain[ing] the moral high ground which an open democratic society enjoys,” and thereby “uphold[ing] the values encapsulated in the judgment of the Supreme Court of Israel in *Public Committee Against Torture in Israel v. Israel* . . . [that] “[a]lthough a democracy must often fight with one hand tied behind its back, it nonetheless has the upper hand”) (citation omitted); *Kadi v. Council of European Union*, 3 C.M.L.R. 41 ¶ AG 45 (European Court of Justice 2008) (quoting former President of Supreme Court of Israel regarding importance of judicial oversight of political decisions: “It is when the cannons roar that we especially need the laws It is an expression of the difference between a democratic state fighting for its life and the fighting of terrorists rising up against it. The state fights in the name of the law and in the name of upholding the law. The terrorists fight against the law, while violating it. The war against terrorism is also law's war against those who rise up against it.”).

III. THE INVESTIGATION OF ALLEGED VIOLATIONS OF THE LAW OF ARMED CONFLICT

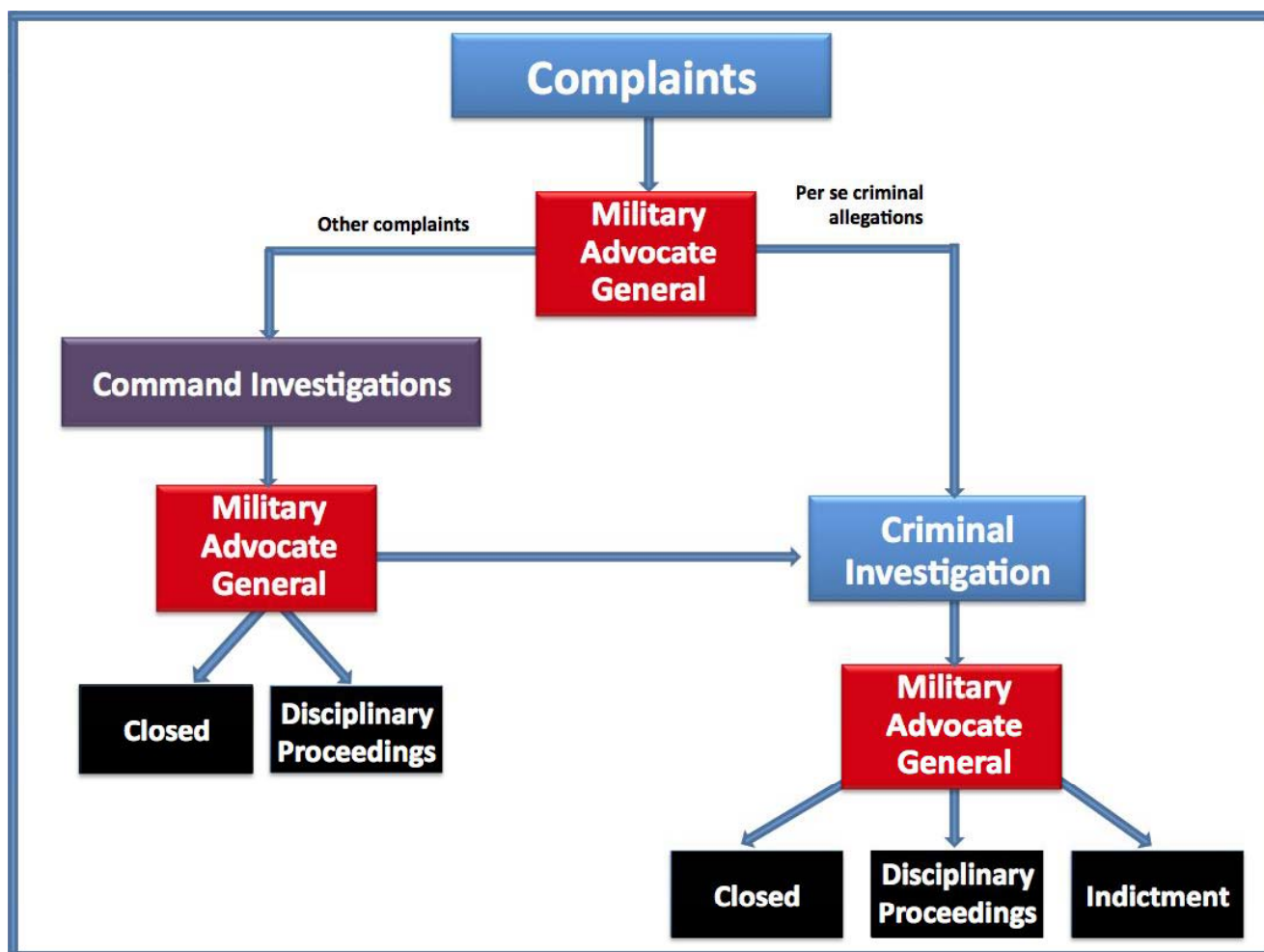
41. The consistent policy of the IDF has been to investigate alleged violations of the Law of Armed Conflict, regardless of the source of the allegations, and to prosecute where there is credible evidence that a violation has occurred. This policy reflects a commitment to resolve complaints against IDF personnel fairly, impartially, and effectively. Israel's Attorney General has affirmed this policy and it has been presented to the High Court of Justice for review.
42. The effectiveness of Israel's justice system has been acknowledged by international bodies. For example, the Criminal Chamber of the National Court of Spain (Audiencia Nacional) decided by a wide margin last year to discontinue a Spanish investigation into alleged IDF war crimes in the Gaza Strip. The proceedings concerned a 2002 incident during which the IDF killed the head of Hamas's military wing but also a number of civilians during an air strike. A Spanish judge had opened an inquiry into the matter pursuant to Spain's universal jurisdiction statute.
43. In closing the investigation, the Criminal Chamber of the National Court of Spain emphasised Israel's ability fully and fairly to investigate the charges itself. Contrary to the allegations raised in the Human Rights Council Fact-Finding Report, the Court held that Israeli procedures and precedents with regard to defensive strikes, and the military, civilian, and judicial review in Israel of the incident, comport with principles of international law. The court stated:

“[D]isputing the impartiality and organic and functional separation from the Executive of the Israeli Military Advocate General, the Attorney General of the State of Israel and the Investigation Commission appointed by the Israeli Government involves ignoring the existence of a social and democratic state with rule of law, where the members of the Executive and the Judiciary in question are subject to the rule of law. On the basis of those premises, there can be no doubt whatsoever with regard to the exercise of pertinent criminal actions in the event that the existence of any criminally relevant conduct on the part of the

individuals who ordered, planned and carried out the bomb attack should come to light in the course of the investigations performed.”³⁶

44. In general, the investigation policy of the IDF regarding alleged violations of the Law of Armed Conflict is as follows:
- The Military Advocate General reviews complaints from a variety of sources.
 - The Military Advocate General refers individual complaints for a command investigation or, when there is an allegation of *per se* criminal behaviour, for a criminal investigation.
 - For those complaints referred for a command investigation, the Military Advocate General reviews the record and findings of the command investigation, along with other available material, to determine whether to recommend disciplinary proceedings and whether there is a suspicion of a criminal act – in which case the complaint is referred for a criminal investigation.
 - Following a criminal investigation, the Military Advocate General reviews the entire evidentiary record to determine whether or not to file an indictment or to recommend disciplinary proceedings.
45. This process is illustrated in the following diagram:

³⁶ Unofficial translation of Decision no. 1/2009, 17 July 2009 (plenary), of the National Criminal Court of Appeals (“Sala de lo Penal de la Audiencia Nacional”), at 24, regarding Preliminary Criminal Proceedings no. 154/2008 of the Central Investigation Court no. 4. *See also* Appeal of the Coordinating Prosecutor (Pedro Martinez Torrijos), 6 May 2009, from the Order of the Audiencia Nacional de Madrid, 4 May 2009, in Preliminary Proceedings Case No. 157/2008 (emphasizing that Israel’s investigatory system, with review by Military Advocate General, Attorney General, and Supreme Court, “fully satisfy” the requirements of “an independent and impartial system of justice”).



A. Sources of Complaints

46. The IDF investigates alleged violations of the Law of Armed Conflict in essentially the same way it investigates other allegations of criminal misconduct. When a complaint raises a reasonable suspicion that a crime has been committed, the IDF opens a criminal investigation. If the investigation yields sufficient evidence to support the complaint, the IDF initiates either criminal or disciplinary proceedings, depending on the severity of the findings.
47. Information on alleged misconduct of soldiers reaches the IDF authorities in various ways, including:
- formal or informal complaints by alleged victims themselves or family members;
 - complaints by commanders or soldiers who witnessed an incident;

- reports by non-governmental organisations and the news media;
 - complaints or letters by non-governmental organisations, journalists, embassies, or international bodies; and
 - complaints forwarded to or filed directly with the Military Advocate General's Corps by the Israeli Police and other law enforcement agencies.
48. Any person may file a complaint with the Military Police at any civilian police station regarding alleged misconduct by IDF soldiers. Gaza residents can file complaints directly in writing (in Hebrew, Arabic, and English), through a non-governmental organisation acting on their behalf, or through the Military Liaison that works directly with the Palestinian civilian population.
49. In addition, the IDF independently identifies incidents that warrant further inquiry, including allegations of military misconduct reported in the news media and by other sources. The Ministry of Justice also monitors such reports and brings allegations to the attention of the relevant bodies. Regardless of the source, the IDF evaluates each complaint based on the circumstances of the case and the evidence available.

B. Military Advocate General Screening and Referral

50. The Military Advocate General and the military prosecution play a major role in the IDF's system of investigating alleged violations of the Law of Armed Conflict. Such investigations are considered extremely important, and the Military Advocate General is personally involved in the examination of many cases. The military prosecution receives all complaints of IDF misconduct for screening and review, and directly refers any complaint that alleges *per se* criminal behaviour – including allegations of maltreatment of detainees, the use of civilians as human shields, intentional targeting of civilians and looting – to the MPCID for criminal investigation.
51. Other complaints – for example, allegations of civilian deaths due to artillery shelling or the destruction of civilian property on the battlefield – may or may not constitute a criminal offence, depending on the specific circumstances. Where hostilities occur in a heavily populated area, and where enemy combatants deliberately seek to blend in with the populace, civilian casualties, unfortunately, are inevitable. Under the Law of Armed Conflict, the occurrence of damage to civilian property, and of injury, or even death of civilians, during an operational activity does not necessarily indicate nor even imply

criminal misconduct.³⁷ Rather, criminal responsibility for violation of the Law of Armed Conflict requires evidence that military personnel *intended* to harm civilians or clearly foresaw that excessive harm to civilians would result, when balanced against the anticipated military advantage.³⁸

52. Therefore, as to this second class of complaints, before initiating a criminal investigation, the Military Advocate General must first determine whether the evidence raises a suspicion of criminal activity and warrants a referral to MPCID. As discussed below, in making his decision, the Military Advocate General evaluates the complaint itself, which may include first-hand accounts from complainants and witnesses, along with the record of evidence developed during military command investigations (also known as operational debriefings) and other materials.
53. Some of Israel's critics have misunderstood the nature of these dual investigative tracks and incorrectly assumed that all complaints first must proceed through the command investigation stage, thereby delaying criminal proceedings for months. This premise – a

³⁷ See, e.g., Open Letter from Luis Moreno-Ocampo, Chief Prosecutor of International Criminal Court, "Allegations concerning War Crimes" at 4-5 (9 February 2006), available at http://www2.icc-cpi.int/NR/rdonlyres/F596D08D-D810-43A2-99BB-B899B9C5BCD2/277422/OTP_letter_to_senders_re_Iraq_9_February_2006.pdf ("Under international humanitarian law and the Rome Statute, the death of civilians during an armed conflict, no matter how grave and regrettable, does not in itself constitute a war crime."); Kenneth Watkin, *Assessing Proportionality: Moral Complexity and Legal Rules*, in YEARBOOK OF INTERNATIONAL HUMANITARIAN LAW 3, 9 (Timothy L.H. McCormack ed., 2005) ("[A]lthough civilians are not to be directly made the object of an attack, humanitarian law accepts that they may be killed or civilian property may be damaged as a result of an attack on a military objective."); W. Hays Parks, *Air War and the Law of War*, 32 A.F. L. REV. 1, 4 (1990) ("Within both the Just War Tradition and the law of war, it has always been permissible to attack combatants even though some noncombatants may be injured or killed . . ."); Michael N. Schmitt, *The Principle of Discrimination in 21st Century Warfare*, 2 YALE HUM. RTS & DEV. L.J. 143, 150 (1999) (noting that international legal doctrine of proportionality "operates in scenarios in which incidental injury and collateral damage are the foreseeable, albeit undesired, result of attack on a legitimate target"); see also NATO BOMBINGS: FINAL REPORT TO THE ICTY PROSECUTOR ¶ 51 ("Collateral casualties to civilians and collateral damage to civilian objects can occur for a variety of reasons.").

³⁸ See, e.g., Yves Sandoz, Christophe Swinarski & Bruno Zimmermann, Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions 12 June 1949 (International Committee of the Red Cross, 1987), art. 51(2), ¶ 1934 ("[I]n relation to criminal law the Protocol requires intent and, moreover, with regard to indiscriminate attacks, the element of prior knowledge of the predictable result."); Rüdiger Wolfrum & Dieter Fleck, *Enforcement of International Humanitarian Law*, in THE HANDBOOK OF INTERNATIONAL HUMANITARIAN LAW 675, 697 (Dieter Fleck ed., 2d ed. 2008) ("The prerequisite for a grave breach is intent; the attack must be intentionally directed at the civilian population or individual civilians, and the intent must embrace physical consequences."). The ICTY has found that for an attack to qualify as a war crime, it "must have been conducted *intentionally* in the *knowledge*, or when it was impossible not to know, that civilians or civilian property were being targeted." *Prosecutor v. Galić*, Case No. IT-98-29-T, Judgment and Opinion ¶ 42 (5 December 2003), quoted in Watkin, *supra*, at 38.

central premise of the Human Rights Council Fact-Finding Report³⁹ – is wrong. The Military Advocate General and the military prosecution have full authority to initiate, and do initiate, direct criminal investigations of those complaints alleging conduct that is clearly criminal in nature. For example, in the case of the alleged firing of a rubber bullets at the feet of a detainee, the Military Advocate General conducted a direct criminal investigation immediately after the incident was published in the media, and filed an indictment within two weeks.⁴⁰ With respect to other complaints, those that are first subject to command investigations, there is no requirement that the Military Advocate General or military prosecution await a final report from the command investigator before making a criminal referral. At any point when there is a reasonable suspicion of criminal misconduct, the military prosecution may launch a criminal investigation.⁴¹

C. Command Investigations

54. Under the Military Justice Law, a command investigation is an “inquiry held in the army, in accordance with IDF orders, regarding an event which occurred during training or operational activity, or in relation to them.”⁴² The longstanding practice of the IDF, and many other militaries, is to conduct a command investigation in the field following any kind of military action. Such an investigation normally focuses on examining the performance of the forces and identifying aspects of an operation to preserve and to improve, but may also focus on specific problems that occurred. By undertaking this review, the IDF seeks to reduce future operational errors, including those potentially resulting in civilian casualties.

³⁹ See, e.g., Human Rights Council Fact-Finding Report ¶¶ 1820, 1831 (criticizing Israel’s investigative process for “undue delay” because “proper criminal investigations can start only after the ‘operational debriefing’ is over”); see also *id.* ¶¶ 121, 1798, 1830.

⁴⁰ *Ashraf Abu Rahma v. Military Advocate General*, HCJ 7195/08 (1 July 2009). This case was discussed in Part II.B.2.

⁴¹ The Human Rights Council Fact-Finding Report wrongly concluded that “in practice criminal investigations do not begin before six months after the events in question.” Human Rights Council Fact-Finding Report ¶ 1830. As discussed below, the Military Advocate General directly initiated more than two dozen criminal investigations related to the Gaza Operation – all within six months. In fact, the Human Rights Council Fact-Finding Report discusses one of these investigations, which was completed less than two months after the Gaza Operation ended. *Id.* ¶ 1780; see “Military Police Investigation Concerning Statements Made at the Rabin Center: Based on Hearsay,” IDF Press Release (30 March 2009), available at <http://dover.idf.il/IDF/English/Press+Releases/09/03/3001.htm>.

⁴² Military Justice Law, § 539A(A).

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55. But routine post-operation investigations are not the only inquiries conducted by the IDF. In addition to these inquiries, when a complaint is filed with the Military Advocate General which does not allege *per se* criminal behaviour, the Military Advocate General requests a command investigation, to compile an evidentiary record and make a preliminary assessment of the complaint. If warranted, the command investigation will also recommend remedial measures, such as disciplinary action (which can result in prison sentences).⁴³
56. Under IDF Supreme Command Order 2.0702, the command investigator must transmit the complete record of a command investigation to the Military Advocate General's Corps upon request or automatically in certain types of cases – for example, whenever a civilian has been killed or seriously injured. The investigation of specific complaints as part of a command investigation thus serves not merely as a means to improve military performance but also as a preliminary inquiry on behalf of the Military Advocate General into potential military misconduct.
57. Further, the IDF's Chief of General Staff has the authority to initiate special (sometimes called "expert") command investigations for exceptional or complex cases. This type of investigation is conducted by a commanding officer who is outside the relevant chain of command. As with other command investigations, the results of a special command investigation must be transmitted to the Military Advocate General's Corps in appropriate circumstances – for example, whenever a civilian has been killed or seriously injured.
58. IDF Supreme Command Order 2.0702 provides requirements for command investigations, including:
- "The command investigator shall not be limited by the rules of evidence."
 - "A soldier who is inquired in the course of a command investigation shall not be represented by a lawyer."

⁴³ The process of internal disciplinary action in the IDF is limited to less serious offenses (those with a maximum sentence of three years or less). The Military Advocate General's Corps may approve, change, or cancel a disciplinary judgment or punishment. Notwithstanding a disciplinary judgment, the Military Advocate General has the authority to approve a military indictment for the same offense. *See* Military Justice Law, § 171(B).

- “A soldier cannot refuse a demand by a command investigator to provide information, by testimony of other manner, even if he is entitled not to provide it to an investigating entity, since it might incriminate him.”⁴⁴
59. IDF Supreme Command Order 2.0702 further requires that all evidence obtained during a command investigation must be preserved. Specifically, “[m]aterials of a command investigation, including exhibits, maps, photos, and so on, shall be preserved by the commanding headquarters superior to the investigator.” Thus, the Military Advocate General has the benefit of the entire record of a command investigation in those cases that are subject to review.⁴⁵
60. Contrary to some criticisms – including those of the Human Rights Council Fact-Finding Report – command investigations do not substitute *de jure* or *de facto* for criminal investigations conducted by trained investigators.⁴⁶ They serve as a means of compiling an evidentiary record for the Military Advocate General, and enabling him, from his central vantage point, to determine whether there is a factual basis to open a criminal investigation. The Military Advocate General’s review, not the command investigation, lies at the heart of the system. Many military systems rely on preliminary reviews, similar to command investigations, to assess complaints of soldier misconduct and to identify those that actually raise suspicions of criminal behaviour.⁴⁷

⁴⁴ A statement made by a soldier during a command investigation, like all the evidence gathered, is preserved as part of the record. The Military Advocate General may use such a statement as a reason to launch a criminal investigation. A statement may also form the basis for a disciplinary proceeding. However, as in other countries that recognize the right against self-incrimination, compulsory soldier statements during a command investigation are not admissible in court except when a soldier is charged with presenting false information or obstructing an investigation.

⁴⁵ Ignoring these IDF regulations and without citing any evidence, the Human Rights Council Fact-Finding Report falsely claims that command investigations “destroy the scene of the crime,” making criminal investigations “nearly impossible.” Human Rights Council Fact-Finding Report ¶ 1817; *see also id.* ¶ 1830 (noting that “evidence may be corrupted” by the time a criminal investigation is launched). While some investigations have experienced delays, due to the large number of complaints submitted after the Gaza Operation, the suggestion that evidence has been lost or destroyed as a result of the process of command investigations has no basis in fact.

⁴⁶ *See, e.g.*, Human Rights Council Fact-Finding Report ¶ 1819 (faulting command investigations for falling short of “established methods of criminal investigations such as visits to the crime scene, interviews with witnesses and victims, and assessment by reference to established legal standards”).

⁴⁷ *See* Part III.E below.

61. The Israeli Supreme Court has recognized that command investigations are “usually the most appropriate way to investigate an event that occurred during the course of an operational activity.”⁴⁸ Specifically, the Court observed that a command investigation is:

“usually conducted close to the time of the event, when it is still fresh in the memory of those that take part in it. It is performed in a direct and non-cumbersome manner. It is an integral part of the whole operational activity and it is well rooted into the operational experience in the IDF since its very beginning.”⁴⁹

62. At the conclusion of a command investigation, the investigator submits a written report of the findings, along with any recommendations, to the commander who commissioned the investigation and up the chain of command. As noted, the final report, along with any evidence collected, must also be transmitted to the Military Advocate General’s Corps upon request or automatically in certain instances – for example, whenever a civilian has been killed or seriously injured.

D. Criminal Investigations and Prosecutions

63. The MPCID conducts criminal investigations, including investigations of complaints alleging that soldiers violated the Law of Armed Conflict. As noted above, the Military Prosecution automatically refers any complaint alleging *per se* criminal conduct to the MPCID for direct criminal investigation. With respect to other complaints, the Military Advocate General initiates a criminal investigation once he finds a reasonable suspicion of criminal activity.⁵⁰

64. To make this determination, the Military Prosecution generally relies on the complaint itself (including any statements submitted by the complainant or witnesses) together with the report and record of a command investigation. In many cases, the Military Prosecution reviews additional materials, such as reports by non-governmental organisations and media accounts. The Military Prosecution can – and in many instances does – request additional information from the command investigator, including a supplemental investigation.

⁴⁸ *Mor Haim v. Israeli Defence Forces*, HCJ 6208/96 (16 September 1996). This case dealt with the appropriate manner for investigating the circumstances of the death of a soldier during an IDF operation.

⁴⁹ *Id.*

⁵⁰ When a command investigation precedes a criminal investigation, the Military Advocate General has to consult with an officer ranked Major or above. Nevertheless, the Military Advocate General alone has the authority to decide whether to initiate a criminal investigation and no officer has the authority to veto his decision.

65. The Military Prosecution notifies the complainant of his decision whether to open a criminal investigation, including an explanation of the reasons. As noted, the complainant can appeal the decision both to the Attorney General and the Supreme Court.
66. When a criminal investigation is opened, the MPCID consults as needed with the relevant Military Advocate (in cases involving alleged operational misconduct against Palestinians, the Military Advocate for Operational Affairs) regarding professional and legal questions.
67. When the MPCID completes its criminal investigation, the military prosecution reviews the evidence and decides whether to file an indictment. The military prosecution exercises prosecutorial discretion according to Israeli law – similar to any prosecutor in Israel or other common law states. For example, the military prosecution will file an indictment only if it determines that there is sufficient evidence to obtain a conviction. A complainant retains the right to appeal a decision of the military prosecution. The military prosecution's exercise of prosecutorial discretion in individual cases is subject to review by both the Attorney General and the Supreme Court.
68. From January 2002 through December 2008, there were 1,467 criminal investigations into alleged misconduct by IDF soldiers, leading to 140 indictments against soldiers for alleged crimes committed against the Palestinian population. Of these indictments, as of December 2008, 103 defendants were convicted and ten cases are still pending. During 2009, 236 criminal investigations were opened, and 14 indictments were filed against officers and soldiers.
69. Historically, the Military Advocate General's Corps has aggressively prosecuted cases of soldier misconduct toward Palestinian civilians. For example, last year the military prosecution indicted a Lieutenant and a Sergeant for the improper use of force while questioning civilians during a military operation in the West Bank. A military Court Martial convicted the Lieutenant of aggravated assault, for both his own use of force as well as the use of force by his subordinate.⁵¹
70. In *Lt. Col. Geva v. Chief Military Prosecutor*, the Military Advocate General's Corps filed an appeal to seek a harsher sentence for a senior officer convicted of threatening the child of a suspected terrorist and using a civilian as a human shield. The Military Court of Appeals sided with the prosecution:

⁵¹ *Military Prosecutor v. Lt. A.M. and Sgt. A.G.*, C/125+126/09. The Lieutenant is awaiting his sentencing hearing.

“The requirement of ‘personal example’ by IDF commanders has been, from time immemorial, at the heart of military leadership which adopted the heritage of Gideon: ‘Look on me and do likewise.’ (Judges 7). The example given by the respondent to his subordinates, to the IDF and to society in general has been negative and the harm caused – both at home and abroad – is probably irretrievable. Given the seriousness of the failure, . . . a clear and distinct statement is warranted.”⁵²

E. The Similar Investigatory Systems of Other States

71. Under international law, the responsibility to investigate and prosecute alleged violations of the Law of Armed Conflict by a state’s military forces falls first and foremost to that state.⁵³
72. International law does not indicate the precise manner or pace at which a state should investigate alleged violations of the Law of Armed Conflict. As commentators have noted, “states do seem to enjoy broad discretion (subject to good faith requirements) in conducting ex post investigations in situations where human rights or IHL [international humanitarian law] had been allegedly breached.”⁵⁴
73. Nonetheless, the investigative systems in Israel and other democratic states (in particular, those based on the Common Law tradition) appear to have several similarities. Like Israel, countries such as the United Kingdom, the United States, Australia, and Canada have processes to screen for Law of Armed Conflict and other complaints that warrant criminal investigation, including the use of preliminary military reviews (comparable to command investigations), to assist in that determination.⁵⁵ These countries also use a courts-martial

⁵² *Lt. Col. Geva v. Chief Military Prosecutor*, A/153/03 ¶ 50 (5 August 2004).

⁵³ See Informal Expert Paper, *The Principle of Complementarity In Practice*, at 3, available at <http://www.icc-cpi.int/iccdocs/doc/doc654724.pdf> (“States have the first responsibility and right to prosecute international crimes.”).

⁵⁴ Amichai Cohen and Yuval Shany, *A Development of Modest Proportions: The Application of the Principle of Proportionality in the Targeted Killing Case*, 5 J. INT’L CRIM. JUS. 310, 318 (2007). The Human Rights Council Fact-Finding Report recognizes these principles. The Report notes that “the responsibility to investigate violations of international human rights and humanitarian law, prosecute if appropriate and try perpetrators belongs in the first place to domestic authorities and institutions”; and that “international justice mechanisms” should only intercede “where domestic authorities are unable or unwilling to comply with this obligation.” Human Rights Council Fact-Finding Report ¶ 1760.

⁵⁵ See, e.g., Aitken Report, *An Investigation into Cases of Deliberate Abuse and Unlawful Killing in Iraq in 2003 and 2004*, 25 January 2008, available at http://mod.uk/NR/rdonlyres/7AC894D3-1430-4AD1-911F-8210C3342CC5/0/aitken_rep.pdf (hereafter “Aitken Report”) (describing the procedures for investigating

[Footnote continued on next page]

system based within the military justice framework to adjudicate criminal indictments alleging violations of the Law of Armed Conflict.⁵⁶

74. When investigating high profile or other alleged incidents of soldier misconduct, these countries, like Israel, have sometimes encountered criticism concerning the pace at which their investigations or prosecutions have proceeded.
75. While there is no question that investigators should move expeditiously, the key imperative is that they take the time necessary to conduct a thorough and professional inquiry and to uncover the truth. Investigators should not sacrifice careful, complete examination of the facts nor adherence to the principles of due process.

(1) United Kingdom

76. The United Kingdom uses both criminal investigations and independent investigations within the military to examine alleged violations of the Law of Armed Conflict.⁵⁷ The Army Prosecuting Authority (APA) (which has recently been consolidated into a service-wide Prosecution Authority) traditionally has dealt with cases referred to it by the army chain of command.⁵⁸ “Legal advice is available for commanding officers and higher authorities to assist with decisions on referring appropriate cases to the APA.”⁵⁹ The Director of Army Legal Services (ALS), who is appointed by the Queen as the APA, “has responsibility for decisions on whether to direct trial for all cases referred by the military chain of command, and for the prosecution of all cases tried before courts-martial, the Standing Civilian Court and the Summary Appeal Court and for Appeals before the Courts-Martial Appeal Court and the House of Lords.”⁶⁰

[Footnote continued from previous page]

violations of the Law of Armed Conflict in the United Kingdom); Dept. of Defense Directive No. 2311.01E, *Dept. of Defense Law of War Program*, 9 May 2006 (setting forth the procedures for the investigation of “reportable incidents” regarding of the Law of Armed Conflict in the United States).

⁵⁶ See, e.g., Victor Hansen, *Changes Made in Modern Military Codes and the Role of the Military Commander: What Should the United States Learn From this Revolution*, 16 TUL. J. INT’L & COMP. L. 419 (2008) (describing U.S., Canadian, and United Kingdom court martial systems).

⁵⁷ See generally Aitken Report.

⁵⁸ See HM Crown Prosecution Inspectorate’s Follow-Up Report on the Army Prosecuting Authority, February 2009, at 1.

⁵⁹ Aitken Report ¶ 28.

⁶⁰ *Id.*

77. The Director of ALS delegates these decision-making functions to “ALS officers appointed as prosecutors in the APA.”⁶¹ As in Israel, “[t]he APA is under the general superintendence of the Attorney-General and is, rightly, independent of the Army Chain of Command.”⁶² The APA (and new consolidated Prosecuting Authority) can decide not to institute court martial proceedings, refer the case back to the commanding officer to address, or direct a trial by court martial.⁶³ Like the Military Advocate General, the Director General of ALS is responsible both for providing legal advice to the army chain of command and for prosecution of offenders.⁶⁴
78. For those incidents that do not warrant direct referral to the APA, the United Kingdom military investigates allegations of misconduct within its military justice framework through administrative actions, informal investigations, or formal investigations ordered by a Board of Inquiry.⁶⁵

(2) United States

79. To respond to alleged violations of the Law of Armed Conflict, the United States grants multiple actors within the Department of Defense and the military branches independent authority to order an investigation.⁶⁶ Specifically, the investigatory procedures in the United States follow the same general practice as in Israel. When a “reportable incident”⁶⁷ involving the Law of Armed Conflict occurs, the appropriate field commander has the duty to report the incident up the chain of command immediately.⁶⁸ Commanders receiving information about an alleged Law of Armed Conflict violation conduct a formal, or more often informal, investigation to collect evidence and assess the credibility of the

⁶¹ *Id.*

⁶² *Id.*

⁶³ See HM Crown Prosecution Inspectorate’s Follow-Up Report, *supra*, at 1.

⁶⁴ See British Army Website, *Army Legal Services*, available at <http://www.army.mod.uk/agc/9935.aspx>.

⁶⁵ Aitkin Report ¶ 36. Formal and informal investigations can be independent of the chain of the command but are conducted within the military.

⁶⁶ See Dept. of Defense Directive No. 2311.01E, *Dept. of Defense Law of War Program* (9 May 2006). Although the Defense Department Law of War Program Directive establishes comprehensive procedures for investigating incidents related to the Law of Armed Conflict, as developed below, investigations are typically ordered by military commanders or military investigation agencies.

⁶⁷ A “reportable incident” is defined as “[a] possible, suspected, or alleged violation of the law of war, for which there is credible information, or conduct during military operations other than war that would constitute a violation of the law of war if it occurred during an armed conflict.” See CJCSI 5810.01C ¶ 5(b).

⁶⁸ See Dept. of Defense Directive No. 2311.01E ¶¶ 6.3-6.8; CJCSI 5810.01C ¶ 7(a)-(b).

allegations to determine whether a crime has been committed.⁶⁹ The report then both moves up the chain of command to the relevant Commander of the Combatant Command, and goes to the appropriate military investigation agency to determine whether to initiate a criminal investigation, as well as to the General Counsel of the Department of Defense.⁷⁰

80. One recent example of this process is the investigation of a U.S. military engagement with Taliban insurgents in Afghanistan, which resulted in civilian casualties. There, “U.S. military elements in Afghanistan began a preliminary inquiry” of the incident.⁷¹ After the preliminary inquiry, the Commander of U.S. Central Command “directed a U.S. Army General from outside Afghanistan to conduct a full investigation” who later presented his final report to the Commander and key leaders. The investigating officer’s findings and recommendations, which found no violation of the Law of Armed Conflict but suggested operational improvements, were approved by the Commander.
81. Criminal investigations of soldier misconduct in the United States are conducted by, among others, the United States Army Criminal Investigation Command (USACIDC).⁷² The USACIDC’s investigative responsibilities include alleged war crimes and in some cases crimes against coalition forces and host nation personnel.⁷³ The USACIDC does not impose time tables for investigations. Rather, like Israel, it takes the time needed to conduct a professional inquiry:

“Criminal investigations take as long as required to get to the truth and determine exactly what transpired in a particular circumstance. Although time is very important, criminal investigations are conducted to a standard not necessarily to a timetable. CID is dedicated to conducting thorough and professional criminal investigations no matter how long it takes.”⁷⁴

⁶⁹ See U.S. Dept. of Navy, JAG Inst. 5800.7D, Manual of the Judge Advocate General, ch 11 (15 March 2004); U.S. Dept. of Army, Reg. 15-6, Procedures for Investigating Officers and Boards of Officers (2 November 2006).

⁷⁰ See Dept. of Defense Directive No. 2311.01E ¶ 6.5.1-2; CJCSI 5810.01C ¶ 7(c).

⁷¹ UNCENCOM’s Unclassified Executive Summary, *U.S. Central Command Investigation into Civilian Casualties in Farah Province, Afghanistan on 4 May 2009*.

⁷² U.S. Army Criminal Investigation Command website, available at <http://www.cid.army.mil/mission.html>.

⁷³ *Id.*

⁷⁴ U.S. Army Criminal Investigation Command frequently asked questions website, available at <http://www.cid.army.mil/faqs.html>.

82. If an investigation reveals evidence of criminal wrongdoing, the ensuing criminal proceeding in the American system is a court-martial similar to the proceedings in Israel. Military prosecutors, known as Judge Advocates, are free from command influence, although as a matter of organizational structure they are subordinate to the command authority. Judge Advocates advise the “Convening Authority”⁷⁵ whether to refer cases to a court martial for trial and to approve, modify, or disapprove the findings and sentences in court martial proceedings.⁷⁶ Unlike in Israel, Judge Advocates in the United States do not file cases on their own⁷⁷ and the U.S. system does not provide for independent judicial review of the decision to commence or not commence a criminal proceeding.

(3) Australia

83. Under the Australian legal system, upon receipt of a complaint alleging soldier misconduct, a commander or supervisor may direct what is called a Quick Assessment (QA) of the incident. A QA has a similar purpose to the Israeli initial command investigation as it is conducted to determine whether there is any substance to allegations that may warrant further investigation or inquiry.⁷⁸

84. The Quick Assessment Officer (QAO) conducts informal interviews, collects evidence, and issues a report and recommendation. The QAO can recommend no further inquiry if he or she finds insufficient evidence of a violation of the Law of Armed Conflict or other law. Alternatively, depending on the nature of the alleged violation, the QAO can recommend a Military Commission Board of Inquiry, an Inquiry Officer inquiry, or a Routine Inquiry (all of which are conducted within the military).

85. When the QA indicates a concern regarding criminal wrongdoing, the QA Officer will recommend a criminal investigation by the Australian Defence Force Inquiry Services

⁷⁵ “Convening Authority” is defined to include “a commissioned officer in command for the time being and successors in command.” Manual for Courts-Martial United States (2008 ed.), Rules for Courts-Martial (“R.C.M.”) 103(6), available at <http://www.jag.navy.mil/documents/mcm2008.pdf>.

⁷⁶ Uniform Code of Military Justice, Art. 34, Art. 64, available at <http://www.army.mil/references/UCMJ/>. As with the Military Advocate General, Judge Advocates are responsible both to provide legal advice to the military chain of command and to prosecute UCMJ offenders. See U.S. Army JAG website, available at <http://www.goarmy.com/JobDetail.do?id=318> (providing that JAG officers “[p]rosecute criminal cases under [UCMJ]” and “[a]dvise commanders of all levels on all legal issues as they arise”); U.S. Air Force JAG website, available at <http://www.afjag.af.mil/shared/media/document/AFD-080502-052.pdf> (similar).

⁷⁷ See R.C.M. 401, 504, 505, 601, 1107, available at <http://www.jag.navy.mil/documents/mcm2008.pdf>.

⁷⁸ See The Defence Instructions (General) - Quick Assessment (Defence Instructions), Admin 67-2 (7 August 2007), available at http://www.defence.gov.au/fr/Policy/ga67_02.pdf.

(ADFIS). The recommendation is referred and reviewed up the chain of command. If the matter is referred to the ADFIS, it in turn may investigate and send the matter to a hearing before a Defence Force Magistrate or a Commanding Officer or may refer the incident to the civilian police.

(4) Canada

86. Under Canada's system, complaints alleging a *prima facie* violation of the Law of Armed Conflict during an operational activity generally are referred to the National Investigation Service (NIS).⁷⁹ The NIS is accountable to the Canadian Forces Provost Marshal.⁸⁰ The NIS's mandate is to investigate "serious and sensitive matters," including alleged violations of the Law of Armed Conflict, concerning Canadian Forces serving in Canada and abroad.⁸¹ If NIS becomes aware of allegations of a potential criminal offence (through regular military police or through complaints from members of the Canadian forces or other sources), it reviews the information to determine whether a NIS investigation should be conducted.⁸² If the allegation does not appear to meet the "serious or sensitive" standard, it can be investigated by non-NIS military police or by the command unit. Prosecutions for serious charges are carried out by the Canadian Military Prosecution Service (CMPS), which is answerable to the Director of Military Prosecutions (DMP). The DMP reports to the Judge Advocate General (JAG) but exercises his or her duties and functions independently.⁸³ The CMPS provides legal advice to NIS military police, reviews charge for court martial (including on grounds of sufficiency of evidence) and conducts prosecution of trials by court martial.⁸⁴
87. Matters that do not initially indicate criminal wrongdoing go to either Summary Investigations (SI) if they are minor or uncomplicated, or to a military Board of Inquiry

⁷⁹ See Canadian Forces National Investigation Service, Annual Report 2007, dated 11 March 2008, at 11, available at <http://www.vcds.forces.gc.ca/cfpm-gpfc/cfp-ggp/nis-sne/ar-ra/2007/doc/nisar-snera-2007-eng.pdf>.

⁸⁰ The Canadian Forces National Investigation Service, CFNIS 2009-02, 1 May 2009, available at <http://news.gc.ca/web/article-eng.do?m=/index&nid=446989>.

⁸¹ The Investigation and Charging Process in the Military Justice System (National Defence Canada), available at <http://www.forces.gc.ca/jag/publications/Training-formation/ChargInves-EnqueAccu-eng.pdf>.

⁸² The Canadian Forces National Investigation Service, CFNIS 2009-02, 1 May 2009.

⁸³ Abridged Annual Report of the Director of Military Prosecutions, 2006-7, available at <http://www.forces.gc.ca/jag/publications/DMP-DPM/DMP-DPM-AR0607-eng.pdf>.

⁸⁴ Abridged Annual Report of the Director of Military Prosecutions, 2006-7.

(BOI) if they are more complex.⁸⁵ If either an SI or BOI receives evidence that reasonably relates to an allegation of criminal conduct, the proceedings must be suspended for potential criminal investigations.⁸⁶ In a BOI, a soldier can be compelled to testify, but as in Israel's command investigations, any self-incriminatory statements are inadmissible as evidence against the soldier in a court martial or trial.⁸⁷

(5) Summary

88. In sum, these military justice systems share similarities with the system in Israel. They rely on a combination of field reviews, informal and formal military investigations, and prosecutions by courts martial or their equivalent. While these other systems differ in some respects from each other and from the Israeli system, all of them nonetheless have been accepted worldwide as sufficient for investigating alleged violations of the Law of Armed Conflict. The comparisons also reflect that investigations into alleged violations of the Law of Armed Conflict can take several weeks, months, or even years. The length of time is contingent on a variety of factors and customary international law does not reflect a standard pace for conducting such investigations, much less a deadline that Israel has exceeded.

⁸⁵ See National Defence and the Canadian Forces, Defence Administration Orders and Directives ("DAOD") 7002-1, 8 February 2002 (as modified 7 May 2007), available at <http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-1-eng.asp> (purpose of BOI is "to investigate and report on matters of unusual significance or complexity"); DAOD 7002-2 8 February 2002 (as modified 7 May 2007), available at <http://www.admfincs.forces.gc.ca/dao-doa/7000/7002-2-eng.asp> (purpose of SI is "to investigate and report on matters of a minor, straightforward and uncomplicated nature").

⁸⁶ DAOD 7002-1; 7002-2 (providing that terms of reference for both SI and BOI must contain paragraphs stating "Should the BOI receive evidence that it reasonably believes relates to an allegation of a criminal act or a breach of the Code of Service Discipline, the BOI shall adjourn, the convening authority shall be notified, and the matter shall be referred to the nearest JAG representative for advice."). Like the Military Advocate General, the Canadian Judge Advocate General is responsible both to provide legal advice to the military chain of command and to prosecute criminal offenders. See National Defence and the Canadian Forces JAG website, available at <http://www.forces.gc.ca/jag/office-cabinet/law-droit-eng.asp> (providing that the JAG is responsible for being "legal advisor . . . to the Canadian Forces" on a number of issues, including "international and operational law" and "criminal law and military justice policy," and for "[p]referral of charges for tr[ia]l at courts martial" and "[p]rosecutions at courts martial").

⁸⁷ *Meade v. Her Majesty the Queen in Right of Canada* [1991] 3 F.C. 365 ¶ 9.

IV. COMPLAINTS ALLEGING VIOLATIONS OF THE LAW OF ARMED CONFLICT DURING THE GAZA OPERATION

89. Israel is aware of concerns raised regarding the Gaza Operation. As discussed in detail in *The Operation in Gaza*, and as outlined above, the deliberate strategy of Hamas to blend in with the civilian population made it difficult for the IDF to achieve the objective of the Gaza Operation – reducing the threat of deliberate attacks against Israeli civilians – while also avoiding harm to Palestinian civilians. To be sure, the IDF undertook strenuous efforts to minimise such harm. It intensively trained its personnel on the requirements of the Law of Armed Conflict. It delayed, diverted, or refrained from attacks to spare civilian life. It provided numerous and varied types of concrete warnings before launching attacks.⁸⁸ Nevertheless, Israel's efforts to comply with the Law of Armed Conflict do not lessen its regret for the loss of innocent lives and damage to civilian property.
90. Following the Gaza Operation, Israel took several concrete steps to reaffirm its commitment to thoroughly investigating, and where appropriate, prosecuting, alleged violations of the Law of Armed Conflict:
- Israel undertook to investigate every specific complaint of alleged violations during the Gaza Operation, regardless of the credibility of the source.
 - The Military Advocate General personally reviewed each complaint submitted and, when available, the record of each command investigation before deciding whether to initiate a criminal investigation.
 - The Chief of General Staff initiated six special command investigations to examine some of the most serious allegations, in addition to the other command investigations conducted.⁸⁹
 - The Military Advocate General ordered the Office of the Military Advocate for Operational Affairs to work closely with the MPCID on every criminal investigation, even before any decision on whether to file charges.
91. At the time of this Report, the IDF has investigated or is currently investigating more than 150 separate incidents that allegedly occurred during the Gaza Operation involving violations of the Law of Armed Conflict. The IDF initiated many of these investigations based on its own sources of information. Others came to the attention of the Israeli

⁸⁸ See *The Operation in Gaza: Factual and Legal Aspects* ¶¶ 262-65.

⁸⁹ Five special command investigations were initiated immediately after the conclusion of the Operation, and an additional special command investigation was initiated on 10 November 2009.

authorities through a variety of channels, either directly via complaints submitted by Palestinians and non-governmental organisations, or indirectly through media accounts and reports published by non-governmental organisations and other sources (among them, the Human Rights Council Fact-Finding Report).

92. The pace of these investigations reflects an orderly approach to uncovering the facts while at the same time safeguarding the rights of civilians and military personnel. Ideally, investigations would begin earlier, end sooner, and yield irrefutable results. But the combat and immediate post-combat environment is not ideal, and it complicates the gathering of evidence and the conduct of investigations. While the Gaza Operation concluded only one year ago, a thorough investigation takes time.
93. The unique difficulties involved in the investigation of alleged violations of the Law of Armed Conflict in the battlefield should not be ignored. They include: the inability to secure the scene for forensic and physical evidence, either during a battle or after, when the territory is under enemy control; the possible destruction of evidence during fighting and the possible manipulation of the scene by the enemy; the need to recall reserve soldiers back for questioning; the difficulty of accurately identifying the location of an incident, when it is described in local and unofficial terms and slang; and the need to locate the adversary's civilians as witnesses and overcome their natural suspicion and fear of reprisals by their authorities.⁹⁰
94. Despite these complexities, the IDF has made significant progress with the investigations and concluded many of them. To date, some investigations have resulted in prosecutions for disciplinary and criminal violations. In others, the preliminary command investigations have been concluded and the Military Advocate General is undertaking his own review to determine whether the record warrants further investigation. In some cases, the Military Advocate General found no evidence of wrongdoing and closed the investigation. As many of the investigations are subject to further review by the Military Advocate General, the Attorney General, and the Supreme Court, it is possible that different conclusions will emerge as these cases advance through Israel's justice system.

⁹⁰ As discussed below, the MPCID has interviewed almost 100 Palestinians at the Erez border crossing point principally by working with non-governmental organisations acting as liaisons with the civilian population of Gaza.

95. Israel has periodically released detailed information concerning the status of its investigations into the Gaza Operation.⁹¹ Current information about these investigations is provided in the following sections.

A. Command Investigations

(1) Five Special Command Investigations Opened Upon the Conclusion of the Gaza Operation

96. On 20 January 2009 – just two days after the conclusion of the Gaza Operation – IDF Chief of General Staff Lt. Gen. Ashkenazi ordered five special command investigations into a range of allegations raised by international and non-governmental organisations and various news media. To head the investigations, he appointed five Colonels with substantial field and command expertise who were not directly involved with the incidents investigated or in the direct chain of command. These investigations were not routine field reviews. Rather, the mandates focused on five types of alleged violations of the Law of Armed Conflict, encompassing 30 individual incidents:
- Claims regarding incidents in which a large number of civilians not directly participating in the hostilities were harmed;⁹²
 - Claims regarding incidents where U.N. and international facilities were fired upon and damaged during the Gaza Operation;⁹³

⁹¹ See, e.g., *The Operation in Gaza: Factual and Legal Aspects*. Israel also posts information concerning the investigations at the Ministry of Foreign Affairs website, available at <http://www.mfa.gov.il/MFA>.

⁹² The Chief of General Staff's mandate was very specific about the allegations to be investigated, requiring review of, for example, the "Attack of a senior Hamas operative Nizar Rian, allegedly resulting in the death of 15 other individuals (4 January)," "Attack of the mosque in Beit Lahia, allegedly resulting in the death of 8 individuals (3 January)," and "Attack of the mosque of Imad Aq'al, allegedly resulting in the death of 7 individuals, 4 of them minors (29 December)." The mandate provided details, when available, such as dates, location, family names and relationships, and the number and gender of individuals allegedly killed. The mandate also required an investigation into the "[d]etails regarding the orders and instructions given in the IDF (on different levels of command before and during the operation) and regarding avoidance of disproportional harm to civilians not taking active part in the hostilities, regarding safety ranges from such civilians in different circumstances and using different weapons."

⁹³ The Chief of General Staff's mandate identified with specificity four alleged incidents to be investigated – for example, the "Shooting towards Fakhura school in Jabaliyah (6 January)," and "Damage to the UNRA school as a result of a strike by the air force, allegedly resulting in the death of 3 individuals." The mandate also required investigators to gather "information regarding intentional use by Hamas of UN premises or facilities for cover or as cover for shooting" and the "information regarding the orders and

[Footnote continued on next page]

- Incidents involving shooting at medical facilities, buildings, vehicles and crews;⁹⁴
- Destruction of private property and infrastructure by ground forces;⁹⁵ and
- The use of weaponry containing phosphorous.⁹⁶

97. The investigations focused not merely on improving operational performance, but rather on assessing specific incidents of harm to civilians and protected persons or facilities. The

[Footnote continued from previous page]

instructions given in the IDF (by different command levels, before and during the operation) regarding avoidance of harm to UN and international organizations' premises, facilities, vehicles and teams." This mandate was later extended to include other incidents investigated by the United Nations Headquarters Board of Inquiry in the Gaza Strip between 27 December 2008 and 19 January 2009.

⁹⁴ The Chief of General Staff's mandate required investigations into seven specific alleged incidents, such as the "Hitting of a medical team on its way to aid a wounded bleeding person in the area of Jabel Kashef, in the north-eastern area of the Gaza Strip, resulted in the death of a doctor, Dr. Ihmad Madhoun, the paramedic Abu Hesri, and the 1 wounded person (31 December)," and "Shelling of Dababish family residence in Sheikh Raduan, during a time when the medical team was at the location in order to evacuate the wounded, as a result of which one member of the medical team was killed (3 January)." With regard to each of these incidents, the mandate directed that the investigations seek "information regarding shooting incidents from within or nearby medical premises, facilities or vehicles, and regarding intentional use by Hamas of medical premises, facilities and vehicles for the purpose of fighting, cover for shooting, movement of weapons and combatants" and the "[d]etails regarding the orders and instructions given in the IDF (on different command levels, before and during the operation) regarding avoidance of harm to medical premises, facilities, vehicles and medical teams."

⁹⁵ The Chief of General Staff's mandate required investigations into the following issues: "a. Orders and instructions given and determined by different command levels (from the headquarters to the ground forces, before and during the operation), regarding the destruction of buildings and infrastructure. b. Extent of destruction of buildings and infrastructure in the different areas, divided in accordance to: stages of the operation, operating units, types of buildings or infrastructure that were damaged, purposes of destruction, the manner in which the destruction was carried out (via engineers/method of destruction/verification of evacuation of residents) and whether the destruction was planned or spontaneous by decisions which were taken in the field in 'real time'. c. Intelligence and operational information regarding the nature of the enemy's offensive and defensive methods, and with regard to infrastructure of the enemy that was identified and documented by our forces, which support the operational necessity of destruction."

⁹⁶ The Chief of General Staff's mandate required investigations into the following issues: "a. Kinds and amount of weapons containing phosphorous, allocated to the forces before and during the operation. b. Kinds and amount of weapons containing phosphorous, actually used during the operation. c. Purpose and military needs for the use of weapons which contain phosphorous (for example – smoke screening, marking), the targets at which these weapons were fired (for example – open areas, sources of fire in built up areas), all this divided in accordance with the type of weapon. d. Professional instructions which exist with regard to every kind of these weapons. e. Rules of engagement relevant to every type of these weapons, including safety ranges which apply with regard to the firing of weapons which contain phosphorous (specifically, the existence of limitations of any kind on the firing of these weapons to populated areas). f. Deviations (if there were) from the instructions and orders with regard to the use of weapons which contain phosphorous, and the core reasons behind such exceptions."

mandates directed the command investigators to conduct detailed inquiries into, among other things, “the orders and instructions given in the IDF (at different levels, before and during the operation) regarding the avoidance of harm” – including instructions regarding “avoidance of disproportional harm to civilians not taking active part in the hostilities, regarding safety ranges for the use of different weapons from such civilians in different circumstances.”

98. In accordance with standard IDF procedures for command investigations, the investigators operated independently and had access to all available materials as well as the freedom to question any relevant IDF personnel. They interviewed numerous soldiers and officers, and gathered relevant documents and other materials from external sources. They reviewed operational logs, video footage and photographs from aerial vehicles, fragment analysis reports, internal military debriefings, intelligence documents, relevant rules of engagement and operational plans, and volumes of other relevant materials. Each soldier interviewed was required to cooperate with the investigation, and each did so.
99. The special investigations revealed some instances of intelligence and operational errors. For example, one special command investigation determined that the IDF mistakenly targeted the home of the Al-Daya family rather than a neighbouring weapons storage facility, resulting in civilian deaths. In another instance, where the lead car of a UNRWA convoy was fired upon, the investigation revealed communication errors in coordinating the movement of the convoy. To avoid these types of errors in the future, IDF Chief of General Staff Lt. Gen. Gabi Ashkenazi directed that certain standing orders be highlighted or clarified and ordered improvements in certain command operations.
100. The special command investigations also uncovered some instances where IDF soldiers and officers violated the rules of engagement. For example, in one case, a Brigadier General and a Colonel had authorized the firing of explosive shells which landed in a populated area, in violation of IDF orders limiting the use of artillery fire near populated areas. The Commander of the Southern Command disciplined the two officers for exceeding their authority in a manner that jeopardized the lives of others.
101. Upon completion of the special command investigations, the investigators presented their findings to the IDF Chief of General Staff, Lt. Gen. Gabi Ashkenazi, who adopted their recommendations.⁹⁷ The Chief of General Staff ordered the IDF to implement lessons

⁹⁷ See IDF Spokesperson Announcement, *Conclusion of Investigations into Central Claims and Issues in Operation Case Lead* (22 April 2009), available at <http://idfspokesperson.com/2009/04/22/idf-announcement-findings-from-cast-lead-investigations/>.

learned on a broad range of matters, directing that certain standing orders be highlighted or clarified, establishing further guidelines on the use of various munitions, and instructing that steps be taken to improve coordination with humanitarian organisations and entities.

102. The Military Advocate General received the findings and evidentiary record of each special command investigation as a source of factual information to assist in the analysis of the relevant allegations. On 19 January 2010, the Military Advocate General issued his opinion, which addressed each of the five special command investigations.

(i) Claims regarding incidents in which a large number of civilians not directly participating in the hostilities were harmed

103. The investigation into these allegations included 7 separate incidents. Some of the findings of the special command investigation are detailed in *The Operation in Gaza*.⁹⁸

104. As to 4 of the incidents, the Military Advocate General completed his investigation and review, finding no grounds to open a criminal inquiry.⁹⁹ The investigations with regard to three incidents are still underway.¹⁰⁰ In 2 instances, due to the complexity of the circumstances, the special command investigation is still ongoing. The third incident involved the alleged strike on the Al Maquadme Mosque, which the Chief of General Staff had remanded for a new special command investigation (as discussed below).

(ii) Claims regarding incidents where U.N. and international facilities were fired upon and damaged during the Gaza Operation

105. The investigation into these allegations included 13 separate incidents. Some of the findings of the special command investigation are detailed in *The Operation in Gaza*.¹⁰¹

106. The Military Advocate General reviewed the findings and entire record of this special command investigation. He also reviewed additional materials, including information in the Human Rights Council Fact-Finding Report and the Report of the United Nations Headquarters Board of Inquiry into certain incidents in the Gaza Strip Between 27 December 2008 and 19 January 2009.

⁹⁸ *The Operation in Gaza: Factual and Legal Aspects* ¶¶ 381-403.

⁹⁹ The four incidents are: the attack resulting in the death of Hamas senior operative Nizar Ri'an and allegedly 15 other individuals; alleged attack of the mosque of Al Rabat; attack of a truck carrying oxygen tanks; and attack of Dr. Abu El Eish family residence.

¹⁰⁰ The three incidents are: the alleged attack of the Mosque of Imad Aq'al; the strike of the Al Daiya family residence; and the alleged attack of Al Maquadme Mosque.

¹⁰¹ *The Operation in Gaza: Factual and Legal Aspects* ¶¶ 330-69.

107. The Military Advocate General found no basis to order criminal investigations of the thirteen incidents under review. With regard to two of these incidents, the Military Advocate General affirmed the decisions to pursue disciplinary proceedings against IDF personnel.
108. One of these incidents involved alleged damage to the UNRWA field office compound in Tel El Hawa.¹⁰² The special command investigation revealed that, during the course of a military operation in Tel El Hawa, IDF forces fired several artillery shells in violation of the rules of engagement prohibiting use of such artillery near populated areas. Based on these findings, the Commander of the Southern Command disciplined a Brigadier General and a Colonel for exceeding their authority in a manner that jeopardized the lives of others.
109. As noted in *The Operation in Gaza*, the United Nations Secretary General established a Board of Inquiry to examine a number of incidents involving damage to U.N. facilities, independent of the ongoing investigations in Israel. Israel cooperated fully with U.N. Board of Inquiry, sharing the results of its internal investigations and providing detailed information about the incidents in question. The Secretary General commended Israel for its extensive cooperation.¹⁰³
110. Following the U.N. Board of Inquiry's examination, and notwithstanding certain reservations it had with some aspects of the Board's report, Israel entered into a dialogue with the United Nations to address all issues arising from the incidents examined. On 22 January 2010, the Secretary General thanked Israel for its "cooperative approach" in these discussions and confirmed that all financial issues relating to these incidents had been satisfactorily concluded.¹⁰⁴

(iii) Incidents involving shooting at medical facilities, buildings, vehicles and crews

111. The investigation into these allegations included 10 separate incidents. Some of the findings of the special command investigation are detailed in *The Operation in Gaza*.¹⁰⁵

¹⁰² *Id.* ¶¶ 341-47.

¹⁰³ See Letter from the Secretary General to the President of the Security Council (4 May 2009), available at <http://www.unhcr.org/refworld/docid/4a292c8dd.html> (expressing "appreciation for the cooperation provided by Israel to the Board").

¹⁰⁴ U.N. Spokesperson Briefing (22 January 2010), available at <http://www.unmultimedia.org/radio/english/detail/89687.html>.

¹⁰⁵ *The Operation in Gaza: Factual and Legal Aspects* ¶¶ 370-80.

112. The Military Advocate General found no basis to order criminal investigations of the 10 incidents under review.

(iv) *Destruction of private property and infrastructure by ground forces*

113. This investigation dealt with the general allegations that the IDF intentionally destroyed private property and civilian infrastructure during the Gaza operation. The investigation did not deal with specific incidents alleged in complaints or reports. Some of the findings of the special command investigation are detailed in *The Operation in Gaza*.¹⁰⁶

114. The Military Advocate General reviewed the findings and the entire record of the investigation. The Military Advocate General noted that according to the Law of Armed Conflict, the destruction of private property is prohibited, except where such a destruction is justified by military necessity. He also emphasised that the findings of the special investigation are consistent with Israel's obligations under the Law of Armed Conflict. In this regard, the Military Advocate General noted that the extent of destruction, by itself, cannot establish a violation of the Law of Armed Conflict.

115. Because this investigation was limited in scope and dealt with overall issues, specific incidents reported after the conclusion of the special command investigation have been referred to individual command investigations. The Military Advocate General stressed the importance of a thorough investigation of each such incident.

116. The Military Advocate General further emphasised the importance of clear regulations and orders, as well as clear combat doctrine, regarding the demolition of structures and infrastructure. The IDF has already adopted such regulations and combat doctrine.

(v) *The use of weaponry containing phosphorous*

117. This investigation dealt with the use of weapons containing phosphorous by IDF forces during the Gaza Operation. The investigation focused on the different types and number of weapons containing phosphorous used during the Operation, the purposes for which they were used, the applicable professional instructions and rules of engagement, and the extent of compliance with those instructions and rules. Some of the findings of the special command investigation are detailed in *The Operation in Gaza*.¹⁰⁷

¹⁰⁶ *Id.* ¶¶ 436-45.

¹⁰⁷ *Id.* ¶¶ 405-35.

118. The Military Advocate General reviewed the entire record of the special command investigation. With respect to exploding munitions containing white phosphorous, the Military Advocate General concluded that the use of this weapon in the operation was consistent with Israel's obligations under international law.
119. With respect to smoke projectiles, the Military Advocate General found that international law does not prohibit use of smoke projectiles containing phosphorous. Specifically, such projectiles are not "incendiary weapons," within the meaning of the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons,¹⁰⁸ because they are not primarily designed to set fire or to burn. The Military Advocate General further determined that during the Gaza Operation, the IDF used such smoke projectiles for military purposes only, for instance to camouflage IDF armor forces from Hamas's anti-tank units by creating smoke screens.
120. The Military Advocate General found no grounds to take disciplinary or other measures for the IDF's use of weapons containing phosphorous, which involved no violation of the Law of Armed Conflict. Nevertheless, the Military Advocate General's opinion did not address a number of specific complaints that were received after the investigation concluded and which are being investigated separately.

(vi) Concluding observations

121. The Military Advocate General ended his opinion on the five special command investigations by underlining the IDF's commitment to compliance with the Law of Armed Conflict, as well as its intention to investigate thoroughly every alleged violation by IDF forces. He noted that the evidence gathered by the special investigations reflected great effort by the IDF to ensure such compliance and to minimize harm to civilians.
122. The Military Advocate General acknowledged that the investigations had found operational lapses and errors in the exercise of discretion. However, given the complexities of decision making under pressure, particularly when the adversary has entrenched itself within the civilian population, such mistakes do not in themselves establish a violation of the Law of Armed Conflict.
123. The Military Advocate General further emphasised the importance of implementing the operational lessons learned from the special command investigations.

¹⁰⁸ Protocol III of the Convention on Prohibitions or Restrictions on the Use of Certain Weapons Which May Be Deemed to Be Excessively Injurious or to Have Indiscriminate Effects (CCW). Israel is not a party to CCW Protocol III.

(2) Additional Special Command Investigation

124. In addition to the original five special command investigations, the Military Advocate General recommended that the Chief of General Staff establish an additional special command investigation to assess certain allegations discussed in the Human Rights Council Fact-Finding Report. The Chief of General Staff agreed and, on 10 November 2009, appointed another Colonel with substantial field and command experience who was not directly involved with the incidents in question to conduct that investigation.
125. The additional special command investigation focuses on three sets of allegations from the Human Rights Council Fact-Finding Report. One set relates to the Al-Samouni residence, where an IDF attack allegedly caused the injury and death of several dozen civilians who were seeking shelter there.¹⁰⁹ Another set of allegations under review relates to claims that the IDF mistreated Palestinians detainees.¹¹⁰ A third set of allegations under review relates to an alleged attack on the Al-Maquadme Mosque.¹¹¹
126. The alleged attack of the Al-Maquadme Mosque was first examined during one of the original five special command investigations. At that time, the special command investigator concluded that the mosque had not been struck during a military operation. After reviewing the findings of the investigation, along with media accounts and reports of non-governmental organisations (some of which were published after the investigation had concluded), the Military Advocate General recommended that a new special command investigation examine the allegations again.
127. Upon conclusion of his investigation, the special command investigator will present his findings to the Military Advocate General, who will then determine whether there is suspicion of a violation of the Law of Armed Conflict warranting further investigation.

¹⁰⁹ See Human Rights Council Fact-Finding Report ¶¶ 712-22. The mandate required an investigation of allegations that “IDF deliberately shot civilians in the Al-Samouni residential compound in Zeitoun, and prevented the access of medical teams, as well as evacuation of the wounded,” resulting in the death of more than 20 civilians. The Military Advocate General had previously referred additional allegations related to the alleged shooting of members of the Al-Samouni family for a criminal investigation. See Human Rights Council Fact-Finding Report ¶¶ 709-11.

¹¹⁰ See Human Rights Council Fact-Finding Report ¶¶ 1107-26. The mandate required an investigation of allegations that “IDF forces held the detainees in cruel, inhumane and degrading conditions,” such “in pits, exposed to cold and bad weather conditions, handcuffed and with their eyes covered, without food or ability to relieve themselves” and “during the night in trucks, while they are handcuffed, without having enough blankets.”

¹¹¹ See Human Rights Council Fact-Finding Report ¶¶ 822-30. The mandate directed the command investigator to “examine the allegations . . . that during prayer time (between 17:00 and 18:00), an explosion had happened in the entrance to the mosque, resulting in the death of 15 civilians.”

(3) Other Command Investigations

128. In addition to the special command investigations discussed above, the Military Advocate General referred complaints regarding approximately 90 incidents for command investigations. These incidents generally involve allegations of civilian injuries or deaths and destruction of civilian property during the Gaza Operation.
129. As explained above, injuries to civilians and damage to civilian property during hostilities do not, in themselves, provide grounds for opening a criminal investigation into potential violations of the Law of Armed Conflict. There must be additional circumstances to warrant a reasonable suspicion of such a violation. As also explained above, after reviewing the findings and record of a command investigation, along with the complaint and other relevant information, the Military Advocate General will decide whether to order a criminal investigation into each incident.
130. To date, the IDF has completed 45 of the approximately 90 command investigations referred by the Military Advocate General. As discussed below, after reviewing the findings and records of command investigations along with other relevant materials, the Military Advocate General has referred 7 incidents for criminal investigations. The Military Advocate General has found that other incidents investigated raised no reasonable suspicion of a violation of the Law of Armed Conflict. Investigations into the remaining 45 incidents continue.

B. Criminal Investigations

131. To date, the Military Advocate General has already referred 36 separate incidents for criminal investigation. The Military Advocate General determined that the nature of the alleged incidents and/or the evidentiary record raised a reasonable suspicion that allegedly criminal behaviour occurred.
132. Special investigative teams of the MPCID were appointed solely for the purpose of investigating complaints stemming from the Gaza Operation. The Commander of the MPCID supervises the professional investigative teams, with involvement by the Office of the Military Advocate for Operational Matters. The teams included 16 investigators, as well as Arabic interpreters.
133. The MPCID has sought assistance from non-governmental organisations (such as B'Tselem) to help locate Palestinian complainants and witnesses and to coordinate their arrival at the Erez crossing point to Gaza, to allow interviews and questioning. To date, MPCID

investigators have taken testimony from almost 100 Palestinian complainants and witnesses, along with approximately 500 IDF soldiers and commanders. They have devoted thousands of working hours to the investigations thus far.

134. Of the 36 incidents referred thus far for criminal investigation, 19 incidents involved alleged shootings towards civilians. The Military Advocate General referred most of these incidents (12) directly for criminal investigation (without requesting a command investigation or awaiting the results of one), while some of them (7) were referred after the Military Advocate General reviewed the findings and records gathered during command investigations and concluded that there was a reasonable suspicion of criminal activity by IDF forces.
135. The remaining 17 incidents involved allegations of using civilians as human shields, mistreatment of detainees and civilians, and pillage and theft. In these instances, the Military Advocate General determined that the allegations, if true, concerned events that were clearly beyond any legitimate operational activity, and therefore directly referred all of the cases to criminal investigation.
136. The allegations referred for criminal investigation came from a variety of sources, including: local and international media reports and inquiries; letters from Palestinians or their attorneys; and letters and reports from non-governmental organisations (e.g., Public Committee against Torture in Israel, Human Rights Watch, Amnesty International, Médecins Sans Frontières). Some of these incidents are also described in the Human Rights Council Fact-Finding Report. The Military Advocate General opened a number of direct criminal investigations after hearing reports alleging that IDF soldiers had described conduct by themselves or fellow soldiers that would violate the Law of Armed Conflict.
137. Of these 36 criminal investigations, 1 investigation has already led to an indictment and conviction of an IDF soldier.¹¹² The Military Advocate General has exercised his discretion to close 7 criminal investigations without charges because the complainants

¹¹² During a search of a Palestinian residence, the soldier stole a credit card belonging to one of the occupants and subsequently used the card to withdraw the equivalent of more than \$400. Following his confession, the soldier served seven and a half months in prison. The Court Martial declared: “The crime of looting is harmful to the moral duty of every IDF soldier to keep human dignity, a dignity ‘that does not depend on origin, religion, nationality, sex, status and function.’ Besides, with the commission of the crime of looting, the accused harmed the ‘combat moral code,’ the spirit of the IDF, in using his power and his arms not for the execution of his military mission.” *Military Prosecutor v. Sergeant A.K.*, S/153/09 ¶ 12 (11 August 2009).

refused to give testimony and/or there was insufficient evidence of a criminal violation.¹¹³ The remaining 28 investigations are ongoing.

C. Incidents Discussed in Human Rights Council Fact-Finding Report

138. The incidents subject to command and criminal investigations discussed above include the 34 incidents addressed at length in the Human Rights Council Fact-Finding Report.¹¹⁴

139. As of 15 September 2009, when the Human Rights Council Fact-Finding Report was released, Israel was already investigating 22 of these 34 incidents. The Report brought the remaining 12 incidents to the IDF's attention for the first time – 10 of which involved alleged damage to property and 2 of which involved alleged harm to civilians. The Military Advocate General promptly referred these 12 additional incidents for investigation.¹¹⁵

140. The current status of the investigations of incidents discussed in the Human Rights Council Fact-Finding Report is as follows:

- 11 incidents are the subject of on-going criminal investigations by the MPCID (Part IV.B above). Two of these investigations were concluded, with no suspicion for criminal behaviour.
- 7 incidents were investigated as part of the special command investigations (Part IV.A.1 and Part IV.A.2 above). The Military Advocate General has requested further review of 2 of these incidents.
- The remaining incidents were subject to regular command investigations (Part IV.A.3 above). Some of these investigations are still ongoing.

¹¹³ As noted above, the Military Advocate General's decision to close these investigations is subject to review by the Attorney General and the Supreme Court.

¹¹⁴ The exact number of incidents addressed in the Human Rights Council Fact-Finding Report is unclear. The Report itself indicates that the Fact-Finding Mission investigated 36 incidents in Gaza. *See* Human Rights Council Fact-Finding Report ¶ 16. However, the State of Israel has been able to identify 34 separate incidents in Gaza that are discussed in the Report.

¹¹⁵ As noted earlier, the Military Advocate General recommended a sixth special command investigation to consider certain incidents discussed in the Human Rights Council Fact-Finding Report. In addition, the Military Advocate General referred one incident discussed in the Report – alleging the use of a Palestinian as a human shield – directly for criminal investigation.

141. Regarding certain incidents discussed in the Human Rights Council Fact-Finding Report, the Military Advocate General has reviewed the entire record and concluded that there was no basis for a criminal investigation. Some examples are detailed below.

(1) Namar wells group, Salah ad-Din Street, Jabaliyah refugee camp¹¹⁶

142. When the IDF first learned about the allegations relating to the Namar wells from the Human Rights Council Fact-Finding Report, it tried to locate the wells (since the Report does not provide any coordinates). For this purpose, the Israeli Coordination and Liaison Administration (CLA) asked the Gaza Coastal Municipalities Water Utility (CMWU) to provide the exact coordinates of the facility.

143. According to the findings of the command investigation, the CMWU provided coordinates located within a closed military compound of Hamas. This compound served as a regional command and control center and was used for military training and weapons storage. Guards manned the entry to the compound and prohibited entry by unauthorized civilians. The coordinates provided for the wells and the manned entry point to the compound are illustrated in the following photograph, taken prior to the alleged incident.



- ▶ Hamas military compound, with coordinates provided for the Namar wells circled in red (Source: IDF)

¹¹⁶ See Human Rights Council Fact-Finding Report ¶¶ 975-83.

144. The IDF attacked the compound on 27 December 2008, at 11:30. All strikes were accurate. The command investigation further determined that pre-planned attacks, such as this one, took into account the existence of sensitive sites, including water facilities, inside or near the intended target, in the decisions whether to attack the target and what precautions to use. When planning the attack on this specific military target, the IDF knew of no water facility inside the compound. The IDF did identify a water well 195 metres from the compound and took precautionary measures, which ensured that the well was not hit or damaged.
145. The command investigation revealed that although the Israeli CLA requests and receives updates from different sources on sensitive sites inside Gaza, it had no information about the Namar water wells before the operation. After the Gaza Operation, the CMWU provided the CLA information about the location of 143 water wells. According to IDF procedures and practices, had the CLA received such information before the operation, it would have been immediately reported to all relevant IDF units.
146. The Military Advocate General reviewed the findings of the command investigation, together with the additional information contained in the Human Rights Council Fact-Finding Report.
147. The Military Advocate General concluded that the Hamas military compound, where the Namar wells were located, was a legitimate military target. The Military Advocate General found that the IDF did not know of the existence of the water wells within the Hamas military compound and did not direct the strike against the water facilities.
148. The Military Advocate General took note of the fact that standing orders issued throughout the Gaza Operation strictly forbade any acts damaging water installations. Moreover, the Military Advocate General found no credible basis for the allegation that the strike was intended to deprive the civilian population of Gaza of water. To the contrary, the IDF made significant efforts to ensure that the population of Gaza had a sufficient and continuous water supply.¹¹⁷
149. Accordingly, the Military Advocate General found no basis to order a criminal investigation regarding the case.

¹¹⁷ During the actual fighting, in several instances, the IDF coordinated the movement of the Palestinian Water Authority (CMWU) maintenance teams to repair water infrastructure (beyond the repairs permitted during humanitarian windows). Additionally, five trucks of infrastructure supplies, including pumps, generators, spare parts, and purification kits, were brought into Gaza at the request of the CMWU.

(2) The Gaza wastewater treatment plant, Road No. 10, al-Sheikh Ejlin, Gaza City¹¹⁸

150. The IDF first learned of allegations of deliberate attacks of the Gaza wastewater treatment plant in Sheikh Ejlin from the Human Rights Council Fact-Finding.

151. The command investigation of this incident included the gathering of information from relevant commanders and officers and from ground and aerial forces. In addition, investigators received information from the Israeli CLA, which was in direct contact with Mr. Munther Shublaq, the Director of the CMWU.

152. Initial findings from the investigation were presented to the Military Advocate General, who asked for several clarifications before reaching his conclusions. The main findings of the command investigation are as follows.

(i) *The date of the incident*

153. Based on an analysis of aerial photographs of the wastewater treatment plant from the relevant days, it was determined that the damage to the facility occurred on 10 January 2009. In an aerial photograph taken that day, the damage to the wall of one of the basins, as well as the flow of sewage to nearby fields, can be seen for the first time.



- ▶ Aerial photograph of wastewater treatment plant in Sheikh Ejlin, 9 January 2009, with no damage visible (Source: IDF)

¹¹⁸ See Human Rights Council Fact-Finding Report ¶¶ 962-72.



- ▶ Aerial photograph of wastewater treatment plant in Sheikh Ejlin, 10 January 2009, with breach of upper basin marked in red (Source: IDF)

154. The ICRC presented a preliminary report about the basin breach to the Israeli CLA on 12 January 2009. During the following days, the CLA tried to coordinate the arrival of Gaza's CMWU teams to address the situation, but these efforts did not succeed due to the fighting in the area.

155. The Director of Gaza's CMWU reported to the CLA that 50,000 cubic meters of sewage leaked from the treatment plant; and that the direction of the leak was towards the southwest, an agricultural area.

(ii) *The possibility of an aerial strike*

156. The wastewater treatment plant was not defined, prior to or during the operation, as a target for an aerial strike. The nearest aerial strike on the relevant dates was 1.3 kilometres away from the plant.

(iii) The possibility of a ground attack

157. Given the characteristics of the damage caused to the basin, it is unlikely that it resulted from flat-trajectory fire of the IDF. The IDF executed no high-trajectory fire towards the plant, and the operations logs identify no such target point.
158. When the armoured forces passed near the plant, during the operation, the basin wall was already breached and the area surrounding it was flooded, thus limiting the movement of the forces in that area.

(iv) The possible causes of damage to the basin

159. The Military Advocate General reviewed the findings of the command investigation, in light of the details provided in the Human Rights Council Fact-Finding Report and the CMWU report of January 2009, entitled “Damage Assessment Report: Water and Waste Water Infrastructure and Facilities.”
160. Taking into account all available information, the Military Advocate General could not definitively rule out the possibility that IDF activity had caused the damage to the wall of the third basin of the wastewater treatment plant (which probably occurred on 10 January). At the same time, he could also not dismiss the possibility that the damage to the basin might have resulted from a deliberate action by Hamas as part of a defensive plan to hamper the movement of IDF forces in the area.
161. The Military Advocate General was able to determine that this damage did not result from an intentional and pre-planned IDF attack. In this regard, the Military Advocate General endorsed the conclusions of the command investigation that the wastewater treatment plant was not a pre-planned target and that the breaching of the basin wall and the flooding of the area with sewage significantly limited the maneuverability of IDF ground forces, especially armoured vehicles, in that area. Moreover, the Military Advocate General noted that there was no physical evidence or eyewitness testimony to support the conclusion of the Human Rights Council Fact-Finding Report.
162. Accordingly, the Military Advocate General found no reason to order a criminal investigation regarding the case.

(3) El-Bader flour mill¹¹⁹

163. With respect to the allegation of deliberate targeting of the el-Bader flour mill, the IDF conducted a command investigation, which gathered evidence from numerous sources, including relevant commanders and officers and ground and aerial forces. In addition, the investigator received information from the Israeli CLA, which was in direct contact with the owner of el-Bader flour mill, Mr. Rashad Hamada. The command investigation included several findings, which are delineated below.
164. From the outset of the Gaza Operation, the immediate area in which the flour mill was located was used by enemy armed forces as a defensive zone, due to its proximity to Hamas's stronghold in the Shati refugee camp. Hamas had fortified this area with tunnels and booby-trapped houses, and deployed its forces to attack IDF troops operating there. For example, 200 meters south of the flour mill an IDF squad was ambushed by five Hamas operatives in a booby-trapped house; 500 meters east of the flour mill another squad engaged enemy forces in a house that was also used for weapons storage; and adjacent to the flour mill, two booby-trapped houses exploded.
165. The IDF ground operation in this area began on 9 January 2009, during night time. Before the ground operation, the IDF issued early warnings to the residents of the area, included recorded telephone calls, urging them to evacuate. Such telephone calls were made to the flour mill as well.
166. While preparing for the operation, the commanders identified the flour mill as a "strategic high point" in the area, due to its height and clear line of sight. Nevertheless, in the planning stage, it was decided not to pre-emptively attack the flour mill, in order to prevent damage to civilian infrastructure as much as possible.

¹¹⁹ See Human Rights Council Fact-Finding Report ¶¶ 913-21.



- ▶ El-Bader flour mill, 9 January 2009, prior to alleged incident (Source: IDF)

167. In the course of the operation, IDF troops came under intense fire from different Hamas positions in the vicinity of the flour mill. The IDF forces fired back towards the sources of fire and threatening locations. As the IDF returned fire, the upper floor of the flour mill was hit by tank shells. A phone call warning was not made to the flour mill immediately before the strike, as the mill was not a pre-planned target.

168. Several hours after the incident, and following a report about fire in the flour mill, the IDF coordinated the arrival of several fire engines to fight the fire.



- ▶ El-Bader flour mill, 10 January 2009, following alleged incident. Fire trucks are visible on the scene. (Source: IDF)

169. The Military Advocate General reviewed the findings and the records of the command investigation and other materials. In addition, the Military Advocate General reviewed the information included in the Human Rights Council Fact-Finding Report, as well as the transcript of the public testimony of Mr. Hamada to the Fact-Finding Mission.

170. Taking into account all available information, the Military Advocate General determined that the flour mill was struck by tank shells during combat. The Military Advocate General did not find any evidence to support the assertion that the mill was attacked from the air using precise munitions, as alleged in the Human Rights Council Fact-Finding Report. The Military Advocate General determined that the allegation was not supported in the Report itself, nor in the testimony to the Fact-Finding Mission by Rashad Hamada, who had left the area prior to the incident in response to the IDF's early warnings. Photographs of the mill following the incident do not show structural damage consistent with an air attack.



- ▶ El-Bader flour mill, 11 January 2009, following alleged incident (Source: IDF)

171. The Military Advocate General found that, in the specific circumstances of combat, and given its location, the flour mill was a legitimate military target in accordance with the Law of Armed Conflict. The purpose of the attack was to neutralize immediate threats to IDF forces.

172. The Military Advocate General did not accept the allegation in the Human Rights Council Fact-Finding Report that the purpose of the strike was to deprive the civilian population of Gaza of food. In this regard, he noted the fact that shortly after the incident, the IDF allowed Palestinian fire trucks to reach the area and extinguish the flames, as well as the extensive amount of food and flour that entered Gaza through Israel during the Gaza Operation.¹²⁰

173. Although the Military Advocate General could not conclusively determine that the flour mill was in fact used by Hamas's military operatives, there was some evidence of such use. The Military Advocate General noted that Mr. Hamada testified before the Fact-Finding Mission that after the operation he found empty bullets on the roof of the flour mill. This could not have been the result of IDF fire, since – as was evident from the findings of the command investigation – the IDF forces which occupied the mill's compound three days

¹²⁰ See *The Operation in Gaza: Factual and Legal Aspects* ¶¶ 266-82.

after the incident did not occupy the roof of the mill, where they would have been exposed to enemy fire.

174. Accordingly, the Military Advocate General found no reason to order a criminal investigation regarding the case.

(4) The house of Abu-Askar family¹²¹

175. The IDF conducted a command investigation into allegations concerning a deliberate strike of the residence of Muhammad Abu-Askar. The command investigation gathered evidence from numerous sources, including relevant commanders and officers, ground and aerial forces, and aerial photos.

176. According to the findings of the command investigation, the cellar and other parts of Mr. Abu-Askar's house were used to store weapons and ammunitions, including Grad rockets. Furthermore, the area where the house was located was frequently used as a launch area for rockets aimed at Israeli towns.

177. Before the strike, the IDF made a telephone call to Mr. Abu-Askar's house warning of the strike. The call was received by Muhammad Abu-Askar. Following this warning, all occupants immediately evacuated the premises. Moreover, the attack took place at night, when fewer civilians were likely to be in the area. There were no civilian casualties from the strike.

178. Shortly after the strike, two sons of Mr. Abu-Askar, both Hamas military operatives, were killed while they were involved in launching mortars at IDF forces.¹²²

179. The Military Advocate General reviewed the findings and the entire record of the command investigation, together with other information on the incident included in the Human Rights Council Fact-Finding Report. He also reviewed the public testimony given by Mr. Abu-Askar before the Fact-Finding Mission.

180. The Military Advocate General concluded that due to its use as a large storage facility for weapons and ammunition, including Grad missiles, the house of Muhammad Abu-Askar

¹²¹ See Human Rights Council Fact-Finding Report ¶¶ 975-85.

¹²² The circumstances of this incident were detailed in *The Operation in Gaza: Factual and Legal Aspects* ¶¶ 336-40.

was a legitimate military target. The strike was not directed against the residents of the house, but rather against the weapons stored in it.¹²³

181. The Military Advocate General further determined that the attack adhered to the IDF's obligation to take precautions to minimise incidental loss of civilian life. The effectiveness of certain precautions – the timing of the attack and the use of warnings – was evident in the fact that there were no civilian casualties in the incident. The intended military advantage of eliminating a large stockpile of weapons, including long-range rockets, exceeded the anticipated harm to civilians.

182. Accordingly, the Military Advocate General found no reason to order a criminal investigation regarding the case.

V. CONCLUSION

183. The Gaza Operation presented complex challenges to Israel and the IDF. While the need and obligation to respond effectively to the thousands of Hamas rockets and mortars that had terrorized Israeli civilians for years was clear and acute, the strategies adopted by Hamas, and in particular its systematic entrenchment in the heart of civilian areas, created profound operational dilemmas.

184. These challenges did not end with the close of operations. A key element of respecting the Law of Armed Conflict is a commitment genuinely to review military operations after the fact, and thoroughly investigate allegations of unlawful activity. Fulfilling this commitment in the context of Gaza is demanding, and requires serious efforts to obtain evidence from battleground situations and to make arrangements to enable residents of Gaza to give their accounts. It also requires an awareness that, in complex combat situations, errors of judgment, even with tragic results, do not necessarily mean that violations of the Law of Armed Conflict have occurred.

185. A further challenge is presented by the scale of the investigations. Because Israel followed up on every allegation, regardless of whether the source was neutral, hostile, or friendly, it launched investigations into 150 separate incidents, including 36 criminal investigations opened thus far. More broadly, the six special command investigations initiated by the IDF addressed more general concerns that arose in the course of the fighting. Beyond the

¹²³ The sole basis for the claim in the Human Rights Council Fact-Finding Report that the house was a civilian target was Mr. Abu-Askar's testimony before the Fact-Finding Mission. The Mission, however, did not ask Mr. Abu-Askar any questions about the potential use of his house for military purposes.

disciplinary and criminal proceedings that have been initiated, operational lessons from these investigations have been incorporated in IDF practice.

186. In this Paper, Israel has sought to share its investigative procedures, and has described the various mechanisms involved, including those operating independently within the military system as well as the civilian oversight provided by the Attorney General and the Supreme Court.

187. Israel recognizes the importance of engaging in dialogue and sharing best practices on the conduct of investigative proceedings with other democratic states facing similar challenges and committed to upholding the rule of law.

Annex II

Letter dated 29 January 2010 from the Permanent Observer of Palestine to the United Nations addressed to the Secretary-General

[Original: English]

Pursuant to the note of 3 December 2009, in which the United Nations Secretariat, on your behalf, requested the Permanent Observer Mission of Palestine to the United Nations to provide written information with regard to the steps that the Palestinian side may have taken in connection with paragraph 4 of General Assembly resolution 64/10 of 5 November 2009, entitled "Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict", I have the honour to convey to you a letter, dated 27 January 2010, from Prime Minister Salam Fayyad transmitting the following documents submitted by the Palestinian leadership:

- A Presidential Decree establishing an Independent Investigative Commission in Follow-up of the Goldstone Report
- A preliminary report by the Independent Investigative Commission in Follow-up of the Goldstone Report

As Prime Minister Fayyad has indicated in his letter, we will continue to provide you with updates and further reports regarding future developments and progress of the work of the Investigative Commission in Follow-up of the Goldstone Report. In this regard, I wish to assure you that the Commission, as evident in its mandate, its composition and its programme of work, will strive to carry out in the most efficient and timely manner an independent and credible investigation that is in conformity with international standards into the allegations of violations of international humanitarian and human rights law contained in the report of the United Nations Fact-Finding Mission on the Gaza Conflict, as urged by the General Assembly in paragraph 4 of resolution 64/10.

In this regard, I wish to reiterate Palestine's firm position that there is absolutely no symmetry or proportionality between the occupying Power and the occupied people and thus our rejection of any equating of the military aggression and crimes committed by Israel, the occupying Power, against the Palestinian people with actions that may have been committed by the Palestinian side.

Nevertheless, Palestine does take seriously the allegations contained in the Goldstone report regarding possible Palestinian violations, and we have thus, in accordance with General Assembly resolution 64/10, launched this Independent Investigative Commission. We do so on the basis of our utmost respect for and conviction in the rule of law and United Nations resolutions. Moreover, we are upholding our responsibilities in this regard based upon our strong belief that the genuine pursuit of accountability by all members of the international community will ultimately bring an end to the impunity that Israel, the occupying Power, has for too long acted with and benefited from. Such accountability will in the long term unquestionably serve the cause of peace, which cannot be attained without justice.

(Signed) **Riyad Mansour**
Ambassador

Permanent Observer of Palestine to the United Nations

Enclosure

[Original: Arabic]

27 January 2010

I have the honour to deposit with you a copy of the Presidential Decree issued by President Mahmoud Abbas on 25 January 2010 concerning the formation of an independent commission to follow up the Goldstone report. That commission will undertake its mandated duties and responsibilities, including investigation and production of a preliminary report on its work.

The attachments to the present letter constitute a response to the demands made on us in General Assembly resolution 64/10, paragraph 4, dated 5 November 2009. That paragraph states as follows:

[The General Assembly]

Urges, in line with the recommendation of the Fact-Finding Mission, the undertaking by the Palestinian side, within a period of three months, of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice.

The attached documents also constitute a response to the letter dated 3 December 2009 from the United Nations Secretariat which requested the Permanent Observer Mission of Palestine, by 29 January 2010, to provide the Secretary-General with written information on the steps taken or currently being taken by the Palestinian side in response to the request of the General Assembly in its resolution 64/10, paragraph 4.

(Signed) Salam **Fayyad**
Prime Minister
Palestinian National Authority

Attachment I

[Original: Arabic]

Decree No. () 2010**Concerning the formation of an independent commission to follow up the Goldstone report**

The President of the State of Palestine,
President of the Palestine Liberation Organization Executive Committee,
President of the Palestinian National Authority,

On the basis of the provisions of the Amended Basic Law of 2003 and its amendments,

Having considered the Decision of the Prime Minister dated 14 January 2010,
Having considered also the Goldstone report,

By virtue of the powers with which he is invested, and in the interests of the public, has decided as follows:

Article 1

To form an independent commission to follow up implementation of the recommendations made in the Goldstone report with respect to the Palestinian National Authority, composed of the following:

1. Issa Abu Sharar, Chairman
2. Zuhair al-Surani, member
3. Ghassan Farmand, member
4. Yasser al-Amuri, member
5. Nasser Rayyes, member

Article 2

1. To authorize that Commission to undertake the investigative duties and responsibilities required of it pursuant to the Goldstone report, and to work in accordance with the timetable provided for in that report.
2. The Commission shall submit its recommendations and the outcome of its work to the relevant authorities.

Article 3

The Commission shall appoint the experts and specialists it considers most appropriate to assist it in performing its duties.

Article 4

All relevant official and unofficial parties shall cooperate with the Commission and provide it with all the facilities and information necessary for it to perform its duties.

Article 5

All the relevant parties shall implement the provisions of this Decree with effect from its publication. The Decree shall be published in the Official Gazette.

Ramallah, 25 January 2010

(Signed) Mahmoud **Abbas**
President of the State of Palestine
President of the Palestine Liberation Organization Executive Committee
President of the Palestinian National Authority

Attachment II

[Original: Arabic]

I have the honour to transmit to you herewith the preliminary report on the work of the Independent Commission to follow up implementation of the recommendations made in the Goldstone report, for transmission to the Permanent Observer of Palestine to the United Nations by the date specified, namely, 29 January 2010.

(Signed) Issa **Abu Sharar**
Chairman
Independent Commission to follow up implementation
of the recommendations made in the Goldstone report

Ramallah, 28 January 2010

Report of meeting of the Independent Investigation Commission that was established pursuant to General Assembly resolution 64/10

On 25 January 2010, Presidential Decree No. 0105 of 2010 was issued by the President of the State of Palestine, President of the Palestine Liberation Organization Executive Committee and President of the Palestinian National Authority, H.E. President Mahmoud Abbas. The Decree concerned the formation of an independent investigative commission, in accordance with the recommendation of the Fact-Finding Mission and pursuant to General Assembly resolution 64/10, paragraph 4, dated 5 November 2009. That paragraph states as follows:

[The General Assembly]

Urges, in line with the recommendation of the Fact-Finding Mission, the undertaking by the Palestinian side, within a period of three months, of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice.

The Commission was constituted as follows:

1. Judge Issa Abu Sharar, Chairman: 1963-1970 Public Prosecutor and subsequently Assistant Prosecutor General of Jordan; 1971-1996 lawyer, Jordan; 1998 President of the Court of Appeal; 2002 Judge of the Palestinian High Court; 2005 President of the High Court and President of the Palestinian High Judicial Council. Retired on 29 November 2009.
2. Judge Zuhair al-Surani, member: 1958-1964 representative of the Public Prosecutor's Office, Gaza; 1964 Judge, Court of First Instance; 1967 Judge, Supreme Court; 1999 Public Prosecutor; 2002 Palestinian Minister of Justice; 2003 President of the High Court and President of the Palestinian High Judicial Council. Retired in 2005.
3. Ghassan Farmand, member. Awarded doctorate of law in France in 1981. 1982 Professor of Law at Birzeit University; 1993 established and directed Institute of Law at Birzeit University. President of Palestinian Red Crescent Society, Ramallah, and member of numerous non-governmental legal institutions. Participated in numerous international conferences, including Yale conferences.
4. Yasser al-Amuri, member. Awarded doctorate of public international law in Spain in 2003. 2003 Professor of Public International Law at Al-Quds University; 2005 Professor of Public International Law at Birzeit University; 2006-2009 Head of Institute of Law and Dean of Masters of Law Programme at Birzeit University. Member of many non-governmental legal institutions. Participated in numerous international conferences and contributed to various studies on human rights.
5. Professor Nasser Rayyes, member. Practitioner of law since 1997. 1998 researcher and legal consultant to Al-Haq, a branch of the International Commission of Jurists; 2002 President of the Committee on Human Rights of the Palestine Academy for Science and Technology; 2003 established Palestinian National Committee for International Humanitarian Law. Member of and contributor to many non-governmental legal institutions. Participated in numerous international

conferences and contributed to various studies on human rights. Head of International Humanitarian Law Team responsible for producing a training guide to the provisions of international law; specialized trainer in human rights law and documentation of crimes and violations.

The Commission held its first meeting in Ramallah on 28 January 2010, with a view to undertaking its mandated duties and responsibilities, pursuant to the above-mentioned Presidential Decree. In accordance with General Assembly resolution 64/10, paragraph 4, dated 5 November 2009, the Commission adopted a working methodology based on the principles and standards laid down in public international law, the Charter of the United Nations, international humanitarian law, international human rights law, international criminal law and the relevant United Nations human rights decisions and declarations, in addition to the precepts of the Palestinian Basic Law and the provisions of national legislation. The Commission considered the Goldstone report and the demands it had made of the Palestinian National Authority, and decided to devise a plan of action and a series of measures for implementation of the mandated duties, including the procedural rules and principles that would ensure that the Commission undertook its investigation in accordance with the principles of justice, equity and impartiality. It would also establish the conditions for the selection of experts, give specifications for investigators and devise witness and informer protection mechanisms. The Commission decided to enlist the help of experts, specialists and appropriate civil society organizations in carrying out its duties, and in due course will inform the relevant parties of all pertinent developments and reports.

Annex III

Letter dated 29 January 2010 from the Chargé d'affaires a.i. of the Permanent Mission of Switzerland to the United Nations addressed to the Secretary-General

[Original: French]

I have the honour to transmit to you the attached summary of the steps that Switzerland has taken to date to implement paragraph 5 of General Assembly resolution 64/10 on the follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict.

(Signed) Heidi **Grau**
Chargé d'affaires a.i.

Enclosure

Progress of consultations regarding action pursuant to paragraph 5 of General Assembly resolution 64/10

On 5 November 2009, the United Nations General Assembly adopted resolution 64/10, entitled "Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict", in paragraph 5 of which the General Assembly "Recommends that the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, undertake as soon as possible the steps necessary to reconvene a Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with common article 1".

In accordance with this recommendation, Switzerland, in its capacity as depositary of the Geneva Conventions, and through its Permanent Mission to the United Nations in Geneva, undertook preliminary consultations between 9 and 17 December 2009. Because of time pressure, the preliminary consultations could be held only with a limited number of parties.

Switzerland consulted Israel and Palestine, as parties directly involved; Egypt, Saudi Arabia, Syria, Pakistan (as coordinator on human rights and humanitarian issues in Geneva of the Organization of the Islamic Conference) and Algeria (as the Chair of the Council of Arab Ambassadors in Geneva), as interested parties from the region; China, the United States of America, France, the United Kingdom and Russia, as permanent members of the United Nations Security Council; and Sweden and Spain, as outgoing and incoming holders of the Presidency of the European Union.

The League of Arab States, the International Committee of the Red Cross, the Office of the High Commissioner for Human Rights, the human rights coordinators of the five regional groups in Geneva, the United Nations Relief and Works Agency for Palestine Refugees in the Near East and the Department of Political Affairs of the United Nations Secretariat were informed of these steps.

In addition, Switzerland was notified of the positions of Australia and Canada on the matter, and was approached by a number of delegations from various regional groups, which expressed their desire to be informed of the process under way.

The preliminary consultations were oral and informal. The responses followed the same pattern, with the exception of the two written contributions. Switzerland began each meeting by emphasizing its view that a Conference of High Contracting Parties must be inclusive and be conducive to a concrete result, rather than being used as a platform to air recriminations connected with any party to the conflict. Switzerland accordingly requested the parties it approached to give their views on the content, timing and level of representation at a Conference, and to make concrete suggestions. The reactions can be divided into three categories:

(1) The first group favoured the holding of a conference, preferably at high level, aimed at identifying individual and collective steps to ensure respect for and implementation of the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem. The

States in question took the view that a Conference of High Contracting Parties should be held in April 2010, in order to avoid a clash with other major conferences or events in Geneva, while still acknowledging the importance of proper and appropriate preparation. They emphasized the need to focus on legal issues. Some States were reflecting on concrete steps, including proposed mechanisms, which they intended to submit for consideration at a later stage.

(2) The second group firmly opposed the holding of a Conference of High Contracting Parties. The States in question were concerned that such a conference could be a needless distraction from, or a damaging obstacle to, the resumption of bilateral negotiations between the Government of Israel and the Palestinian Authority. A politicization of the discussions was regarded as inevitable. Some States also voiced their opposition on grounds of substance. They pointed to the lack of specific provision for such a conference in the Geneva Conventions. They also underlined that paragraph 5 of General Assembly resolution 64/10 took the form of a recommendation.

(3) The third group, while not formally opposing the convening of a Conference of High Contracting Parties, was unenthusiastic at that prospect. Those States regarded such an event as neither useful nor urgent. They were sceptical about the added value of a reconvened conference, indicating that the experience of the Conference of High Contracting Parties of 5 December 2001 had shown no discernible tangible impact on the ground. They could not support a conference that would be used to criticize one particular country.

In conclusion, these consultations, which were limited in number, did not reveal a dominant trend for or against the holding of a Conference of High Contracting Parties, or a view on the contribution to the civilian population affected of a reconvened Conference of High Contracting Parties to the Fourth Geneva Convention; in other words, it was uncertain what results could be expected for what issues.

Switzerland has been encouraged to hold its own discussions on the matter and to share their outcome at the appropriate time. Such discussions will focus on the environment and aims of a reconvened Conference of High Contracting Parties. They will be an integral part of a second round of consultations, open to all the High Contracting Parties and other interested parties, that Switzerland intends to conduct in the near future. In that task, Switzerland will be guided by the desire to protect civilians and to ensure that their humanitarian needs are met.



General Assembly

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Agenda item 64

Information on the second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict

Report of the Secretary-General

Summary

The present report is submitted pursuant to General Assembly resolution 64/254 of 26 February 2010. On 27 May 2010, the Secretary-General sent notes verbales to the Permanent Mission of Israel to the United Nations, the Permanent Observer Mission of Palestine to the United Nations and the Permanent Mission of Switzerland to the United Nations, drawing their attention to the relevant provisions of resolution 64/254, and requesting written information by 12 July 2010 concerning any steps that may have been taken or were in the process of being taken in relation to their implementation.

* Reissued for technical reasons on 12 August 2010.



I. Introduction

1. The present report, submitted pursuant to paragraph 5 of General Assembly resolution 64/254 of 26 February 2010 (second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict), in which the Assembly requested the Secretary-General to report to the General Assembly, within a period of five months, on the implementation of the resolution. To fulfil that request, it was therefore necessary to ascertain what steps the parties named in paragraphs 2, 3 and 4 of the resolution had taken.

2. On 27 May 2010, the Secretary-General drew the attention of the Permanent Mission of Israel to the United Nations to resolution 64/254, with the request that the Mission provide the Secretariat with written information, by 12 July 2010, of any steps that the Government of Israel may have taken or was in the process of taking further to the call of the General Assembly in paragraph 2 of the resolution.

3. On 16 July 2010, the Secretariat received a document from the Government of Israel entitled "Gaza Operation Investigations: Second Update".

4. On 27 May 2010, the Secretary-General drew the attention of the Permanent Observer Mission of Palestine to the United Nations to resolution 64/254, with the request that the Mission provide the Secretariat with written information, by 12 July 2010, of any steps that the Palestinian side may have taken or was in the process of taking further to the exhortation of the General Assembly in paragraph 3 of the resolution.

5. On 12 July 2010, the Secretary-General received a letter of the same date from the Permanent Observer Mission of Palestine to the United Nations conveying a letter dated 11 July 2010 from President Mahmoud Abbas of the Palestinian Authority and the report of the Palestinian Independent Commission Investigating in Follow-up of the Goldstone Report, including a general introduction to the report.

6. On 27 May 2010, the Secretary-General drew the attention of the Permanent Mission of Switzerland to the United Nations to resolution 64/254, with the request that the Mission provide the Secretariat with written information, by 12 July 2010, of any steps that the Government of Switzerland may have taken or was in the process of taking further to the recommendation of the General Assembly in paragraph 4 of the resolution.

7. On 12 July 2010, the Secretary-General received a note verbale of the same date from the Permanent Mission of Switzerland conveying a report entitled "Status of the talks on follow-up to paragraph 4 of General Assembly resolution 64/254".

8. The submissions received from the above-mentioned parties total approximately 382 pages. For technical reasons, I am unable to issue the documents or my observations at the present time. I will report further as soon as the technical process of translation is completed.

**General Assembly**Distr.: General
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Agenda item 64

Report of the Human Rights Council**Second follow-up to the report of the United Nations
Fact-Finding Mission on the Gaza Conflict****Report of the Secretary-General***Summary*

The present report is submitted pursuant to General Assembly resolution 64/254. On 27 May 2010, the Secretary-General sent notes verbales to the Permanent Mission of Israel to the United Nations, the Permanent Observer Mission of Palestine to the United Nations and the Permanent Mission of Switzerland to the United Nations, drawing their attention to the relevant provisions of resolution 64/254 and requesting written information by 12 July 2010 concerning any steps taken or in the process of being taken in relation to their implementation. The full text of the materials received by the Secretariat in reply to those requests is attached as annexes. The report also contains the observations of the Secretary-General.



I. Introduction

1. The present report is submitted in pursuance of paragraph 5 of General Assembly resolution 64/254 of 26 February 2010, entitled “Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict”, in which the Assembly requested the Secretary-General to report to it, within a period of five months, on the implementation of the resolution. To fulfil that request, it was therefore necessary to ascertain what steps the parties named in paragraphs 2, 3 and 4 of the resolution had taken.
2. On 27 May 2010, the Secretary-General drew the attention of the Permanent Mission of Israel to the United Nations to resolution 64/254, with the request that the Permanent Mission provide the Secretariat with written information by 12 July 2010 on any steps that the Government of Israel might have taken or was in the process of taking further to the call of the General Assembly in paragraph 2 of the resolution.
3. On 16 July 2010, the Secretariat received a document from the State of Israel entitled “Gaza operation investigations: second update”. The full text of the document is attached as annex I to the present report.
4. On 27 May 2010, the Secretary-General drew the attention of the Permanent Observer Mission of Palestine to the United Nations to resolution 64/254, with the request that the Permanent Observer Mission provide the Secretariat with written information by 12 July 2010 on any steps that the Palestinian side might have taken or was in the process of taking further to the exhortation of the General Assembly in paragraph 3 of the resolution.
5. On 12 July 2010, the Secretary-General received a letter of the same date from the Permanent Observer Mission of Palestine to the United Nations transmitting a letter dated 11 July 2010 from President Mahmoud Abbas of the Palestinian Authority and the report of the Palestinian Independent Commission Investigating in Follow-up of the Goldstone Report, including a general introduction to the report. The full text of the letters, the general introduction to the report of the Palestinian Independent Commission Investigating in Follow-up of the Goldstone Report and the report itself is attached as annex II to the present report.
6. On 27 May 2010, the Secretary-General drew the attention of the Permanent Mission of Switzerland to the United Nations to resolution 64/254, with the request that the Permanent Mission provide the Secretariat with written information by 12 July 2010 on any steps that the Government of Switzerland might have taken or was in the process of taking further to the recommendation of the General Assembly in paragraph 4 of the resolution.
7. On 12 July 2010, the Secretary-General received a note verbale of the same date from the Permanent Mission of Switzerland transmitting a report entitled “Status of the talks on follow-up to paragraph 4 of General Assembly resolution 64/254”. The full text of the letter and the report is attached as annex III to the present report.
8. The present report follows the report of the Secretary-General of 26 July 2010 to the General Assembly (A/64/867) submitted pursuant to paragraph 5 of resolution 64/254, in which it was reported that the submissions received from the parties totalled approximately 382 pages. In that report, the Secretary-General indicated that, for technical reasons, he was unable to issue the documents or his observations at that time and that he would report further as soon as the technical process of translation was completed.

II. Observations

9. At the beginning of 2009, I visited both Gaza and southern Israel in order to help end the fighting and to show my respect and my concern at the death and injury of so many people during the conflict in and around Gaza. In March 2010, I again visited Gaza and Israel. I was, and remain, deeply affected by the widespread death, destruction and suffering in the Gaza Strip, as well as moved by the plight of civilians in southern Israel who have been subject to indiscriminate rocket and mortar fire.

10. I reiterate that international human rights and humanitarian law need to be fully respected in all situations and circumstances. Accordingly, on several occasions, I have called upon all of the parties to carry out credible, independent domestic investigations into the conduct and consequences of the Gaza conflict. I hope that such steps will be taken wherever there are credible allegations of violations of international human rights and humanitarian law.

11. It is my sincere hope that General Assembly resolution 64/254 has served to encourage investigations by the Government of Israel and the Palestinian side that are independent, credible and in conformity with international standards.

12. I recall that on 25 March 2010 the Human Rights Council adopted resolution 13/9, in which it decided, in the context of the follow-up to the report of the Independent International Fact-Finding Mission, to establish a committee of independent experts in international humanitarian and human rights laws to monitor and assess any domestic, legal or other proceedings undertaken by both the Government of Israel and the Palestinian side, in the light of General Assembly resolution 64/254, including the independence, effectiveness and genuineness of those investigations and their conformity with international standards. Also, in resolution 13/9, the Human Rights Council requested me to transmit all the information submitted by the Government of Israel and the Palestinian side pursuant to paragraphs 2 and 3 of General Assembly resolution 64/254 to the committee of independent experts. I am accordingly sending today a letter to the High Commissioner for Human Rights requesting her to transmit the documents received from the State of Israel and the Permanent Observer Mission of Palestine to the United Nations to the committee of independent experts.

Annex I

[Original: English]

Gaza operation investigation: second update

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I. INTRODUCTION AND SUMMARY

1. This Paper describes the progress and current status of investigations carried out by Israel into allegations of misconduct and violations of the Law of Armed Conflict¹ by Israel Defence Forces (“IDF”) during the military Operation in Gaza from 27 December 2008 through 18 January 2009 (the “Gaza Operation,” also known as “Operation Cast Lead”). It is intended as an update to the information presented in Israel’s reports related to the Gaza Operation previously released in July 2009 and January 2010.
2. Israel’s first report, from July 2009, entitled *The Operation in Gaza: Factual and Legal Aspects* (hereinafter “*Operation in Gaza Report*”),² described the events leading up to the Gaza Operation. These included Hamas’s incessant mortar and rocket attacks from Gaza on Israel’s civilians (some 12,000 such attacks in the eight years prior to the Operation) and the steadily increasing range and threat of such attacks; the abduction in 2006 of Israeli soldier Corporal Gilad Shalit, who remains in captivity incommunicado to this date; as well as Israel’s numerous attempts to address the terrorist threat from Gaza through non-military means, including diplomatic overtures and urgent appeals to the United Nations.³
3. The *Operation in Gaza Report* also described the IDF’s efforts to ensure compliance with the Law of Armed Conflict during the Gaza Operation, despite the significant operational challenges posed by the tactics of Hamas—in particular Hamas’s intentional use of Palestinian civilians and civilian infrastructure as a cover for launching attacks, shielding combatants, and hiding weapons.
4. The *Operation in Gaza Report* also set out in detail the legal framework governing the use of force and the rules—including the principles of distinction and proportionality—that apply to an armed conflict under international law⁴. The report also detailed the Israeli system for investigating allegations of violations of the Laws of Armed Conflict, and included preliminary findings (as of July 2009) of a number of the investigations already established following the Gaza Operation.

¹ As in the two previous reports, the term “Law of Armed Conflict” is used throughout this Paper in its ordinary sense—describing the legal obligations of parties to an armed conflict in the course of their military operations. International Humanitarian Law is used by many commentators and countries as an interchangeable term. Israel, like many other countries, prefers the term Law of Armed Conflict.

² *The Operation in Gaza Report: Factual and Legal Aspects* (July 2009), available at http://www.mfa.gov.il/MFA/Terrorism-+Obstacle+to+Peace/Hamas+war+against+Israel/Operation_in_Gaza-Factual_and_Legal_Aspects.htm.

³ *Id.* ¶¶ 36-81.

⁴ *Id.* ¶¶ 27-35.

5. In January 2010 Israel released an update to the *Operation in Gaza Report* (the “*January 2010 Update*”).⁵ That update provided detailed information on Israel’s various mechanisms for reviewing allegations of violations of the Law of Armed Conflict; it also compared the Israeli investigative systems for military activities with the analogous systems of other democracies (the United Kingdom, the United States, Canada, and Australia)⁶ and explained how Israel was addressing specific complaints alleging violations of the Law of Armed Conflict during the Gaza Operation.
6. The *January 2010 Update* described in detail the multiple layers of review in Israel’s investigative system that ensure thoroughness, impartiality, and independence. At the heart of the military justice system is the Military Advocate General (“MAG”), who is legally independent from the military chain of command. When allegations of violations of the Law of Armed Conflict are identified by or brought to the attention of the MAG, in situations that suggest *per se* criminal behavior, the MAG will refer a case immediately for criminal investigation. In other cases, the MAG may first review the findings of a command investigation or in its absence request that one be conducted. The MAG will examine the information gathered in the command investigation, together with the complaint received and all additional publicly available materials, before determining whether to refer the case to criminal investigation.
7. Israel’s Attorney General provides for civilian oversight, as decisions of the MAG on whether or not to investigate or indict may be subject to his review. As noted in the *January 2010 Update*, judicial review is available through Israel’s Supreme Court sitting as the High Court of Justice exercising oversight over any decision of the MAG and the civilian Attorney General. Such Supreme Court review can be initiated by a petition of any interested party, including Palestinians who live in Gaza and non-governmental organizations (“NGOs”).⁷
8. The *January 2010 Update* reviewed progress made in the investigations as of January 2010, including updates on five special command investigations detailed in the *Operation in Gaza Report*.⁸ The *January 2010 Update* also noted that a sixth special command investigation was initiated in November 2009 to review three specific allegations in the *Report of the U.N. Human Rights Council Fact-Finding Mission on the Gaza Conflict, chaired by Justice Richard Goldstone*

⁵ *Gaza Operation Investigations: An Update* (January 2010), available at <http://www.mfa.gov.il/NR/rdonlyres/8E841A98-1755-413D-A1D2-8B30F64022BE/0/GazaOperationInvestigationsUpdate.pdf>.

⁶ *January 2010 Update* ¶¶ 71-88.

⁷ See, for example, *January 2010 Update*, ¶ 36.

⁸ *January 2010 Update* ¶¶ 96-123.

(hereinafter “*HRCFF Report*”).⁹ Israel opened numerous other criminal and command investigations to investigate and assess allegations regarding the Gaza Operation.¹⁰

9. The current Paper provides information regarding the additional steps Israel has taken, and is taking, to conduct investigations into allegations relating to the Gaza Operation. This Paper will not repeat the extensive information previously provided in the two prior reports nor will it attempt to cover all of the investigations that Israel has opened in this regard. Instead, this report provides an overview of the progress of the major investigations over the last six months, including information on investigations relating to specific incidents discussed in the *HRCFF Report*. In addition, this Paper includes a summary of some of the changes in military operational procedures that Israel has made, or is making, to implement the lessons learned as a result of the Gaza Operation.
10. Israel’s numerous investigations have produced significant results, particularly during the last several months. Since the *January 2010 Update*, Israel’s Military Police Criminal Investigative Division (“MPCID”) has opened 11 additional criminal investigations, resulting in a total of 47 criminal investigations initiated so far into specific incidents relating to the Gaza Operation. Some of the investigations have resulted in criminal indictments and trials: two IDF soldiers were recently indicted for compelling a Palestinian minor to assist them in a manner that put the minor at risk; the MAG has also filed criminal charges in the case of an IDF soldier who is suspected of killing a Palestinian civilian who was walking with a group of civilians towards an IDF position. These cases are in addition to an earlier indictment and conviction of an IDF soldier for the crime of looting, as reported in the *January 2010 Update*.¹¹
11. Several other investigations have resulted in military disciplinary actions. An IDF Brigadier General and a Colonel have been disciplined for approving the use of explosive shells in violation of the safety distances required in urban areas. An IDF Lieutenant Colonel was disciplined for permitting a Palestinian civilian to enter a structure where terrorist operatives were present. In addition, an IDF officer was severely reprimanded and two other officers were sanctioned for failing to exercise appropriate judgment during an incident that resulted in civilian casualties in the Al-Maqadmah mosque.
12. At the same time, the MAG has concluded his review of a number of other MPCID criminal and command investigations without initiating criminal charges or disciplinary measures, after concluding that the investigations did not establish any

⁹ *Human Rights Council Fact-Finding Report* (25 September 2009), available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-48.pdf>.

¹⁰ *January 2010 Update* ¶¶124-27.

¹¹ *Id.* ¶ 137 & n. 112.

violations of the Law of Armed Conflict or IDF procedures. A number of other allegations of military wrongdoing are still under investigation.

13. The IDF has also implemented operational changes in its orders and combat doctrine designed to further minimize civilian casualties and damage to civilian property in the future. In particular, the IDF has adopted important new procedures designed to enhance the protection of civilians in urban warfare, for instance by further emphasizing that the protection of civilians is an integral part of an IDF commander's mission. While the majority of the issues addressed in the new procedures were already embedded in various operational orders and guidelines in existence prior to the Operation, the new procedures demand even more comprehensive protections, such as the integration of a Humanitarian Affairs Officer in each combat unit beginning at the battalion level and above. In addition, the IDF has adopted an order defining new procedures to regulate the destruction of private property in cases of military necessity.
14. Israel has made extensive efforts to conduct thorough and independent investigations of allegations of misconduct by the IDF during the Gaza Operation. In this regard, Israel has developed mechanisms to overcome some of the challenges inherent in conducting investigations into operational activity in the context of an armed conflict, including the challenges of locating witnesses in Gaza and addressing general and often second-hand allegations of wrongdoing.
15. While the State of Israel is confident in the thoroughness, impartiality, and independence of its investigatory system of alleged violations of the Law of Armed Conflict, in light of criticism raised in certain reports regarding these mechanisms, the Government of Israel has recently mandated an independent public commission to examine the conformity of Israel's mechanisms for investigating complaints raised in relation to violations of the Law of Armed Conflict with its obligations under international law. The Commission, headed by retired Justice of the Supreme Court Yaakov Turkel, is composed of three distinguished independent experts and two renowned international observers ("Turkel Commission").
16. This paper is structured as follows: Section II outlines the progress of investigations since the *January 2010 Update*. Section III describes the results and status of several specific investigations, including investigations into incidents mentioned in the *HRCFF Report*. Section IV describes changes in military operational guidelines, based on Israel's assessment of the Gaza Operation. Finally, Section V describes the establishment of the Turkel Commission and its mandate.

II. PROGRESS OF INVESTIGATIONS SINCE JANUARY 2010

17. Over the past six months, Israel's military justice system has continued to make progress in its investigations of allegations of wrongdoing by IDF forces during the Gaza Operation. As reported in January 2010, Israel has launched over 150 military investigations, including both MPCID criminal investigations and command investigations. This Paper highlights the results of some of the investigations that have been completed and the decisions that have been made by the MAG. As previously explained, decisions of the MAG may be subject to review by the Attorney General and by Israel's Supreme Court.
18. The facts described in this Paper demonstrate that the scope of Israel's investigations into the Gaza Operation has gone well beyond focusing on individual soldiers. In addition to the criminal indictments of IDF soldiers, the MAG has not hesitated to pursue discipline of senior military officers, including a Brigadier General and a Colonel in one case, and a Lieutenant Colonel in another. In a third case, one officer was subject to disciplinary measures and two others to command sanctions, as described in more detail in Section III below. Furthermore, the IDF's six special command investigations, discussed in Israel's two previous reports, have focused on broader operational issues such as the use of weapons containing white phosphorous, the precautions taken in the vicinity of sensitive sites, and the destruction of private property. Some of these investigations have already led to substantial changes in IDF procedures, and other changes are in the process of being implemented.

A. Military Advocate General Review of Command Investigations

19. As described in the *January 2010 Update*, command investigations are important fact-finding inquiries intended not merely to examine the performance of IDF forces during military operations but also to identify and correct specific problems that may have occurred. Command investigations do not serve as a substitute for criminal investigations. Rather, command investigations compile an initial factual record, which is reviewed by the MAG together with the complaint and other relevant information before determining whether a criminal investigation is warranted. Command investigations may also recommend remedial measures, such as disciplinary actions or changes in operational procedures.
20. The MAG review of a command investigation is a rigorous procedure. During this review, the MAG considers the results of the command investigation together with the complaint received and all additional information provided by the complainant or publicly available, including reports published by human rights organizations and any additional sources of information at its disposal. The MAG also frequently asks follow-up questions of the investigators and may require them to

perform additional fact-finding before making a decision on what course of action to take with respect to a particular complaint.

21. Even with regard to closed investigations, the MAG may reopen the review of an incident if new facts or circumstances subsequently come to light. This occurred, for instance, in the investigation of events around the el-Bader flour mill described in the *January 2010 Update*¹² (and discussed in Section III below), as well as in the investigation related to the al-Maqadmah mosque (also described in Section III).
22. Since January 2010, the Military Advocate General has completed his factual and legal review of numerous command investigations, referring some of them for criminal investigations, identifying others for disciplinary proceedings,¹³ and closing others when the investigation did not establish that IDF forces violated the Law of Armed Conflict or IDF procedures.

B. MPCID Criminal Investigations

23. Since the *January 2010 Update*, Israel has launched 11 new MPCID criminal investigations into IDF conduct during the Gaza Operation, bringing the total number of criminal investigations to 47. The latest criminal investigation ordered by the MAG relates to allegations described in several reports, including the *HRCFF Report*, pertaining to the Al-Samouni family.¹⁴
24. As explained in the *January 2010 Update*, command investigations are not a prerequisite for the initiation of a criminal investigation and therefore do not delay investigations in cases in which a *prima facie* basis for criminal behavior is clearly apparent. In fact, of the 47 criminal investigations initiated to date relating to the Gaza operation, 34—three quarters of the total—were directly referred to criminal investigations.
25. A number of criminal investigations have been concluded and their results reviewed by the MAG. In several of these cases, the MAG has referred the matter for disciplinary proceedings or ordered the issuance of a criminal indictment, as detailed in Section III below.
26. Since the conclusion of the Gaza Operation, the MPCID has focused its resources on the investigation of incidents arising out of the Operation. As previously

¹² *Id.* ¶¶ 165-74.

¹³ As noted in the *January 2010 Update*, ¶ 55, disciplinary proceedings are reserved for less serious offenses. However, they can result in prison sentences of up to three years.

¹⁴ *HRCFF Report* ¶¶ 706-44. As stated in the *January 2010 Update*, ¶¶ 124-25, a special command investigation was established to review this incident. Upon review of the findings of the special command investigation, the MAG decided that a criminal investigation was warranted. This investigation will proceed concurrently with two criminal investigations which are underway regarding other aspects of the incident.

reported, due to the volume and breadth of the investigations, a team of sixteen investigators was dedicated exclusively to the Gaza Operation investigations. The investigators have at their disposal four Arabic-speaking translators. During a period when a particularly large volume of translations was required, the MPCID temporarily employed seven additional translators.

27. MPCID investigators traveled to various locations in order to meet with relevant witnesses, including Palestinians and IDF soldiers and officers involved in the Gaza Operation. In order to contact and coordinate meetings with Palestinian complainants in Gaza, MPCID investigators sought the assistance of human rights organizations and Israeli lawyers representing some of the complainants, which facilitated meetings between residents of Gaza and MPCID investigators (some in a facility at the Erez Crossing, one of the crossing points between Israel and the Gaza Strip). When the complainants named other potentially relevant witnesses in the course of an interview, investigators sought to interview those individuals as well.
28. In addition to collecting witness testimony, criminal investigators sought and obtained a variety of physical evidence, including IDF maps and operational logs relevant to the investigations. Investigators also gathered medical records from Gaza hospitals to assess injuries reported by Palestinian complainants. In some cases, MPCID enlisted the assistance of independent experts in order to study evidence of blast marks and attempt to identify the types of munitions used.
29. As noted in the *January 2010 Update*, MPCID investigators faced a number of difficult challenges in ascertaining the facts of rapidly evolving conflict situations.¹⁵ The first challenge was the identification of the IDF contingents operating in each area on the day in question. MPCID investigators met with representatives of the Southern Command and the Gaza Division and carefully mapped the movement of the forces in the course of the Operation. Investigators also took testimony from battalion commanders and company commanders. MPCID investigators then sought to match up particular allegations with the location of relevant forces.
30. Another challenge is that some Palestinian witnesses have refused to make any statement, even in writing, to IDF investigators. Other Palestinian witnesses have declined to provide testimony in person. While an affidavit can provide investigators with valuable information and serve as the starting point for an investigation, a written affidavit alone is generally inadmissible as evidence at trial. In the Israeli legal system, as in many others, proving a criminal case instead requires that witnesses be willing to appear in court to permit cross-examination on issues such as the witness's ability to observe the events, whether a witness has any bias, and whether there were other relevant facts not recounted in the written

¹⁵ *Id.* ¶ 93.

statement. Hence, in some cases, the unwillingness of a complainant to cooperate in criminal investigations may deprive the investigators of the most significant evidence.

31. Despite these difficulties, the MPCID has now completed a significant number of the criminal investigations opened in relation to the Gaza Operation. The MAG, in turn, has reviewed and made a decision with regard to many of these investigations. It should also be noted that in the course of evaluating some of the more complex incidents of the Gaza Operation, the MAG has consulted with senior attorneys in the Office of the State Attorney, and, in particular, with the Deputy State Attorney for Special Affairs and the Deputy State Attorney for Criminal Matters.
32. This Paper gives further detail about a number of MAG decisions reviewing criminal and command investigations in Section III.

C. Civilian Review of the Military Justice System

33. As detailed in the *January 2010 Update*,¹⁶ decisions of the MAG may be subject to civilian review by the Attorney General of the State of Israel, an independent figure of high authority. A complainant or NGO may trigger review of the Attorney General by sending a letter to the Attorney General requesting further review of the matter. The Israeli Supreme Court has ruled that the Attorney General can order the MAG to change his position concerning whether to file a criminal indictment.¹⁷
34. Decisions of both the MAG and the Attorney General may be subject to review by the Supreme Court, sitting as the High Court of Justice.¹⁸ This would include a decision whether to open a criminal investigation, whether to file an indictment, and whether to take other disciplinary action. Palestinian residents, as well as NGOs, have filed successful petitions challenging the MAG's exercise of prosecutorial discretion in several instances, while in other cases the Supreme Court has affirmed the decisions of the MAG.¹⁹

¹⁶ *Id.* ¶¶ 31-33.

¹⁷ *Id.*

¹⁸ *Id.* ¶¶ 34-40.

¹⁹ Examples of such petitions are detailed in the *January 2010 Update*, ¶¶ 36-37.

III. REPORT ON RESULTS OF SPECIFIC INVESTIGATIONS RELATING TO THE GAZA OPERATION

35. As stated in the *January 2010 Update*, Israel has launched more than 150 investigations into allegations of misconduct or violations of the Law of Armed Conflict related to the Gaza Operation, including the allegations described in the *HRCFF Report*. The *January 2010 Update* contained a description of four investigations with regard to which the MAG had completed his review as of the date of publication of that report. The present update reports on the results of several more of the cases reviewed by the MAG.

A. Investigations Relating to Alleged Mistreatment of Palestinian Civilians and Detainees

36. The IDF operational orders emphasize the duty to protect the dignity of civilians in the course of an armed conflict and to provide detainees with humane treatment. Accordingly, the standing orders of the Gaza Operation explicitly prohibited the use of civilians as human shields, as well as the compulsion of civilians to take part in military operations, in accordance with the Law of Armed Conflict and a Supreme Court ruling on the matter.²⁰
37. Israel takes seriously any and all reports of mistreatment of Palestinian civilians or detainees during the Gaza Operation. The MAG has directly referred for criminal investigation all allegations that civilians were used by IDF forces as human shields or compelled to take part in military operations or that detainees were mistreated while in IDF custody. As the cases described below illustrate, the facts uncovered by some of the investigations differ substantially from the allegations. Nonetheless, in one case described below, the MAG found sufficient evidence of wrongdoing to prosecute two soldiers, and, in another, the MAG referred the case for disciplinary proceedings against a senior IDF commander. Furthermore, as stated in the *January 2010 Update*, the principal issues concerning the conditions of detention of Palestinian detainees during the course of the Gaza Operation are the subject of an ongoing special command investigation, headed by a senior officer outside the chain of command during the events in question.²¹
38. The following are a number of examples of the results of the MAG's review of investigations relating to alleged mistreatment of Palestinian civilians and detainees.

²⁰ *Adalah—The Legal Center for Arab Minority Rights in Israel v. GOC Central Command, IDF*, HCJ 3799/02 (6 October 2005).

²¹ See *January 2010 Update*, ¶ 125 & note 110, for the detailed mandate of this special command investigation.

(1) M.R.

39. The complaint regarding this incident was included in a Report of the Special Representative of the U.N. Secretary General for Children and Armed Conflict and alleged the use of a Palestinian boy as a human shield by IDF forces operating on 15 January 2010 in the Tel Al-Hawa area of Gaza City.²² A similar allegation was raised by an Israeli NGO. In light of the allegations, the MAG ordered the opening of a direct criminal investigation.
40. The MPCID sought to identify the complainant, whose identity was not referenced in the report of the Special Representative of the Secretary General for Children and Armed Conflict. The military police investigators contacted the Israeli NGO and requested its assistance in identifying the complainant and coordinating an interview with him. The boy was interviewed in the presence of his mother. The investigators also collected other evidence, including the testimonies of soldiers involved in the incident.
41. The investigation revealed that while conducting a search in a building in Tel Al-Hawa, two soldiers compelled a boy to open several bags and suitcases suspected of being rigged with explosives. Based on these findings, the MAG found substantial evidence that these soldiers had failed to comply with IDF orders prohibiting the use of civilians for military operations.
42. In March 2010 the MAG issued a criminal indictment against the two soldiers. The trial, which is open to the public,²³ is currently underway in a District Military Court in Israel. As of the date of this Report, the prosecution has presented its case, which included the testimony of the boy.

(2) Majdi Abd-Rabbo

43. A complaint by an Israeli NGO asserted that a Gaza resident named Majdi Abd-Rabbo was forced to assist an IDF unit in an attempt to obtain the peaceful surrender of several armed operatives hiding in a house adjacent to his own. The MAG referred the incident directly to an MPCID criminal investigation in June 2009.²⁴ With the assistance of the NGO, the MPCID met with the complainant and took his statement. In addition, testimony was taken from 15 soldiers and officers from the unit involved in the incident, as well as several soldiers and officers from other units operating in the area at the time specified in the complaint.

²² *Human Rights Situation in Palestine and Other Occupied Arab Territories*, A/HRC/10/22, at annex ¶ 10 (20 March 2009).

²³ See *January 2010 Update* ¶ 28.

²⁴ After the MPCID investigation was already underway, the allegations were also described in the *HRCFF Report*, ¶¶ 1033-63.

44. Following a thorough investigation, various aspects of Mr. Abd-Rabbo's testimony could not be substantiated. However, the evidence gathered in the course of the investigation did reveal that the commander of the force, a Lieutenant Colonel who was in radio contact with the IDF unit throughout the event, had repeatedly authorized the unit to allow Mr. Abd-Rabbo to enter the structure adjoining his house in order to communicate with armed men inside.
45. Although the investigation found that Mr. Abd-Rabbo had asked to enter the structure and to communicate with the men, apparently in an attempt to resolve the situation and avoid potential damage to his own house, the MAG concluded that the commander should not have allowed Mr. Abd-Rabbo to enter the structure at that time, putting him at risk, regardless of his apparent consent.
46. Therefore, the MAG referred the case for disciplinary proceedings against the commander for failing to adhere to IDF operational orders prohibiting any such use of civilians for military operations. In opting for disciplinary proceedings rather than a criminal indictment, the MAG considered a range of factors, including the commander's belief that by consenting to Mr. Abd-Rabbo's request, he was acting to minimize potential damage to Mr. Abd-Rabbo's property. An additional factor was that Mr. Abd-Rabbo was not injured as a result of the incident. The officer was subsequently disciplined.

(3) Abbas Ahmad Ibrahim Halawa and Mahmoud Abd Rabbo al-Ajrami

47. Abbas Ahmad Ibrahim Halawa and Mahmoud Abd Rabbo al-Ajrami both alleged in two separate complaints that on 5 January 2009 Israeli soldiers took them from their homes in the Al-Atatra neighborhood, mistreated them, and forced them to act as human shields.²⁵ Mr. al-Ajrami also alleged that he suffered physical injuries as a result of mistreatment by IDF forces and that his house was vandalized and looted. The MPCID opened two separate criminal investigations into the two cases that were later combined when it became apparent that they related to a single chain of events.
48. In the course of the investigation, MPCID interviewed Mr. Halawa, Mr. al-Ajrami, and Mrs. Manal al-Ajrami. Investigators later sought to interview Mr. Halawa a second time, but he refused to appear. He did, however, provide investigators with additional information by means of a written affidavit. The MPCID also collected testimonies of over 20 officers and soldiers, including commanders of the regiments and companies that operated in the area during the relevant timeframe. In addition to witness testimony, the MPCID examined a variety of documentary evidence, including medical documents presented by Mr. al-Ajrami from Shifa hospital in Gaza.

²⁵ The allegations were also described in the *HRCFF Report*, ¶¶ 1064-95.

49. The investigation found that an IDF unit operating in the Al-Atatra neighborhood and searching for weapons and terrorist operatives²⁶ encountered the families of Mr. Halawa and Mr. al-Ajrami, who chose to stay in their homes despite the early warnings issued by the IDF, calling for civilians to evacuate the neighborhood for their safety. The force suspected Mr. Halawa and Mr. al-Ajrami of involvement with militant groups, and thus detained them for questioning and transferred them out of the battle zone to an IDF post approximately one kilometer away. For security reasons, the detainees were blindfolded while they were being transferred to the post.
50. The consistent evidence was that at no time during the incident were either of the two individuals made to walk ahead of the soldiers or used as human shields. Rather, the two detainees walked surrounded by the soldiers as required by IDF operational procedures, both in order to protect the detainees as well as to reduce the possibility of their escape.
51. The investigation found no evidence to support the complainants' contention that they were physically abused while in IDF custody. In fact, this contention was contradicted by the records of Mr. al-Ajrami's medical examination at Shifa hospital soon after the incident. Similarly, the investigation determined that there were no grounds to attribute to IDF forces the vandalism or looting that may have occurred in Mr. al-Ajrami's home. The investigation noted that Mr. al-Ajrami told investigators that his family had failed to evacuate from the area partly due to their fear of burglaries and looting by other Gaza residents.
52. After reviewing the facts of the investigations, the MAG found that there were no grounds for any additional proceedings and closed both cases.

(4) AD/03

53. The *HRCFF Report* describes an incident involving an anonymous witness, AD/03, who alleged that he and others were improperly detained and coerced into assisting IDF forces during the Gaza Operation.²⁷ In reviewing these allegations and cross-referencing them with other available sources of information, Israeli investigators were able to establish the identity of AD/03 and determine that his case had already been reported to the IDF prior to the publishing of the report and was already the subject of a criminal investigation by the MPCID.²⁸

²⁶ The Al-Atatra neighborhood in which the incident occurred was an area of heavy fighting on the date in question. The neighborhood had been the site of multiple rocket launchings into Israel, prompting the IDF to take control of the area and search buildings for militants and weapons.

²⁷ *HRCFF Report* ¶¶ 1143-63.

²⁸ Acting through his Israeli lawyer, AD/03 sent a complaint regarding the incident to Israel's Attorney General. In accordance with Israeli procedure, this complaint was forwarded to the MAG, who ordered the opening of a direct criminal investigation.

54. At the outset of the criminal investigation, the MPCID contacted AD/03's lawyer to coordinate an interview with AD/03 at the Erez Crossing, where MPCID has taken testimony from dozens of Palestinian complainants in other cases related to the Gaza Operation, but AD/03 refused the requests. The lawyer asserted that AD/03 refused to be interviewed out of concern for his safety.
55. AD/03 continued to refuse to cooperate even though Israeli investigators explained that such testimony was essential to the criminal investigation. Taking detailed testimony from the complainant, including collection of any materials from the complainant that could be used to further the investigation, is a principal component of an MPCID investigation. The testimony is necessary not only to confirm allegations but also to identify the particular IDF unit and individuals that were allegedly involved. In the absence of a complainant's testimony, it is difficult for the military prosecution to build a sustainable criminal case, which requires proof of guilt beyond a reasonable doubt. Allegations contained in the *HRCFF Report* and various NGO and media reports would be considered inadmissible "hearsay" under the rules of evidence, and Israeli courts cannot rely on statements contained therein to prove criminal activity.
56. As of the date of this Paper, the case of AD/03 has been closed, but the IDF remains interested in interviewing him to learn more about the incident and complete the investigation. The IDF has given assurances that Palestinian witnesses who agree to come to the Erez Crossing point and provide testimony will be questioned by the MPCID only in relation to their complaints and will not be detained. These assurances are also applicable to AD/03.
57. It should be noted that some of the particular allegations cited in the complaint of AD/03, including the conditions of detention of Palestinians during the Gaza Operation, are the subject of a special command investigation described in the *January 2010 Update*.²⁹ That investigation is still ongoing.

B. Investigations Concerning the Alleged Targeting of Civilian Objects and Sensitive Sites

58. The principle of distinction is a core element of IDF standing orders. All IDF soldiers are instructed that strikes are to be directed only against legitimate military targets, combatants, and civilians directly participating in hostilities. IDF orders and doctrine strictly prohibit the intentional targeting of civilians or civilian objects. The principle of proportionality is also a core element, prohibiting attacks that are anticipated to harm civilians excessively in relation to the expected military advantage. IDF orders include the obligation to take all feasible precautions in order to minimize the incidental loss of civilian life or property,

²⁹ *January 2010 Update* ¶¶ 124-25; see also note 21, *supra*.

such as by adjusting the timing of an attack, the means of attack, and the direction of attack, as well as aborting attacks under certain circumstances.

59. As described in the *Operation in Gaza Report*,³⁰ in conformity with the Law of Armed Conflict, IDF operational orders also instruct that medical facilities should be provided absolute protection from attacks, unless they are being used by the enemy for military activities. In addition, special precautions are to be taken when conducting military activities near U.N. premises and other facilities dedicated for humanitarian use, such as those of medical organizations and hospitals.
60. Following the Gaza Operation, the IDF reviewed complaints regarding the alleged targeting of civilian objects, as well as claims of damage caused to medical and U.N. facilities.³¹ These incidents were the subject of four special command investigations (one dedicated to damage to medical facilities, a second to U.N. facilities, a third dealing with incidents involving multiple civilian casualties and the most recent command investigation which is addressing several complex incidents).³² In two of these cases, five officers were disciplined or sanctioned, two of them for violating IDF rules of engagement and three others for failing to exercise appropriate judgment. In other cases, the MAG review revealed that the damage did not violate the principles of distinction and proportionality and has found no basis for imputing any criminal intent to the IDF soldiers in the field or to the principal actors in the operations.

(1) Al-Fakhura Street

61. The *HRCFF Report* describes an alleged Israeli mortar strike in al-Fakhura Street in Jabalia, in close proximity to a United Nations Relief and Works Agency (“UNRWA”) school used as a shelter, which reportedly caused a number of civilian casualties. This incident was discussed in the *Operation in Gaza Report*, which explained that Israeli forces fired on and eliminated a Hamas mortar squad that had fired repeatedly on them from a location approximately 80 meters from

³⁰ *Operation in Gaza Report* ¶ 224.

³¹ In the densely populated Gaza Strip there are over 750 U.N. facilities, and almost 1,900 sensitive facilities in total. Nonetheless, a relatively small number of complaints alleged damage caused to such sensitive facilities. The U.N. Board of Inquiry Report into certain incidents in the Gaza Strip found possible damage or injury by IDF action to seven U.N. facilities in the course of the Operation. Israel cooperated fully with the U.N. Board of Inquiry, sharing the results of its internal investigations and providing detailed information about the incidents in question. The Secretary General commended Israel for its extensive cooperation. Following the U.N. Board of Inquiry’s examination, and notwithstanding certain reservations it had with some aspects of the Board’s report, Israel entered into a dialogue with the United Nations to address all issues arising from the incidents examined. On 22 January 2010, the Secretary General again thanked Israel for its “cooperative approach” in these discussions and confirmed that all financial issues relating to these incidents had been satisfactorily concluded. U.N. Spokesperson Briefing (22 January 2010), available at <http://www.unmultimedia.org/radio/english/detail/89687.html>.

³² *January 2010 Update* ¶¶ 103-12, ¶¶ 124-27.

the UNRWA school.³³ The MAG has now completed his review of the results of the special command investigation and found that IDF fire did not violate the Law of Armed Conflict.

62. The MAG found that the attack was directed against a legitimate military target and did not violate the principle of proportionality under the “reasonable military commander” test.³⁴ The MAG found that the Hamas mortar fire posed a clear and immediate threat to Israeli forces. In fact, the particular mortar rounds fired by Hamas over the course of an hour landed in very close proximity to Israeli forces. Only a day before, a mortar attack of a similar nature led to the wounding of 30 IDF soldiers.
63. The MAG also found that the commander was aware that the mortar attacks were being carried out from a populated area in the vicinity of an UNRWA school. For this reason, the commander took many precautions, including cross-verification of the source of fire by two independent means, using the most accurate weapon available, and making sure the school would not be hit by ensuring a safe buffer distance between the school and the targeted location. These precautions delayed the force’s response, prolonging its exposure to the Hamas mortar fire.
64. Ultimately, the MAG determined that the anticipated collateral damage prior to initiating IDF mortar fire was not excessive when weighed against the expected military benefit, in light of the clear military necessity of the force to protect itself from ongoing mortar fire, the force’s measured response, the relatively small area of dispersal, and the precautions taken.
65. The MAG also found that the IDF’s choice of weapons was appropriate under the circumstances. The Israeli forces employed a burst of four 120mm “Keshet” mortar rounds, fired in quick succession. The Keshet mortar contains advanced target acquisition and navigation systems and was the most precise weapon available to Israeli forces at that time. Air support was not available to the unit under attack at that moment, and the Law of Armed Conflict does not require commanders to await air support and prolong soldiers’ exposure to enemy fire.
66. Israel acknowledges that, while the strike was effective in removing the threat to Israeli forces, it also resulted in the regrettable loss of civilian lives. Although the MAG found that the IDF had not violated the Law of Armed Conflict with respect to this incident, as part of Israel’s efforts to minimize civilian casualties under all circumstances, the MAG reiterated the recommendation of the special command investigation to formulate more stringent definitions in military orders to govern the use of mortars in populated areas and in close proximity to sensitive facilities. The IDF Chief of General Staff has ordered the undertaking of staff work to draft the required orders.

³³ *Operation in Gaza Report* ¶¶ 336-40. The incident was described in the *HRCFF Report*, ¶¶ 653-90.

³⁴ *Operation in Gaza Report* ¶¶ 120-31.

(2) Al Maqadmah Mosque

67. The *HRCFF Report* and other sources alleged that on 3 January 2009 civilian casualties occurred inside the Al Maqadmah mosque in Beit Lahiya when an IDF missile struck the entrance to the mosque.³⁵ This incident was first examined in one of the original five special command investigations discussed in Israel's previous reports. This investigation could not substantiate that the mosque had been struck by IDF forces at the alleged time. However, in light of information included in other reports, the Chief of General Staff followed the MAG's recommendation that the case be reopened and reexamined in the context of a new special command investigation.
68. The new special command investigation confirmed that civilian casualties and damage to the mosque which occurred on 3 January 2009 were indeed a result of an IDF missile strike directed at two terrorist operatives standing near the entrance to the mosque.
69. These operatives, who belonged to a terrorist squad that was involved in the launching of rockets towards Israel, were initially identified standing in the vicinity of a hospital —and they were therefore not targeted at that time. The operatives were later identified at a different location in Beit Lahiya. At this point, the IDF began to deploy its assets for an immediate attack against the two terrorist operatives.
70. In the course of the preparations for the attack, the area of the strike was monitored closely and observed for several minutes. During this time, no civilians were visible in the surrounding streets, except for one who entered the building adjacent to the operatives. Since the location appeared to be clear of civilians, the strike against the operatives was initiated. The missile was directed at the operatives and struck the ground near the entrance to the building.
71. The investigation revealed that the military commanders planning the strike were not aware that the building next to the operatives was a mosque. The building did not have a minaret that might have identified it as a mosque and it was not marked as such on the operational maps used by the commanders. The commanders were also unaware that one of the entry doors to the building was open, since this could not be discerned from the observation. The investigation disclosed that, as a result of the open door, shrapnel from the missile flew into the mosque, resulting in a large number of casualties inside the mosque.
72. Based on these findings, the investigation concluded that the commanders who authorized the attack were not aware that the building adjacent to the target was a mosque and did not anticipate that there would be any civilian casualties as a result of the strike.

³⁵ The incident was also described in the *HRCFF Report*, ¶¶ 822-43.

73. Nevertheless, the investigation found that an IDF Captain involved in the preparations for the strike had learned, just before the strike, but after it had already been approved, that the building might be a mosque. The officer gravely erred in exercising his judgment in failing to bring this information to the attention of his superior commanders so that they could reconsider the strike. In light of this finding, the officer was disciplined by means of a severe reprimand, taking into account the fact that he had not anticipated harm to civilians and given the time-sensitivity of the attack, which required quick action under extreme pressure. In addition, it was decided that the officer would not be allowed to serve in positions of a similar nature and responsibility in the future.
74. The command investigation also determined that two officers responsible for the selection of ammunition used in the air strike had also exercised poor professional judgment and deviated from professional guidelines when they used a more powerful missile than they had been directed to use. This was done because the requested missile was not available on short notice and the operation was highly time-sensitive. As the officers did not anticipate any civilian casualties from the strike, they did not foresee any additional risk to civilians resulting from using the selected missile. The officers were both sanctioned and temporarily suspended from taking part in operational activity.
75. After reviewing these findings, the MAG concluded that the strike did not target either civilians or civilian objects, since it was aimed at the terrorist operatives. As such, it abided by the principle of distinction.
76. The MAG also concluded that the strike did not violate the principle of proportionality because the decision makers in the operation did not expect harm to civilians, based on their observation of the area several minutes before the strike, and the information they possessed regarding the nature of the building. They also did not know and could not discern that the door to the building was open. In light of this, the anticipated incidental harm to civilians was low and the expected military advantage of the strike—targeting terrorist operatives involved in the launching of rockets towards Israel—was high.³⁶ The MAG further concluded that the negligence of some of the officers involved in the attack did not alter the good faith of the senior commanders in seeking to abide by the key norms of distinction and proportionality.
77. The MAG also determined that the disciplinary measures taken against the negligent captain, as well as the command sanctions against the officers in charge of munitions, were sufficient under the circumstances. The officers had not expected harm to civilians based on their observation of the area and were operating under extreme pressure due to the time-sensitivity of the strike.

³⁶ On that day alone, 39 rocket and mortar shells were launched from Gaza towards Israeli towns.

78. Even though no criminal proceedings were initiated in this case, the MAG has recommended a revision of IDF procedures and its implementation through additional training to ensure that the errors that led to this result will not be repeated.

(3) Hamas “Police” Stations in al-Sajaiyeh and Deir al-Balah

79. The legality of targeting Hamas’s “police” force was extensively discussed in the *Operation in Gaza Report*.³⁷ As detailed in that report, Hamas military forces in Gaza were comprised not only of the Izz al-Din al-Qassam Brigades (Hamas’s official military wing), but also included the internal security apparatus of Hamas in Gaza, which performed, in addition to their regular law enforcement tasks, significant military functions. One such force—and the most substantial in size—was the police force.
80. Extensive information gathered by the IDF prior to the Operation substantiated the military function of the police force in Gaza based on its military, operational, logistic and administrative ties and cooperation with the military wing of Hamas, both as a matter of routine and particularly during a state of emergency, for instance during an Israeli military operation inside the Gaza Strip.³⁸ This military function rendered the police force a legitimate military target.
81. Additional information gathered by the IDF both in the course of the Operation³⁹ and following its completion—including public statements made by Hamas officials—further confirmed that the police force in Gaza was intertwined with the military wing of Hamas. In fact, even the current minister of the Interior and National Security of the Hamas regime in Gaza—responsible for the internal security forces of Hamas, including the police—in listing the “achievements” of his predecessor, Sayid Siyyam, said that:

“among the minister’s greatest achievements was the creation of the cooperation and coordination between the current security services and the Palestinian resistance...against the Zionist enemy...and for that reason [the enemy] attacked the headquarters of the security services [during the Gaza Operation]”.

³⁷ *Operation in Gaza Report* ¶¶ 77-81, 237-48.

³⁸ Routine military activities by the Palestinian police in Gaza included: the gathering of intelligence about IDF activities, including surveillance; the provision of weapons to assist in the capabilities-building of Hamas’s military wing; and participation in a variety of military training exercises. In a state of emergency, the police force was institutionally planned to be involved in fighting Israeli forces. The police have been observed performing this function during past operations of the IDF in the Gaza Strip.

³⁹ According to information gathered by the IDF, just before the beginning of the Gaza Operation, the internal security forces in Gaza prepared for re-deployment in anticipation of the fighting with the IDF. In the course of the operation, the internal security forces shared “operations rooms” with the military wing, cooperated with the intelligence units of the military wing, and gave preference to their military functions over law enforcement tasks.

(Hamas police website, May 7, 2009)⁴⁰

82. The MAG has recently completed his review of the findings of command investigations into two aerial strikes on police stations reported in the *HRCFF Report*—one in al-Sajaiyeh and the other in Deir al-Balah—which allegedly resulted in civilian casualties.⁴¹ These strikes were part of the Israel Air Force (“IAF”) aerial campaign at the commencement of the Gaza Operation, aimed at weakening Hamas’s terrorist and military strongholds and capacity by targeting its operational infrastructure. The MAG concluded that the strikes were mounted against legitimate military targets and thus complied with the principle of distinction.
83. The police station in Deir al-Balah was part of the “internal security” apparatus of Hamas, and was occupied by armed operatives. It was struck on the first day of the aerial campaign, as part of a coordinated IAF opening strike, intended to substantially weaken the military force available to Hamas during the Operation by concurrently attacking numerous military locations.
84. It was alleged that, as a result of the strike on the Deir al-Balah station, six civilians were killed, five of them while attending a nearby vegetable market. The investigation found that the IAF was not aware of the existence of the vegetable market, as the market’s location had not been reported to the IDF in the past and thus was not marked as a “sensitive site” on IAF maps, which could have affected the planning of the air strike. In addition, it was not observed as a gathering place of civilians in aerial photographs analyzed by the strike’s planners before the operation.
85. The IAF took several measures in order to minimize collateral damage, including the use of munitions with a warhead of reduced size and strength, equipped with a delay fuse.⁴² Advanced warnings could not be given due to the timing of the strike, which required the element of surprise.
86. The al-Sajaiyeh police station served as the central station of the police force in that area, and was also occupied by armed Hamas operatives. It was attacked on the second day of the aerial campaign, intended to further destroy Hamas’s operational and command infrastructures. Similar precautions to the ones implemented in the strike against the station in Deir al-Balah were used in this strike as well. Nevertheless, as a result of the attack, four civilians were reportedly killed in an adjacent street.

⁴⁰ Intelligence and Terrorism Information Center, *Hamas and the Terrorist Threat from the Gaza Strip: The Main Findings of the Goldstone Report Versus the Factual Findings*, at pp. 271 (March 2010), available at http://www.terrorism-info.org.il/malam_multimedia/English/eng_n/pdf/g_report_e1.pdf.

⁴¹ *HRCFF Report ¶¶ 405-07*.

⁴² Unlike a regular warhead, which will normally detonate upon impact with an object, a warhead with a delayed fuse will detonate within a structure, and thus will typically cause a more contained explosion with less debris and shrapnel.

87. The MAG reviewed the findings of the command investigations and concluded that both strikes were planned and executed in accordance with the Law of Armed Conflict. The MAG noted that, despite the unfortunate death of civilians, in both cases the anticipated collateral damage to civilians was not excessive in relation to the expected military advantage of the strike, due to the strategic importance of the strikes conducted on the first days of the Operation against Hamas's operational and command infrastructures and their substantial contribution to the ability of the IDF to achieve the goals of the Operation as a whole. Accordingly, the MAG decided not to refer either of the cases for additional proceedings.
88. Nonetheless, the findings of the command investigations will be studied as part of the operational "lessons learned" analysis, in order to consider measures which can minimize the danger to civilians in future military actions. In this regard, the MAG has recommended improvements regarding the mapping of "sensitive sites." Currently, these sites are identified by the IDF based on information received from various sources regarding certain types of facilities, such as: hospitals, schools, mosques, and U.N. facilities. In light of the findings of the investigation of the Deir al-Balah station strike, the MAG recommended the broadening of this list to include places of large civilian gatherings, such as open markets.

(4) Hamas Security Force Building adjacent to the Main Prison

89. The IDF investigated allegations that on 28 December 2008 the main prison complex inside the al-Saraya compound in Gaza City was deliberately targeted in an air strike.⁴³
90. The command investigation of this incident confirmed that an IAF aerial attack on 28 December caused damage to prison facilities within the al-Saraya compound. However, the damage occurred because the prison was located immediately adjacent to the barracks building used by Hamas internal security forces. The barracks—which were the object of this strike—were a legitimate military target.⁴⁴ Incidental damage occurred to several smaller structures within the prison complex and led to the collapse of several prison walls. The central structure of the prison remained standing. The damage also led to the death of one prison guard and injury to several other guards. No prisoners were injured in the attack.
91. Upon review, the MAG found that the attack did not violate the Law of Armed Conflict. The IDF attack targeted a specific military facility, taking precautionary measures, including the use of precision technology. Under these circumstances, the MAG determined not to pursue any further proceedings.

⁴³ *HRCFF Report ¶¶ 365-70.*

⁴⁴ *See ¶¶ 79-81, supra, and accompanying notes.*

(5) UNRWA Field Office Compound

92. One of the most widely reported incidents during the Gaza Operation involved the UNRWA field office compound, where three individuals were injured and significant property damage resulted from the use of smoke-screen munitions containing white phosphorous. Additional damage occurred due to the use of high explosive shells in the vicinity of the compound.⁴⁵
93. A special command investigation, devoted to examining claims of damage to U.N. facilities by IDF forces, included an investigation of the UNRWA incident, and factual findings of that investigation were reported in the *Operation in Gaza Report*.
94. With regard to the use of high explosive shells in the incident, based on the findings of the investigation, the Commander of the Southern Command disciplined two senior commanders, a Brigadier General and a Colonel, for authorizing the use of the shells in violation of the safety distances required in urban areas set forth in IDF operational orders. The MAG reviewed the results of the investigation and concurred with the decision to discipline the two officers. He also determined that, even though the shelling was carried out in violation of IDF operational orders, no criminal charges were appropriate because the shelling was aimed at military targets, and because precautions were taken which proved effective in avoiding civilian casualties.
95. With regard to the use of the smoke-screening munitions, the MAG found that the investigation did not demonstrate any violations of the Law of Armed Conflict or IDF procedures. As explained in the *Operation in Gaza Report*, this type of munition is not prohibited under international law, even in urban areas.⁴⁶ In the particular circumstances of this case, the MAG determined that the use of these munitions was needed to protect Israeli forces from Hamas operatives armed with anti-tank missiles⁴⁷ and complied with the requirement of proportionality, as the anticipated risk to civilians and civilian objects stemming from their use was not excessive in relation to the expected military advantage.
96. The investigation did find that the actual damage to the compound as a result of the smoke-screening shells was more extensive than the IDF had anticipated. Following reports of the damage, the IDF immediately imposed revised restrictions on the use of smoke-screening munitions containing white phosphorous near sensitive sites (including the requirement of a several hundred meters buffer zone). These restrictions were in place through the remainder of the Gaza Operation.

⁴⁵ This incident was also described in the *HRCFF Report*, ¶¶ 543-98.

⁴⁶ *Operation in Gaza Report* ¶¶ 405-30.

⁴⁷ *Id.* ¶¶ 341-47.

97. The use of smoke-screening munitions containing phosphorus during the Gaza Operation was also addressed in a special command investigation dedicated to the issue. This investigation determined that the policy of using such munitions was consistent with Israel's obligations under the Law of Armed Conflict. Nonetheless, following that investigation, the Chief of the General Staff ordered the implementation of the lessons learned from the investigation, particularly with regard to the use of such munitions near populated areas and sensitive installations. As a consequence, the IDF is in the process of establishing permanent restrictions on the use of munitions containing white phosphorus in urban areas.

C. Investigations Concerning the Alleged Targeting of Civilians

98. As mentioned above and also detailed in the *Operation of Gaza Report*,⁴⁸ IDF standing orders incorporate the principle of distinction and prohibit the intentional targeting of civilians. This section discusses the results of several investigations of incidents in which IDF military operations resulted in the death of civilians, allegedly in violation of the Law of Armed Conflict and the IDF standing orders. In one of the cases, an indictment has been filed against a soldier suspected of killing a civilian. Other cases have not uncovered evidence justifying disciplinary proceedings or a criminal indictment but nevertheless resulted in lessons learned and operational adjustments by the IDF intended to further minimize the possibility of similar events happening in the future.

(1) Juhr ad-Dik Incident

99. Following information received by the MAG, a criminal investigation was opened into an incident involving a soldier who opened fire, killing a civilian who was walking with a group of civilians carrying white flags in the village of Juhr ad-Dik on 4 January 2009.
100. According to the investigation, the soldier discharged his firearm in a manner inconsistent with orders given to him by his superior officer.
101. In light of the time and place of the incident, investigators believed that the case corresponded to allegations regarding the deaths of Majda and Rayya Hajaj described in the *HRCFF Report*.⁴⁹ There were, however, a number of inconsistencies between the two accounts, which prevented the investigators from making a positive identification of the civilian killed.
102. Nonetheless, since the evidence gathered in the course of the investigation implicated the soldier in a shooting incident of a civilian in deviation from orders,

⁴⁸ *Id.* ¶¶ 222--23.

⁴⁹ *HRCFF Report* ¶¶ 764-69.

the MAG has ordered the indictment of the soldier on the charge of manslaughter for the killing of a civilian during the Gaza Operation.

(2) Rouhiya al-Najjar

103. This incident—involving the death of Rouhiya al-Najjar on 13 January 2009 in the village of Khuza'a—was reported to the Israeli authorities by several human rights organizations.⁵⁰ After examining the results of a command investigation regarding this incident, together with the complaints that had been received, the MAG determined that the facts available led to a significant suspicion of criminal behavior, and referred the case for an MPCID criminal investigation. The MPCID investigation included interviews with eight Palestinian residents of Gaza, including members of the al-Najjar family. Investigators also questioned more than fifteen IDF soldiers and officers regarding the incident, and studied aerial and ground photographs.
104. The investigation found that the IDF unit operating in the Khuza'a area on 12 January 2009 was involved in active combat with terrorist operatives. The operatives launched a rocket-propelled grenade ("RPG") missile towards the building occupied by the IDF unit in the early morning hours of 13 January.
105. Later that morning, the soldiers were still carefully monitoring the area adjacent to the building in order to prevent additional rocket attacks. The soldiers observed suspicious activity in the street leading to the building: a woman was identified repeatedly approaching the building carrying an unidentified package, which she placed near the building. Immediately after she returned and entered a house down the street, a group of local women unexpectedly began approaching the IDF position, and the soldiers suspected a tactic that could conceal a gunman or suicide bomber. One of the soldiers fired a warning shot to prevent the group from advancing further. A ricochet from this warning shot apparently struck Rouhiya al-Najjar, killing her.
106. The MAG reviewed the testimony collected in the course of the investigation and concluded that, under the circumstances, the soldier who fired the shot was not criminally liable. The MAG concluded that the soldier fired his weapon in light of the security need to keep the group from approaching the IDF post and his shot was not intentionally directed to hit or harm civilians. Thus, while acknowledging the lamentable results of the incident, the MAG closed the case without filing a criminal indictment against the soldier.
107. However, the MAG did find that a lapse in effective communication between IDF units may have played a part in the soldier's perception of the group as a threat. This led the MAG to recommend certain changes to IDF operational procedures, which could assist in improving the manner in which evacuation instructions are

⁵⁰ The incident was also described in the *HRCFF Report*, ¶¶ 780-87.

given to the civilian population by the IDF, as well as to the method for relaying such information among the different forces in the field.

(3) Amal, Souad, Samar, and Hajja Souad Abd Rabbo & Adham Kamiz Nasir

108. This incident involved the alleged shooting of four Palestinian civilians on 7 January 2009 in the neighborhood of Izbet Abd Rabbo, and was reported to Israeli authorities by several human rights organizations.⁵¹ The MAG referred the complaint to a direct criminal investigation which was recently concluded. In the course of this comprehensive investigation, the MPCID collected testimony from eleven Palestinians who witnessed the events. Some of them were unable or unwilling to testify before MPCID investigators, but provided detailed affidavits. In addition, the investigators reviewed medical reports and death certificates, as well as aerial photographs provided by an Israeli NGO, which helped identify the different units involved in the incident. More than fifty commanders and soldiers from these units were also questioned by the MPCID. Some were questioned multiple times in order to clarify the circumstances of the case.
109. The evidence collected in the course of the investigation could not confirm the description of the incident by the complainants, who claimed that a soldier standing on a tank had opened fire at a group of civilians. The substantial discrepancies between the complaint and the findings of the investigation—in particular, the identity of the force and the sequence of events—led the MAG to conclude that the evidence was insufficient to initiate criminal proceedings.
110. A second part of the complaint alleged that the IDF fired at a horse-driven carriage attempting to evacuate the civilians injured in the first shooting incident and subsequently killed the carriage's driver.
111. The investigation confirmed that the carriage was fired upon by an IDF unit operating in the Izbet Abd Rabbo neighborhood. The unit had received a concrete warning that Hamas planned to send such a carriage loaded with explosives to detonate near an IDF position. The soldiers fired warning shots at the approaching carriage, which was loaded with bags that the soldiers thought contained explosives. When the carriage did not respond to the warning shots and continued its approach, the unit fired in its direction.
112. Under these circumstances, the MAG determined that the soldiers who fired at the carriage were not criminally liable. The MAG found that the soldiers' decision to fire was made in light of their belief, at the time, that the carriage posed an immediate threat to the force. (The investigation revealed that the bags did not contain explosives.) Thus, despite the unfortunate results of the incident, the MAG decided to close the case.

⁵¹ The incident was also partially described in the *HRCFF Report*, ¶¶ 770-79.

(4) Abd al-Dayem

113. This incident, involving an alleged attack on the Abd al-Dayem condolence tents in Beit Hanoun on 5 January 2009 using flechette munitions, and resulting in the deaths of civilians, was reported to Israeli authorities by several human rights organizations.⁵² After examining the results of a command investigation regarding this incident together with the complaints that had been received, the MAG referred the case for an MPCID criminal investigation, which was recently concluded.
114. In the course of this investigation, the MPCID collected testimony from eighteen Palestinian witnesses and a number of soldiers from the relevant force. Investigators also obtained and considered physical evidence such as medical reports and photographs received from an Israeli NGO. Two technical experts were consulted regarding the munitions used in this incident and their effects. Investigators also reviewed technical manuals regarding the operation of the munition.
115. The investigation revealed that a tank crew operating in Beit Hanoun had visually identified a squad of terrorist operatives in open terrain, loading a “Grad” rocket⁵³ onto a launcher. (Many such rockets were launched towards Israel before and during the Operation.) During the Gaza Operation, this was an area frequently used by terrorist operatives to launch rockets towards Israel. The tank commander immediately began preparing a strike to prevent the imminent terrorist attack on Israeli civilians.⁵⁴ Since the operatives were at a distance of approximately 1,500 meters away from the force, the use of machine guns would be ineffective. The tank commander therefore decided to use flechette shells, based on an assessment that they would be the most effective in open terrain. The tank crew observed the area surrounding the terrorist squad and did not identify any civilians in the vicinity. Hence two successive flechette shells were fired at the operatives, killing them.
116. The investigation found that, although the shells were aimed at and hit the terrorist squad in open terrain, darts from the flechette shells could have incidentally struck civilians near the Al Dayem condolence tent. However, the investigation confirmed that the soldiers did not identify any civilians in the vicinity of the terrorist squad, and therefore did not foresee the harm to the civilians near the tent.
117. The MAG reviewed the findings of the investigations and determined that the actions of the tank crew did not violate the Law of Armed Conflict. The flechette shells were launched against a military target in order to prevent an imminent

⁵² The incident was also described in the *HRCFF Report*, ¶¶ 867-85.

⁵³ A “Grad” is a 122mm foreign manufactured artillery rocket with a range of 20 kilometers.

⁵⁴ Thirty-two rocket and mortar shells were fired at Israel in the course of that day.

threat to Israeli civilians. The force did so in the reasonable belief that no civilians were present in the immediate vicinity of the terrorist squad. The use of these munitions is not prohibited under international law, as confirmed by Israel's Supreme Court and discussed in the *Operation in Gaza Report*.⁵⁵ The force acted in accordance with the applicable rules of engagement, which allowed the use of flechette shells against military targets located in open terrain. Therefore, despite the tragic consequences of the incident, the MAG determined that no further proceedings were required.

D. Investigations Concerning Damage to Private Property

118. As described in the *Operation in Gaza Report*, IDF's operational orders for the Gaza Operation mandated that private property must be respected. In accordance with the Law of Armed Conflict, the destruction of civilian property was prohibited, except in cases of imperative military necessity which required that the damage be proportional to the military advantage. The destruction of property for deterrence or retribution was strictly forbidden.⁵⁶
119. Immediately after the cessation of hostilities, Israel launched a special command investigation into the manner in which the IDF carried out this mandate during the conflict.⁵⁷ In addition, the IDF has conducted specific command investigations to examine particular incidents of destruction of property. The MAG has carefully reviewed the results of the investigations completed so far.
120. The following are three specific cases of significant property damage discussed in the *HRCFF Report* in which the MAG has completed his review of the facts and issued a final opinion. In addition, a further investigation of the el-Bader flour mill case (described in the *January 2010 Update*) is presented below.
121. These incidents highlight the difficulties posed by terrorist groups that operate within densely populated civilian areas and near economic facilities. During the Gaza Operation, Israeli forces made extensive efforts to avoid civilian casualties and unnecessary damage to civilian property. Even so, fighting an adversary that deliberately made use of civilian buildings to store ammunition, mount attacks, and conceal combatants—as well as booby-trapping civilian buildings with explosives along the expected path of advancing forces—created enormous operational dilemmas. Israel has acknowledged that significant damage was caused to civilian property as a result of the events of the Gaza Operation. As described in more detail in Section IV, Israel is adapting and revising its military procedures to further minimize damage to civilian property in the future.

⁵⁵ *Physicians for Human Rights v. OC Central Command*, H CJ 8990/02 (27 April 2003); *Operation in Gaza Report* ¶¶ 431-35.

⁵⁶ *Operation in Gaza Report* ¶ 226.

⁵⁷ *Id.* ¶¶ 318, 436-45; *January 2010 Update* ¶¶ 113-16.

(1) The Sawafeary Chicken Coops

122. According to allegations included in the *HRCFF Report*,⁵⁸ in January 2009 IDF forces bulldozed several chicken coops owned by the Sawafeary family in Zeytoun, purportedly as part of a deliberate strategy of destroying civilian infrastructure.
123. The command investigations conducted with regard to this incident reveal that the Sawafeary chicken coops were destroyed for reasons of military necessity.
124. Specifically, the investigations revealed that the area around the Sawafeary chicken coops was occupied by an IDF ground force beginning on 4 January 2009, as part of the ground maneuver, with the intention to take control of rockets and mortar launching sites and reducing the number of terror attacks on Israeli territory. The force took positions in several houses, including one house that was adjacent to the chicken coops. This positioning was necessary to secure the area for military operations against Hamas and to protect the IDF troops in those operations. The IDF's defense plan for this area needed to meet three serious threats to the safety and security of the IDF troops: the firing of anti-tank and RPG missiles on IDF positions; sniper fire; and infiltration of terrorist operatives into the immediate vicinity of the forces in order to plant and detonate explosive devices, including by suicide bombers.
125. The terrain in the area made this location more dangerous for IDF forces. The area was agricultural in its original use and thus included many orchards, groves, and greenhouses, located between and around the houses occupied by the IDF. This made it harder for the IDF to identify Hamas positions and fighters. The threat was not theoretical—on 5 January 2009, an RPG missile was launched at one of the IDF positions in that area. In addition, several shooting incidents occurred originating from the orchards located to the south of the chicken coops.
126. In order to overcome these threats, the IDF decided to create a security zone around each of the IDF positions with a perimeter of 20–50 meters around each post, which would allow uninterrupted observation and firing capabilities for the force in each position, as well as joint protection among the different IDF outposts. These security zones allowed IDF forces to anticipate at an earlier stage the approach of terrorist operatives.
127. The Sawafeary chicken coops were located only a few meters away from one of the key IDF positions. The IDF position was, itself, dictated by the lay of the terrain in the area. As the command investigation determined, this IDF position could not be adequately secured if the chicken coop structures were left intact. The demolition of these structures was needed to allow a clean line of sight for protection of IDF forces. The investigation also determined that the decision to

⁵⁸ *HRCFF Report* ¶¶ 942-61.

destroy the coops was consistent with the demands of the principle of proportionality: there was a compelling military need for the area to be cleared for the safety of the IDF forces and for the success of IDF operations against the Hamas forces operating in the area. The local commanders determined that these advantages outweighed the damage to private property that would result from the demolition. The commanders avoided the destruction of residential buildings or other facilities in the area, when such destruction was not required by military necessity or appeared to be disproportional.

128. The MAG reviewed the findings of the command investigation and concluded that the destruction of the chicken coops was lawful, as it was necessary to protect IDF forces operating in the area. It did not violate the limitation on destruction of private property because it was justified by military necessity. The MAG also found that the destruction of the chicken coops did not violate the ban on destroying any object that is indispensable to the survival of the civilian population. It was dictated by the location of specific operations against Hamas, and not part of a campaign to interfere with the production of food supplies in Gaza. It was not intended to deny the civilian population in Gaza access to essential commodities.⁵⁹ As a result of these findings, the MAG determined that no further proceedings were necessary.
129. Although the MAG found no violation of the Law of Armed Conflict in this incident, he recommended several changes to IDF procedures in cases involving destruction of private property, which are detailed below in Section IV of this Paper. In particular, the MAG found that the decision to destroy the chicken coops was made by a relatively junior IDF officer, and that such decisions were more appropriately and typically made at more senior levels. While the MAG found that the particular rank of the officer making the decision did not indicate wrongful or criminal conduct (as neither the Law of Armed Conflict nor IDF procedures at the time required that such decisions be taken by an officer of any particular rank), he has recommended that the IDF's procedures for destruction of civilian property be reviewed in several respects, as detailed in Section IV below.

(2) The Abu Jubbah Cement-Packaging Plant

130. According to allegations included in the *HRCFF Report*,⁶⁰ in January 2009, the IDF wrongfully destroyed a cement-packaging plant owned by Mr. Atta Abu Jubbah, utilizing both aerial and ground attacks. This was allegedly part of a deliberate strategy of gratuitous destruction of civilian infrastructure in Gaza.

⁵⁹ In particular, during the course of 2009, over 230 truckloads of fertilized chicken eggs (intended to hatch) were transported by Israel to the Gaza Strip, in addition to immunizations and food for chickens. More than 130 more trucks carrying fertilized chicken eggs have been transported to Gaza since the beginning of 2010.

⁶⁰ *HRCFF Report* ¶¶ 1012-17.

131. The incident was investigated by both IDF ground forces and the IAF.⁶¹ These investigations concluded that the cement plant was not the target of any aerial attacks, nor was artillery fire directed at it. Instead, it was damaged in the course of intense fighting that took place in the immediate area of the plant, including IDF efforts to locate and destroy an intricate tunnel system that was dug by Hamas. These tunnels were intended both to strengthen Hamas's operating capabilities and to help it execute plans to attack or capture IDF soldiers.
132. The investigation also concluded that the IDF soldiers believed that the plant was being used by Hamas operatives to position themselves to attack and kidnap Israeli soldiers.
133. While artillery shells were neither directed at the plant nor landed inside it, operations in that area did involve IDF artillery fire at military targets near the factory, and the shrapnel from these shells may have caused structural damage to the plant. In addition, IDF tanks and bulldozers entered the plant while searching for tunnel infrastructure, causing damage to some of the pillars holding the factory's roof. As a result, the factory roof partially collapsed.⁶²
134. The MAG reviewed the results of the command investigations and determined that the damage caused to the cement-packaging plant was incidental to the combat activities in the area and proportionate to the military need under the circumstances. As a result of these findings, the MAG determined that no further proceedings were necessary.

(3) The Al-Wadiyah Group's Factories

135. According to allegations made in the *HRCFF Report*,⁶³ the IDF gratuitously destroyed factories belonging to the al-Wadiyah Group which were engaged in the manufacture of a variety of snacks. The *HRCFF Report* cites the incident as evidence of a deliberate strategy to deprive the population of essential commodities.
136. This allegation was also investigated by the IDF. As the command investigation found, the factories were in the area of Izbet Adb Rabbo, where Hamas had concentrated significant military resources. The IDF forces encountered a constant

⁶¹ This kind of parallel investigation would take place whenever concerns regarding the activities of various branches of the military are raised in an investigation. A similar dual-track investigation took place in the case of the investigation of damages at the Al-Bader flour plant, discussed in detail in the *January 2010 Update*, ¶¶ 163-74.

⁶² Contrary to some reports, the IDF investigation revealed that the damage to the factory was limited. For instance, while several reports alleged that the IDF destroyed a silo used to contain large amounts of cement, IDF aerial photos indicate that it was still standing at the end of the Operation. While this does not rule out the possibility that damage was caused to the structure, it does support the finding that the plant was not targeted intentionally and that the damage caused to the plant was incidental.

⁶³ *HRCFF Report* ¶¶ 1018-20.

barrage of hostile fire from the area, reflecting Hamas's control of the surrounding neighborhoods. The area is also close to the Gaza border with Israel and has served as a base for terrorist attacks directly against Israel. The area was therefore a focus of IDF operations.

137. As the command investigation concluded, IDF forces fighting in the area near the factories discovered a well-prepared military infrastructure, including an extensive network of underground tunnels used by Hamas operatives to fight the IDF forces. The military infrastructure in that area also included booby traps and improvised explosive devices ("IEDs") planted under the main roads and in civilian buildings, as well as in the civilian buildings used by Hamas as its military posts.
138. An IDF unit encountered military operatives leaving one of the al-Wadiya factories. In response to the attack, and in light of the concern about the use of the factories and the tunnels in their vicinity as a continuing threat to IDF forces in the immediate area, the IDF force decided to demolish the buildings. The investigation found that the IDF forces did not know the structures were used to produce food products.
139. The MAG reviewed the findings of the command investigations and concluded that the demolition of the buildings was lawful, as it was necessary to protect IDF forces operating in the area. The MAG found that it did not violate the rules on protection of private property since it was justified by military necessity.⁶⁴ The MAG also found that the destruction of the factories was not intended to deny the civilian population in Gaza commodities indispensable to its survival. The purpose of the demolition was instead to protect IDF forces operating in the area and not to prevent the civilian population from having access to essential commodities (regardless of whether the products made in the factories qualify as essential). Based on these findings, the MAG determined that no further proceedings were necessary.
140. Although the MAG found no violation of the Law of Armed Conflict in this incident, he recommended several changes to IDF procedures in cases involving destruction of private property, as detailed below in Section IV.

(4) The El-Bader Flour Mill

141. The case of the el-Bader flour mill was discussed in the *January 2010 Update*. It concerns allegations that the mill had been targeted with precision weapons in the course of a pre-planned air strike, as part of a systemic destruction of industrial infrastructure and with the purpose of depriving the civilian population of Gaza of food supplies. The IDF investigation into the matter concluded instead that the mill was been struck by a tank shell in the course of active combat activities, in order to neutralize immediate threats to IDF forces.

⁶⁴ See *Operation in Gaza Report* ¶ 436.

142. Following the publication of the *January 2010 Update*, various news media stated in February 2010 that the U.N. was in possession of evidence that contradicted the findings of the IDF investigation. Specifically, it was reported that an unexploded IAF bomb was found in the mill, even though the command investigation had concluded there had been no aerial strike.⁶⁵
143. Upon reviewing these reports, the MAG requested and received additional evidence from the U.N. and ordered the IAF to re-open its investigation of the incident. The MAG also initiated a meeting with U.N. representatives, who had visited the site of the mill, to discuss their findings. The follow-up investigation confirmed the earlier finding that the mill had not been targeted by the IAF in the course of a pre-planned attack. The new reports, photographs taken by U.N. officials, and video footage examined appeared inconsistent with an airborne strike, particularly given the absence of entry holes in the roof of the mill; the lack of trace marks on the floor where the shell was allegedly found (such trace marks would normally be expected when such a munition penetrates a building); and the fact that the fire which damaged the machinery in the mill broke out on the second floor while the ordnance was found on the first floor.
144. Furthermore, the IAF examined every aerial attack in the vicinity of the mill in the course of the Gaza Operation and found that none of them could have resulted in a hit on the flour mill. Of the seven strikes conducted within a one-kilometer radius of the mill using the particular munitions identified, five had hit their precise target (the closest one being approximately 300 meters away from the mill). The impact sites of the two additional strikes were visible in the IAF aerial footage of the operation, and the closer of the two landed a full 350 meters from the mill.
145. After reviewing the findings of this additional investigation, the MAG could not affirmatively determine how the ordnance had found its way into the mill, but reaffirmed that the flour mill had not been intentionally targeted by the IAF. He was also unable to rule out the possibility that the ordnance had been deliberately planted in the mill. Accordingly, the MAG determined that there was no basis for additional proceedings in this matter.

⁶⁵ This discrepancy was important not only because of its effect on the credibility of the IDF command investigation, but also because of the perception of a pre-planned air strike intended to destroy the mill.

IV. SUMMARY OF CHANGES TO MILITARY OPERATIONAL GUIDELINES AS A RESULT OF INVESTIGATIONS OF GAZA OPERATION

146. The Gaza Operation presented complex military challenges in protecting civilians from the hazards of battle. Urban warfare and the cynical choice made by Hamas to imbed itself in civilian urban areas and to use civilian structures as shields contributed to the great challenges for Israeli air and ground forces. The IDF nonetheless made extensive efforts to avoid civilian casualties and limit damage to private property, as well as to ensure that Israeli military activities were conducted in compliance with the Law of Armed Conflict and Israel's own stringent ethical and legal requirements.
147. Israel recognizes that, despite these efforts, the Gaza Operation resulted in numerous deaths and injuries to Palestinian civilians and considerable damage to private property. The Government of Israel did not wish these losses. Israel believes that the fact that Hamas chose to conduct its military operations from urban areas and to put its own civilian population at risk significantly contributed to the number of casualties and extent of harm to civilian property in the course of the Operation.
148. Israel will continue to conduct comprehensive investigations into every allegation of misconduct by the IDF during the Gaza Operation. Aside from the review conducted by the MAG of legal aspects of such investigations, the factual findings will be valuable in drawing "lessons learned"—a self-scrutiny conducted by the IDF as a responsible and professional military. The effort to protect civilians and avoid damage to civilian property is a core concern, and will remain such in any future military operations.
149. In particular, the IDF has issued two new Orders designed to further increase the protection of civilians and civilian property during armed conflicts.

A. New written procedures regarding the protection of civilians in urban warfare

150. The IDF has adopted important new written procedures and doctrine designed to enhance the protection of civilians in urban warfare, including by further emphasizing that the protection of civilians is an integral part of a commander's mission. In addition, the procedures require increased attention to civilian matters in operational planning. Although protection of civilians during military operations has long been part of IDF training and doctrine, the new procedures mandate additional comprehensive protection. These revised procedures stem from general understandings and lessons learned both in Gaza and other military operations conducted by Israel in recent years.

151. The new procedures and doctrine also specify steps to better insulate the civilian population from combat operations and to limit unnecessary damage to civilian property and infrastructure, and require integration of civilian interests into the planning of combat operations. This involves advance research into and the precise identification and marking of existing infrastructure, including that pertaining to water, food and power supplies, sewage, health services, educational institutions, religious sites, economic sites, factories, stores, communications and media, and other sensitive sites as well as cultural institutions.
152. Furthermore, the new written procedures mandate the planning for a number of additional provisions aimed at safeguarding the civilian population. This includes: safe havens for civilians to take refuge; evacuation routes for civilians to safely escape combat areas; medical treatment for civilians; methods for effectively communicating with and instructing the population; and provisions for humanitarian access during curfews, closures and limitations on movement. Finally, the new written procedures require the assignment of a Humanitarian Affairs Officer integrated in each combat unit beginning at the battalion level and up,⁶⁶ with responsibilities for advising the commanding officer and educating the soldiers with regard to: the protection of civilians; civilian property and infrastructure; the planning of humanitarian assistance; the coordination of humanitarian movement; and the documentation of humanitarian safeguards employed by the IDF.
153. While the majority of these issues were already addressed in various operational orders and guidelines in existence prior to the Gaza Operation, the new revised procedures are important because they are comprehensive and applicable to all stages of military operations, including the crucial stage of planning.

B. New Order Regulating the Destruction of Private Property for Military Purposes

154. In the aftermath of the Gaza Operation, the destruction of private property and infrastructure by ground forces was the subject of one of the five special command investigations ordered by the IDF Chief of General Staff. One of the lessons learned from this investigation was that there should be a set of clear rules and guidelines to assist commanders in making such decisions.
155. Accordingly, upon the Chief of the General Staff's instructions, a new Standing Order on Destruction of Private Property for Military Purposes was formulated. This new standing order, entered into force in October 2009, and addresses in clear terms when and under what circumstances civilian structures and agricultural

⁶⁶ This is supplemental to other humanitarian mechanisms which were established in the past and were in place during the Gaza Operation, such as a 24-hour operations room by the Gaza Coordination and Liaison Administration to facilitate communication between IDF and international organizations, as described in the *Operation in Gaza Report*, ¶¶ 266-82.

infrastructure may legitimately be demolished in circumstances of imperative military necessity. It clarifies the applicable legal criteria and limitations and allocates specific command responsibility and hierarchical authority for decision-making.

156. Following the issuance of this new Standing Order, the IDF continues to study the issue of protection of private property and to consider additional changes to its procedures. For instance, the MAG, in the course of his review of a specific incident involving destruction of property, has recommended several additional clarifications to the new order, including: (a) identifying more clearly sites that are considered to be especially “sensitive” and whose destruction should require more senior level of approval; (b) analyzing and addressing how the issue of proportionality should be implemented in different situations; and (c) better incorporating the new Standing Order at all levels and regions of command.

* * *

157. Israel’s prior reports on its investigations of the Gaza Operation described other operational changes that the IDF is considering or implementing based on lessons learned in the command investigations. These include:
- a. In connection with the review of operations affecting incidents involving harm to U.N. and other international facilities, the IDF Chief of General Staff re-emphasized the importance of better familiarizing IDF units at all levels with the location of sensitive facilities within their assigned combat zones. He ordered that regulations regarding safety distances from sensitive facilities be highlighted, specifically with regard to the use of artillery, and also ordered that additional steps be looked at to improve the coordination between the IDF and U.N. agencies in the field.
 - b. The IDF Chief of General Staff has ordered improvement in training and procedures, including practice by all forces in “incidents and responses” drills with specific humanitarian aspects, including involving prevention of harm to medical crews, facilities and vehicles. He also ordered an examination of the operation of the humanitarian corridors opened for the benefit of the local population during the fighting. The formulation of a new operational order on this topic is underway.
 - c. The IDF Chief of General Staff ordered the establishment of a clear doctrine and orders on the issue of various munitions which contain white phosphorous. These instructions are currently being implemented.

V. THE TURKEL COMMISSION MANDATE TO EXAMINE ISRAEL'S SYSTEM OF INVESTIGATIONS

158. While the State of Israel is confident in the thoroughness, impartiality, and independence of its investigatory system, in light of recent criticisms concerning Israel's mechanisms for examining and investigating complaints raised in relation to violations of the Law of Armed Conflict, the Government of Israel has mandated an independent public commission to examine the conformity of these mechanisms with Israel's obligations under international law, as detailed below.
159. On 14 June 2010 an independent public commission was set up by the Government of Israel to address issues pertaining to a maritime incident involving the IDF which occurred on 31 May 2010, and which is unrelated to the Gaza Operation. The Commission is headed by retired Justice of Israel's Supreme Court Yaakov Turkel, joined by Professor Shabtai Rosenne, a leading expert in international law, and Amos Horev, a retired general and former president of the Technion—Israel Institute of Technology. In addition, two international observers, Nobel Peace Prize Laureate Lord William David Trimble from Northern Ireland and former Canadian Judge Advocate General Kenneth Watkin, were appointed to participate in the Commission's hearings and proceedings.
160. In addition to its responsibilities related specifically to the maritime incident, the Commission's scope of responsibility includes a broad mandate that goes beyond the events of 31 May 2010 and includes examining:
- the question of whether the mechanism for examining and investigating complaints and claims raised in relation to violations of the laws of armed conflict, as conducted in Israel generally, and as implemented with regard to the present incident, conform with the obligations of the State of Israel under the rules of international law.⁶⁷
161. Thus, one of the central tasks of the new independent public commission is to examine and assess the current mechanisms in place in Israel for investigating allegations of a violation of the Law of Armed Conflict. The mechanisms under review are the same mechanisms that are implemented in the investigations relating to the Gaza Operation and which were discussed in detail in this Paper and the two previous reports.
162. The Government's decision sets forth that every relevant governmental body will cooperate fully with the Commission and will make available to the Commission information and documents required by it for the purposes of performing its

⁶⁷ Israeli Ministry of Foreign Affairs, *Government Establishes Independent Public Commission* ¶ 5 (14 June 2010), available at http://www.mfa.gov.il/MFA/Government/Communiques/2010/Independent_Public_Commission_Maritime_Incident_31-May-2010.htm.

function. Furthermore, the Commission has the power to subpoena witnesses, to enforce their appearance before the Commission, and to compel their testimony.

163. Upon completion of its work, the Commission will submit a report to the Government of Israel, by way of the Prime Minister. The report will also be made available to the public.

VI. CONCLUSION

164. Since the *January 2010 Update*, Israel has made significant progress investigating allegations of misconduct by the IDF during the Gaza Operation. Israel has devoted extensive resources to conducting thorough and independent investigations, including interviews of hundreds of IDF soldiers and Palestinian civilians.
165. The IDF has conducted numerous command investigations of operational activity in the course of the Operation. The MPCID has opened 47 criminal investigations, and the MAG has initiated criminal prosecutions of four soldiers in separate incidents. Six officers have been disciplined or subject to command sanctions.
166. In other cases, the MAG has concluded that IDF actions did not violate the Law of Armed Conflict or IDF orders. Israel's investigations are ongoing, and Israel remains committed to investigating allegations regarding violations of the Law of Armed Conflict.
167. As part of its continuous learning process, the IDF has also made numerous changes to its operational procedures and policies in order to further enhance the protection of civilians from the hazards of battle and the protection of private property during military operations.

Annex II

Letter dated 12 July 2010 from the Permanent Observer of Palestine to the United Nations addressed to the Secretary-General

The present letter is being conveyed to you in connection with the efforts of the General Assembly to follow up the report of the United Nations Fact-Finding Mission on the Gaza Conflict, also commonly referred to as the “Goldstone Report”, in pursuit of accountability and justice for the violations of international humanitarian law and international human rights law perpetrated during the Israeli military operations in the Gaza Strip from December 2008 to January 2009.

Pursuant to the note of 27 May 2010, in which the Secretariat of the United Nations, on your behalf, requested the Permanent Observer Mission of Palestine to the United Nations to provide, with reference to General Assembly resolution 64/254 of 26 February 2010, entitled “Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict”, written information regarding the steps that the Palestinian side may have taken, further to the urging of the Assembly in paragraph 3 of resolution 64/254 as well as in paragraph 4 of resolution 64/10 of 5 November 2009, I have the honour to transmit to you the following:

1. A letter, dated 11 July 2010, from President Mahmoud Abbas (see appendix I)
2. The report of the Palestinian Independent Commission Investigating in Follow-up of the Goldstone Report, including a general introduction to the report (see appendix II).

Pursuant to its mandate, the Palestinian Independent Commission has presented a comprehensive report, constituting an independent, credible investigation that is in conformity with international standards. This information is thus being submitted in compliance with General Assembly resolution 64/254, as requested by the Secretariat, in order to assist the Secretary-General in fulfilling his responsibilities under the said resolution, in which he was requested to report on the implementation of the resolution, with a view to the consideration of further action, if necessary, by the relevant United Nations organs and bodies, including the Security Council.

In this regard, as stressed by the General Assembly in resolution 64/254, Palestine reaffirms the need to ensure accountability for all violations of international humanitarian and human rights law in order to prevent impunity, ensure justice, deter further violations and promote peace. Palestine reaffirms its respect for international law and its commitment to upholding its obligations and responsibilities in this regard. At the same time, Palestine reiterates its urgent and constant appeals to the international community to uphold the rule of law and all of the legal and moral obligations towards the question of Palestine, including towards ensuring accountability and justice for the crimes perpetrated by Israel, the occupying Power, against the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem, over the many decades of its belligerent military occupation.

In closing, we take the opportunity to reiterate the importance of achieving truth and justice, which are absolutely necessary for the fulfilment of our collective efforts to make peace a reality. In this regard, we reaffirm the conviction expressed repeatedly by the General Assembly, including in resolutions 64/10 and 64/254, that “achieving a just, lasting and comprehensive settlement of the question of Palestine, the core of the Arab-Israeli conflict, is imperative for the attainment of a comprehensive, just and lasting peace and stability in the Middle East”.

(Signed) **Riyad Mansour**
Ambassador
Permanent Observer of Palestine to the United Nations

**Attachment I to the letter dated 12 July 2010 from the
Permanent Observer of Palestine to the United Nations
addressed to the Secretary-General**

**Letter dated 11 July 2010 from the President of the Palestinian National
Authority to the Secretary-General**

Ramallah, 11 July 2010

I have the honour to transmit to you the report of the Independent Investigation Commission established pursuant to the Presidential Decree of 25 January 2010, as called for by General Assembly resolution 64/254 concerning the second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict.

In that resolution, the General Assembly reiterated its urging for the conduct by the Palestinian side of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice.

The present report is also submitted in response to the letter of the United Nations Secretariat, dated 27 May 2010, requesting the Permanent Observer Mission of Palestine to the United Nations to submit in writing to the Secretary-General by 12 July 2010 information concerning the steps that have been or will be taken by the Palestinian side in response to the request contained in paragraph three of the above-mentioned General Assembly resolution.

Accept, Sir, the assurances of my highest consideration.

(Signed) Mahmoud **Abbas**
President of the State of Palestine
Chairman of the Executive Committee of the Palestine Liberation Organization
President of the Palestinian National Authority

**Attachment II to the letter dated 12 July 2010 from the
Permanent Observer of Palestine to the United Nations
addressed to the Secretary-General**

**General introduction to the report of the Palestinian Independent
Investigation Commission established pursuant to the Goldstone Report**

1. The present report is submitted by the Palestinian National Authority pursuant to General Assembly resolution 64/10 of 5 November 2009, entitled "Follow-up to the report of the Fact-Finding Mission on the Gaza Conflict" as well as General Assembly resolution 64/254 of 26 February 2010, entitled "Second Follow-up to the report of the Fact-Finding Mission on the Gaza Conflict". In those resolutions, the United Nations urged the Palestinian authorities to investigate the alleged serious violations of international humanitarian law and international human rights law documented in the report of the United Nations Fact-Finding Mission on the Gaza Conflict (also known as the "Goldstone report"), hereinafter referred to as the Fact-Finding Mission report. In this regard, it is to be recalled that the Fact-Finding Mission was established pursuant to Human Rights Council resolution S-9/1 to investigate the violations of international humanitarian law and international human rights law perpetrated by Israel, the occupying Power, against the Palestinian people, particularly on the Gaza Strip during the military operations that occurred from 27 December 2008 to 18 January 2009.

2. It is prepared by the Palestinian Independent Commission Investigating in Follow-up of the Goldstone Report, which was created pursuant to a Palestinian Presidential Decree issued on 25 January 2010 by President Mahmoud Abbas for the purpose of fulfilling the requirements of General Assembly resolution 64/10.

3. It commences with an examination of the Fact-Finding Mission's mandate, a brief survey of the historical context that led up to the Israeli military aggression against the Gaza Strip (self-entitled by Israel, the occupying Power, as "Operation Cast Lead"), a brief reference to the Fact-Finding Mission's report on the violations of international humanitarian law and international human rights law that occurred in that context, a discussion of some relevant legal considerations, and an extensive and detailed independent investigation into violations of international human rights law in the Occupied Palestinian Territory undertaken by the Palestinian Independent Commission. The report of the Palestinian Independent Commission follows the present introduction.

4. Firstly, the Palestinian Independent Commission wishes to commend all of the members of the Fact-Finding Mission for their professionalism, integrity and impartiality in undertaking their report, which will contribute to international efforts to combat impunity in conflicts and to ensure accountability and justice for violations of international humanitarian law and other international crimes committed against the Palestinian people, who continue to suffer from oppression, hardship and systematic human rights violations as well as war crimes, perpetrated by Israel, the occupying Power, in the context of its belligerent military occupation of the Palestinian Territory since 1967. The Palestinian Independent Commission also wishes to express its appreciation of the efforts exerted by the High Commissioner for Human Rights and the dedicated members of her Office in support of the Fact-Finding Mission, in accordance with resolution ES-9/1.

Scope of the report

5. In accordance with the recommendations of the Fact-Finding Mission, the General Assembly in resolution 64/10 urged “the undertaking by the Palestinian side, within a period of three months, of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice”. This was reiterated by the Assembly in resolution 64/254.

6. This language stems from the broadened scope of the mandate of the Fact-Finding Mission, which, as articulated by the President of the Human Rights Council was to “investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in Gaza during the period between 27 December 2008 and 18 January 2009”.

7. The General Assembly thus urged “the Palestinian side” to undertake investigations into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission. The United Nations has recognized the Palestine Liberation Organization (PLO) as an observer to the Organization pursuant to General Assembly resolution 3237 (XXIX) of 22 November 1974, which is in keeping with the decision of the 1974 Arab Summit in Rabat which designated the PLO as the “sole legitimate representative of the Palestinian people”. The Palestinian National Authority was established pursuant to the Declaration of Principles on Interim Self-Government Arrangements, signed between the PLO and the Government of Israel on 13 September 1993, known as the Oslo Accord. By virtue of this agreement and subsequent agreements, the Palestinian National Authority was accorded the legitimate right of governmental administration over the Occupied Palestinian Territory under Israeli control since the 1967 war. Therefore, it must be stressed that the official for the “Palestinian side” is the Palestinian National Authority, whose ultimate authority is the PLO.

Historical background

8. Following the declaration of independence by the State of Israel on 15 May 1948 and the outbreak of war between Israel and Egypt, Jordan, Syria, Lebanon and Iraq, Israel seized more territory than that which was allotted to it by the General Assembly in resolution 181 (II) of 29 November 1947, by which it partitioned Mandate Palestine, and hundreds of thousands of Palestinians were forcibly expelled or fled in fear from their homes, a tragic turning point in Palestinian history known as Al-Nakba. Following the 1948 war, the remaining territory of Mandate Palestine, namely the West Bank, including East Jerusalem, and the Gaza strip, came under the control and administration of, respectively, the Hashemite Kingdom of Jordan and Egypt. Egypt had not claimed sovereignty over the Gaza strip, but merely the right to exercise administration over it, pending its return to a prospective Palestinian state, and in 1969, King Hussein of Jordan renounced any claim of sovereignty over the West Bank and relinquished it to the Palestinian people, whose legitimate representative was recognized to be the PLO.

9. General Assembly resolution 273 (III) of 1949, which admitted the State of Israel to membership, recalled both resolution 181 (II), otherwise known as the partition resolution, and resolution 194 (III), which affirmed the right of Palestinian refugees to return to their original homes in Mandate Palestine. This resolution also took note of the declaration of the representative of Israel that affirmed the intention of his Government to respect those two resolutions. The

implication of referring to those two resolutions and to the declaration of the Israeli representative is that Israel's membership in the United Nations remains conditional on the implementation of those resolutions.

10. Following the 1967 war, Israel occupied the remaining areas of Palestine by forcibly seizing the West Bank, including East Jerusalem, and the Gaza Strip. This now 43-year foreign military occupation by Israel of the Palestinian and other Arab lands has been the subject of numerous Security Council and General Assembly resolutions, among the most important of which is Security Council resolution 242 of 22 November 1967, which emphasized the "inadmissibility of the acquisition of territory by war", and required the "withdrawal of Israeli armed forces from territories occupied in the recent conflict".

11. Despite the aforementioned resolutions, Israel continued to occupy the West Bank, including East Jerusalem, and the Gaza Strip (which constitute one geopolitical entity commonly referred to as the Occupied Palestinian Territory, and consistently and systematically violated international humanitarian law and international human rights law through policies and practices aimed at perpetuating its occupation and altering the demographic composition and map of the Occupied Palestinian Territory. As part of these policies, Israel unilaterally annexed occupied East Jerusalem in 1980, an unlawful annexation which is not recognized by the international community to this day, confiscated thousands of tracts of land owned by Palestinians, constructed hundreds of settlements, transferred thousands of Israeli settlers to the Occupied Palestinian Territory and built an elaborate and discriminatory system of "bypass routes" to connect these illegal settlements in a massive, illegal colonization campaign, which later also came to include the Wall that continues to be unlawfully constructed by Israel in the West Bank in deviation of the 1967 Green Line, in grave breach of international humanitarian law and in flagrant defiance of the 9 July 2004 advisory opinion of the International Court of Justice.

12. Following the commencement of the Middle East Process, beginning with the Madrid Peace Conference in 1991, based on the relevant Security Council resolutions and the principle of "land for peace", and the signing of the 1993 Oslo Accord, the PLO assumed limited responsibilities for governing certain areas of the Occupied Palestinian Territory for what was to be an interim period of five years until the conclusion of a comprehensive peace agreement. However, throughout the various stages of the peace process negotiations, Israel continued to confiscate more Palestinian lands and construct more settlements in an attempt to create a *fait accompli*, violating international law and demonstrating that Israel conducted negotiations in bad faith as it endeavoured to prejudice the outcome of final negotiations.

13. Following the failure of peace negotiations between Israel and the Palestinian National Authority and the outbreak of the Al-Aqsa Intifada on 28 September 2000, the Government of Israel, led by Prime Minister Ariel Sharon, declared that it would implement a unilateral disengagement plan that in effect endeavoured to impose upon the Palestinians Israel's vision for a settlement. An integral part of this disengagement plan was the dismantlement of Israeli settlements in Gaza and the redeployment of Israeli occupation troops to the areas bordering Gaza. Contrary to Israeli contentions that the disengagement plan and the redeployment of Israeli troops from Gaza ended the state occupation in that area, it is the position of the Palestinian National Authority, which the Palestinian Independent Commission endorses and adopts, that Gaza remains occupied territory and that Israel remains the occupying Power over that territory, with all the obligations appertaining thereto. The

occupation of the Gaza Strip is confirmed by Israel's continued exercise of effective control over the territory, which is manifested in a number of ways, including: (1) Israel's unilateral control of the airspace and territorial waters of Gaza, (2) Israel's continued military presence in the Philadelphi Corridor along the border between the Gaza Strip and Egypt, (3) Israel's continued control of all border crossings with Gaza, (4) Israel's continued military land incursions, and air and naval strikes against Gaza, and (5) Israel's insistence that the entry and exit of any persons or goods be with its consent.

14. The situation in the Gaza Strip further deteriorated with the taking over by the Islamic Resistance Movement (Hamas) of Palestinian National Authority institutions in Gaza on 12 June 2007, which was followed by Israel's declaration on 19 September 2007 that the Gaza Strip had become an "enemy entity", and its imposition on the territory of a land, air and naval blockade that constitutes a form of collective punishment of the Palestinian civilian population in the Gaza Strip, in flagrant violation of international law. Israel also intensified its policy of targeted assassinations of the political leadership in Gaza, which constitute a form of extrajudicial executions in violation of international humanitarian law and international human rights law. Moreover, Israel undermined the functioning of the Palestinian governmental structures by detaining many leading Palestinian figures, including members of the Palestinian Legislative Council.

15. Israel also periodically launched military operations and assaults against the Gaza Strip, at times allegedly in response to the firing by the Palestinian armed resistance groups of "crude rockets" into Israeli territory. These military operations usually entailed strikes from fighter aircraft, helicopter gunships and artillery barrages. Israel also occasionally carried out ground assaults against the Gaza strip, using tanks, armoured personnel carriers and heavily armed infantry, which caused civilian casualties and widespread destruction of homes and infrastructure.

16. In this regard, Israel has repeatedly claimed that its attacks on Gaza were necessitated on the grounds of self-defence because of the launching by Palestinian armed resistance groups of rockets and mortars against its territory and civilian population. It must be stressed that there are no verifiable or reliable estimates of the numbers of rocket launchings or mortar shelling, where they originated from, where they landed and what, if any, damage they caused, except with respect to certain deaths reported by Israel and consisting at the highest reported figure of 13 casualties over a period of four to five years (including three or four military personnel who would be considered valid military targets under international humanitarian law). The numbers publicly reported vary, depending on their sources. The Israeli Ministry of Foreign Affairs claimed that during the 2008 Palestinian resistance armed groups launched 1,750 rockets and fired 1,528 mortar projectiles, while the Israeli spokesperson reported the launch of 1,755 mortar projectiles, 1,720 Qassam rockets, and 75 Grad missiles. In another report, the Israeli spokesperson announced that 7,200 projectiles had been launched at Israel since 2005, without distinguishing the nature of the projectiles. Israeli Prime Minister Benjamin Netanyahu stated during an interview on the CNN "Larry King Live" talk show on 7 July 2010 that "6,000 rockets" had been launched against Israel, presumably during the same period of 2005-2009, which is the time frame of the Israeli report. It should be noted that none of these Israeli sources indicate where the purported fired projectiles landed. Thus, they could have landed in desert areas or in areas uninhabited by the civilian population, or in or around military areas (which could be deemed valid military targets under international humanitarian law).

17. The Fact-Finding Mission report cited Israeli sources claiming that 3,455 rockets and 3,742 mortar projectiles were fired at Israel from 2001 to mid-June 2008, without distinguishing where they landed. The Fact-Finding Mission could not verify any of the Israeli claims that are periodically announced in the media and that are cited in the Fact-Finding Mission's report, given the Israeli refusal to cooperate with the Fact-Finding Mission.

18. None of these estimated numbers have been independently and impartially verified and the Palestinian Independent Commission was not in a position to investigate the accuracy of any of these numbers and it could not address this question more fully in the present report. It would have been useful if Israel had established an independent fact-finding commission in order to ascertain the truth, instead of having unascertainable data bandied around to justify Israel's military aggression and repressive actions in Gaza and against its civilian population, particularly in connection with Operation Cast Lead.

19. Nothing in the above should be construed as indicating that the present report dismisses or makes light of the impact and consequences of rocket launching and mortar firing against a civilian population. The Palestinian National Authority has repeatedly and officially condemned rocket fire and called for its cessation. Nor does it deny the responsibility of those who may have deliberately targeted civilian populations. What the report highlights is the inaccuracy and unreliability of the data and the failure of Israel to investigate them in a fair and impartial manner.

20. Returning to the situation in Gaza prior to the Israeli military aggression launched on 27 December 2008, it should be recalled that Egypt had negotiated a six-month ceasefire between Hamas in Gaza and Israel, otherwise known as the "period of calm" or *tahde'a*. By late December 2008, however, discussions mediated by Egypt to renew the "period of calm" for six months had not been successful. Israel then launched a 23-day military offensive against the Gaza Strip, dubbed "Operation Cast Lead", which led, as reported by the Fact-Finding Mission, to the death of over 1,300 Palestinian civilians and the injury of over 6,000, many of them women and children.

Violations of international human rights law by the Palestinian National Authority and by those exercising authority in Gaza

21. The Palestinian Independent Commission responds with specificity to the claims by the Fact-Finding Mission of violations of international human rights law by the Palestinian National Authority and those in authority in Gaza, under the name of the Islamic Resistance Movement (Hamas), in the main part of the report.

The Palestinian legal system: history and heritage

22. Palestine has a longstanding legal system, which includes legal institutions and structures and a judiciary. The following is a brief description, which is purely of an introductory nature. The present legal system falls within the overall structure of the Palestinian National Authority as it has been structured following the conclusion of the Oslo Accords of 1993. The new governmental structure, however, has built upon its historic heritage, which involves law-making, a separate judiciary and an executive branch of government overseeing law enforcement and prosecution. The history of that legal system cannot be characterized as essentially indigenous because of the succession of external powers exercising authority over Palestine. This history can be retraced to the inclusion of Palestine in 637 C.E. as part of the Muslim *Ummah* (nation), whose successor was the Turkish Ottoman Empire as of the

15th century. The latter, which lasted until 1917, preserved the distinctive characteristics of the Palestinian administration. It was followed from 1922 with the establishment of the League of Nations mandate (with Britain as the Mandatory Power) until 1948, when Israel declared its independence and established a State on what amounted to more than half of the territory of Palestine. At that time the territory known as the West Bank, including East Jerusalem, came under the administration of the Hashemite Kingdom of Jordan and Gaza was under the administration of Egypt. During this period, the various administering powers enacted laws that were administered by a judicial system. Over the years, there has been an accumulation of laws, which must be assessed in the light of the contemporary needs of Palestinian society, including the codification of different areas of law. Many of these efforts are under way.

23. There are also many reforms currently under way in the Palestinian legal system and much progress has been made in the last few years, including with regard to greater emphasis on the protection and promotion of human rights, notwithstanding the difficult economic, social and political circumstances that continue to be confronted due to the Israeli military occupation and its myriad illegal policies and practices. This progress needs to be sustained with a view to strengthening the rule of law and enhancing the protection of human rights, as defined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Other human rights, norms and standards should also be strengthened, such as those contained in the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women. Present efforts are in this direction, and it is in this spirit that the report of the Palestinian Independent Commission has focused on human rights violations, demonstrating in a fair and impartial manner its commitment to the rule of law in Palestine.

24. As shown in the report of the Palestinian Independent Commission (Arabic section), the situation in Gaza has been different ever since the takeover by Hamas. Legal institutions are being undermined and this has resulted in a high number of violations of international human rights law, negatively impacting the situation of human rights in Gaza. In accordance with the recommendations of the Fact-Finding Mission, the report of the Palestinian Independent Commission has focused on violations of international human rights law in both the West Bank and Gaza. This report, however, is not to be read as if they were a counterpart to the Israeli violations in Gaza during the period from 27 December 2008 to 18 January 2009 of international humanitarian law and international human rights law. These are two different questions which are not to be considered equivalent or counterbalancing each other. They are totally distinct and separate questions, and should be treated accordingly. The Palestinian Independent Commission emphasizes that there is no moral equivalency between Israeli violations of international humanitarian law and international human rights law in Gaza during the period from 27 December 2008 to 18 January 2009 and the situation concerning observance and respect for human rights in Gaza by Hamas and the different situation which exists in the West Bank.

25. The Palestinian Independent Commission is not in disagreement with the report of the Fact-Finding Mission on conditions with regard to international human rights law in Gaza. It does not, however, agree with some of the critical observations regarding the West Bank. The Palestinian Independent Commission has, however, found that there are international human rights law

violations and deficiencies in the West Bank, many of which are noted in the report of the Fact-Finding Mission. However, it notes that these violations and deficiencies are not due to the absence of laws and institutions but to the failure of these institutions to properly apply the law to all citizens in a fair and equal manner, which must also be viewed consistently in the light of the situation faced by the West Bank.

26. The Palestinian Independent Commission documents a number of these violations and deficiencies as a way of showing the fairness of its reporting as required by General Assembly resolution 64/10. Moreover, the Palestinian Independent Commission expects that its reporting on these violations and deficiencies, which the Palestinian National Authority has agreed to submit as part of its reporting to the United Nations, in compliance with the aforesaid resolution, will contribute to the improvement of the internal situation in the West Bank. While neither the Palestinian Independent Commission nor the Palestinian National Authority can at this time exercise any authority in Gaza, the Palestinian Independent Commission hopes that this report will also contribute to improving the human rights situation in that part of Palestine, until such time as the government can exercise national authority over all of the Occupied Palestinian Territory.

Legal considerations

27. The Government of Israel is a party to the four Geneva Conventions of 1949, but it has not acceded to their Additional Protocols I and II. The PLO submitted a declaration on 21 June 1989 to the Government of Switzerland to the effect that it considers itself bound by the Geneva Conventions of 1949. Both parties are, therefore, bound by the Geneva Conventions, and that portion of the additional protocols that falls within the meaning of customary international law. There is no question that, under both the Geneva Conventions and customary international law, attacks upon civilian populations or civilian targets, and indiscriminate and disproportionate use of force constitute a war crime in cases of conflict of an international character. Similarly, belligerent reprisals fall within the same prohibition.

28. While the Government of Israel has taken the position that it does not consider that the Fourth Geneva Convention of 1949 is applicable to the West Bank and Gaza, it has been firmly established that the Fourth Geneva Convention is applicable to the Occupied Palestinian Territory, including East Jerusalem. This has been reaffirmed in dozens of Security Council resolutions, as well as annually in numerous General Assembly resolutions. Moreover, this was clearly affirmed in the Advisory Opinion of the International Court of Justice on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory, which clarified that the intent of the drafters of the Convention was “to protect civilians who find themselves, in whatever way, in the hands of the occupying Power” and which also affirmed the applicability of the human rights covenants to the Occupied Palestinian Territory, including East Jerusalem. Israel has, nevertheless, acknowledged that the provisions of the Fourth Geneva Convention are binding upon it. In addition, several General Assembly resolutions, including of its tenth emergency special session, have directly called on the High Contracting Parties to the Fourth Geneva Convention to uphold their legal obligation under common article 1 of the Geneva Conventions to respect and ensure respect of the Convention in the Occupied Palestinian Territory, including East Jerusalem, which was also reflected in the Advisory Opinion of the International Court of Justice and constituted a significant recommendation of the Fact-Finding Mission, reflected

in the calls made in this regard by the Assembly in resolutions 64/10 and 64/254.

29. It should also be noted that Protocol I gives people “fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination” the protections applicable in an international armed conflict. Assuming the applicability of Protocol I to the Palestine resistance movement against the continued Israeli occupation of the territories occupied by force after the 1967 war in violation of resolutions 242 and 338, any violations of international humanitarian law by any of the parties would be subject to the grave breaches provision of Protocol I and the Fourth Geneva Convention.

30. Furthermore, the Sharia specifically prohibits these and other transgressions in the conduct of war. In fact, the Islamic law prohibitions against these violations long preceded contemporary international humanitarian law. The protection of civilians originated with the Prophet Mohammed (Peace be upon Him) giving instructions in 630 CE to the Muslims conquering Mecca. This was followed specifically in 634 CE by the first khalifa of Islam, Abu Bakr al-Siddiq, giving instructions to the Muslim army going to fight the Roman Empire, in what is now Syria. He stated in those instructions “do not commit treachery, nor depart from the right path, you must not mutilate, nor kill a child or aged man or woman. Do not destroy a palm tree nor burn it with fire, and do not cut any fruitful tree. You must not slay any of the flock or the herds of camels [of your enemy], save for [what is needed] for your subsistence. You are likely to pass by people who have devoted their lives to monastic services, leave them to that which they have devoted their lives to [protection of religious persons].”

31. It is a fundamental principle of the Sharia, as it applies to limitations on the means and methods of warfare, to reduce unnecessary or excessive pain and suffering in a way that is presently reflected in the principles of customary and conventional international humanitarian law.

State of implementation of the recommendations contained in the report of the Fact-Finding Mission

32. In this section, the present report will examine the extent to which the recommendations of the Fact-Finding Mission were implemented. The Palestinian Independent Commission has found it appropriate to examine a selection of recommendations that were addressed to Israel, the Palestinian National Authority, Palestinian armed resistance groups in Gaza and the Security Council. These include lifting the Israeli blockade against Gaza, lifting the restrictions on freedom of movement within the Occupied Palestinian Territory, including between the West Bank and the Gaza Strip, the ceasing of Israeli restrictions on the fishing and agricultural industries in Gaza, and the release of all Palestinians detained by Israel, including Palestinian political leaders. The present report also discusses the implementation of recommendations directed to the Palestinian National Authority to investigate allegations of mistreatment of members of Hamas in the West Bank, and the recommendation to release Israeli Corporal Gilad Shalit. The report also discusses, at length, the recommendation directed to the Palestinian armed resistance groups to respect and uphold international humanitarian law and international human rights law.

The lifting of the Israeli blockade of the Gaza Strip; the ceasing of border closures and restrictions on passage of persons and goods through border crossings with the Gaza Strip and the imperative of allowing the passage of goods and supplies necessary and sufficient to meet the needs of the civilian population

33. This recommendation concerns a variety of measures taken by the Government of Israel under the guise of security measures, consisting of closures of border crossings, restrictions on individual passage across those border crossings, as well as restrictions on the passage of humanitarian assistance and goods necessary and sufficient to meet the needs of the population, undeniably constituting a blockade of the Gaza Strip, as repeatedly acknowledged by the Government of Israel and Israeli officials themselves. The individual and cumulative measures comprising this policy and its deleterious impact on all sectors and aspects of Palestinian life constitute collective punishment of a massive scope and scale, in grave violation of international humanitarian law and international human rights law, and they also rise to the level of crimes against humanity. Israel has yet to explain why it has engaged in this unlawful policy, offering only empty and unjustifiable ruses, and why it continues to carry it out notwithstanding its proven negative effect on the health and socio-economic, humanitarian, psychological and political well-being of the Palestinian people in Gaza. Moreover, Israel has yet to explain why those in command, whether civilian or military, who have established this policy and carried it out have not been held accountable. On the contrary, Israel has continued to make claims of justification based on so-called security considerations, without demonstrating what the real threats are in relationship to the harm that it has deliberately inflicted on the Palestinians. Moreover, such harm, which appears to be a policy of retaliation, is in the nature of reprisals conducted on a widespread and systematic basis against the civilian population, in violation of international humanitarian law and international human rights law.

34. As the Fact-Finding Mission notes in its report, the Israeli policy of blockading Gaza predates the military operations that commenced on 27 December 2008. This policy was intensified after the takeover of Palestinian National Authority institutions in Gaza by Hamas on 12 June 2007.

35. The underlying purpose of this policy was to remove the Hamas authorities from power, by placing Israeli economic, social and, on many occasions, military pressure on the Palestinian civilian population. This policy is a form of collective punishment that is prohibited by both customary and conventional international humanitarian law. The Israeli blockade of Gaza also precipitated an immensely adverse effect on the lives of the civilian population. By all accounts, Palestinians in Gaza witnessed a devastating decline in their standard of living. For example, according to both the Food and Agriculture Organization of the United Nations and the World Food Programme, 76 per cent of households in Gaza suffer from food insecurity, while the Office for the Coordination of Humanitarian Affairs of the United Nations found that Palestinians in Gaza suffered from up to 8-12 hours of electricity cuts daily. Moreover, the World Health Organization reported that the Israeli military operations severely eroded what was an already precarious health situation in Gaza. Furthermore, according to the Office for the Coordination of Humanitarian Affairs, 20 per cent of Gaza's workforce was unemployed in the first quarter of 2009, and 70 per cent of families were already living on an income of less than one dollar a day per person as of May 2008.

36. Palestinian Independent Commission affirms that this policy of collective punishment, which led to the systematic destruction of all facets of life in Gaza, represents a serious violation of both international humanitarian law and international human rights law. Furthermore, the Palestinian Independent Commission believes that the political situation in Gaza and the de facto control of Hamas does not legitimize the Israeli policy of collective punishment of the Palestinian people, which has been unanimously condemned by the international community.

37. Since receiving the recommendations contained in the report of the Fact-Finding Mission, Israel has not complied with the calls to lift the blockade and to cease the closing of border crossings with Gaza and to allow for the crossing of humanitarian assistance and other supplies and materials needed for the restoration of the standard of living in Gaza to its status quo ante including by allowing for the unfettered entry of goods that are essential for both the reconstruction and rehabilitation of Gaza following the Israeli military aggression in December 2008 and January 2009 and the disastrous impact of the blockade for meeting the daily subsistence needs of the Palestinian civilian population. The latest such incident in Israel's blockade of humanitarian assistance to Gaza occurred on 31 May 2010 when Israel attacked the "Gaza Freedom Flotilla" as it attempted to ship humanitarian aid to the Palestinian population in Gaza, an attack that resulted in the killing by Israel of nine Turkish civilians aboard one of the ships in the flotilla.

38. Israel has, however, recently announced that it intends to change this policy. The Palestinian Independent Commission takes note of this announcement. In the meantime, the United Nations and the international community at large should continue to consistently demand that Israel lift its blockade of Gaza and allow for the sustained and regular passage of essential foodstuffs, medication, building and reconstruction materials, educational supplies and fuel, as well as commercial flows necessary for economic recovery.

39. Furthermore, with respect to accountability, the Palestinian Independent Commission concurs with the views of the Fact-Finding Mission and many other sources that this form of collective punishment is a violation of international humanitarian law and international human rights law, and that, in connection with international humanitarian law, those who have established this policy should be held criminally accountable, pursuant to the grave breaches provisions of the Fourth Geneva Convention of 1949 and as a war crime under customary international law.

40. Moreover, such conduct, targeting a civilian population of that magnitude and for that duration, constitutes a crime against humanity as defined in customary international law and by the International Criminal Court. Similar conclusions were arrived at in the statutes of the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda.

41. The Israeli reports of July 2009 entitled "The operation in Gaza: factual and legal aspects" and of January 2010 entitled "Gaza operation investigations: an update" do not address this question, which is an example of the selectivity of both these reports and of Israeli investigations into possible violations of international humanitarian law and international human rights law perpetrated by the occupying forces. These and other official Israeli reports seem designed not as investigations into the conduct of the Israeli armed forces or to verify possible violations of international law, but rather as an endeavour to legitimize the conduct of Israel's occupying forces.

The termination of restrictions on access to the sea for fishing purposes and allowing the resumption of agricultural activities

42. The Gaza coast on the Mediterranean Sea is 44 km long, stretching from the northern border with Israel to the international border with Egypt. The Oslo Accords allowed Palestinian fishermen to fish in waters up to 20 nautical miles from the Gaza shore. Following the outbreak of the Aqsa Intifada in occupied East Jerusalem on 28 September 2000, Israel unilaterally reduced this zone to 12 nautical miles and also designated a “closed security area”, dubbed KI, with a breadth of 1.5 nautical miles from the Israeli border and a similar area, dubbed MI, with a breadth of 1 nautical mile from the Egyptian border. Following the latest Israeli military operations against Gaza, Israel further reduced the fishing zone to 3 nautical miles, which effectively reduced the total fishing area to 1,300 km². The result of this policy was the reduction of total annual output of the once flourishing Gaza fishing industry from 3,788 tons in 1997 and to 1,800 tons in 2009, a reduction of nearly 60 per cent.

43. This limitation directly affected the food supply of the 1.5 million Palestinians in Gaza which, combined with other limitation of food supplies discussed elsewhere in the present report, has had a significant and deleterious effect on the health and well-being of the civilian population, including in particular children and women, in violation of international humanitarian law and international human rights law.

44. To date, Israel has not complied with this recommendation of the Fact-Finding Mission report. The Palestinian Independent Commission affirms that the fishing industry is one of the important mainstays of the economy of Gaza and provides sustenance to many Palestinian families. Therefore, the continued restrictions placed by Israel against fishing in Gaza continue to constitute a serious violation of international human rights law.

45. Like the fisheries sector, agriculture in Gaza has been especially damaged by Israeli policies and practices. A primary reason for the deterioration of agricultural production in Gaza is that over 25 per cent of agricultural land is situated in areas bordering Israel, which meant that these areas were used by the Israeli occupying forces as the primary theatre for military operations during Operation Cast Lead. Indeed, these areas witnessed the dropping of around 75 per cent of all ordinances launched by the occupying Power against Gaza during the military operations that started on 27 December 2008.

46. The continued siege of Gaza has negated every effort to rehabilitate the once profitable agricultural sector in Gaza, contributed to the high levels of unemployment among Palestinians and had an immensely negative impact on incomes and standards of living. Israel has failed to implement the recommendations of the Fact-Finding Mission in this regard and continues, through the blockade and its recurrent military incursions into Gaza, to impede the rehabilitation of the agricultural sector in Gaza, with implications for the overall economy of Gaza, including the social and economic impact that this policy has on the civilian population.

47. It should be noted that, over the past few years, laudable efforts have been made by a number of organizations to rehabilitate the agricultural sector in Gaza. These efforts included the initiative of former World Bank President James Wolfensohn to secure the requisite financial resources for the purchase of greenhouses constructed by former Israeli settlers in Gaza, which were turned over to the Palestinians after Israel’s 2005 so-called disengagement from Gaza during Ariel Sharon’s premiership. The Palestinians successfully used these greenhouses and developed produce intended for export. These products,

however, had to pass screening by the Israeli security authorities before being allowed out of Gaza. Repeatedly, Israel has prevented the passage of these agricultural products, causing them to rot and thus causing serious economic harm to the Gaza economy, as well as to the economic survival of these agricultural projects.

48. Considering the repeated instances of this unlawful practice and their cumulative effect, they can only be viewed as constituting part of the overall collective punishment policy reflected in this and other measures, such as the limitation on fishing and the prevention of the passage of imports and exports to and from Gaza.

Allow freedom of movement for Palestinians within the Occupied Palestinian Territory — within the West Bank, including East Jerusalem, and between the Gaza Strip and the West Bank — and between the Occupied Palestinian Territory and the outside world

49. An integral aspect of the Israeli blockade of Gaza is denying freedom of movement to Palestinians both within the West Bank and Gaza, and between these areas of the Occupied Palestinian Territory. This is a policy which has, essentially, been in place since the occupation of the West Bank and Gaza in 1967, and has been implemented at different times with various levels of intensity. Following the commencement of the Middle East peace process in 1991 and the conclusion of the Oslo Accords in 1993 and subsequent agreements, freedom of movement improved as limited areas of the West Bank and Gaza returned to Palestinian control. With the outbreak of the Al-Aqsa Intifada in September 2000, Israel reoccupied many of the areas assigned to the PNA according to agreements signed by the Government of Israel with the PLO and the PNA. Since then, Israel has systematically hindered freedom of movement throughout the Palestinian territories, in violation of its obligations under international humanitarian law and international human rights law as the occupying Power.

50. Since the unilateral disengagement of Israel from the Gaza Strip in 2005, the Government of Israel has continued to hamper communication and movement between the West Bank and Gaza through control of the border crossings. This is best reflected in the following statistics, which show the number of days that the various border crossings between Gaza and Israel have been closed.

<i>Crossing point</i>	<i>2006</i>	<i>2007</i>	<i>2008</i>
Erez	159 days	57 days	18 days
Karni	54 days	349 days	225 days
Sufa	75 days	203 days	209 days
Kerem Shalom	127 days	251 days	220 days

51. Since the military aggression of 27 December 2008-18 January 2009, Israel has continued its policy of violating the Palestinian right of movement between the West Bank and Gaza, which is a serious violation of both international humanitarian law and international human rights law, and also contravenes the agreements concluded between the PNA and Israel throughout the peace process.

52. This practice must be viewed in the light of all of its deleterious effects on the economies of the West Bank and Gaza, as well as its harmful and traumatic

effects on the social fabric and on the basic humanitarian and psychological conditions of Palestinian society. The purpose of this policy is to isolate the West Bank and Gaza and to facilitate Israel's ability to impose other oppressive restrictions on each of these areas of the Occupied Palestinian Territory, with harmful effects on the lives and well-being of their respective populations. This policy and its application must also be viewed in the context of the other policies and practices mentioned above, all of which are cumulatively and intentionally designed to inflict collective punishment on the Palestinian people, in direct and grave violation of international humanitarian law and international human rights law.

The release of Palestinian civilians who are arbitrarily detained or imprisoned in Israeli jails and detention centres in connection with the occupation — the release of children should be an utmost priority, and the ceasing of the inhumane, degrading and discriminatory treatment of Palestinian prisoners and detainees; the cessation of interference with national political processes in the Occupied Palestinian Territory and, as a first step, the release of all members of the Palestinian Legislative Council currently in detention, and allowing the movement of all members of the Council between Gaza and the West Bank is also essential

53. Since the occupation of the Palestinian Territory in 1967, Israel has illegally detained and imprisoned a total of almost 800,000 Palestinians, in violation of international law, and denied the Palestinian population their rights pursuant to the International Covenant on Civil and Political Rights and other standards of international human rights law. Of those detainees and prisoners, 70,000 have been arrested in the period since the outbreak of the second intifada in 2000. Of that number, 8,200 remain in Israeli prisons and detention centres, 2,600 are being held without trial in violation of the International Covenant on Civil and Political Rights and other human rights standards and norms, and under deplorable conditions.

54. Furthermore, many of these Palestinian detainees and prisoners are exposed to various forms of degrading and inhumane treatment, including physical and mental abuse, harassment and humiliation, amounting in many cases to torture, which violates, inter alia, article 7 of the International Covenant on Civil and Political Rights. Israel has not taken the appropriate steps to investigate the many documented reports of brutality by its security services and to hold the perpetrators of those violations of international human rights law accountable.

55. More egregiously, Israel continues to keep over 370 children below the age of 16 in detention, some of them as young as 12 years of age, in violation of the Convention on the Rights of the Child, and nearly 100 women who are also exposed to all forms of ill-treatment.

56. In this connection, it is highly regrettable that the Government of Israel has remained wholly intransigent during negotiations undertaken through Egyptian mediation to secure the release of a large number of Palestinian detainees in return for the release of Israeli Corporal Gilad Shalit, who is being held by Palestinian resistance forces in Gaza. Israel's attitude during these negotiations is a cause of considerable concern for the PIC because the Government of Israel allows political considerations to direct these negotiations without regard for the human cost of the continued detention and imprisonment of thousands of Palestinian civilians in violation of international human rights law and international humanitarian law. The PIC also reaffirms that, even if an agreement is reached on the release of Palestinian detainees in return for

Corporal Shalit, Israel remains bound under international humanitarian law and international human rights law to release all remaining detainees and prisoners who have not been fairly tried in accordance with international human rights law and found guilty of a criminal offence.

57. Moreover, Israel continues to hold numerous figures of the Palestinian political leadership, including members of the elected Palestinian Legislative Council. This represents a violation of international human rights law, and of the obligations of the State of Israel pursuant to the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip signed on 13 September 1995. This policy also places further impediments before the ongoing efforts to achieve a just and comprehensive solution to the Palestinian-Israeli conflict. As long as the political leadership of the Palestinian people is not accorded its rights under international human rights law and is not treated with dignity and fairness, trust will continue to be undermined and peace negotiations will continue to face serious obstacles.

58. Israel has also failed to comply with the recommendations of the Fact-Finding Mission pertaining to facilitating the movement of Palestinian public figures, including politicians and members of the Palestinian Legislative Council between the West Bank and Gaza. This has seriously debilitated the work of the Council and hampered the functioning of other Palestinian governmental institutions. More critically, this policy is part of the greater Israeli strategy of creating a rift between the Palestinian communities in the West Bank and Gaza, which also has negative consequences for peace efforts. This policy is yet another manifestation of Israel's collective punishment of the Palestinian people, in violation of international humanitarian law and international human rights law, and represents a further hurdle facing a peaceful resolution of the conflict.

59. The official Israeli reports pertaining to the military operations in Gaza during the period 27 December 2008-18 January 2009 have ignored these matters and disregarded examination of the harmful impacts of such unlawful and aggressive Israeli policies on the Palestinian people and on the prospects for peace in the region.

Palestinian armed resistance groups who hold Israeli soldier Gilad Shalit in detention should release him on humanitarian grounds; pending such release they should recognize his status as prisoner of war, treat him as such, and allow him ICRC visits

60. The PIC took note of the recommendation contained in the Fact-Finding Mission report that Israeli Corporal Gilad Shalit should be released on humanitarian grounds. The commission charged with preparing the present report was not in a position to meet Corporal Shalit or to ascertain that he was being held in conformity with the principles of international humanitarian law. The PIC, however, affirms that Corporal Shalit is an active serviceman with the Israeli occupying forces and, thus, is a combatant within the meaning of the Third Geneva Convention of 1949, which means that his detention is not in contravention of international law. The PIC agrees with the Fact-Finding Mission report that Corporal Shalit qualifies for the status of prisoner of war in accordance with the Third Geneva Convention of 1949, and should be treated as such. The PIC further agrees with the Fact-Finding Mission report that Corporal Shalit should be released on humanitarian grounds, but adds that such release should be part of an exchange agreement for the release of Palestinian detainees and prisoners being held by Israel, the occupying Power. In this regard, Israel should be compelled to approach these negotiations in good faith

and to ameliorate the suffering of Palestinian detainees and their families, instead of allowing these negotiations to be governed solely by unilateral Israeli political considerations. At the same time, the rights of all the Palestinian civilians being arbitrarily detained and imprisoned by Israel must be fully respected and the demands for their humane treatment by Israel, in accordance with international humanitarian law and international human rights law, and for their release must be unrelenting.

The Palestinian Authority should issue clear instructions to security forces under its command to abide by human rights norms as enshrined in the Palestinian Basic Law and international instruments, ensure prompt and independent investigation of all allegations of serious human rights violations by security forces under its control, and end resort to military justice to deal with cases involving civilians

61. As discussed in the Arabic part of the present report, the PIC has fully complied with this recommendation by the Fact-Finding Mission. The PIC issued numerous public calls in the various media outlets in the Occupied Palestinian Territory, including the newspapers and television stations, to invite any person alleging to have been the victim of human rights violations by PNA officials to present their complaints to the PIC. These public calls were not limited to the West Bank: attempts were also made by the PIC to extend this outreach to the Palestinian civilian population in Gaza through various media outlets there. The PIC did not, however, receive any response from media outlets operating in Gaza.

62. To reinforce the independence and integrity of its investigations, the PIC also held numerous meetings with human rights activists and members of non-governmental organizations active in the field of human rights in the West Bank. Furthermore, the PIC held a video conference session with human rights activists from Gaza, to receive information about human rights violations that may have been committed by the authorities there.

63. During the period 4-6 May 2010, the PIC held confidential meetings with all persons who had presented complaints alleging that they had been victims of human rights violations committed by PNA officials in the West Bank. This was followed by a similar session during the period 16-18 May 2010 to meet with persons alleging that they had been victims of human rights violations in Gaza. Among other things, however, the PIC was unable to ascertain whether the Hamas authorities had undertaken any investigations into alleged violations of human rights against individuals, members of the Fatah organization or otherwise. The PIC also met on 20 May with representatives of numerous Palestinian non-governmental organizations from the West Bank to receive their views on the human rights situation in the West Bank.

Palestinian armed resistance groups should undertake forthwith to respect international humanitarian law, in particular by renouncing attacks on Israeli civilians and civilian objects

64. As already noted, the Palestinian Independent Commission was created pursuant to a Palestinian National Authority Presidential decree. However, the Palestinian National Authority has been unable to exercise effective control of Gaza since the taking over of power by Hamas. Despite its independence, the Palestinian Independent Commission was unable to secure the cooperation of Hamas and was thus unable to undertake any investigations in Gaza into the use of “crude rockets” by any of the armed resistance groups.

65. Nonetheless, the PIC affirms that, should it be acknowledged that the armed resistance groups in Gaza did intentionally target Israeli civilians, then such a practice would undoubtedly represent a violation of international humanitarian law. The PNA has on many occasions condemned rocket firing and called on armed resistance groups in Gaza to respect international law and to exercise their right to self-defence in a manner that ensures that the Palestinian people maintain their moral high ground and does not harm their national cause and interests. It is the position of the PIC to reaffirm the basic premise of the present report that international humanitarian law prohibits reprisals in times of armed conflict. Consequently, any claim of reprisals, whether by the Government of Israel or the Palestinian armed resistance groups, is hereby rejected.

66. In this regard, it is factually established that, during the period from 27 December 2008 to 18 January 2009, a number of rockets and mortar projectiles fired by Gaza armed resistance groups fell in Israel, causing the alleged death of three Israeli civilians and the alleged destruction of some civilian property of an undisclosed nature and extent.

67. The Fact-Finding Mission has not been able to verify these allegations. The present report does not challenge or confirm these facts because the PIC has not been in a position to verify them. However, for the purposes of the present report, the PIC admits to the facts presented by the Fact-Finding Mission in its report, to the effect that three persons were killed and that some civilian properties in southern Israel were damaged.

68. It is, however, important to understand that one of the salient features characterizing the dynamics between the Palestinian armed resistance groups in Gaza and the Government of Israel is their extremely asymmetric nature. The enormous disparity in military capabilities between the two sides is self-evident and need not be repeated. The Palestinian resistance's capability to respond to Israel's full arsenal of weaponry, including fighter airplanes, helicopter gunships, tanks and artillery, as well as substantial ground forces, is limited to sporadic "crude rocket" firing and mortar shelling. Yet it is also imperative to recall that this is a situation of an occupying Power versus an occupied people, who constitute a defenceless civilian population entitled to protection under international law.

69. If and when civilian targets or populations have been affected by such "crude rocket" firing, it was essentially because of the crude nature of the weapon and the inability to control where the fired projectile lands. While this is in no way intended to justify any harm caused to innocent civilians, it cannot be considered a violation of international humanitarian law, per se. Furthermore, each alleged incident of harm to civilian persons or civilian property would have to be investigated on an individual basis, and the Palestinian Independent Commission is not in a position to do so without the cooperation of both the Government of Israel and the armed resistance groups in Gaza.

70. Nevertheless, and as a matter of principle, international humanitarian law recognizes a right of compensation for property damage and for those who have been victimized by such attacks — a position which the Palestinian Independent Commission advocates, especially if undertaken as part of an agreement under which both sides compensate respectively the Palestinian and Israeli victims of the military operations that occurred during the period from 27 December 2008 to 18 January 2009.

Concluding remarks on the implementation of the recommendations of the Fact-Finding Mission report

71. It should be noted that the comments and answers furnished by the Government of Israel to the recommendations of the Fact-Finding Mission report and to the concerns expressed by other States, intergovernmental organizations, non-governmental organizations and civil society have invariably been justificatory of the military aggression perpetrated against Gaza on the basis of alleged security concerns. Israel has never addressed the legality and overall effect of all the repressive and collective punishment measures, policies and practices it implements in the Occupied Palestinian Territory and against the Palestinian civilian population. Instead, Israel has sought to compartmentalize these various practices and present justification for singular restrictive, aggressive and destructive actions, without regard to their legal, social, economic, humanitarian and political impact. Surely an independent and fair investigation of these cumulative practices would reveal a policy of intentional collective punishment by means of all these different measures. Israel has never undertaken a thorough and fair assessment of the cumulative effect of its repressive practices and policies. This is for the obvious reason that it would not only expose this repressive policy of the occupying Power, but would also expose the architects and the senior executors of these policies and practices to criminal responsibility for war crimes and crimes against humanity.

72. Israel's common responses to the serious concerns repeatedly expressed by the international community about the perpetration of violations of international humanitarian law and international human rights law by its occupying forces over the decades is to point to a limited number of suicide bombings and a limited number of "crude rockets" producing limited harmful effect and to repeatedly attempt to distort and mischaracterize the conflict as a so-called "war on terror". With respect to the latter, it must be emphasized that the allegation of the Government of Israel is that, in four years, 13 people have been killed by these crude rocket attacks from Gaza, of whom four were military personnel, thus limiting the overall harm suffered by Israel to nine civilians killed during that period.

73. This response fails to display any concern towards the number of victims caused by Israel's military attacks and reprisals, collective punishment and colonization policies and measures, all of which constitute serious violations, many amounting to grave breaches, of international humanitarian law and international human rights law. Israel has never addressed its responsibility in connection with its policies and practices on the subject; instead it has tried to shift the blame onto the Palestinians, and in particular Hamas. Israel also endeavours to create the distorted impression that the Palestinians, and in particular, Hamas, are a people dedicated to terrorism against Israel. The Palestinian people, and for that matter people of goodwill all over the world, ask themselves the question why the killing by Hamas of nine Israeli civilians as a result of "crude rocket" firing over a period of four years deserves worldwide condemnation, while at the same time the killing of over 1,300 Palestinian civilians (including over 300 children and 100 women) and the injuring of almost 6,000 Palestinians within a period of almost four weeks and the collective punishment of 1.5 million civilians as described above can be treated with benign neglect or categorized as "collateral damage" of the conflict. The Palestinian Independent Commission reiterates that the perpetrators of these crimes against the Palestinian people must be accountable in accordance with international law.

The role of civil society in identifying Israeli violations of international humanitarian law and international human rights law

74. The Palestinian Independent Commission notes that a number of human rights organizations, including Amnesty International and Human Rights Watch, and more particularly Palestinian and Israeli human rights non-governmental organizations, such as B'Tselem, Al Haq, the Al Mezan Center for Human Rights and the Palestinian Centre for Human Rights, have consistently identified violations of international humanitarian law and international human rights law committed by the Government of Israel and its occupying forces with complete impunity. The Palestinian Independent Commission takes this opportunity to acknowledge with gratitude these and other human rights organizations and advocacy groups, as well as many in the media throughout the world who have focused attention on the egregious violations being committed by Israel, the occupying Power, against Palestinian people. These independent sources add support to the report of the Fact-Finding Mission and to the findings and conclusions contained in the present report.

Accountability

75. According to General Assembly resolution 64/10, the investigations to be undertaken by both the Israeli and Palestinian sides are to contribute “towards ensuring accountability and justice”.

76. Accountability requires the establishment of truth, which is what the Fact-Finding Mission sought to do. The request of the General Assembly to the Israeli and Palestinian authorities to carry out their respective investigations is intended to advance the goal of the truth. Regrettably, the reports issued by the Government of Israel to date do not do so. Instead, those reports seem intended to provide justifications of a dubious nature concerning specific attacks committed by the Israeli occupying forces in Gaza during the period from 27 December 2008 to 18 January 2009. Such reports do not advance the purpose of truth and justice, do not advance the objective of accountability, do not help to bring an end to impunity and do not advance the goals of reconciliation and peace.

77. Those found to have ordered and committed serious violations of international humanitarian law, and more specifically those incidents that amount to war crimes and crimes against humanity, should be held accountable in the appropriate legal systems, and that includes both the military and political leadership who have either used their command authority to order these violations or have failed to prevent them once they discovered their perpetration, and those who failed to prosecute and punish those who committed them.

78. In this regard, the Palestinian Independent Commission takes note of the announcement on 6 July 2010 by the Israeli Military Advocate General that investigations into four incidents that took place during Operation Cast Lead have led to the taking of action against at least four personnel in the Israeli occupying forces. While this is a relevant development, the Palestinian Independent Commission urges Israel to comply with the calls by the international community to carry out a truly independent, credible investigation in conformity with international standards, as called for by the Fact-Finding Mission and the General Assembly. Israel should open full investigations into the many more cases of violations of international humanitarian law and international human rights law that were recorded both in the Fact-Finding Mission report and the numerous reports of non-governmental and relief organizations, which have consistently reaffirmed the perpetration of serious

human rights violations and grave breaches of international humanitarian law by the Israeli occupying forces against Palestinian civilian population, particularly in the Gaza Strip from December 2008 to January 2009. The Palestinian Independent Commission hopes that such an independent Israeli investigation will lead to holding accountable all those that have planned, ordered and committed violations of international humanitarian law or international human rights law during Operation Cast Lead. In such steps, the modalities of reparation and compensation that Israel, the occupying Power, is obligated to make to the victims of violations and their families must also be considered.

Concluding remarks and observations

79. The Palestinian Independent Commission is cognizant of the reality that every Government must balance between the needs for security and the protection of human rights. This balancing process must be undertaken on the basis of the established principles of international law, particularly the protections and prohibitions enshrined in international humanitarian law and international human rights law, and the realization that some human rights are non-derogable, especially the right to life and protection against torture, cruel, inhuman and degrading punishment or treatment.

80. The Government of Israel has all too often sought to legitimize and justify such gross violations perpetrated by its occupying forces by presenting claims of security. Seldom, however, has it convincingly presented any basis in international law for such violations or truly established the causal connection between its repressive actions and the enhancement of security for its own population. Instead, it has shown a tendency towards blatant impunity and disregard for international law, as well as justification of its indiscriminate, disproportionate and collective punishment measures against the Palestinian people, as if no limitations applied to Israel, irrespective of whether they arise under international humanitarian law and international human rights law. All such actions contravene and breach Israel's obligations under international law as an occupying Power and as a Member State of the international community of nations under the Charter of the United Nations.

81. Such Israeli impunity is rooted in self-bestowed and internationally fostered exceptionalism over the decades that disregards and abrogates all relevant provisions of international law and relevant United Nations resolutions, not only resulting in systematic and grave violations of international humanitarian law and international human rights law, but also constituting the core and most challenging impediment to reaching a just and lasting peace settlement between Israel and Palestine. Considering that a prospective peace requires justice and peaceful coexistence and cooperation between the two peoples, it is indispensable for the Government of Israel to change its approach of repressive and collective punishment to one of respect for and observance of the rights of the Palestinian people, who tragically continue to suffer under its military occupation.

82. International humanitarian law and international human rights law reflect and represent the commonly shared values of humankind. The international community has committed itself to the respect and observance of those values and those specific norms contained in international conventions, covenants, statutes and treaties as well as those that are reflected in customary international law. Provision for their enforcement has been included in a variety of treaty mechanisms, which can be equated in terms of domestic law to administrative and civil measures and which have, in fact, been incorporated in the national

legislation of many countries. Many of the violations of these values and norms have been addressed in international criminal law, which has criminalized a number of violations, including those contained within the meaning of war crimes, genocide, crimes against humanity and torture. These protections and the criminalization of their denial apply without discrimination to all human beings, and no State can claim exception.

83. Admittedly, three Israeli civilians were killed during the period from 27 December 2008 to 18 January 2009 by misguided “crude rockets” fired by the armed resistance groups in Gaza, and that cannot be justified even though it was not intended. At the same time, over 1,300 Palestinian civilians (including over 300 children and 100 women) were killed in Gaza during the Israeli military aggression, while over 6,000 civilians were injured, many severely and permanently, and thousands of civilians were displaced, their homes and communities reduced to rubble by the Israeli aggression and remaining in that state because of the punitive and illegal blockade Israel continues to impose on the traumatized Palestinian civilian population. The comparison between these numbers is shocking to the conscience of any people. And yet, the Palestinian Independent Commission acknowledges that it is well established in both Judaism and Islam that preventing the death of even one human being is sacrosanct.

84. Sadly, the Government of Israel’s reports prepared in response to the request of the General Assembly show how extensive its efforts have been to present spurious, ill-founded and overstretched attempts, barely based on the norms and rules of international law, to explain why it used indiscriminate and excessive force against the Palestinian civilian population, causing the unprecedented harm very briefly described above. There is not a single incident among the hundreds of incidents resulting in the large number of casualties and the high level of civilian destruction and trauma mentioned in the Fact-Finding Mission’s report, and in other sources, about which the Government of Israel and its forces have admitted to a single violation. For nearly every instance referred to in the Israeli reports of July 2009 and January 2010 they claim military necessity, or that fire emanating from a civilian target against Israeli forces justified the harm that resulted from the military action. It should have appeared curious, even to the drafters of the report, that so many incidents which others considered to be violations of international humanitarian law were always found justifiable or excusable. The reader of the Israeli reports will also not fail to notice that facts reported by the Fact-Finding Mission and other human rights organizations have been avoided. Nevertheless, it is noteworthy that Israel, in a separate action, readily admitted responsibility to a United Nations Board of Inquiry regarding Israeli military attacks upon United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) schools, health centres and its headquarters in Gaza during Operation Cast Lead. Obviously, the admission to damage to United Nations property, including Israel’s willingness to provide US\$ 10.5 million in compensation to the United Nations, does not carry with it the same legal and political consequences as would admissions to wrongful conduct against Palestinians. Even in the case of admission to liability in the attack upon the UNRWA school, there was no admission of criminal responsibility or of responsibility for violations of international humanitarian law by the Israeli occupying forces. The conclusion has to be in the nature of a rhetorical question, namely: how is it possible that so many incidents resulting in so many deaths and injuries to innocent and defenceless civilians, including children, women, the elderly and infirm persons, and causing such wanton destruction and damage to property, including to vital civilian infrastructure such as hospitals, children’s schools,

and water, sanitation and electricity systems necessary for the functioning of daily life and the well-being of the society, is consistently justified and excused, in certain instances as an “error in judgment” and in other instances as an innocent “mistake”?

85. The enormity of the harm that was inflicted upon the Palestinian people in Gaza, in addition to the harm inflicted upon the people of the West Bank during this time, as well as on earlier equally tragic occasions, is no longer in question, as the facts have become so well known worldwide. What is astounding is the lack of responsibility by the Government of Israel to account for this immeasurable human harm, amounting to war crimes and crimes against humanity, and the lack of expression of concern for the damage committed by its occupying forces. Instead, we witness a cynical attempt to justify the harm committed and a cover-up of violations of international humanitarian law and international human rights law by those who directly perpetrated these acts and by their superiors, both military and civilian.

86. The inference from such conduct can only be either that the Palestinians are considered by their occupier as lesser human beings, or that whatever harm is inflicted upon them, no matter how indiscriminate, excessive and disproportionate, is justifiable on the basis of Israel’s exceptionalism and granted impunity. Israel has on many occasions shown how concerned it is about its citizens, for example Corporal Shalit, who, as noted above, is held by one of the Palestinian armed resistance groups in Gaza (not under the control of the Palestinian National Authority). This is a laudable position on the part of a Government and its people who are concerned for their countrymen. If a similar concern for the lives and well-being of Palestinians were to be displayed by the Government of Israel and its people, it would be the most fundamental change in the dynamics of this prolonged, illegitimate 43-year occupation and could surely serve as a basis for future peace and reconciliation between the two people. Regrettably, the pursuit of a political settlement for peace without a humanistic foundation that genuinely recognizes the value of human life, the dignity of all people and the need for justice is not likely to produce reconciliation or a durable peace.

87. The opportunity given by the General Assembly to both Israel and the “Palestinian side” to address the issue of harm in the context of the Israeli military operations between 27 December 2008 and 18 January 2009 should have been opportunity for the Government of Israel to finally take responsibility, as opposed to seeking to evade it. Israel should have seized this opportunity to express its concern, at both the national and international levels, for the harm inflicted on the Palestinian people, and to change the discourse from that of a superior military occupying Power inflicting harm on a captive civilian population that is unable to defend itself to one of human concern, morality and justice. Such a change in discourse, perception and actions is an indispensable requisite for peace and coexistence in the future. There can be no difference in the value of the human life and dignity of an Israeli and a Palestinian. Moreover, in the context of the present report, there can be no moral equivalency between the deaths of three Israeli civilians and the deaths of over 1,300 Palestinian civilians, as well as the injury of over 6,000 other Palestinian civilians.

88. The numbers and the facts speak for themselves and it is time for nations to speak on the basis of humanistic terms and to ensure accountability and justice, if they are genuinely interested in peace for Palestine and Israel and a new era for the Middle Eastern region as a whole, in which international law, human rights, security and coexistence are accorded primacy over conflict,

aggression, force, violence, instability and disregard for human rights. The importance of accountability and redress for wrongs committed is central to the three monotheistic religions to which the Holy Land is home. This is stressed in a *hadith* by the Prophet Mohammed (Peace be upon Him): “If you see a wrong you must right it with your hand, if you can, or with your words or with your gaze — or in your heart, but that is the minimum required by of faith.” Moreover, as stated in the Talmud, “the world rests on three pillars; it rests on truth, peace and justice”, and in a Talmudic commentary it is stated that “if justice is realized, truth is vindicated and peace results”. Further, in this regard, it is well established in contemporary international law and contemporary international relations, particularly with respect to post-conflict justice, that, as simply and eloquently stated by Pope John Paul II, there is “no peace without justice”.

Palestinian Independent Investigation Commission established pursuant to the Goldstone report: violations allegedly committed by Palestinians

Members of the Commission

Chairman: Judge Issa Abu Sharar, former Head of the Supreme Court and former President of the Supreme Judicial Council

Member: Judge Zuhair al-Surani, former Head of the Supreme Court and former President of the Supreme Judicial Council

Member: Mr. Ghassan Farmand, Professor of Law at Birzeit University

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Mr. Mahmoud Cherif Bassiouni, international expert

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I. Introduction

1. The present report is submitted pursuant to United Nations General Assembly resolution 64/10, entitled "Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict". In that report (the Goldstone report), the Head of the Mission, South African Justice Richard Goldstone, referred to human rights violations that had been perpetrated during the attack on the Gaza Strip that was carried out by Israeli occupation forces between 27 December 2008 and 17 January 2009. The report noted that during the same period, in addition to the violations of international humanitarian law and international human rights law that amounted to war crimes and crimes against humanity that were perpetrated by the occupation forces, the Palestinian side was also responsible for human rights violations. The United Nations Fact-Finding Mission recommended that investigations should be launched into the violations that it had reported.

2. In the light of the foregoing, on 25 January 2010 an independent Palestinian commission was formed: the Palestinian Independent Investigation Commission established pursuant to the Goldstone report. The Commission was established pursuant to a presidential decree issued by Mr. Mahmoud Abbas, President of the State of Palestine, Chairman of the Executive Committee of the Palestine Liberation Organization and President of the Palestinian National Authority.

3. The investigation conducted by the Commission concentrated on human rights violations by the Palestinian side in both the West Bank and the Gaza Strip during the period referred to above, on the basis of the Goldstone report. The investigation was genuine, independent and professional, and sought no justifications or grounds for equivocation.

4. Nevertheless, we cannot ignore the patent truth that all the violations that have happened and are continuing to happen are the outcome and manifestation of one thing and one thing only, namely, the Israeli occupation of Palestinian land.

5. While we were preparing the present report, we felt that a new day was beginning to dawn, giving grounds for hope that justice would have a place in this part of the world and that the criminals who continually and systematically perpetrate international crimes and flagrant violations would find it increasingly difficult to escape due process. We felt that the cries of the victims were finally penetrating the walls of the international justice institutions, which had been rendered weak and ineffectual by the narrow political considerations that had overridden the values of humanitarianism, justice and equality. The Commission avers that unless people who are facing injustice, oppression and crime feel that they have some protection and are able to truly enjoy their human rights, dignity and justice, there will be no peace, security or stability. On the contrary, violations will continue to be perpetrated and the suffering will never end.

6. The Commission believes that no investigative or fact-finding commission can address violations of any type without taking into consideration the influencing factors, circumstances and legal framework within which violations take place. Therefore, and in order to place matters in their proper context, there is no choice but to consider the legal status of the Occupied Palestinian Territory.

7. After the First World War, by virtue of the Mandate for Palestine that entered into force in September 1922, the League of Nations entrusted to

Britain a mandate over Palestine. That Mandate was in keeping with the aims of the Covenant of the League of Nations, which in article 22, concerning mandates over countries that had not reached a stage of development that enabled them to be self-governing, provided that administrative advice and assistance should be rendered to such countries by a Mandatory until such time as they were able to stand alone.

8. In 1947, Great Britain announced its decision to withdraw from Palestine, and specified that 1 August 1948 would be the date on which its tutelage would terminate. It subsequently brought forward that date to 15 May 1948.

9. On 29 November 1947, the United Nations General Assembly adopted resolution 181 (II) concerning the future government of Palestine, in which it recommended to the United Kingdom, as the mandatory Power for Palestine, and to all other Members of the United Nations the adoption and implementation of the Plan of Partition whereby independent Arab and Jewish States and a special international regime for the city of Jerusalem would come into existence.

10. On 14 May 1948, on the basis of that General Assembly resolution, Israel announced its independence, and an armed struggle began between Israel and several Arab States. The Partition Plan was never implemented: Israel seized by force large swathes of the region, carried out mass expulsions and killings of the Palestinian population, and destroyed hundreds of Palestinian villages and communities, thereby creating the Palestine refugee problem. The wide-ranging international crimes that were committed led to the dispossession and displacement of a large percentage of the Palestinian population and the seizure of a sizeable proportion of its land. It should be noted that Zionist organizations had targeted the Palestinian Arabs and their property well before the resolution on partition: such organizations had carried out scores of hostile operations against the Palestinian Arabs that had caused hundreds of casualties as well as destroying property and agricultural land.

11. Under the aegis of the United Nations, armistice agreements that are known as the Rhodes agreements were signed by Israel on the one hand and, on the other hand, each of Egypt, Jordan, Lebanon and Syria on 24 February, 3 April, 23 March and 20 July 1949 respectively. Armistice lines were determined and subsequently became known as “green lines” because of the colour that was used to draw them on maps. It was agreed that no interpretation could be given to agreement provisions that would prejudice a final political settlement between the parties. The agreements also stressed that agreements reached with regard to territory, future borders and the related claims of any of the parties should not be prejudiced.

12. The General Assembly in its resolution 273 (III), concerning admission of Israel to membership in the United Nations, recalled its resolutions 181 (II), concerning the future government of Palestine, and 194 (III) of 11 December 1948, which addresses the return of Palestinian refugees, and demanded that they should be implemented. On behalf of his Government, the representative of Israel undertook before the Special Political and Decolonization Committee to honour and implement resolutions 181 (II) and 194 (III). Israeli membership of the United Nations was therefore conditional upon its application of and compliance with international resolutions.

13. From that time to the present date, hundreds of international resolutions on Palestine have been adopted and, as was reaffirmed in General Assembly resolution 57/107 of 3 December 2002, the United Nations has a permanent responsibility towards the question of Palestine until the question is resolved in

all its aspects in a satisfactory manner in accordance with international resolutions. That affirmation indicates that Palestine will remain the responsibility of the United Nations until the Palestinian people gains the right to self-determination, a right that is considered to be a peremptory norm of international law, and establishes a sovereign independent State as the embodiment of that right, as has been set forth in many General Assembly and Security Council resolutions.

14. Subsequent to the Israeli aggression of 1967, Israel occupied all the remaining Palestinian land to the east of the Green Line. Thus, the West Bank, including East Jerusalem, and the Gaza Strip became subject to Israeli occupation. One international resolution after another was adopted, in particular, Security Council resolutions 242 (1967) and 338 (1973). The former emphasized the inadmissibility of the acquisition of territory by war and called for the withdrawal of Israel armed forces from territories occupied in the recent conflict.

15. The Palestinian lands that fell under the control of Israeli forces subsequent to the Israeli aggression of June 1967 are considered to be occupied territories as defined by the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949. Furthermore, a number of Security Council resolutions stress that the term "occupied territories" must be applied to those lands.

16. Scores of General Assembly resolutions have affirmed that the provisions of the 1949 Fourth Geneva Convention are applicable to and valid for the Occupied Palestinian Territory. Such resolutions include 2443 (XXIII) of 19 December 1968, in which it was decided to establish a Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories. That was the first General Assembly resolution to demand that Israel should respect its obligation to apply the Fourth Geneva Convention in the occupied Arab territories. Scores of other relevant General Assembly resolutions have been reiterated every year, including 2546 (XXIV) of 11 December 1969, 2727 (XXV) of 15 December 1970, 3092 (XXVIII) of 7 December 1973 and 43/58A and 43/58B of 6 December 1988.

17. By their daily practices in the Occupied Palestinian Territory, the Israeli occupying authorities have violated their legal obligations under the provisions and principles of international humanitarian law, customary humanitarian law and international human rights law. The Israeli forces and military administration have committed, inter alia, the following crimes: the transfer of civilian inhabitants of the occupying State to the Occupied Palestinian Territory, the establishment of hundreds of settlements and the creation of an administrative system that controls all aspects of the lives of the Palestinian population, with a view to promoting the well-being of the Jewish settlers. Furthermore, all natural resources are controlled and used for the benefit of those settlers. Land has been appropriated and annexed in a manner inconsistent with the laws that govern the role and presence of a military occupier in an occupied zone. In addition, extrajudicial killings and arbitrary detentions have been carried out, the conditions under which protected civilian populations live have been made difficult, populations have been forcibly relocated and restrictions placed on their movements with a view to minimizing the Palestinian demographic factor and preventing the Palestinian people from exercising its right to self-determination.

18. In addition to the foregoing, the Israeli occupying authorities, throughout their long occupation of Palestinian territory, have changed the legislative system that was in place before the occupation by issuing hundreds of military orders, the aim of which was to reinforce the predominance of the occupation

and control the status of the inhabitants and land, with complete disregard for the welfare of the protected population under occupation, concern for which is one of the most important principles of international humanitarian law, and in breach of the principles and provisions of the 1949 Fourth Geneva Convention and the Hague Regulations of 1907.

19. In 1980, the Israeli occupying authorities promulgated the Basic Law: Jerusalem, whereby that city is proclaimed as the capital of Israel. Under that Law, the western part of Jerusalem and the eastern part that was occupied in 1967, “complete and united”, are stated to be the capital of Israel. The Law also provides that Jerusalem is the seat of the President of the State, the Knesset, the Government and the Supreme Court. In 2001, the Knesset added a new article to the Law which provides that no authority that is stipulated in the law of the State of Israel or of the Jerusalem Municipality may be transferred to a foreign body.

20. The annexation by Israel of occupied Jerusalem contravenes the purposes and principles of the Charter of the United Nations, which provide that all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations. The annexation of East Jerusalem also contravenes the obligations of the occupying State under the provisions and principles of international human rights instruments, international humanitarian law and the peremptory norms of international law, including the principle of the rights of peoples to self-determination and permanent sovereignty over their natural wealth and resources.

21. Security Council resolution 478 (1980) of 20 August 1980 affirms the illegality of Israel’s conduct in that regard. In it, the Council decided not to recognize the “basic law” and called upon those States that had established diplomatic missions in Jerusalem to withdraw them. Scores of General Assembly resolutions also reject the measure.

22. The Palestinians, through their only legitimate representative, the Palestine Liberation Organization which, pursuant to General Assembly resolution 3237 (XXIX), has had the status of Permanent Observer at the United Nations since 1974, have made every endeavour to bring about a just peace based on United Nations resolutions and, in particular, Security Council resolution 242 (1967) and other pertinent Security Council and General Assembly resolutions. Their aim is the establishment of a Palestinian State on the Palestinian land that was occupied in 1967 and the withdrawal of occupying forces from that land, as well as the settlement of the issue of the Palestine refugees in accordance with General Assembly resolution 194 (III). Those efforts led to the signature by the Palestine Liberation Organization and Israel of the Oslo Declaration of Principles on 13 September 1993; the Cairo Agreement on Gaza and Jericho on 5 May 1994; and the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip on 28 September 1995.

23. In the light of those agreements, a Palestinian national authority was established in order to exercise self-rule over certain parts of the Palestinian territory occupied since 1967 and manage and facilitate certain administrative and functional tasks. As detailed in the agreements that had been concluded, that authority was granted specific administrative, legislative and judicial powers for an interim stage to 1999, before the peaceful settlement of the struggle and the conclusion of permanent-status negotiations.

24. The Israeli occupation continued to control the occupied territory and redoubled its appropriation of land. It built more settlements while conducting pro forma negotiations that were designed to gain time in order to impose facts on the ground that would affect the outcome of any future final settlement. As a result, Palestinians lost hope that there would ever be a peace that would enable them to exercise their right to self-determination and sovereignty over their land and resources in accordance with international resolutions and principles, and this led to the outbreak in September 2000 of the al-Aqsa intifada. The occupation responded by suppression, killing, arbitrary detention, the destruction of property, various forms of collective punishment, retaliation against the civilian population, the demolition of homes, the storming of Palestinian towns in April 2002 and the destruction of every Palestinian National Authority seat and centre.

25. Military occupation is viewed by contemporary international law as illegal and as one form of violation by a State of its international undertaking to prohibit the threat or use of force. It is therefore not reasonable for the rules of international law to impose an obligation on the inhabitants of occupied territory to submit to the interests of those who are in breach of their own obligations. The Palestinian struggle derives its legitimacy from the unquestionable right of peoples to self-determination as one of the means to which peoples have recourse in order to remove obstacles to their free exercise of that right. It also derives legitimacy from the right to self-defence, which is one of the lawful manifestations of a population's opposition to an occupier which uses its armed forces to consolidate and maintain its occupation of and control over the land. There are grounds for that legitimacy in many international resolutions, including, inter alia, General Assembly resolution 2649 (XXV) of 30 November 1970, which affirms the legitimacy of the struggle of peoples under colonial and alien domination recognized as being entitled to the right of self-determination, and General Assembly resolution 2787 (XXVI) of 6 December 1971, which confirmed the legality of the peoples' struggle for self-determination and liberation from colonial and foreign domination, including that of the Palestinian people. Scores of other General Assembly resolutions have also affirmed that right.

26. Not only United Nations resolutions, but also international humanitarian legal instruments and, in particular, the four Geneva Conventions of 1949 and the First Additional Protocol of 1977, assert the right of resistance combatants to enjoy legal protection and gain the legal status of combatants and, consequently, to be treated as prisoners of war.

27. For their part, resistance combatants must, when carrying out military operations, respect and apply the rules and norms of war and other obligations under international humanitarian law.

28. On 7 June 1982, Palestine presented a unilateral written undertaking to Switzerland, the depositary of the Geneva Conventions, to be bound by the Fourth Geneva Convention and other international instruments. Switzerland accepted that undertaking without implying that it represented an instrument of ratification. The Declaration of Independence issued by the Palestinian National Council in 1988 clearly stated that the State of Palestine would respect the provisions of the Charter of the United Nations and the Universal Declaration of Human Rights.

29. What possibly concerns us most about the current functional division is its impact on the nature and content of the legal terms of reference that govern the relationship of the Palestinians with each side, namely, the Palestinian National Authority on the one hand and, on the other hand, the occupying State of Israel.

As a result of the duplication whereby a Palestinian national authority was established in order to exercise self-rule over parts of the territory while the occupation of its territory continues, the Palestinians are controlled by a twofold international legal system, which varies depending on the administrative and political system to which they are subject.

30. The Palestinians are governed by the system of international human rights law constituting the legal system that regulates the relationship between citizen and State, which in this case is the relationship between Palestinian and Palestinian National Authority, while at the same time being subject to the system of international humanitarian law, the rules and provisions of which regulate the relationship between the occupier and the civilian population in occupied territory. That system also comprises international human rights law and, in particular, the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. That system will remain in force for as long as the occupation continues to oppress the Palestinian territory, regardless of the existence of the Palestinian National Authority. The International Court of Justice Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory refers to that situation when it states in paragraph 78 that the territories situated between the Green Line and the former eastern boundary of Palestine under the Mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying Power. Subsequent events in these territories have done nothing to alter this situation. All these territories (including East Jerusalem) remain occupied territories and Israel has continued to have the status of occupying Power. The Opinion further stated, in paragraph 112, that Israel, as the occupying Power, is bound by the provisions of the International Covenant on Economic, Social and Cultural Rights. Furthermore, it is under an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities.

31. However, the daily practices of the Israeli occupying authorities well exceed the imposition of obstacles to the undertaking by the Palestinian National Authority of its duties, and sabotage the Authority's role, disrupting the lives of the Palestinian people, as when the Palestinian President Yasser Arafat was kept under siege until the day he died. The goal was to destroy any serious attempt by the Palestinian people to realize its national rights, and to maintain Israeli control over the land and resources, leaving the Palestinian people to deal with the administrative details of their daily lives, and that goal is clearly demonstrated by the daily realities of the occupation.

32. On 18 December 2003, the Prime Minister of Israel at that time, Ariel Sharon, announced at the fourth annual Herzliya Conference the "Disengagement Plan", whereby Israel initiated separation or disengagement from the Palestinians. The Plan soon became official policy: it was adopted by the Israeli Government on 6 June 2004 and by the Knesset on 25 October 2004.

33. Under the Plan, as set forth in the official document, Israel unilaterally determined that its occupation forces should withdraw from the Gaza Strip and certain Palestinian areas in the northern West Bank. It would also dismantle the following settlements in the Gaza Strip: Morag, Netzarim, Kfar Darom, Elei Sinai, Dugit, and Nisanit and the Gush Katif bloc; and four settlements in the northern West Bank: Ganim, Kadim, Sa-Nur and Homesh.

34. The "Disengagement Plan" did not, it was clear, mean that the Israeli occupation of the areas from which it would withdraw would end: it was in fact

a redeployment of armed forces. The Plan affirms that Israel, in order to maintain security, has the right after disengagement to take a set of security measures on Palestinian territory, as set forth below:

- (a) The State of Israel will continue to maintain exclusive authority in Gaza air space and will continue to exercise security activity in the sea off the coast of the Gaza Strip;
- (b) The Gaza Strip and the areas of the West Bank from which Israeli forces are withdrawn shall be demilitarized and shall be devoid of weaponry, the presence of which does not accord with the Israeli-Palestinian agreements;
- (c) The State of Israel reserves its fundamental right of self-defence, both preventive and reactive, including where necessary the use of force, in respect of threats emanating from the Gaza Strip and the northern West Bank;
- (d) In other areas of the West Bank, current security activity will continue;
- (e) The State of Israel agrees that by coordination with it, advice, assistance and training will be provided to the Palestinian security forces in order to combat terrorism and maintain public order;
- (f) No foreign security presence may enter the Gaza Strip and/or the West Bank without being coordinated with and approved by the State of Israel;
- (g) The State of Israel will continue to maintain a military presence along the border between the Gaza Strip and Egypt (Philadelphi Route);
- (h) The State of Israel will continue building the Security Fence, in accordance with the relevant decisions of the Government. The route will take into account humanitarian considerations;
- (i) The completion of the plan will serve to dispel the claims regarding Israel's responsibility for the Palestinians in the Gaza Strip.

35. The Gaza Strip continues to be occupied territory, as do the West Bank and the eastern part of the city of Jerusalem, which were seized by the Israeli occupation authorities during the June 1967 war. All those territories are occupied territories as understood by the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949.

36. On the basis of the precepts of general international law, the unilateral disengagement of Israel from the Gaza Strip, which is an inalienable part of Palestinian territory, was effectively a redeployment of occupation forces away from that area rather than a termination of the state of occupation, given that the withdrawal did not extend to all components of that Palestinian geographical area. The occupation continues to prevent Palestinians and their legitimate representative, the Palestine Liberation Organization, from exercising real and legal sovereignty over the Gaza Strip: since withdrawal, the Israeli occupying authorities have maintained absolute control of the air space and territorial waters as well as of certain administrative affairs.

37. At the 23rd plenary meeting of its tenth emergency special session, held on 8 December 2003, the General Assembly decided, in resolution ES-10/14, to request the International Court of Justice to urgently render an advisory opinion on the legal consequences arising from the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory, including in and around East Jerusalem.

38. On 9 July 2004, the International Court of Justice issued its Advisory Opinion on that matter. It affirmed that the Fourth Geneva Convention is applicable to the Occupied Palestinian Territory and that Israel is legally bound by the provisions of the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the United Nations Convention on the Rights of the Child. It also affirmed that the legitimate rights of the Palestinian people include the right to self-determination and that the acquisition and annexation by force of Palestinian territory by the occupying State is illegal. The Court concluded that the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law and that construction of the wall is contrary to international law.

39. The aim of the Israeli occupier in stating that Gaza is no longer occupied is, without question, to shirk its legal obligations as occupier and deal with the Strip as if it were sovereign territory, thereby giving Israel what it claims is the legitimate right to defend itself against what it calls "terrorist attacks". Another of its aims is to completely separate the Gaza Strip from the West Bank, thereby sabotaging the right of the Palestinian people to exercise its right to self-determination and the territorial integrity of the Occupied Palestinian Territory.

40. On 19 September 2007, Israel declared the Gaza Strip hostile territory, thereby paving the way for the imposition of the siege against it. As a result, and in flagrant violation of the rules of international law and the legal obligations of Israel as the occupying Power, the living and humanitarian conditions of more than 1.5 million people have become extremely difficult. As the occupying Power, Israel is obliged by the Hague Regulations of 1907 and the Fourth Geneva Convention of 1949 to lift the siege on Gaza and permit the entry of medical and food supplies and everything else that is essential to ensure that the inhabitants of Gaza have the necessities of life.

41. The aim of presenting the above facts is to place matters in their proper legal context, without attempting to underestimate the legal obligations that the Palestinian side, represented by the Palestinian National Authority, has in the Occupied Palestinian Territory, which have been complicated by the breach caused by the forcible takeover of the Gaza Strip by the Islamic Resistance Movement, Hamas, on 12 June 2007. That takeover involved widespread killing, exemplary punishment and torture and destroyed much that had been achieved at many levels, including, inter alia, the basis of the Palestinian justice sector, resulting in a twofold system. The judicial system was divided between two bodies, the first of which, the Supreme Judicial Council, holds sway in the West Bank, while the second, the Supreme Justice Council, has authority in the Gaza Strip. The latter was instructed by the de facto authority in the Gaza Strip to administer and facilitate justice and oversee appointments and promotions and other matters. The Palestinian courts were no longer able to impose and implement their judgements; indeed, it became common for the Palestinian security apparatus to ignore and disregard those judgements, particularly when they related to the release of arbitrarily detained prisoners. Judgements relevant to the Gaza Strip that were issued by Palestinian courts in the West Bank became impossible to enforce there, and the same applied to judgements relevant to the West Bank that were issued in the Gaza Strip.

42. The political schism also led to the politicization of the enjoyment of rights and freedoms, which largely became dependent upon individual political affiliation. Furthermore, each party formed a special division for "security vetting", or a team to study every file or request, whether for appointment to a post, permission to establish an association or a company, or any other means

of employment for which a permit or registration is required by the relevant authorities, the aim being to prevent any person perceived as belonging to the other party from obtaining any such permit or employment.

43. The Palestinian political schism led to tension and mutual human rights violations that took place before the Israeli onslaught on the Gaza Strip and continued throughout and after that onslaught. As a result, it cannot be claimed that all the violations that were committed in the West Bank by the various Palestinian security and administrative agencies, or those that were committed in the Gaza Strip by the comparable agencies of the de facto authority were linked to the Israeli attack on the Gaza Strip that took place between 27 December 2008 and 17 January 2009, and killed hundreds of civilians, made hundreds of thousands more homeless and destroyed thousands of residential and public buildings.

44. The Palestinian situation is unique because of the continuing Israeli occupation of Palestinian territory and Israel's continual perpetration of crimes that amount to war crimes and crimes against humanity. At the same time, there is a Palestinian national authority that is responsible for some aspects of the lives of the population, which makes legal analysis difficult. However, the immutable point is that the obligations of the occupier are regulated by customary and contractual international law. The responsibilities of the Palestinian side, which is under occupation, are governed by customary law, in particular, that which concerns resistance to occupation. Such resistance must observe the rules and laws of war, which have acquired binding force not only for States but also for individuals engaged in resistance.

45. Consequently, the Palestinian National Authority, in the exercise of its powers, is obliged to respect and apply international human rights law, in particular, the international human rights canon represented by the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights. That obligation is entailed by the United Nations observer status acquired by the Palestine Liberation Organization, as is the obligation to respect the Charter of the United Nations and any human rights-related declarations and resolutions pursuant thereto. Furthermore, in the Palestinian Declaration of Independence that was adopted by the Palestinian National Council in 1988, the State of Palestine proclaimed its commitment to the principles and purposes of the Charter of the United Nations and to the Universal Declaration of Human Rights. Given the particular legal value of that document, which effectively constitutes the ultimate legal foundation and terms of reference for the principles and grounds on which the State of Palestine will be established, there is no question but that the Palestinian National Authority is obliged to respect the undertakings to which the State made a commitment in the Declaration, and to refrain from taking any action that conflicts with or is in contravention of those principles.

46. In view of the fact that certain international human rights instruments are legally binding, those responsible for enforcing general international law have an obligation to respect and enforce those instruments. The Palestine Liberation Organization and the Palestinian National Authority therefore have a responsibility and a duty to respect and enforce those instruments.

47. The Palestinian political schism and the complete detachment of the West Bank from the Gaza Strip were not the optimum conditions in which to carry out the work of the Commission, and meant that the Commission was not able to investigate certain of the conclusions of the Goldstone report in respect of violations committed by the Palestinian side, particularly in the Gaza Strip.

Furthermore, it was difficult to obtain certain information from eyewitnesses and victims, either because they were unable to provide it, or because they were afraid and preferred to remain silent.

48. Notwithstanding the complexity of the political and legal situation, the Commission was able to investigate the majority of cases cited in the Goldstone report and draw conclusions and make specific recommendations on the basis of its responsibility to be impartial, independent and earnest. During its investigation, the Commission faced no obstacles to obtaining information, particularly in the West Bank, although the political schism did impede its capacity to investigate all the violations that took place in the Gaza Strip.

49. As soon as it received its mandate, the Commission studied every similar undertaking throughout the world and devised a system and operating rules that were consistent with international standards for genuine, impartial and effective independent investigations. It was particularly concerned to protect witnesses and safeguard the information it obtained. It approached civil society by holding meetings at which it heard suggestions and gave information about the duties and powers of the Commission. Such meetings had a positive impact on the work of the Commission.

50. The Commission is of the view that commitment by the Palestinian National Authority and the Palestine Liberation Organization to the principles of human rights and rules of international law, and the use of those principles by the Authority as political and legal guidelines, can only bring the Palestinians closer to realizing their national aims, aims that cannot be achieved without belief in and assertion of the collective and individual rights guaranteed by international law under all circumstances and at every stage, including the stage of struggle against colonization and occupation and that of establishing a Palestinian state. No society that fails to safeguard the dignity and rights of its citizens or whose laws are not based on principles of human rights and justice is able to confront external or internal threats or keep abreast of contemporary developments. Failure to punish someone who has committed a crime is tantamount to an open invitation to commit further crimes.

51. While hearing the testimonies of eyewitnesses and victims, the Commission became increasingly convinced that the frustrations and lack of expectations with regard to human rights, international law and the international community caused by the failure to protect the civilian population living under occupation constitute a long-term risk to the community and its essential humanity. The international community must give responsible consideration to that matter, with a view to ending the suffering of the Palestinian people, by ending the occupation on the basis of the principles and rules of international law, by enabling the Palestinian people to exercise its right to self-determination and establish an independent State, and by permitting the refugees to return to the homes from which they were forced to flee.

52. The crisis of rights and freedoms in Palestinian territory is connected to the political schism between the West Bank and the Gaza Strip. Indeed, those rights and freedoms have become the hostages of that situation. If the schism continues, the crisis affecting basic rights and freedoms in Palestinian territory will be prolonged and exacerbated, whereas, if the schism ends, many of those violations will cease, because it is largely responsible for them. The division between Palestinians has turned rights and freedoms into a bargaining chip that each side uses to bring pressure to bear on the other.

II. Background

53. On 27 December 2008, Israel, the occupying Power, launched a military attack against the Gaza Strip that lasted 23 days, ending on 18 January 2009. Israel called this attack "Operation Cast Lead". Thousands of Palestinians were killed and injured as a result of the attack, which also caused widespread destruction to infrastructure, buildings and public and private property.

54. On 8 January 2009, the Security Council adopted resolution 1860 (2009), in which it expressed its grave concern at the escalation of violence and the deterioration of the situation, in particular the heavy civilian casualties. The Security Council also stressed the urgency of and called for an immediate, durable and fully respected ceasefire, leading to the full withdrawal of Israeli forces from the Gaza Strip. Nonetheless, the aggression continued for a further 10 days after the resolution was adopted.

55. On 3 April 2009, in response to the serious violations committed during the war, the United Nations Human Rights Council established the United Nations Fact-Finding Mission on the Gaza Conflict. The Fact-Finding Mission's mandate was to investigate all violations of international human rights law and international humanitarian law that might have been committed at any time in the context of the military operations that were conducted in the Gaza Strip during the period from 27 December 2008 to 18 January 2009, whether before, during or after. The Fact-Finding Mission was headed by Justice Richard Goldstone, former Prosecutor of the International Criminal Tribunals for the former Yugoslavia and Rwanda and former member of the South African Constitutional Court. The other Mission members were Ms. Christine Chinkin, Professor of International Law at the London School of Economics and Political Science; Ms. Hina Jilani, Advocate of the Supreme Court of Pakistan, former Special Representative of the Secretary-General on Human Rights Defenders and member of the International Commission of Inquiry on Darfur; and Mr. Desmond Travers, a former officer in the Irish Armed Forces and member of the Board of Directors of the Institute for International Criminal Investigations (IICI).

56. The report of the Fact-Finding Mission was submitted to the Human Rights Council, which adopted the report and transmitted it to the General Assembly. On 5 November 2009, the Assembly adopted resolution 64/10, in which it urges, in line with the recommendation of the Fact-Finding Mission, the undertaking by the Palestinian side, within a period of three months, of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Mission, towards ensuring accountability and justice.

57. The report was not submitted to the United Nations by the deadline specified in the above-mentioned resolution. On 26 February 2010, the General Assembly adopted resolution 64/254, paragraph 3 of which reiterates the Assembly's urging for the conduct by the Palestinian side of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice.

58. On 25 January 2010, Mr. Mahmoud Abbas, President of the State of Palestine, Chairman of the Executive Committee of the Palestine Liberation Organization and President of the Palestinian National Authority, issued a

decree establishing an independent commission to investigate alleged violations of international humanitarian and international human rights law in the West Bank and the Gaza Strip, in accordance with the provisions of General Assembly resolution 64/254. The Commission was headed by Judge Issa Abu Sharar, former Head of the Supreme Court and former President of the Supreme Judicial Council. The other Commission members were Judge Zuhair al-Surani, former Head of the Supreme Court and former President of the Supreme Judicial Council; Mr. Ghassan Farmand, Professor of Law at Birzeit University; Mr. Yasir al-Amuri, Professor of International Law at Birzeit University; Mr. Nasser Rayyes, attorney and expert in international human rights and international humanitarian law. Mr. Rayyes refused his appointment, because of a conflict of interest: he serves as a legal consultant to Al-Haq human rights organization, which monitored and documented violations that fell within the Commission's mandate.

59. Upon the issuance of the Presidential Decree, the Commission began work immediately, making the administrative and logistical preparations required for the conduct of the investigation. A team of investigators was contracted and contacts were made with civil society organizations concerned with human rights with a view to obtaining reports and other information regarding the violations the Commission would be investigating.

60. The Commission drafted its Statute, which it adopted on 7 February 2010, and established its headquarters in Ramallah. Under the Statute, the Commission's mandate is to investigate the Palestinian violations cited in the report of the Fact-Finding Mission established by the Human Rights Council and led by Judge Richard Goldstone. The Commission's geographical purview included all occupied Palestinian territory. The following fell within the scope of the Commission's mandate: arbitrary detention and torture, violation of freedom to form associations, violation of press freedoms, violation of freedom of peaceful assembly, employment discrimination in the West Bank based on political affiliation, arbitrary killings and detention, and torture and abuse in the Gaza Strip.

61. With regard to the time period its investigation should cover, the Commission decided to look into violations that were allegedly committed by Palestinian parties prior to and after the Israeli aggression against the Gaza Strip, in order to enable it to develop a sound understanding of human rights conditions during those periods.

62. With a view to the optimal execution of its mandate, the Statute authorizes the Commission to collect information, evidence and data relevant to its activities, receive accusations or complaints of human rights violations that fall within its mandate, and hear testimony from complainants, including victims and eyewitnesses, and from rights organizations and official agencies. The Statute also emphasized that the Commission must abide by international human rights, humanitarian and criminal law, honour Palestine's unilateral obligations arising from its stated commitment to respect the Geneva Conventions, and comply with the laws currently in force in Palestine. The Statute further emphasized the complete independence of Commission members, with a view to ensuring that the investigation was professional, impartial and in conformity with international standards. No party was allowed to interfere with or influence the course of the investigation. The Commission maintained the confidentiality of complaints and other information related to its work and provided protection to complainants, including victims and eyewitnesses.

63. The Commission regularly consulted independent experts with a view to ensuring the professionalism of its work and preserving its independence. On 23 February 2010, the Commission travelled to the Arab Republic of Egypt and consulted with Mr. Mahmoud Cherif Bassiouni, an expert in international law. On 25 February 2010, the Commission consulted with Mr. Ahmed ben Helli, Deputy Secretary-General of the League of Arab States, and requested the League to facilitate the Commission's work, thereby enabling it to conduct its investigation.

64. On 7 April 2010, the Commission met in Ramallah with rights activists, officials of Palestinian rights organizations and national figures, in order to inform them of the Commission's working methods and plan of work, and listen to their suggestions regarding the investigation. The following were among the human rights organizations that attended the meeting in the West Bank: Al-Haq, Al-Dameer Association for Human Rights, Democracy and Workers' Rights Centre, Independent Commission for Human Rights, Human Rights and Democracy Media Centre (SHAMS), Ensan Centre for Democracy and Human Rights, Coalition for Integrity and Accountability (AMAN), Ramallah Centre for Human Rights Studies (RCHRS), Jerusalem Legal Aid and Human Rights Centre, and Centre for Development.

65. The participants were updated on the Commission's activities and apprised of the substantive and temporal scope of its mandate, after which a discussion ensued concerning the Commission's methods of work, potential difficulties and how to resolve them, particularly with regard to communication with the Gaza Strip and the conduct of the investigation in that territory, protection of complainants, the Commission's independence, and efforts made to contact officials of the de facto authority in the Gaza Strip with a view to the conduct of the investigation in that territory. A number of recommendations were made at the meeting, the most significant of which concerned the need to coordinate and cooperate with local and Arab media in order to encourage victims and eyewitnesses to appear before the Commission, organize field visits to hear complaints, facilitate the process by which citizens could make complaints, maintain communication with the Gaza Strip in order to facilitate the conduct of the investigation in that territory, and the importance of presenting a consolidated report.

66. On the same day, the Commission held a similar meeting with the representatives of civil society organizations in the Gaza Strip concerned with human rights. The meeting took place via videoconference because the Commission was unable to travel to the Gaza Strip. Participants at the meeting included: Al-Dameer Association for Human Rights, Al-Mezan Centre for Human Rights and the Independent Commission for Human Rights in the Gaza Strip. After being updated on the Commission's work by Judge Issa Abu Sharar, the participants discussed several matters, including the factional split and its effect on the Commission's work, the likelihood of the Hamas movement allowing the Commission to investigate on the ground in the Gaza Strip, greater cooperation with the media in order to reach all victims, and continued communication with rights organizations in the Gaza Strip with a view to involving them in the Commission's work.

67. On 23 March 2010, the Commission ordered its Technical Team to collect and analyse reports prepared by Palestinian and international rights organizations concerning violations that fell within the Commission's mandate, to be used for consultation in the course of the investigation.

68. In April 2010, the Commission decided to place notices in the most widely disseminated media in the West Bank and the Gaza Strip. Those notices

called on persons who claimed that their rights had been violated by the Palestinian Authority in the West Bank or by the de facto authority in the Gaza Strip to present their complaints to the Commission. The notice appeared five times in local newspapers (*Al-Hayat*, *Al-Ayyam* and *Al-Quds*) and was broadcast six times on television (Palestine Television and Watan Television) and 24 times on radio (Palestine Radio, Ajyal Radio, Ilm Radio and Hurriyah Radio).

69. The Commission sent letters to the print and broadcast media in the Gaza Strip requesting the publication or broadcast of its notices. However, the Commission received no reply and the notices were never disseminated. The media outlets to which letters were sent included Al-Aqsa Radio, Al-Aqsa Satellite Channel, *Al-Risalah* newspaper, *Filistin* newspaper and Al-Quds Radio. The Commission also requested rights organizations in the Gaza Strip to place the notices on their websites.

70. On 8 April 2010, the Commission organized a press conference in Ramallah that was attended by a number of journalists and media representatives. The purpose of the conference was to communicate with the public, and with the victims of violations in particular, in order to introduce the Commission and encourage people to lodge complaints concerning violations they had suffered or witnessed. The assembled journalists were updated on the Commission's activities and asked to disseminate information on the Commission's work to all Palestinians, who could then lodge complaints in respect of violations they had allegedly suffered. The Commission's President and members emphasized that the Commission was independent, impartial and unaffected by the current Palestinian political strife. They also emphasized that complainants would be protected and information kept confidential.

71. In order to emphasize its independence, impartiality and transparency, the Commission endeavoured to involve all parties by updating them on its work and welcoming suggestions. On 15 April 2010, responding to the suggestions of rights activists, the Commission met with members of the Palestinian Legislative Council from the Change and Reform Bloc affiliated with Hamas, in order to update them on the Commission's work and hear their proposals. The following Bloc members attended: Mr. Omar Abdul Raziq, Mr. Nasir Abdul Jawad, Mr. Mahmud Muslih, Ms. Muna Mansur, Ms. Samirah al-Halayqah, Mr. Hassan al-Burini and Mr. Abdul Rahman Zaydan. After the President had given an overview of the Commission's work, its working methods and its mandate, the participants commented on the extension of the Commission's mandate and the contacts that were being made by national figures with the de facto authority in the Gaza Strip with a view to the conduct of the investigation in that territory. The participants also stressed the importance of finding a solution to the issue of persons who had been dismissed from public positions, providing protection for complainants in order to encourage them to appear before the Commission, maintaining the Commission's impartiality and non-interference in its work.

72. Following up on its meeting with the Change and Reform Bloc, on 18 April 2010 the Commission met with the coordinators of other blocs and lists in the Palestinian Legislative Council. It also held a meeting with parliamentarians who had not attended the first meeting, including: Ms. Najat al-Astal, Mr. Qays Abdul Karim, Ms. Khalidah Jarar and Mr. Mustafa Barghouti. The participants commented on the need to conduct a serious and impartial investigation and the importance of presenting a consolidated national report and communicating with the de facto authority in the Gaza Strip with a view to the conduct of the investigation in that territory.

73. On 25 April 2010, the Technical Team travelled to Nablus and Hebron with a view to making preparations for the receipt of complaints from citizens in the north and the south. After placing notices in the local newspapers, the Commission, acting in coordination and cooperation with local rights groups, heard complaints in the branch offices of the Independent Commission for Human Rights.

74. In keeping with its strong desire to benefit from local, regional and international expertise, the Commission invited Mr. Bassiouni to serve as a consultant, with a view to benefiting from his expertise and enabling the Commission to produce a report that conforms with international standards. Mr. Bassiouni was subsequently appointed as a consultant to the Commission.

75. In accordance with the plan of work adopted by the Commission and its Technical Team, the Commission began to hear complaints from individuals and Palestinian rights organizations of rights violations allegedly committed by officials of the Palestinian National Authority in the West Bank and by the de facto authority in the Gaza Strip. From 4 to 18 May 2010, the Commission heard 105 complainants: 77 from the West Bank and 28 from the Gaza Strip. West Bank complainants were heard in Commission headquarters in Ramallah while complaints from the Gaza Strip were heard via videoconference because Commission members were not allowed to enter the Gaza Strip. Each complainant was heard privately in order to maintain confidentiality of information.

76. The Commission held 51 hearings concerning dismissal from public positions; 5 hearings concerning violations of press freedoms and violations committed by the security services of the Palestinian National Authority in the West Bank against journalists and the media; 4 hearings concerning the right to form associations; 16 hearings concerning detention and torture; and 1 hearing concerning violation of the right to assemble peacefully.

77. The Commission held 11 hearings concerning allegations of detention and torture committed by the security services of the de facto authority in the Gaza Strip. A further 17 hearings concerned killings.

78. The Commission also heard representatives of rights organizations, who presented information they had documented concerning violations that fell within the Commission's mandate. From 20 May to 6 June 2010, the Commission heard representatives of the following organizations: Al-Dameer Association for Human Rights, Al-Haq, Jerusalem Legal Aid and Human Rights Centre, Treatment and Rehabilitation Centre for Victims of Torture, Independent Commission for Human Rights, Palestinian Network of Non-Governmental Organizations, Democracy and Workers' Rights Centre and the Samir Kassir Foundation.

79. In order to ensure the comprehensiveness of the investigation, the Commission also heard representatives of official agencies, the most important of which was the Ministry of the Interior of the Palestinian National Authority. The Commission questioned those representatives about complaints of arbitrary detention, torture, dismissal from public positions, and closure of associations and interference in the selection of their boards of directors. On 9 June 2010, the Commission heard the Director of Public Relations and Non-Governmental Organization Affairs of the Ministry of the Interior.

80. On 15 June 2010, the Commission heard the Minister of the Interior. At that hearing, the Minister addressed complaints concerning detention, torture, and closure of associations and interference in the selection of their boards of directors. In respect of torture, the Minister stated that the practice of torture

had been halted completely. The Ministry had established a system to monitor and investigate the manner in which its officials performed their duties. He also stated that rights groups were permitted to visit detainees. In respect of the trial of civilians by military courts, the Minister said that the military courts had jurisdiction over charges of disturbing public order. The Minister said that court decisions were always respected and any delay in implementation was unintentional. The prohibition against visits by detainees' family members in the first few days of an investigation was consistent with the law. In respect of security checks for persons wishing to establish an association, the Minister said that such checks were performed in order to protect the interests of the associations and to determine whether the applicants were qualified to establish an association. The Ministry replied to applications for the establishment of an association within the legally mandated two-month period. The Minister categorically denied that the Ministry did not respect the decisions of the Supreme Court concerning associations and said that the Ministry had never appointed an outsider to an association's board of directors. With regard to violations of press freedoms, he said that any curtailment of journalists' freedom was for reasons unrelated to their profession.

81. With regard to the analysis and presentation of the violations investigated in the West Bank and the Gaza Strip, the Commission, after lengthy and in-depth discussions, decided that the format and presentation of its report should be somewhat different from the format and presentation used in reports submitted to the United Nations and other international organizations, in order to ease the burden of those reviewing the report and enable them to readily understand how the law views the violations that the Commission investigated. Each section of the present report therefore begins with an exposition of the relevant local laws, thereby giving the reader an understanding of how domestic law views the violations that were committed.

82. A number of obstacles and challenges prevented the Commission from fulfilling its mandate completely. From the outset, the Commission was confronted with a number of obstacles and challenges in its effort to conduct an investigation that is independent, credible and in conformity with international standards into serious violations of international humanitarian and international human rights. Among those challenges and obstacles were the following: The Commission was unable to enter the Gaza Strip in order to investigate violations of international humanitarian law allegedly committed by Palestinian armed groups, in particular the firing of homemade rockets against Israeli towns and settlements.

83. Also affecting the Commission's efforts to investigate human rights violations committed by Palestinian parties was the Commission's inability to enter the Gaza Strip in order to conduct investigations on the ground and hear the testimony and statements of victims and eyewitnesses.

84. Despite those obstacles, the Commission was able to hear approximately 28 complainants via videoconference. The complainants provided details of the violations they had suffered, thereby allowing the Commission to develop a credible picture of the serious human rights violations that the Fact-Finding Mission alleges were committed in the Gaza Strip by the de facto authority in that territory, as well as by its security services and armed groups.

85. The Commission wishes to emphasize that its unflagging efforts to enter the Gaza Strip left little time for it to fulfil its commitment to produce and submit its report by the established deadline. Because the Commission was forced to wait for a response to the entreaties that had been made by the League of Arab States and Egyptian officials seeking to persuade the de facto authority

in the Gaza Strip to allow the Commission to conduct its work in that territory, the dissemination of its notices and the receipt of complaints were delayed. As a result, the Commission was obliged to redouble its efforts in order to honour its commitment to submit its report by the established deadline.

86. The Commission is of the view that Palestinian citizens' lack of belief in the benefit of investigative commissions or the sincerity of their efforts was a grave impediment and a factor in the Commission's receiving fewer complaints and hearing less testimony than it should have. In addition to domestic commissions formed to investigate local violations, Palestinians have become accustomed to the establishment from time to time of international fact-finding commissions. Despite those efforts, there have never been any prosecutions or inquiries, leading citizens to doubt the benefit and importance of cooperating with such commissions. The Commission sensed this scepticism in the questions it faced from the public.

87. Fear of the security services in the West Bank and those of the de facto authority in the Gaza Strip deterred many victims from contacting the Commission. Their reluctance is particularly relevant given that many violations, including detention, torture and dismissal from employment, continue to occur.

88. The link between violations of human rights and freedoms, on the one hand, and the struggle and political differences between Fatah and Hamas, on the other, has resulted in a conviction among Palestinians that such violations cannot be halted or prevented without the reconciliation of the two sides.

89. There is a widespread belief that the work of investigative commissions and local human rights organizations will be fruitless as long as those political differences remain unresolved. The majority of the people believe that each side will continue to target the activists and supporters of the other side for as long as the crisis continues.

III. Violations in the form of rocket and mortar attacks on southern Israel attributed to Palestinian armed groups

90. Israeli occupation forces regularly carried out brief military strikes against the Gaza Strip in response to the firing into Israeli territory by Palestinian armed resistance groups of homemade rockets. Those attacks consisted of aerial bombardment, carried out by warplanes and helicopters, and artillery shelling. The Israeli occupation forces also occasionally made brief land forays against the Gaza Strip using tanks, armoured personnel carriers and heavily armed infantry.

91. Israel claims that the attacks against the Gaza Strip were necessary, and in self-defence in response to the firing of rockets and mortars by Palestinian armed resistance groups against Israeli territory and civilians.

92. It is unclear exactly how many rockets and mortars were fired by Palestinian armed resistance groups from the Gaza Strip. It should be understood that there are no reliable or verifiable estimates of the number of rockets and mortars that were fired, the locations from which they were fired, the targets they struck and whether they caused any casualties other than the deaths reported by Israel. The highest number of deaths reported was 13 over a period ranging from four to five years, including three or four military personnel, who are considered legitimate military targets under international humanitarian law. The reports of internal investigations conducted by the Israeli army have not yet been published and Israel has not conducted any independent fact-finding investigation.

93. Publicly available numbers vary according to their source. The Israeli Ministry of Foreign Affairs claims that, in 2008, Palestinian armed resistance groups fired 1,750 rockets and 1,528 mortars,¹ while the Israeli army spokesperson said that 1,755 mortars, 1,720 Qassam rockets and 75 Grad rockets² had been fired. In another report, the Israeli army spokesperson stated that 7,200 rockets had been fired against Israel since 2005, without specifying their type.³ In an interview conducted on 7 July 2010, Israeli Prime Minister Benjamin Netanyahu told Larry King of the Cable News Network (CNN) that 6,000 rockets had been fired against Israel, presumably from 2005 to 2009, which is the same time period covered by the Israeli army report. It is worth noting that none of those sources indicated which targets had been struck. It is therefore possible that those rockets and mortars struck the desert, areas uninhabited by civilians, or military areas and their surroundings, which are considered legitimate military targets under international humanitarian law.

94. The report of the Fact-Finding Mission cites Israeli sources that claim 3,455 rockets and 3,742 mortars were fired into Israel from 2001 to mid-June 2008, without specifying the targets that were struck.⁴ The Mission was unable to verify any of the Israeli claims, which were mentioned regularly in the media. The Mission's report cited the figures quoted in the media because Israel refused to cooperate with the Mission.

¹ Israel Ministry of Foreign Affairs, "The Hamas terror war against Israel". Available at <http://www.mfa.gov.il/MFA/Terrorism+Obstacle+to+Peace/Hamas+war+against+Israel/Missile+fire+from+Gaza+on+Israeli+civilian+targets+Aug+2007.htm>.

² Israel Defense Forces spokesperson's blog, "Rocket Statistics, 3 Jan 2009". Available at <http://idfspokesperson.com/2009/01/03/rocket-statistics-3-jan-2009/>.

³ Ibid.

⁴ Report of the United Nations Fact-Finding Mission on the Gaza Conflict, para. 183.

95. None of the above-mentioned figures were verified independently and impartially. The Commission was never in a position to verify the accuracy of the above-mentioned figure and is therefore unable to address this question in great detail in the present report.

96. The foregoing should not be interpreted to mean that the present report overlooks or diminishes the consequences of the firing of rockets and mortars against civilians, or that it denies the responsibility of persons who might have deliberately targeted civilians. The purpose of this part of the present report is to point out that the figures provided by Israel are imprecise and lack credibility, and that Israel has refused to verify those figures in an objective, professional and impartial manner.

97. As noted earlier, the Commission, which was established by a decree of the President of the Palestinian National Authority, was unable to exercise its mandate in the Gaza Strip from the time Hamas seized power by force in that territory. The Commission was therefore unable to conduct any investigations in the Gaza Strip regarding the use or firing of crude rockets⁵ by Palestinian armed groups.

98. Nonetheless, should it be determined that Palestinian armed groups in fact deliberately targeted civilians, the Commission affirms that such an action would undoubtedly constitute a violation of international humanitarian law. The Palestinian National Authority has on many occasions called on armed resistance groups in the Gaza Strip to respect international law and exercise their right to self-defence in a manner that respects the moral and legal principles of the Palestinian resistance.

99. The Commission would therefore like to reiterate the fundamental point on which the present report is based: international humanitarian law strictly prohibits belligerent reprisals⁶ in armed conflict, regardless of how such conflict is defined and, in particular, whether or not the conflict is international. The present report therefore rejects any justification of belligerent reprisals, whether committed by the Israelis or by Palestinian resistance groups.

100. In that connection, it has been established that, from 27 December 2008 to 18 January 2009, a number of rockets and mortars were fired by Palestinian armed resistance groups from the Gaza Strip. Those groups are not under the control of the Palestinian National Authority owing to the political division between the West Bank and the Gaza Strip. The projectiles struck Israel, allegedly resulting in three civilian deaths and the destruction of civilian property, the nature and extent of which has not been revealed.⁷

101. This part of the present report neither refutes nor confirms the figures noted in the Fact-Finding Mission's report because the Commission was not in a position to verify those figures. Nonetheless, for the purposes of the present report, the Commission accepts the figures noted in the Mission's report, which indicates that three persons were killed and some civilian property in southern Israel damaged.

⁵ The term "crude rockets" is used in Human Rights Council resolution S-9/1, which established the Fact-Finding Mission.

⁶ See Kalshoven, Frits, *Belligerent Reprisals (International Humanitarian Law)*, Brill Academic Publishing, 2nd edition (5 June 2005). See also Bassiouni, Mahmoud Cherif, "Al-hurub wa al-azmat al-jadidah fi al-imtithal bi qanun al-niza'at al-musallahah min qibal al-fa'lin min ghayr al-duwal, *Sahifat al-qanun al-jina'i wa 'ilm al-jarimah*, vol. 98, pp. 712-820.

⁷ See para. 73 above.

102. It is crucial to bear in mind that the inequality of the sides is one of the most important aspects of the conflict between the Palestinian armed resistance groups in the Gaza Strip and Israel, the occupying Power. The vast difference in their capacities is patently obvious and requires no proof. The only way the Palestinian resistance could respond to Israel's air force, helicopters, tanks, artillery and powerful infantry was to intermittently fire homemade rockets and mortars. The indiscriminate targeting of Palestinian civilians by the Israeli occupation forces, with their advanced combat weaponry and technology, which enables them to identify their targets precisely and distinguish civilian targets from and military targets with ease, is without doubt a violation of international humanitarian and international human rights law.

103. Civilian casualties and damage to civilian targets resulting from the firing of homemade rockets are primarily attributable to the unsophisticated nature of those rockets and the inability to aim them at specific targets. The preceding statement should in no way be interpreted as offering justification for any harm that was caused to civilians. Although each alleged incident of harm to civilians or civilian property needs to be investigated separately, the Commission will be unable to do so unless it can conduct on-site investigations.

104. Nonetheless, it should be recalled that, as a matter of principle, international humanitarian law provides that persons and property harmed by such attacks are entitled to reparations. The Commission supports this position and believes that the Palestinian National Authority will also agree, particularly if the two sides reach an agreement to compensate Palestinians and Israelis who were the victims of the military operations that took place from 27 December 2008 to 18 January 2009, as well as the victims of any other violations of international humanitarian and international human rights law that were perpetrated by the Israeli army or Palestinian armed resistance groups in the Gaza Strip.⁸

⁸ See United Nations General Assembly resolution 60/147 of 21 March 2006, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law". See also Bassiouni, Mahmoud Cherif, "Al-i'tiraf al-duwaliy bi huquq al-dahaya", *Muraja'h li qanun huquq al-insan*, Vol. 6, pp. 79-203 (2006). It is worth noting that Islam addresses the question of the compensation of victims, or *diyyah*, in great detail and sets forth clear conditions in that regard. The Koran states: "O ye who believe! Retaliation is prescribed for you in the matter of the murdered; the freeman for the freeman, and the slave for the slave, and the female for the female. And for him who is forgiven somewhat by his (injured) brother, prosecution according to usage and payment unto him in kindness. This is an alleviation and a mercy from your Lord. He who transgresseth after this will have a painful doom. And there is life for you in retaliation, O men of understanding, that ye may ward off (evil)", *Al-Baqarah* (the Cow), verses 178 and 179.

IV. Detention and torture in the West Bank

105. Since 14 June 2007, when Hamas forcibly assumed power in the Gaza Strip, the Occupied Palestinian Territory has been administered by two bodies. The established Palestinian order, represented by the Palestinian National Authority and its official and security institutions, has continued to govern and administer the West Bank, while the Gaza Strip has been under the administration and control of Hamas and its subordinate or auxiliary military, regulatory and party forces.

106. During this phase and, specifically, from the beginning of the events known to Palestinians as the political division between the West Bank and the Gaza Strip, many rights and freedoms have been subject to restriction and violation by both parties, and arrest and detention have been widespread. It is claimed that this is in order to maintain security and order, protect the institutions and capacities of the existing authorities in the West Bank and the Gaza Strip and prevent confrontation and Palestinian internal violence from spreading from the Gaza Strip to the West Bank.

A. Bodies charged under national legislation with maintaining security in the West Bank

107. In order to clarify the nature of the violations related to arrest and torture, it is necessary to explain the character of the bodies charged with enforcing the law in the West Bank, as well as the nature and substance of the pertinent guarantees in national legislation.

1. Bodies charged under national legislation with maintaining security.

108. The legislative corpus that regulates the organization, powers and duties of the security forces in Palestine consists of a set of laws, the most important of which include: the Palestinian Basic Law as amended in 2003;⁹ Law No. 8 (2005) concerning service in the security forces; General Intelligence (Law No. 17) of 2005; Decree-Law No. 11 (2007) on preventive security; Code of Criminal Procedure (Law No. 3 of 2001); Law No. 6 (1998) concerning reform and rehabilitation centres (prisons); Law No. 12 (1998) concerning public gatherings; the Penal Code (Law No. 16 of 1960), in force in the West Bank; and the Revolutionary Penal Code (1979) of the Palestine Liberation Organization.

109. The Law concerning service in the security forces, the General Intelligence Law and the Decree-Law on preventive security are held to be tantamount to basic legislation, defining the nature, authority and structure of the security forces, while other legislation regulates the roles and duties of those forces in the spheres in which they operate and the matters for which they are responsible.

110. The Law concerning service in the security forces, the General Intelligence Law and the Decree-Law on preventive security show that the Palestinian security forces comprise, in effect, the following:

⁹ Article 84 of the Palestinian Basic Law stipulates: "The Security Forces and the Police are regular forces. They are the armed forces in the country. Their functions are limited to defending the country, serving the people, protecting society and maintaining public order, security and public morals. They shall perform their duties within the limits prescribed by law, with complete respect for rights and freedoms".

(a) The National Security Forces and the Palestine Liberation Army: Pursuant to the Law concerning service in the security forces, articles 3 and 7, these forces constitute a regular military body, which performs its functions and exercises its competences under the leadership of the Minister of National Security and under the command of the Commander-in-Chief, who issues the decisions necessary for the administration of its work and regulation of all its affairs, in conformity with the provisions of the Law and the by-laws issued on the basis thereof;

(b) The Internal Security Forces: Pursuant to the Law concerning service in the security forces, article 10, these forces constitute a regular security body, which performs its functions and exercises its competences under the leadership of the Minister of the Interior and under the command of the Director-General of Internal Security, who issues the decisions necessary for the administration of its work and regulation of all its affairs. In the West Bank, these forces consist of the Palestinian Police Force and the Palestinian Preventive Security Service;

(c) The General Intelligence Service: Pursuant to article 13 of the above-mentioned Law, this Service constitutes a regular security body, subordinate to the President of the Palestinian National Authority, which performs its functions and exercises its competences under the leadership and command of its head, who issues the decisions necessary for the administration of its work and regulation of all its affairs. The General Intelligence Service is the body officially charged with carrying out security activities and tasks outside the geographical borders of Palestine. It is required to carry out specific security tasks within the geographical borders of the State of Palestine in order to complete the implementation of measures and activities commenced outside the borders.

2. Nature and powers of bodies charged with enforcing the law.

111. The legislation in force regulates the powers of the security bodies charged with enforcing the law and intervening in order to maintain security and order. The powers and competences of these bodies are listed below.

(a) Palestinian Police Force

112. Pursuant to the provisions of Palestinian legislation and the interim Jordanian Public Security Law (No. 38 of 1965), the legal authority of which remains in force in the West Bank, the duties of the Palestinian Police Force can be defined as follows:

- To maintain order and security and protect life, honour and property;
- To prevent, detect and investigate crime, and arrest and bring to justice the perpetrators thereof;
- To administer prisons and guard prisoners;
- To implement laws and official, regulations and orders that comply with the law, and to support the public authorities in the performance of their duties in accordance with the law;
- To control and regulate road transport;
- To supervise public meetings and processions on roads and in public places.

(b) General Intelligence Service

113. The General Intelligence Law, article 9, defines the duties of this Service as follows:

- To take the measures necessary to prevent acts that may endanger the security and safety of Palestine and to take action against the perpetrators thereof in accordance with the law;
- To uncover external dangers which may jeopardize Palestinian national security in respect of espionage, conspiracy, sabotage or any other acts which may threaten the unity, security, independence and capacities of the homeland;
- To cooperate with similar agencies of friendly States in combating all acts which may threaten joint peace and security or any areas of external security, providing reciprocity is assured.

114. Article 10 of the Law defines the acts to which the stipulations of the preceding article apply:

1. Communication with a foreign Power with a view to committing a hostile act against Palestine;
2. Joining the army of a foreign country that is at war with Palestine;
3. Passing or helping to pass to a foreign Power a secret relating to the defence of Palestine in the military, political, economic or social sphere;
4. Any intentional act which may cause the death, serious physical injury or loss of liberty of any of the following:
 - (a) Monarchs or heads of State and their spouses, and ascendants or descendants thereof;
 - (b) Heirs apparent, deputy heads of State, prime ministers or ministers;
 - (c) Persons with public responsibilities or in public positions, if those acts are directed towards them in their capacity as such;
 - (d) Ambassadors or diplomats accredited to the State of Palestine;
5. Deliberate sabotage or damage to public property or private property used for public purposes and belonging to or under the control of a State having diplomatic or friendly relations with Palestine;
6. The manufacture, possession or acquisition of weapons, explosives or any harmful substances with the intention of committing any of the aforementioned acts in any State;
7. Any act of violence or threat, whatever the motive or purpose, which occurs in the course of an individual or collective criminal scheme and is designed to spread panic among people or frighten them by harming them or putting their lives, liberty or security at risk, by causing damage to the environment, public facilities or public property or occupying or seizing control thereof, or by surreptitiously transferring land or putting a national resource at risk.

115. Under the Law, the Service is equivalent to a judicial police force, with the power to conduct preliminary investigations into incidents allegedly committed by the person under arrest, to exercise oversight, to conduct investigations, inquiries and searches, to demand the seizure of property and detention of persons, to summon and interrogate individuals and hear their statements, to require anyone to surrender data, information or documents,

which may retain, and to take such measures as it deems necessary in accordance with the law.¹⁰ The provisions of the Law affirm that the members of the Palestinian General Intelligence Service must, while carrying out their duties, respect all the rights and guarantees stipulated in Palestinian law and the relevant tenets of international law.

(c) Preventive Security Service

116. Article 2 of Decree-Law No. 11 (2007) on preventive security¹¹ defines the Preventive Security Service as a regular security directorate-general within the Internal Security Forces, subordinate to the competent ministry and operating in the field of security. It has two temporary headquarters, in the cities of Ramallah and Gaza, and may open subdirectorates in other cities.

117. Article 4 of the Decree-Law determines the conditions of appointment of the Director of Preventive Security, stipulating that the Director-General and his deputy are to be appointed by decree of the President of the Palestinian National Authority, pursuant to a decision by the competent minister, the nomination of the Director-General of Internal Security and the recommendation of the Committee of Officers. The Director-General and his deputy shall swear the legal oath before the President before commencing work.

118. Article 5 of the Decree-Law stipulates the following:

1. The Director-General shall assume responsibility for supervising the work of the Directorate-General of Preventive Security and its staff and for forming the committees necessary for the proper conduct of work. The Director-General may delegate some of his powers to his deputy.

2. The Director-General shall be answerable to the competent minister and the Director-General of Internal Security for his work and for maintaining the confidentiality of the activities of the Directorate-General of Preventive Security.

119. Article 6 of the Decree-Law determines the duties of this body, stipulating that, without contravening the laws in force, the Directorate-General of Preventive Security shall be charged with the following:

1. Working to protect Palestinian national security;
2. Following up on crimes which threaten the internal security of the Palestinian National Authority and/or crimes committed against it, and striving to prevent their occurrence;
3. Uncovering crimes which target Government departments, public bodies and organizations and their employees.

¹⁰ General Intelligence Law, articles 12 and 14.

¹¹ Given the inactivity of the Legislative Council and its inability to convene and exercise its powers because of the schism between the West Bank and Gaza Strip, the Palestinian President has begun to exercise the powers of the legislature by issuing temporary resolutions having the force of law, in order to close the legislative gap resulting from that inactivity, pursuant to the Palestinian Basic Law, article 43, which affirms: "The President of the National Authority shall have the right, in cases of necessity that cannot be delayed, and when the Legislative Council is not in session, to issue decrees that have the power of law. These decrees shall be presented to the Legislative Council in the first session convened after their issuance; otherwise they will cease to have the power of law. If these decrees are presented to the Legislative Council, as mentioned above, but are not approved by the latter, then they shall cease to have the power of law".

120. Article 7 of the same Decree-Law treats this force as equivalent to a judicial police force, stipulating that the officers and non-commissioned officers of the Preventive Security Service shall, to facilitate the performance of the preventive security functions set forth under the Decree-Law, have the capacity of judicial police.

121. Article 8 of the Decree-Law requires the members and administration of the force to respect rights, affirming the commitment of the Directorate-General of Preventive Security to the rights, freedoms and guarantees stipulated in Palestinian law and international instruments and treaties.

122. Article 9 of the Decree-Law grants the Preventive Security Service the power to establish detention centres, to be determined by the competent minister, namely, the Minister of the Interior, in coordination with the Director-General of Preventive Security. The Minister of Justice and the Public Prosecutor is to be informed of the status of such centres and of any changes thereto.

B. Limits, scope of and rules for detention under Palestinian legislation:

123. Palestinian legislation, specifically the Palestinian Basic Law as amended in 2003 and Law No. 3 (2001) concerning criminal procedures, regulates the rules and guarantees relating to arrest and detention.

1. Rules for detention and search provided for in the Palestinian Basic Law

124. The Palestinian Basic Law as amended in 2003, which is tantamount to the constitution of the Palestinian National Authority, recognizes a set of restrictions and guarantees which must be respected and observed by those charged with enforcing the law when carrying out arrest and detention procedures. Possibly the most important guarantees provided by the Palestinian Basic Law are set forth in article 11, which affirms the following:

1. Personal freedom is a natural right which is guaranteed and may not be violated;

2. No person may be arrested, searched, imprisoned or have his liberty or freedom of movement restricted in any way except by judicial order, in accordance with the provisions of the law. The law shall specify the period of preventive custody. Detention or imprisonment shall only be permitted in places that are subject to the laws on the organization of prisons.

125. Article 12 of the Basic Law stipulates the following: "Every arrested or detained person shall be informed of the reason for their arrest or detention. They shall be promptly informed, in a language they understand, of the nature of the charges brought against them. They shall have the right to contact a lawyer and to be tried before a court without delay".

126. Torture is forbidden. Article 13 of the Basic Law affirms as follows:

1. No person may be subjected to coercion or torture. Indictees and all persons deprived of their freedom shall receive appropriate treatment.

2. All statements or confessions obtained through violation of the provisions contained in paragraph 1 of this article shall be considered null and void.

127. Article 17 of the Basic Law stipulates: “Homes shall be inviolable; they shall not be subject to surveillance, broken into or searched, except with a valid judicial order and in accordance with the provisions of the law. Any conclusions drawn as a result of a violation of this article shall be considered invalid. Individuals who are wronged by such a violation shall be entitled to fair compensation, guaranteed by the Palestinian National Authority”.

128. The right to litigation is affirmed. Article 30 of the Basic Law stipulates as follows:

1. Litigation is a protected and guaranteed right for all people, and all Palestinians have the right to seek redress through the judicial system. Litigation procedures shall be regulated by law and shall ensure prompt settlement of cases.

2. Laws may not contain any provisions that provide immunity for any administrative decision or action from judicial review.

3. Judicial error shall entail restitution by the National Authority. The conditions and manner of such restitution shall be regulated by law.

129. There shall be no statute of limitations on crimes that violate rights and freedoms. Article 32 of the Basic Law stipulates as follows:

“Any violation of a personal freedom or of the sanctity of a person’s private life or of any of the rights or liberties that have been guaranteed by law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations shall not be subject to any statute of limitations. The National Authority shall ensure fair restitution for any such harm suffered”.

2. Rules for detention and search in national legislation and international instruments

130. To supplement the guarantees provided by the Palestinian Basic Law, Palestinian legislation has followed the example of international human rights instruments and adopted a set of guarantees and rules aimed at ensuring respect for the rights and dignity of persons under arrest and investigation.

(a) Rules for detention and investigation set forth in the Code of Criminal Procedure (Law No. 3 of 2001)

131. The articles of this Law contain a set of guarantees, the most important of which include the following:

- Article 29, affirming that individuals may be arrested or imprisoned only pursuant to an order issued by the competent authority. It stipulates that no person may be arrested or imprisoned except by order of the competent authority as set forth in law. He must be treated in a manner that preserves his dignity and shall not be physically or morally harmed.
- Article 34, affirming that the law enforcement officials must take statements from arrested individuals immediately. If there is no justification for their release, they must be transferred to the competent deputy public prosecutor within 24 hours.
- Article 39, affirming that homes may be entered and searched only with a warrant issued by the Office of the Public Prosecutor, or in the presence of a member of the Office. The resident of the home must have been accused of perpetrating or being an accessory to a crime or offence. Alternatively, there should be strong evidence that the individual is

concealing objects connected with a crime. The article further affirms that the search warrant must be substantiated and made out in the name of one or more law enforcement officials.

– Article 48, affirming that the competent authorities may not enter a house without a warrant except in the following cases:

1. To request assistance from inside the house;
2. In the event of fire or drowning;
3. If a crime is being committed *in flagrante*;
4. If a person who must be arrested or who has escaped from a place in which he was lawfully detained is being pursued.

– The Law defines the Public Prosecutor's power to investigate and in article 55 stipulates:

1. The Public Prosecutor shall have exclusive competence to investigate crimes and take action in respect thereof.

2. The Public Prosecutor or competent deputy public prosecutor may delegate a competent member of the judicial police to carry out an investigation in a specific case, other than the interrogation of the accused in felony cases.

3. Powers shall not be comprehensively delegated.

4. The person to whom authority has been delegated shall, to the extent permitted, enjoy all the powers vested in the deputy Public Prosecutor.

– The Code of Criminal Procedure, article 99, requires the deputy public prosecutor to conduct a physical inspection of the suspect prior to questioning, to document any visible injuries and establish their cause.

– Article 102 of the Law affirms:

1. Suspects are entitled to legal representation during the prosecution.

2. During the investigation, counsel may speak only with the permission of the deputy public prosecutor. If permission is not given, that must be noted in the record.

3. Counsel shall be allowed to study the case prior to the prosecution in respect of matters concerning his client.

4. Counsel may submit a memorandum containing his observations.

– Article 103 of the Law stipulates that the deputy public prosecutor may, in felony cases and in the interests of expediting the investigation, decide to prohibit communication with the suspect for a period of not more than 10 days, renewable only once. This prohibition shall not apply to the counsel of the suspect, who may communicate with his client at any time he wishes, without restriction or supervision.

– Article 108 of the Law stipulates that the deputy public prosecutor may detain the individual after prosecution for a period of 48 hours. The period of detention may be extended by the court in accordance with the Law. The law enforcement official must immediately convey the detainee to the police station. Where there is no warrant, the prison official who takes the detainee into custody must immediately ascertain the reasons for the detention. Such custody shall in no event exceed 24 hours, and the Office of the Public Prosecutor shall to be notified at once.

- Article 125 of the Law stipulates that individuals may be detained or imprisoned only in a prison or in a legally specified place of detention. Prisoners may be taken in only pursuant to an order from the competent authority, and may not be detained beyond the period specified in the order. If it is decided that a detainee should be released on bail, the official responsible or the director of the prison shall release him, provided that he has not also been arrested or detained on some other charge.
- Article 126 of the Law requires that several authorities to inspect the prisons. It stipulates that the Office of the Public Prosecutor and the heads of the courts of first instance and Courts of Appeal shall inspect prisons and other places of detention under their jurisdiction in order to ensure that no person is unlawfully imprisoned or detained. They shall examine and make copies of the prison records, detention orders and arrest warrants. They shall make contact with inmates in order to hear any grievances. Directors and officials shall offer them every assistance in obtaining the information sought.

(b) Rules for detention in accordance with international instruments

132. The Universal Declaration of Human Rights, article 3, affirms that everyone has the right to life, liberty and security of person, while article 5 provides that no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment, and article 9 stipulates that no one shall be subjected to arbitrary arrest, detention or exile.

133. The same guarantees are stipulated in and provided for by the International Covenant on Civil and Political Rights, article 7 of which states, “No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation”. Article 9 of the Covenant affirms:

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

134. Article 10 of the Covenant provides that all persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

135. The Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, adopted by the General Assembly and annexed to resolution 43/173 of 9 December 1988, sets forth the rules for arrest and investigation.

136. The most important principles and rules governing arrest and investigation established and affirmed in the Body of Principles are perhaps the following:

- All persons under any form of detention or imprisonment shall be treated in a humane manner and with respect for the inherent dignity of the human person;
- Arrest, detention or imprisonment shall only be carried out strictly in accordance with the provisions of the law and by competent officials or persons authorized for that purpose;
- Any form of detention or imprisonment and all measures affecting the human rights of a person under any form of detention or imprisonment shall be ordered by, or be subject to the effective control of, a judicial or other authority;
- No person under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstance whatever may be invoked as a justification for torture or other cruel, inhuman or degrading treatment or punishment;
- States should prohibit by law any act contrary to the rights and duties contained in these principles, make any such act subject to appropriate sanctions and conduct impartial investigations upon complaints;
- Persons in detention shall be subject to treatment appropriate to their unconvicted status. Accordingly, they shall, whenever possible, be kept separate from imprisoned persons;
- The authorities which arrest a person, keep him under detention or investigate the case shall exercise only the powers granted to them under the law;
- A person shall not be kept in detention without being given an effective opportunity to be heard promptly by a judicial or other authority. A detained person shall have the right to defend himself or to be assisted by counsel as prescribed by law;
- Any person shall, at the moment of arrest and at the commencement of detention or imprisonment, or promptly thereafter, be provided by the authority responsible for his arrest, detention or imprisonment, respectively, with information on and an explanation of his rights and how to avail himself of such rights;
- Communication of the detained or imprisoned person with the outside world, and in particular his family or counsel, shall not be denied for more than a matter of days;
- A detained person shall be entitled to have the assistance of a legal counsel. He shall be informed of his right by the competent authority promptly after arrest and shall be provided with reasonable facilities for exercising it;

- A detained or imprisoned person shall have the right to be visited by and to correspond with, in particular, members of his family and shall be given adequate opportunity to communicate with the outside world, subject to reasonable conditions and restrictions as specified by law or lawful regulations;
- It shall be prohibited to take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, to incriminate himself otherwise or to testify against any other person;
- A proper medical examination shall be offered to a detained or imprisoned person as promptly as possible after his admission to the place of detention or imprisonment, and thereafter medical care and treatment shall be provided whenever necessary. This care and treatment shall be provided free of charge;
- Places of detention shall be visited regularly by qualified and experienced persons appointed by, and responsible to, a competent authority distinct from the authority directly in charge of the administration of the place of detention or imprisonment;
- A detained person or his counsel shall be entitled at any time to take proceedings according to domestic law before a judicial or other authority to challenge the lawfulness of his detention in order to obtain his release without delay, if it is unlawful;
- Whenever the death or disappearance of a detained or imprisoned person occurs during his detention or imprisonment, an inquiry into the cause of death or disappearance shall be held by a judicial or other authority, either on its own motion or at the instance of a member of the family of such a person or any person who has knowledge of the case. When circumstances so warrant, such an inquiry shall be held on the same procedural basis whenever the death or disappearance occurs shortly after the termination of the detention or imprisonment. The findings of such inquiry or a report thereon shall be made available upon request, unless doing so would jeopardize an ongoing criminal investigation;
- A detained person suspected of or charged with a criminal offence shall be presumed innocent and shall be treated as such until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence. The arrest or detention of such a person pending investigation and trial shall be carried out only for the purposes of the administration of justice on grounds and under conditions and procedures specified by law. The imposition of restrictions upon such a person which are not strictly required for the purpose of the detention or to prevent hindrance to the process of investigation or the administration of justice, or for the maintenance of security and good order in the place of detention shall be forbidden.

C. Human rights violations committed by Palestinian security services at the time of arrest and detention

137. In order to obtain an idea of the nature, scale and substance of the violations alleged in the Goldstone report, the Commission contacted all the Palestinian human rights institutions that have, in its opinion, reliably observed and documented the violations in the West Bank, including Al-Haq, Al-Dameer

Association for Human Rights, the Independent Commission for Human Rights, the Jerusalem Legal Aid Centre and the Treatment and Rehabilitation Centre for Victims of Torture, to provide it with any information that had been collected and documented by those institutions, in addition to their reports, statements and contributions.

138. All the reports, testimonies and statements received by the Commission from those organizations are in agreement that West Bank law-enforcement agents committed violations in the performance of arrests and detentions. Reports and statements noted that the security services in the West Bank, in carrying out arrest, detention and investigation procedures, had committed a number of violations, which may be summarized as follows:

1. Arrests were linked to the Palestinian political situation, inasmuch in the West Bank they targeted persons belonging to, closely associated with or supportive of Hamas, and others favoured by political groups or forces allied with or sympathetic to Hamas;
2. Law-enforcement officers in the West Bank security services failed to respect due legal process, in the majority of cases of arrest and detention;
3. Detainees were mistreated and subjected to cruelty;
4. Detainees were not referred to the Office of the Public Prosecutor within the statutory time limits prescribed by the Palestinian Code of Criminal Procedure;
5. Civilian detainees were brought before military courts;
6. The security services disregarded and failed to implement release orders issued by the courts, and in some cases they were duplicitous in the execution of such orders in that they only gave the appearance of releasing detainees whose discharge had been ordered;
7. Detainees were subjected to torture and other forms of humiliating and degrading treatment as a means of extracting from them confessions regarding acts ascribed to them or confessions relating to others.

1. Complaints received by the Commission concerning detention-related violations:

139. The Commission received from human rights organizations, parliamentary blocs, relatives of detained persons and released detainees some 165 complaints concerning arrest and detention-related human rights violations by law-enforcement officers and Palestinian security services in the West Bank, in addition to directly receiving 85 personal complaints from individuals in the West Bank.¹²

140. After reviewing and studying the complaints and their annexes, the Commission found that the claims relating to violations of human rights and freedoms by law-enforcement officers in the West Bank in connection with arrests and detention were justified. The Commission also confirmed the statements of persons who gave testimony at the hearings it conducted in the

¹² Lists of all the complaints, which have been documented by the Commission, are attached hereto.

West Bank¹³ regarding the perpetration of the following violations by the authorities responsible for carrying out arrests and detentions in the West Bank:

(a) Disregard on the part of the security services for the rules of jurisdiction regarding authority to detain and arrest:

141. It is evident from the content of the complaints and the hearings held by the Commission that the Palestinian Military Intelligence Service shared the exercise of the authority to detain and arrest with the police and the General Intelligence and Preventive Security Services. Indeed, the Military Intelligence Service detained, investigated and held individuals at its headquarters,¹⁴ although under the law it has no authority to arrest anyone other than military personnel; hence it is not empowered to apprehend, detain or arrest civilians.

142. All the security agencies, whether or not they are legally authorized to make arrests, failed to respect Palestinian Code of Criminal Procedure Law (No. 3 of 2001), which provides that no arrest warrant may be executed without a court order. According to statements documented by the Commission in every one of the hearings it conducted, no arrest warrant issued by the competent judicial authorities had been produced. Rather, arrests had been carried out forcibly by taking the wanted person to security headquarters, whether from his home, his place of work or a public thoroughfare; or else the person was summoned by telephone to a meeting with the security body, whereupon he was immediately apprehended and arrested.¹⁵

143. The Palestinian Code of Criminal Procedure, article 125, explicitly provides that detainees and prisoners may only be housed in specially designated detention or imprisonment facilities, namely, reform and rehabilitation centres or the arrest and detention centres of such properly authorized agencies as the Palestinian General Intelligence Service or the Preventive Security Service. The Palestinian security services failed to abide by that provision and detained scores of arrested persons at Military Intelligence headquarters, even though those headquarters are not, according to Palestinian law, designated for the arrest and detention of civilians.

144. When entering and searching homes, the security services did not respect the requirement to show judicial orders. Numerous homes were broken into and searched without any such order being shown, which constitutes a clear violation of the sanctity of those homes.

(b) Use of violence, mistreatment, beating and degradation at the time of arrest:

145. In addition to resorting to force and violence, the security services frequently carried out arrests in a degrading and inhuman manner. As shown by the statements obtained by the Commission from arrested persons or their relatives concerning the facts surrounding arrest, the Palestinian security services in general did not comply with the rules and criteria governing arrests,

¹³ The Commission heard the testimony of 22 persons in connection with complaints relating to detention.

¹⁴ Eleven persons testified in hearings that they or their relatives had been detained and arrested by the Military Intelligence Service: statements documented by the Commission and registered as Nos. S-D-3/2010, S-D-4/2010, ayn-t-D-11/2010, ayn-t-D-12/2010, ayn-t-D-13/2010, ayn-t-D-14/2010, ayn-t-D-15/2010, ayn-t-D-17/2010, ayn-t-D-21/2010, ayn-t-D-25/2010 and ayn-t-D-26/2010.

¹⁵ This situation was corroborated by most of the statements documented by the Commission, including the following: statements documented by the Commission and registered as Nos. S/D-4/2010, S/D-3/2010, ayn-t-D-12/2010, ayn-t-D-21/2010, ayn-t-D-23/2010 and ayn-t-D-25/2010.

in particular those relating to proper treatment and the avoidance of beating, degradation and recourse to violence.

(c) Violation of the legal provisions governing the duration of custody by those services:

146. As previously mentioned, in ordinary circumstances Palestinian law allows the authorized agency to detain and arrest persons for a period of 24 hours, after which the arrested person must immediately be released or transferred to the Office of the Public Prosecutor or the competent court with a view to a decision on his status being made.

147. It is worth noting that, in the majority of cases of arrest which it documented, the Commission found that the security services ignored those time limits and failed to observe binding legal provisions by detaining many persons for periods longer than those provided for by law; moreover, none of the detainees were transferred to the Office of the Public Prosecutor or the competent court.

(d) Failure to comply with court order regarding the release of detainees:

148. Eight complainants out of the total of 22 persons heard by the Commission stated that the security services (Preventive Security, General Intelligence and Military Intelligence) did not execute some of the court orders requiring the discharge of detainees or their release on bail; despite the court orders, those persons continued to be detained. In other cases deception was practised with regard to court orders requiring the release of detainees: the decision of the court was executed by the security service, only for the person to be reapprehended and detained by another security service. Some security services carried out the order to release the detainee and then rearrested him as soon as he left security headquarters, on the pretext that he had committed another delinquent act; the detainee was thus rearrested by the same agency on a different charge.

149. Other means of avoiding the implementation of court orders involved releasing the person, then rearresting him immediately under a new arrest warrant issued by the Military Prosecutor or the head of the military judiciary.

150. Some of the statements of complainants who were heard in this connection serve to illustrate the manner in which the security services dealt with court decisions, including those of the Supreme Court. One of the victims testified: "... on 11 September 2008, the Supreme Court ordered my release, and immediately upon the receipt of that order, I was indeed released. As I proceeded out of the door of the place of arrest, a civilian car approached me and one of the passengers pulled out a General Intelligence card and asked me to enter the car. It drove around for 15 minutes, after which I was taken to General Intelligence headquarters, where I was asked to hand over my personal belongings and placed under arrest for a period of eight days. I was released after signing an undertaking to obey the law ... I was detained at the Preventive Security Service ... On 15 July 2009, an order for my release was issued by the Supreme Court and I was released on 26 July 2009 ...".¹⁶

¹⁶ Statement documented by the Commission and registered as No. S/D-4/2010.

151. According to another victim: "... I had filed an appeal against the decision to arrest me with the Supreme Court and, on 4 October 2009, the Court ruled that I should be released. At the prison door, they took me back in again ...".¹⁷

152. Yet another victim stated: "... On 8 April 2009, my husband was arrested by Military Intelligence and taken to Al-Junaid Prison in Nablus ... On 22 November 2009, I obtained an order for his release from the Supreme Court, but the Court's order has not been executed to this day ... After the order for my husband's release was issued by the Supreme Court, he was handed over to the military court, which sentenced him to four years on 19 January 2010 ...".¹⁸

153. In a further statement concerning the manner in which the security services dealt with judgements of the civil courts, the complainant testified as follows: "... On 2 January 2009, I was placed under arrest in the Military Intelligence Service in the town of Salfit. My detention lasted 13 months ... I filed an appeal with the Supreme Court, which ruled that I should be released. Three months after the issuance of the decision by the Court, I was released ...".¹⁹

154. In yet another statement relating to the deceitful ways in which the security services circumvented court decisions, the complainant testified as follows: "... I obtained a Supreme Court order for my release on 2 December 2009, but Preventive Security did not comply by releasing me. It should be pointed out that I delivered the order to Preventive Security myself, inasmuch as that is where I was detained. Military Intelligence transferred me to General Intelligence, and when General Intelligence reviewed the matter with a view to executing the decision, they informed me that the decision did not concern them because it was addressed to Preventive Security, and not to them ...".²⁰

(e) Torture, beatings and ill-treatment during interrogation and investigation:

155. It is evident from the statements heard by the Commission that many persons were subjected to beatings, torture and degrading treatment at various stages of their detention. By placing pressure on them, it was hoped to extract information or induce them to confess to acts or statements ascribed to them or to others.

156. Furthermore, it is clear from all the statements obtained by the Commission that the security services used a number of methods of exerting pressure on detainees in order to extract information or confessions from them, including:

- Severe beatings in the form of blows, kicks and slaps;
- Collective beating of the detainee, where several individuals take part in beatings and other acts of aggression;
- Whipping with water hoses;
- *Shabah*, where the detainee's hands are tied behind him and pulled up by fastening the bonds to a door, window or other object, so that the mashbuh, or the person subjected to this form of torture, remains virtually suspended in the air, a process that may last for periods of varying

¹⁷ Statement documented by the Commission and registered as No. ayn-t-D-12/2010.

¹⁸ Statement documented by the Commission and registered as No. ayn-t-D-11/2010.

¹⁹ Statement documented by the Commission and registered as No. ayn-t-D-15/2010.

²⁰ Statement documented by the Commission and registered as No. ayn-t-D-21/2010.

duration, even several days in succession, the person being granted brief periods of respite;

- Curses, contemptuous remarks and humiliation;
- Threats and intimidation;
- Detention in cramped cells measuring roughly 1 metre by 2 to 3 metres;
- Withholding of blankets and bedding;
- Questioning for many hours at night, sometimes until daybreak;
- Sleep deprivation;
- Refusal to provide medical treatment and care;
- Beatings on the soles of the feet with sticks, done by shackling and raising the detainee's feet, whereupon he is beaten with sticks or clubs for variable lengths of time, then required to walk in order to obscure the blood congestion resulting from the beating.

157. As an indication of the harsh treatment and torture meted out to detainees, one complainant stated the following: "... On 31 January 2009 I was taken into custody by the Preventive Security service in Hebron and remained in detention, I believe, until 26 February 2009. For nearly 18 days I remained in a cell without any bedding, not even a blanket, and was subjected to torture, which included *shabah* on the door, and was not permitted to sleep for five days. The investigation focused on my activity at the university ... It should be mentioned that, approximately a week before my arrest, I began to receive treatment from a doctor who specialized in rheumatism, because it appeared that I suffered from vitamin B12 deficiency ... The treatment prescribed was in the form of injections, at the rate of one injection per day over three months. During my detention I was not able to take the injections, despite the fact that I informed them that I needed them. I was permitted to receive the injections during the last three days ... When they sent a doctor to examine my condition at the time of my arrest, it was obvious to the doctor that I needed to receive the treatment, but the investigator informed me that he wanted me to die right there and that there would be no treatment. He haggled with me over confession in exchange for treatment ... The last arrest, which was on 6 September 2009 and lasted until 12 September 2009, was at the General Intelligence Service in Hebron ... On the occasion of that arrest I was subjected to torture, which included *shabah* on a chair and the door and beatings as well as other types of torture, one of which consisted of placing a snake on my body, while they repeatedly told me that the snake was hungry and needed food. However, I was not harmed by the snake. In addition, there was a new torture method, which consisted in lowering the upper half of my body into a well in the *shabah* yard at General Intelligence headquarters and threatening to let me fall into the well if I did not confess ...".²¹

158. In another statement, one of the complainants testified to the Commission as follows: "... I was taken into custody by Preventive Security ... The moment I went in to the investigator, he asked me why I had not saluted him, and I replied that I was in a confused state of mind. And because I had not saluted him, he said to me, 'I'll show you!' and called in a soldier who held me firmly from behind while blows from the investigator rained down on me. He then escorted me to the torture yard, where the investigator fell upon me, beating me

²¹ Statement documented by the Commission and registered as No. ayn-t-D-26/2010.

from in front and behind, before concentrating on my lower body, until I fell to the ground, bleeding heavily from my mouth and nose and almost fainting. They told me to wash my face so that I would regain consciousness. After that, they put me back in the *shabah* standing position ... While I was being tortured I witnessed them torturing other detainees ... Between solitary confinement cells and *shabah*, the torture continued for a month. After beating me they made me stand on my feet for four days. Throughout my detention I rested only at prayer and mealtimes ...”²²

159. Another statement contained the following: “...On 1 March 2009 I was taken into custody at General Intelligence, on al-Irsal Street in the city of Ramallah ... The investigator called for a soldier and told him, ‘Take ‘Ahmad’ to his private suite’. He took me to a dark cell without any bed or mattress, which measured 1 by 2 metres, where I remained until the following day, sleeping on the tile floor; the weather was freezing ... A soldier then took me from the cell and placed iron handcuffs on my hands, fastening them behind my back. He then tied them to a window on the wall and raised my hands until they were tight against the end of the window. I was in a hanging position, the tips of my toes touching my shoes. They pushed the shoes out from under my feet so that I remained suspended, a situation that continued from Monday to Thursday ... On the following Saturday, after the Friday break, they threw me on the ground, place a piece of cloth in my mouth, blindfolded me with my hands behind me, bound my feet to a Kalashnikov and brought a rigid plastic hose. Two of them raised my feet and the officer began to beat my feet with the hose after removing my shoes. Five persons took turns performing this bastinado until they grew tired. They poured water on the ground and asked me to jump barefoot ... I could not jump because my feet had turned blue, and because I was unable to jump, they began to beat me all over my body ... Another time they subjected me to the same torture for more than two hours and as a result of the swelling in my feet, my toenails fell out on the ground. Things continued this way for a period of 20 to 25 days ... One night a soldier named ‘Rami’ continued to beat me on the swollen area all night ...”²³

160. The testimony of another complainant included the following: “... On 2 April 2009, I was arrested at a private school by the name of ‘Akadimiyat al-qur’an al-karim’ (Academy of the Holy Koran), which belongs to the Nablus Zakat Committee, where I was working, and taken to Jenin prison, where I was arrested by Preventive Security. On the occasion of that arrest I was subjected to torture consisting in continuous *shabah*, sleep deprivation and severe beating, which resulted in a toe on my right foot being broken ...”²⁴

161. In another statement the complainant reported: “... In July 2009, they put me directly into a cell without questioning me; then they subjected me, blindfolded, to *shabah* and took turns beating me with a hose about seven times. I shouted to them that I was a journalist and should not be treated in that manner, whereupon they struck me in the face with the hose. I reacted by getting free of the bonds and pulled the cover off my head. The person who had been beating me stepped back and called the officer, and at that moment I saw around me some 10 people who were being tortured and subjected to *shabah*. At that point two officers arrived, and they threw me to the ground and beat me. I kept screaming until the interrogation chief arrived. He also slapped me and

²² Statement documented by the Commission and registered as No. ayn-t-D-23/2010.

²³ Statement documented by the Commission and registered as No. ayn-t-D-22/2010.

²⁴ Statement documented by the Commission and registered as No. ayn-t-D-17/2010.

ordered me not to argue and keep quiet, then tied me and subjected me to *shabah* again ...”²⁵

162. One of the important testimonies obtained by the Commission concerning the conditions of arrest and detention and the nature of the practices by members of the security services with regard to detainees is contained in the statement of Mr. Mahmud Sahwail, Director of the Treatment and Rehabilitation Centre for Victims of Torture, a human rights organization concerned with studying and documenting torture. He stated that his institution had carried out a field survey in a sample of 50 detainees who had been released. After all the individuals in the sample had answered all the questions addressed to them, the Centre arrived at the following set of indicators and conclusions:²⁶

- 8.9 per cent reported that, at the time of arrest, they had been beaten in front of members of their families;
- 37.8 per cent of the sample reported that they had been subjected to humiliation, curses and threats while being transported to the places of arrest and detention;
- Most of the persons in the sample reported that they had been arrested in the middle of the night, which had made their family members shocked and fearful;
- 86 per cent of the sample reported that they had been released after being investigated, but without any regard for the time limits established by law for arrest and detention, which means that the criterion for the release of detainees was not the statutory limits defined by the laws governing the arrest, detention, interrogation and investigation of persons. What in fact determined the duration of such detention or arrest was the length of time required for the investigator to obtain a confession;
- Based on the statements of the survey subjects, the rate at which torture was practised was highest in the Military Intelligence Service, followed by the General Intelligence Service and the Preventive Security Service. However, it should be noted that, instead of focusing on quantity and severity, the Preventive Security Service was more selective in its use of torture, employing types and methods of torture and pressure that would lead to a rapid confession and admission of the charges attributed to the person.

163. The forms of torture used by the persons concerned included the following:

- Violent beating with truncheons;
- Caning for prolonged periods;
- Torture using water and jets of hot and cold air;
- Burning with cigarettes;
- Strangulation.

The main forms of psychological torture to which the detainees were subjected comprised:

- Solitary confinement;

²⁵ Statement documented by the Commission and registered as No. S-D-5/2010.

²⁶ Statement documented by the Commission and registered as No. m/D-32/2010.

- Sleep deprivation;
- Denial of drinking water;
- Denial of access to toilet facilities;
- Being kept in ignorance of time and place;
- Denial of medical treatment;
- Prohibition of visits.

164. Perhaps the most serious consequence of the subjection of the detainees to torture and other forms of harsh and degrading treatment is the fact that 48 per cent of those who were questioned said that they wanted to take revenge on their jailers and that 77 per cent of them stated that they felt hatred and rage because of the indignity and ill-treatment to which they had been subjected.

D. Opinion of the Commission on the arrest and detention operations in the West Bank

165. It is clear from the facts documented by the Commission on arrests that were made in the West Bank that many involved assaults and violations by the agencies charged with implementing the law, and were contrary to the rules that should be respected and applied in the event of arrest or detention. Set forth below are perhaps the most important of the points identified by the Commission from the testimonies that it documented subsequent to the hearings it convened and from the reports and data that it obtained from Palestinian human rights institutions.

166. The positions of the Palestinian civil society institutions and the Palestinian National Authority differ: all the institutions heard by the Commission took the view that the arrest campaigns being carried out by the security agencies involved arbitrary arrests that were aimed at all sympathizers with Hamas and other Islamic movements. The official agencies deny that allegation and reject any suggestion that persons were arrested on grounds of political affiliation; they claim that all those detained in the West Bank were persons suspected of having committed acts that were illegal or prejudicial to public safety and public order.

167. On the basis of the hearings that it held and of the reports and documents that it obtained, the Commission considers that the arrests of Hamas sympathizers and other persons made by the Palestinian security agencies were a response to the political differences between Fatah and Hamas, because the majority of those arrests were based on considerations of political affiliation and can consequently be characterized as illegal.

168. It is evident from all the complaints filed and the hearings convened by the Commission that most of the complaints of torture, ill-treatment and beating concerned the Preventive Security Service, the General Intelligence Service and, in particular, the Military Intelligence Service.

169. It is clear that the Office of the Public Prosecutor was remiss in performing the role entrusted to it by law, because it was incumbent on the members of the Office, under article 126 of the Palestinian Code of Criminal Procedure (No. 3 of 2001), to investigate prisons and places of detention within their jurisdiction in order to verify that they held no illegally detained inmates. They are also responsible for consulting the records of such centres and arrest and detention warrants, taking copies thereof, and contacting any detainees or

other inmates and hearing any grievances that might be submitted to them. Moreover, prison directors and wardens are obliged to offer them every assistance in obtaining the information sought.

170. Consequently, it was incumbent on the Office of the Public Prosecutor not only to intervene in order to prevent any arrest or detention that fell outside the remit of the prisons, but also to initiate criminal proceedings against anyone in breach of the legal requirements. It has also been established that the Office of the Public Prosecutor failed to intervene in order to prevent members of the security apparatus, in particular the Military Intelligence Service, from usurping the powers of the agencies which, under the law, had the status of judicial police, particularly given that the Palestinian security apparatus, under Palestinian military code of criminal procedure, does not have the status of judicial police in cases involving military personnel.

171. For this reason, the Military Intelligence Service does not have the authority to act in the capacity of judicial police, whether the matter concerns arrest or detention or the entering or searching of homes.

172. It is clear that violations of human dignity, including treatment during arrest, beating, abuse, humiliation and the subjection of arrested persons to torture or to physical or psychological pressure in order to obtain information from them or to force them to confess and admit the charges brought against them were not isolated cases of individual conduct in the detention and investigation centres of the preventive security apparatus, the General Intelligence Service and the Military Intelligence Service.

173. The fact that such practices occurred in a number of arrest and detention centres in the West Bank suggests that there were clear breaches by the security apparatus of the provisions of the Palestinian Basic Law, article 13, which affirms that no person shall be subject to duress or torture and that indicted and all persons deprived of their freedom shall receive proper treatment.

174. The security agencies successively rearrested the same person, who was not finally released until the last agency had arrested and detained him. This implies, on the one hand, a lack of effective coordination between the security agencies and, on the other, a lack of respect by the security agencies for the decisions of other agencies to release detainees.

175. The repeated arrest of the same person by the same agency means that there is no real guarantee of the protection of the individual. This in turn implies a lack of effective supervision of the agency's performance by the authorities and other agencies.

176. In the view of the Commission, this constitutes a serious breach of article 11 of the Palestinian Basic Law as amended in 2003, which affirms that personal freedom is a natural right that is guaranteed and protected, and that it is unlawful to arrest, search, imprison or restrict the liberty or freedom of movement of any person, except by judicial order, in accordance with the provisions of law. The law shall specify the period of preventive custody. It also provides that imprisonment or detention shall only be permitted in places that are subject to the laws on the organization of prisons.

Arrest and detention of civilians by the Office of the Military Prosecutor and the military judiciary

177. It is beyond question that the extension of the purview of the military judiciary to include civilians is a clear and blatant violation of the prerogatives of the civilian judiciary. In addition, it deprives civilians of the right to appear

before a civilian judge, a right that is guaranteed and affirmed by the Palestinian Basic Law, article 30, which states that litigation is a protected and guaranteed right for all people, and all Palestinians have the right to seek redress through the judicial system.

178. Similarly the extension of the purview of the military judiciary to include civilians is clearly prejudicial to the powers and functions of the civilian judiciary and constitutes a blatant violation of and departure from the substance of the Palestinian Basic Law, article 97, which provides that the judiciary shall be independent, and judicial authority shall be exercised through the various types and levels of courts. The structure, jurisdiction, and rulings of the courts shall be in accordance with the law.

179. The Commission also considers that the Palestinian Basic Law restricts the competence to arrest and detain civilians to the Office of the Public Prosecutor and the civilian judiciary, as indicated in the text of article 112 of the Law, which affirms that any arrest resulting from the declaration of a state of emergency shall be subject to the following minimum requirements:

1. Any detention carried out pursuant to a state of emergency decree shall be reviewed by the Public Prosecutor or by the appropriate court no more than 15 days from the date of detention.

2. The detainee shall have the right to appoint a lawyer of his choice.

180. The Commission considers that, inasmuch as the Palestinian Basic Law restricts the competence to review warrants for the arrest of civilians in emergency situations to the Office of the Public Prosecutor or the appropriate court, it is neither permissible nor lawful for the Office of the Military Prosecutor and the military judiciary to assume such competence in normal circumstances that do not constitute an emergency situation.

181. Such assumption by the Office of the Military Prosecutor and the military judiciary of the competence to arrest and detain civilians has led, in the view of the Commission, to a situation in which the military security agencies have unlimited authority to exercise the functions of the judicial police with respect to civilians, thus impairing the rights and freedoms guaranteed to civilians by the Palestinian Code of Criminal Procedure in the event of their being arrested or detained. That is particularly important in view of the fact that the procedural authority of the Office of the Military Prosecutor and the military judiciary is derived from the Revolutionary Penal Code of the Palestine Liberation Organization (1979), the guarantees and precepts of which are not in conformity with the guarantees conferred by the Code of Criminal Procedure on accused persons under arrest.

182. Furthermore, intervention by the Office of the Military Prosecutor and the military judiciary and their exercise, in a manner that is at variance with the Palestinian Basic Law, of the competence to try cases involving persons whose lawsuits, disputes and offences the civil judiciary is competent to consider, constitutes a blatant attack on the rights and freedoms of individuals. The Palestinian judiciary, through the Supreme Court, its highest judicial authority, has affirmed in dozens of judicial rulings that it is neither permissible nor lawful for Palestinian civilians to be brought to trial or detained by the Office of the Military Prosecutor.

183. The proliferation of instances of torture is due in part to the lack of effective supervision of prisons. It is clear to the Commission that General Intelligence Service and Preventive Security Service prisons were not properly supervised by the agencies with the appropriate legal competence.

184. The Commission also considers that the widespread use of torture at some security agency prisons has been facilitated and encouraged by the lack of legislation to regulate and criminalize such practices. The Jordanian Penal Code (No. 16 of 1960) which is in force in the West Bank addresses the crime of torture in only one article, namely, article 208, which provides as follows:

1. Any person who inflicts on another any kind of violence or harsh treatment not permitted by the law with a view to obtaining a confession to a crime or extracting information shall be punished by a term of imprisonment of between three months and three years.

2. If such acts of violence or harsh treatment result in illness or injury, the term of imprisonment shall be between six months and three years unless a more severe punishment is required.

185. Those provisions make it clear that:

1. The crime of torture is considered to be a misdemeanour and not a felony, because the corresponding term of imprisonment varies between three months and three years, even though torture is regarded as a felony under the penal legislation of most if not all States.

2. Since the definition of torture is restricted to physical injury and violence, all forms of psychological torture and stress are excluded. Those forms include acts involving threats and intimidation; the imposition of total and unjustified isolation; detention in conditions that render the detainee incapable of knowing where he is being held or how long he has been there; subjecting a person to mock execution; and totally neglecting a person or putting him in a place equipped for the infliction of torture or giving the impression that the detention authorities are preparing to inflict torture.

3. Harsh and humiliating treatment which is intended to inflict serious degradation or physical or psychological indignity with no specific objective is not criminalized.

186. The Palestinian Basic Law as amended in 2003, article 13, provides as follows:

1. No person shall be subject to duress or torture. Indictees and all persons deprived of their freedom shall receive proper treatment.

2. All statements or confessions obtained through violation of the provisions contained in paragraph 1 of this article shall be considered null and void.

187. Given that there have been instances of torture and harsh and degrading treatment attributable to the Palestinian security agencies, the Commission considers that there is a need for a Palestinian law to prohibit torture and other forms of degrading treatment, in order to remedy failure by penal legislation in force in the West Bank to criminalize torture and other forms of degrading treatment.

188. The Commission wishes to emphasize the need to harmonize the proposed law with the provisions of the 1987 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which has binding legal authority that must be respected and applied by all persons responsible for enforcing international law, irrespective of their status with regard to the Convention.

189. The Commission considers that a factor in the proliferation of such irregularities is the fact that perpetrators of the crime of torture, including the

members of the security apparatus who violated the principles and rules governing seizure and detention and the procedural rules established by law, are not accountable.

190. Accordingly, the Commission considers that public agencies should carry out their responsibility to hold accountable and prosecute all who break the law with regard to arbitrary and illegal arrests and the crime of torture and other forms of degrading treatment.

V. Violation of the right to assume public office in the West Bank

A. The right of Palestinians to assume public office in national legislation

191. The Palestinian Basic Law as amended in 2003 affirms the right of Palestinians to assume public office on the basis of equality of opportunity without any preference or distinction between them. Article 9 of the Law provides that all Palestinians are equal before the law and the courts, without distinction as to race, sex, colour, religion, political views or disability.

192. Article 26 of the Law provides as follows:

Palestinians shall have the right to participate in political life both as individuals and in groups. In particular, they shall have the following rights:

1. To form, establish and join political parties in accordance with the law;
2. To form and establish unions, guilds, associations, societies, clubs and popular institutions in accordance with the law;
3. To nominate candidates and vote in elections, in order to select representatives, who shall be elected by public ballot, in accordance with the law;
4. To hold public office and positions in accordance with the principle of equality of opportunity;
5. To conduct private meetings without the presence of police officers, and to conduct public meetings, gatherings and processions, within the limits of the law.

193. Similarly, article 25 of the Law provides that work is a right, duty and honour, and the Palestinian National Authority shall strive to provide work for any individual capable of performing it.

194. The affirmation in the Palestinian Basic Law of the right to assume public office on a basis of equal opportunity, and of the obligation of the Palestinian National Authority to endeavour to provide work for any individual capable of performing it, is in keeping with the provisions and principles of international human rights instruments, specifically, the International Covenant on Economic, Social and Cultural Rights.

195. The Commission considers that the application to the assumption of public office of the principle of equality of opportunity, which is adopted and affirmed by the Palestinian Basic Law, implies the obligation to provide uniform circumstances, conditions and standards for all citizens, in order to enable them to avail themselves of such opportunities, rights and status provided that they are suitably qualified and that there is a need for their employment in public office, or in the case of promotion and progression up the occupational hierarchy.

196. This principle also requires the official authorities to refrain from engaging in any action likely to discriminate between individuals in the assumption of public office, from giving special or preferential treatment to any category of persons to the detriment of others or from establishing limitations, procedures or measures that might have the effect of preventing certain individuals from availing themselves of opportunities to assume public office

on a basis of equality with other employees. Any such limitations, for whatever cause, must be regarded as discriminatory and contrary to the principle of equality between employees in the exercise of their constitutional and legal rights.

197. In its approach to the right to assume public office, the Palestinian Basic Law conforms to the provisions of international human rights law, specifically, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights both of which affirm the right and obligation of equality between employees in the assumption of public office. Article 21 of the Universal Declaration provides as follows:

1. Everyone has the right to take part in the government of his country, directly or through freely chosen representatives;

2. Everyone has the right of equal access to public service in his country;

3. The will of the people shall be the basis of the authority of government; this will shall be expressed in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures.

198. The International Covenant on Civil and Political Rights establishes that right and emphasizes it in article 25, which states as follows:

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

(a) To take part in the conduct of public affairs, directly or through freely chosen representatives;

(b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;

(c) To have access, on general terms of equality, to public service in his country.

B. Right to assume public office in the legislation governing the national civil service

199. The Palestinian legislation regulating the right to assume public office as generally understood comprises the Civil Service Law (No. 4 of 1998), as amended by Law No. 4 (2005), and the implementing regulation thereof promulgated by Council of Ministers Decision No. 15 (2008). This legislation regulates working relations in the governmental sector as well as delineating and regulating various aspects and areas connected with the right, including its definition, the parties involved, the official body empowered to exercise administrative oversight of implementation of the right, the rights and duties of officials, administrative and disciplinary penalties for the breach of professional conduct, and other matters connected with public service.

1. Procedures for appointment to public office in the Palestinian National Authority

200. The Palestinian Civil Service Law specified a set of procedures to be observed and followed by the competent bodies when appointing individuals to

public office. In accordance with the law, they are defined and set forth in the following manner:

- The vacant post must be announced: article 19 of the Civil Service Law requires the authorities to announce vacant posts in at least two daily newspapers for two weeks from the time they fall vacant, specifying details of the post and any conditions of appointment;
- A competition must be held for appointment to posts for which a competitive examination is a requirement. Article 20 of the Civil Service Law states that the authorities must arrange a written and an oral examination for the posts that are to be filled. The written examination shall be announced first and those candidates who pass it shall be invited to take an oral examination. The names of those who pass the oral examination shall be announced, ranked in order of marks awarded;
- The names of those accepted to sit for the examination for appointment must be announced in two daily newspapers on at least two successive days and the announcement must specify the date and place of the examination;
- Under article 22 of the Civil Service Law, appointments in order of examination results must be made after the examination. When candidates are ranked equally, the one having the highest qualifications and greatest experience shall be appointed, and if two candidates are equal, the one who is older shall be appointed. The right to appointment of any person who has not been appointed to a post shall lapse one year after the announcement of the examination results.

2. Conditions for appointment to public office

201. The Civil Service Law, article 24, requires compliance with the following conditions by any person appointed to public office:

1. The person must be Palestinian or Arab;
2. The person must have attained the age of 18 years;
3. The person must be in good health and have no physical or mental disabilities likely to prevent him from performing the activities of the post to which he has been appointed;
4. The person must be entitled to the enjoyment of his civil rights and must not have been sentenced by a competent Palestinian court for a felony or misdemeanour of a dishonourable nature.

3. Probationary period prior to appointment to public office

202. The Civil Service Law, article 30, provides for a probationary period of one year during which a Government department or agency will evaluate the performance of a new employee. If the evaluation is unfavourable or if the new employee proves unsuitable for the post to which he was appointed, he will be notified of the termination of his employment two weeks before the end of the one-year probationary period. However, if he successfully completes the probationary period, the head of the competent Government agency will issue a decision confirming him in the post from the date on which he commenced work, and the secretariat will be informed accordingly.

203. Under article 36 of the implementing regulation of the Civil Service Law, during the probationary period the immediate supervisor of the official must prepare monthly reports on the official for submission to the head of the

competent governmental agency. One month before the end of the probationary period, the immediate supervisor of the official must submit to the head of the governmental agency a final report, based on his earlier reports, on the suitability of the official for the post to which he has been appointed. The same article provides that the evaluation of the official during the probationary period shall focus on his qualifications, conduct, performance of his duties, diligence, personal characteristics and approach to and success in his work.

204. Article 39 of the implementing regulation indicates the procedures that are to be followed in the event that the official does not successfully complete the probationary period, and provides that the probationer must be notified in writing of the termination of his employment by the head of the Government department to which he has been appointed two weeks before the end of the probationary period. Similarly, article 40 of the implementing regulation states that the head of the Government department in which the official on probation is employed must issue a decision confirming the appointment of an official who has successfully completed the probationary period.

4. Disciplinary procedures and penalties applying to public officials

205. If it is established that an official who has been appointed to public office has violated any law, regulation, directive or decision applicable to the public service, one of the following disciplinary penalties shall be imposed, in accordance with the provisions of article 68 of the Civil Service Law:

1. A caution or admonition;
2. A warning;
3. A deduction from remuneration not exceeding 15 days' salary;
4. The withholding or deferral of a periodic increment for a period not exceeding six months;
5. Withholding of promotion in accordance with the provisions of the Act;
6. Suspension from work on half salary for a period not exceeding six months;
7. Demotion, warning of separation, retirement on a pension, or separation from the service.

206. Article 69 of the Act also provides that the administration may not impose a sanction on an official until he has been referred to a committee of inquiry and has been heard. The decision on the matter shall be recorded in a special report and the decision on the imposition of a sanction shall be accompanied by a statement of reasons.

C. Violation of the right to hold a public position, alleged to have been committed by official Palestinian bodies

207. In order to obtain an idea of the nature, scale and substance of the violations alleged in the Goldstone report, the Commission contacted all the Palestinian human rights organizations that have, in its opinion, reliably observed and documented the violations in the West Bank, including Al-Haq, the Independent Commission for Human Rights and the Jerusalem Legal Aid and Human Rights Centre. The purpose was to provide the Commission with all information on the infringement or violation by official Palestinian agencies of

the right of Palestinians to hold a public position, in addition to their reports, statements and contributions.

208. The Commission also contacted Palestinian parliamentary blocs, namely, the Fatah movement bloc, the Change and Reform Bloc, which is affiliated to Hamas, the Popular Front for the Liberation of Palestine bloc, the Democratic Front and the Palestinian National Initiative, in order to gain an understanding of the positions and views of those blocs with regard to the alleged violations and to obtain from them evidence to support or refute the allegations.

209. All the reports received by the Commission from those organizations agree that a number of violations were committed by official bodies, specifically the General Personnel Council and the directorates and departments of various Palestinian ministries. Reports and affidavits indicate that official bodies in the West Bank have committed a number of violations, which may be summarized as follows:

(a) Cancellation of appointment or dismissal by official Palestinian bodies in the West Bank of hundreds of employees in the teaching profession and other public positions, on the basis of their political affiliation. The Ministry of Education, in particular, issued hundreds of decisions pursuant to which the appointment of teachers assigned to the education sector was halted on the basis of recommendations by the Preventive Security Service and General Intelligence Service that persons should not be nominated or appointed to a public position;

(b) Refusal in principle to appoint any new staff, regardless of whether the official Palestinian bodies had obtained the prior agreement from the security services that is known officially as a security clearance procedure.

Any appointment, regardless of the nature and level of the position, has become subject to scrutiny by the security services, who investigate the political affiliation of the person applying for the position, on the basis of which they determine his political suitability for the position.

D. Complaints received by the Commission regarding alleged violations of the right to hold a public position

210. The Commission received more than 140 complaints from Palestinian human rights organizations and parliamentary blocs concerning dismissal from employment. It received 61 direct personal complaints from individuals in the West Bank.²⁷

211. From the review and study of the substance of those complaints and the relevant attachments, the meetings held with human rights organizations and parliamentary blocs and the hearings held for complainants,²⁸ it became clear to the Commission that there is evidence to support allegations that official bodies in the West Bank violated the right of citizens to hold a public position.

212. The Commission is of the opinion that official bodies in the West Bank did in fact violate the right of Palestinians to hold public positions. It further believes that decisions by the security services in the West Bank to cancel and halt appointment procedures for staff in the public sector were based on a range of considerations and grounds, the most significant of which are the following:

²⁷ The Commission holds documentation on all these complaints; lists are annexed.

²⁸ The Commission heard the testimony of 51 persons concerning complaints about dismissal from employment.

1. The employee's political affiliation

213. From the scores of complaints and hearings with complainants, it was clear to the Commission that, in most cases where appointment procedures were cancelled, sympathizers of Hamas, or those close to it, were targeted; in some cases, Islamic Jihad sympathizers were targeted.

214. Most of the hearings the Commission held with complainants revealed the existence of a clear link between the dismissal of such persons and their political affiliation to Hamas. Many dismissed persons were investigated after dismissal on the grounds of political affiliation to Hamas, while some were dismissed following detention or arrest by the security services on the charge of belonging to Hamas.

215. One person who testified to the Commission commented on the reason for the termination of his services, saying, "... On 21 Ramadan 2008, I was summoned by the Preventive Security Service and detained for 10 days. I was released on the night before the Eid, without being charged. After that, in November 2008, I received a letter terminating my services ...".²⁹

216. In other testimony to the Commission, it was stated, "... On 31 December 2008, I received a letter discharging me from work and requiring me to return anything in my possession. When I consulted the Director of Education, he told me that he had no part in my dismissal and that the letter dismissing me had come from the Ministry. Prior to my dismissal, I had been called in for questioning by the Preventive Security Service, during which they asked me about my political affiliation to Hamas. I believe that the reason for my dismissal is related to my membership of Hamas ...".³⁰

217. Another person stated, "... On 8 February 2009, I received a letter cancelling my appointment on the grounds that the approval of the competent agencies was not forthcoming and requiring me to return anything in my possession. I knew that those agencies were the Preventive Security and General Intelligence Services. I learned that I had been dismissed because of my political affiliation to Hamas. I had previously been detained for a month because of my political affiliation. In the course of my work, I had been professionally assessed and obtained an evaluation of "good". I was dismissed for political, not professional, reasons, and I believe that my dismissal on the grounds of my political affiliation is a violation of the law ...".³¹

218. Persons have been penalized for their stance in elections and, according to numerous affidavits, have been dismissed from their employment because they had supported Hamas in the 2005 election campaign, or voted for the Hamas bloc in the second elections for the Palestinian Legislative Council or voted for the Hamas-affiliated student bloc in the West Bank university student councils.

219. At one of the hearings, it was stated, "... On 22 April 2008, I was appointed to the tenured position of teacher at Aqraba Elementary School for Boys. The school is attached to the South Nablus Directorate of Education, situated in the village of Howwarah. On 17 December 2008, I was surprised to receive notice of dismissal from the job in the form of a letter from the Ministry of Education (No. ME40/937810406), stating, '... given that the competent bodies have not approved your nomination/appointment to the staff of the Ministry of Education and Higher Education, kindly return anything you may

²⁹ Statement documented by the Commission and registered as No. f-w/D-57/2010.

³⁰ Statement documented by the Commission and registered as No. f-w/D-58/2010.

³¹ Statement documented by the Commission and registered as No. f-w/D-62/2010.

have in your possession'. After I received the notice terminating my employment, the South Nablus Director of Education told me to ask the Preventive Security and General Intelligence Services why they had not recommended approval of my appointment ... General Intelligence refused to see me until several acquaintances had intervened to facilitate a meeting with General Intelligence in Nablus. I was seen by two officers whose names I do not know. They questioned me, saying, 'You voted for Hamas and are a supporter of Hamas' and demanded that I should state which side is legitimate. After questioning, they told me that the interview was over and the upshot was that General Intelligence did not recommend my nomination for appointment because I had voted for Hamas ...".³²

220. In another hearing, it was stated, "... after that, I checked with the Education Office in Nablus and was told to see the security bodies. About three months after the letter was sent, I was summoned by General Intelligence. My interrogation revolved around the legislative elections ...".³³

221. In another affidavit, it was stated, "... I went to General Intelligence in Nablus and was informed that there was no problem. I am a graduate of the Department of Mathematics of Al-Najah National University and when I presented myself at General Intelligence, they asked me who I had voted for in the University elections. I told them I had left the ballot blank. They asked me about the legislative elections and I told them that I had not taken part in them ...".³⁴

222. In another affidavit, it was stated, "... On 15 February 2009, I received a message from the school secretary that I should present myself to the North Nablus Directorate of Education. I went there on the same day and was given a letter stating that the competent bodies had recommended that my appointment should be cancelled. The same day, I went to the General Personnel Council and Ministry of Education in Ramallah, who led me to understand that I should check with the security services. Three days later, I proceeded to the Preventive Security Service, where I was told that there was no problem ... I went to General Intelligence in Hebron ... where it was indicated that I had been reported to be a Hamas activist ... After that, they interviewed me in March 2009 and asked me about problems at Hebron University when I was a student at the Polytechnic Institute. They concentrated on my participation in the student elections ... and asked me my opinion of Hamas and whom I had voted for ...".³⁵

223. The affidavit of one of the persons heard by the Commission stated, "... On 1 November 2009, I received notice of dismissal. When I checked with the Ministry, they told me to see the Preventive Security and General Intelligence Services. When I presented myself at the General Intelligence Directorate and Preventive Security in Jenin, they questioned me ... The questions were not about my political affiliation but about whom I had voted for and the split in Gaza. I do not know the reason for my dismissal from work and no political charge has been levelled against me ... The security services did, however, accuse me of working for Hamas during the elections ...".³⁶

³² Statement documented by the Commission and registered as No. f-w/D-50/2010.

³³ Statement documented by the Commission and registered as No. f-w/D-51/2010.

³⁴ Statement documented by the Commission and registered as No. f-w/D-52/2010.

³⁵ Statement documented by the Commission and registered as No. f-w/D-60/2010.

³⁶ Statement documented by the Commission and registered as No. f-w/D-61/2010.

2. Cancellation of appointment because of close affiliation to Hamas

224. It is clear to the Commission that negative recommendations have been made by the Palestinian security services in respect of several persons, resulting in a refusal to approve their appointment to a public position on the grounds of close affiliation to Hamas.

225. A female teacher testified to the Commission that, "... On 28 August 2006, I was appointed to Carmel Secondary School, then transferred to another school, where I worked for three years in a non-tenured position. On 4 March 2009, I received a letter from the South Jenin Directorate of Education cancelling my appointment, discharging me from work and requiring me to return anything in my possession. I did not check personally with the security bodies; my father did that and was told that they had received a report about me ... and that my dismissal from work was for political reasons. The reports on my teaching had been excellent and I had never received any warning notice or been investigated. I was an excellent teacher in Islamic education. I believe that the problem is related to my husband, who was imprisoned by the occupying Power because he belongs to Hamas. That is why I was dismissed, not for incompetence at work ...".³⁷

226. In another affidavit, it was stated, "... I was dismissed on 9 September 2009. I was not notified of my dismissal and only learned about it when my replacement arrived. When I checked with the South Jenin Directorate of Education, I was told that I had been dismissed because the Preventive Security and General Intelligence Services had not recommended my appointment. When I checked with the two Services, they would not see me but informed me that my husband had been detained by Preventive Security, accused of belonging to Hamas. They told me that if my husband left Hamas, I would be appointed. I was told unequivocally that the reason for my dismissal was that my husband belonged to Hamas".³⁸

227. At another hearing, it was stated, "... Up to now, I do not know the reasons for the termination of my service. I went to the Independent Commission for Human Rights and then to the teachers' federation, where I was told that the reason for my dismissal was that one of my relatives belongs to Hamas ...".³⁹

E. The Commission's view of violations alleged to have been committed regarding the freedom to hold public positions in the West Bank

228. As a result of the hearings held by the Commission for complainants and human rights organizations concerned with monitoring and documenting violations by official bodies in the West Bank of the right of Palestinians to hold public positions, the Commission believes it is true that violations occurred and that official Palestinian bodies in the West Bank infringed the provisions of the Palestinian Basic Law and the Civil Service Law (of 1998 as amended) regarding the right to hold public positions, in the following respects:

229. The Ministry of Education in particular, and other Government bodies in general, stipulate that employees must obtain the approval of the security

³⁷ Statement documented by the Commission and registered as No. f-w/D-52/2010.

³⁸ Statement documented by the Commission and registered as No. f-w/D-56/2010.

³⁹ Statement documented by the Commission and registered as No. f-w/D-57/2010.

services as a condition for appointment to a public position. The Commission is of the view that this measure is unlawful and, moreover, represents a clear violation by Government bodies of the provisions of the Palestinian Basic Law and the Civil Service Law (1998), given that article 24 of the latter exhaustively stipulates the conditions for appointment, namely, that the candidate for appointment should be Palestinian or Arab, no less than 18 years of age, enjoy full civil rights, and not have been found guilty in a competent Palestinian court of a felony or a misdemeanour involving dishonour or breach of trust, unless his moral standing has been restored.

230. The Law and its implementing regulation explicitly stipulate that an employee on probation must be informed of the termination of his employment two weeks before the end of the probationary period, which is one year. However, the Ministry of Education and Higher Education and other Government bodies have not complied with that stipulation.

231. Furthermore, cancellation of an employee's appointment during the probationary period should, as stated in the Law and its implementing regulation, be based on professional considerations related to the results of the assessment of employee performance during the probationary period. That assessment is based on the principles and criteria of competence, professional behaviour, performance of duties, diligence at work, personal attributes, working manner and productivity. By contrast, nowhere at all among the justifications for termination of employment is there any condition or stipulation requiring that a security investigation or a recommendation from the security services be taken into consideration.

232. Accordingly, cancellation pursuant to a security service's demand of an employee's appointment during the probationary period or more than one year after appointment to the post is a clear violation by the official bodies of the provisions of the law. Official bodies therefore transgressed and acted arbitrarily in issuing decisions refusing appointment or a tenured position on that basis, which is not provided for by the Law or its implementing regulation.

233. In order to gain an understanding of the legal basis for the stipulation by official bodies that employees should obtain security service approval as a new condition of appointment, the Commission consulted the General Personnel Council and learned that the measure had been adopted in the public sector on the basis of an official letter sent to the President of the Council on 9 September 2007. In that letter, the then Secretary-General of the Council of Ministers demanded that the General Personnel Council should consider a security investigation part of the appointment process. The letter also made it obligatory for the Council to liaise with the security services in order to implement the measure.

234. The letter of the Secretary-General of the Council of Ministers referred to a Council of Ministers' resolution that had been adopted at weekly session No. 18 of 3 September 2007 concerning the conducting of a security investigation as part of the appointment process. However, the Commission was not able to gain access to that resolution. It was merely informed officially by the current Secretary-General of the Council of Ministers that the Council, at the aforementioned session, had held security clearance to be a condition for the appointment of staff, pursuant to the Civil Service Law.⁴⁰

⁴⁰ Copies of this correspondence are contained in annex 17 to the present report.

235. The Commission is of the view that staff dismissals or appointment cancellations were not prompted by professional concerns or related to the criteria for holding a public position. It has been established that such measure were taken on the basis of employees' political affiliation or their political views, and therefore constituted discriminatory act as defined by the Discrimination (Employment and Occupation) Convention, which was adopted at the forty-second session of the General Conference of the International Labour Organization (ILO) on 25 June 1958 and entered into force on 15 June 1960. Article 1 of that Convention defines discrimination in employment as follows:

1. For the purpose of this Convention the term "discrimination" includes:

(a) any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;

(b) such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organizations, where such exist, and with other appropriate bodies.

236. Paragraph 23 of Human Rights Committee General Comment No. 25, on the right to participate in public affairs, voting rights and the right of equal access to public services, adopted at the Committee's fifty-seventh session in 1996, states that in order to ensure access on general terms of equality [to public service positions], the criteria and processes for appointment, promotion, suspension and dismissal must be objective and reasonable. Affirmative measures may be taken in appropriate cases to ensure that there is equal access to public service for all citizens.

237. Basing access to public service on equal opportunity and general principles of merit, and providing secured tenure, ensures that persons holding public service positions are free from political interference or pressures. It is of particular importance to ensure that persons do not suffer discrimination in the exercise of their rights under article 25, subparagraph (c), on any of the grounds set out in article 2, paragraph 1.

238. Paragraph 1 of Human Rights Committee General Comment No. 18, on non-discrimination, adopted at the Committee's thirty-seventh session in 1989, states that non-discrimination, together with equality before the law and equal protection of the law without any discrimination, constitute a basic and general principle relating to the protection of human rights. Thus, article 2, paragraph 1, of the International Covenant on Civil and Political Rights obligates each State party to respect and ensure to all persons within its territory and subject to its jurisdiction the rights recognized in the Covenant without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Article 26 not only entitles all persons to equality before the law as well as equal protection of the law but also prohibits any discrimination under the law and guarantees to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status. Similarly, article 25 of the Covenant provides that every citizen shall have the right to take part in the

conduct of public affairs, without any of the distinctions mentioned in article 2 [of the Covenant].

239. The Commission believes that the term “discrimination”, as employed in the Covenant, must be understood as including any distinction, exclusion, restriction or preference on any ground, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status, which seeks or brings about the obstruction or hindrance of the recognition of the enjoyment or exercise of all rights and freedoms by all persons equally.

240. On this basis, the Commission is of the view that the dismissal of an employee on grounds of political affiliation or suspension of the right to hold a public position on the basis of a specific political affiliation discriminates between citizens and shows preference based on political affiliation and is inconsistent with the provisions of the Palestinian Basic Law, article 9, which affirms that all Palestinians are equal before the law and the courts, without distinction as to race, sex, colour, religion, political views or disability.

241. The Commission is of the view that the cancellation of the appointment of citizens in the public sector on the ground that they voted for a certain political body is a clear violation of an individual’s right to participate in political life, as guaranteed and affirmed by the Palestinian Basic Law, article 26 of which provides thus:

Palestinians shall have the right to participate in political life both as individuals and in groups. In particular, they shall have the following rights:

1. To form, establish and join political parties in accordance with the law;
2. To form and establish unions, guilds, associations, societies, clubs and popular institutions in accordance with the law;
3. To nominate candidates and vote in elections in order to select representatives, who shall be elected by public ballot, in accordance with the law;
4. To hold public office and positions in accordance with the principle of equality of opportunity;
5. To conduct private meetings without the presence of police officers, and to conduct public meetings, gatherings and processions, within the limits of the law.

242. The Commission believes that the Council of Ministers, as the body responsible under the Palestinian Basic Law as amended in 2003, article 69, for following up the implementation of laws, ensuring compliance with their provisions and taking necessary actions in that regard, must intervene to stop the application of security clearance measures, given that those measures are inconsistent and incompatible with the Palestinian Basic Law, which explicitly guarantees the right of Palestinians to hold public positions. They are also incompatible with the Civil Service Law, which contains no provisions with regard to such measures.

243. The Commission considers that, in order to remedy violations arising from security clearance measures and consequent violations of citizens’ basic rights and freedoms, the Palestinian Council of Ministers must annul all decisions concerning the cancellation of appointments, reinstate all those who have been affected by those measures, and grant them compensation for losses

incurred, pursuant to article 32 of the Palestinian Basic Law, which affirms that any violation of a personal freedom or of the sanctity of a person's private life or of any of the rights or liberties that have been guaranteed by law or by this Basic Law shall be considered a crime. Criminal and civil cases resulting from such violations shall not be subject to any statute of limitations. The National Authority shall ensure just reparation for any such harm suffered.

244. From the reports that it received and the hearings that it held, it is apparent to the Commission that scores of employees had their appointments cancelled more than a year after they had taken up a public position. In the Commission's view, this represents a clear infringement by Palestinian National Authority administrative bodies of the provisions of the Civil Service Law and its implementing regulation.

245. Article 30 of the above-mentioned Law provides for a one-year probationary period during which a Government department or body will evaluate the performance of a new employee. If the evaluation is unfavourable or if the new employee proves unsuitable for the post to which he was appointed, he will be notified of the termination of his employment two weeks before the end of the one-year probationary period. However, if he successfully completes the probationary period and there are no unfavourable comments on his performance, the head of the competent Government department must take steps to confirm him in the post permanently.

246. Accordingly, the Commission considers that all employees who complete the one-year probationary period have the legal right to be confirmed in a public post. Moreover, termination of their services on the basis of a former position is held to be tantamount to arbitrary dismissal from the civil service.

F. Violation by the de facto authority in the Gaza Strip of the right to hold a public position

247. While the Commission's mandate in respect of the right to hold a public position is restricted to investigating the situation in the West Bank, or the areas under the control and administration of the Palestinian National Authority, the Commission is of the view that it is important to draw attention to the manner in which the de facto authority in the Gaza Strip has also violated and infringed this right.

Appointment based on political affiliation

248. Most, if not all, appointments to public positions in the Gaza Strip are made on the basis of a person's political-affiliation background. If there is any question that a person is affiliated with Fatah or any group supporting or under the protection of that movement, he is disqualified and prevented from filling the vacant post.

249. The security services of the de facto authority in the Gaza Strip play a role similar to that of the security services in the West Bank with regard to performing security checks on persons who are the subject of appointment procedures. They also control and decide who is acceptable and may be permitted to fill the vacant post. Those services also have the authority to intervene and stop or cancel an appointment, or to terminate a person's employment.

250. The de facto authority in the Gaza Strip employs indirect methods of excluding personnel who do not support it. It is well known that the Palestinian

National Authority in the West Bank has continued to pay the salaries of civil servants in the Gaza Strip, on condition that they do not report to work places run by the de facto authority in the Strip.

251. Because such employees do not in fact report to work, the de facto authority in the Gaza Strip justifies their termination on the basis of the Civil Service Law, articles 90 and 100, the first of which provides as follows:

1. An employee who is absent from work without permission for a period exceeding 15 consecutive days shall forfeit his post unless he presents a valid excuse.

2. In such cases, absence shall be calculated on the basis of full salary or otherwise, as the case warrants.

252. Article 100, on the other hand, provides:

The employee's service shall cease, with forfeiture of the post, in either of the following two cases:

- (a) Absence, in accordance with the provisions of article 90 of this Law;
- (b) In the event of absence from work without permission or valid excuse for more than 30 non-consecutive days in a year, service shall be considered to be terminated as from the day following the completion of that period, provided that a written warning has been given after 15 days of absence.

253. On the basis of these provisions, the de facto authority has dismissed thousands of employees and replaced them with staff who belong to or are sympathetic to Hamas. The civil service in the Occupied Palestinian Territory has therefore become politicized in the full sense of the term, which, in addition to having negative repercussions on the civil service sector in both the West Bank and the Gaza Strip, will have a number of adverse consequences, the most important of which are the following:

- The employee's allegiance will be to the party, not to the job and its requirements;
- The employee will hide behind his position and his value to the party, which will grant him immunity in the event that he is called to account or prosecuted for any breach on his part of the requirements of the post;
- The employee's service is tied to his party orientation and, in consequence, he may fail to provide services relating to his function to anyone who is a partisan of a group that is not acceptable to his party.

254. The right to work is undoubtedly one of the most important components of the body of economic, social and cultural rights that has been established and is guaranteed by human rights instruments. Furthermore, it represents the premise for and the legal and material foundation of individuals' real enjoyment of all social, economic and cultural rights and freedoms as well as other civil and political rights and freedoms.

255. Human rights and freedoms and their constituent elements are interrelated and interdependent: they cannot therefore be broken into separate parts or fragmented. Consequently, it is not possible to respect some of those rights and enable individuals to enjoy them while at the same time allowing other rights to be abrogated and denied. Political rights are meaningless in the absence of social, economic and cultural rights, which, similarly, cannot be enjoyed by individuals who have no civil or political rights.

256. The various human rights and freedoms are complementary and must either be granted to individuals in full, in which case we can affirm that those rights exist; or they are diminished and divided, or some are recognized while others are denied, which in practice means that no rights exist, given that those that do are useless and devoid of value.*

257. The interrelated nature of human rights is not restricted to their various fields and principles, but extends to the individual branches of those rights: every primary human right on freedom includes a series of related or subsidiary rights, and the abrogation or elimination of any right or freedom unquestionably results in the abrogation and elimination of its subsidiary rights. Thus, in the area of social and economic rights, the withdrawal of the right to work entails, ipso facto, the removal and denial of all other rights established for the individual in that area, because the primary condition for those rights is missing. Indeed, the right to form unions or to strike, and the right to equal rights, pay and holidays and so on are useless and of no value if the grounds and justification for the existence of those rights, namely, the right to employment, does not exist.

258. The same applies to civil rights, one of the main pillars of which is the individual's right to life and personal integrity. Consequently, the abrogation of or lack of respect for that right automatically entails the denial and abrogation of all other rights, which lose all value and no longer have any *raison d'être*. Again, the same remarks apply to the individual's right to education, because all the rights that derive from it are devoid of meaning if the right to equality and non-discrimination, the right to freedom of opinion and expression, the right to humane treatment, and other rights, are denied.

259. The Commission therefore considers that when some Palestinians are deprived of the right of access to a public position they are not only denied the right to work and earn a livelihood, but also deprived of other rights, including, inter alia, the right to social security, suitable housing and health care; the right to marry and raise a family; and the right to a decent standard of living, dignity and education. An individual who loses his source of income and his livelihood will inevitably face difficult living conditions and be compelled to forfeit many rights which, without an income, he will not be able to exercise and enjoy.

* The United Nations General Assembly, in its resolution 32/130 of 1977, stressed the unity and integration of human rights as follows:

“(a) All human rights and fundamental freedoms are indivisible and interdependent; equal attention and urgent consideration should be given to the implementation, promotion and protection of both civil and political, and economic, social and cultural rights;

“(b) The full realization of civil and political rights without the enjoyment of economic, social and cultural rights ...”, etc.

The same was affirmed in the body of the Declaration on the Right to Development, adopted by the General Assembly in its resolution 41/128 of 4 December 1986, which provides “... that all human rights and fundamental freedoms are indivisible and interdependent and that, in order to promote development, equal attention and urgent consideration should be given to the implementation, promotion and protection of civil, political, economic, social and cultural rights ...”.

VI. Violation of press freedoms in the West Bank

A. Press freedoms in current legislation and international covenants

260. The Palestinian Basic Law as amended in 2003 affirms freedom of opinion and expression and freedom of the press in more than one of its articles. Article 19 provides as follows:

Freedom of opinion may not be prejudiced; every person has the right to express his opinion and circulate it orally, in writing, or in any other form of expression or art, with due consideration to the provisions of law.

261. Similarly, article 27 of the same Law provides as follows:

1. The establishment of newspapers and all other information media shall be the right of all and shall be guaranteed by this Basic Law. The sources of financing thereof shall be subject to the scrutiny of the law.

2. The freedom of the audio, visual and printed media, the freedom to print, publish, distribute and broadcast and the freedom of those working in these fields shall be guaranteed under this Basic Law and related laws.

3. Censorship of the media shall be prohibited. No warning, suspension, confiscation, cancellation or restriction shall be imposed on the media except by law and in pursuant to a judicial ruling.

262. The Palestinian Press and Publications Law (No. 9 of 1995) deals with press freedoms in more than one passage; article 2 of the Law provides:

The press and printing are free and freedom of opinion is guaranteed to every Palestinian, who may express his opinion freely in speech, writing, photographs or drawings in any form of expression or medium.

263. Article 3 of the Law affirms the following:

The press shall be free to present news, information and comment and shall contribute to the dissemination of ideas, culture and knowledge within the limits of the law and with due respect for public duties, rights and freedoms and for the freedom and sanctity of the private lives of others.

264. Article 4 of the same Law provides:

Freedom of the press includes the following:

- (a) Informing citizens of events, ideas and trends and providing them with information at the local, Arab, Islamic and international levels;
- (b) Providing opportunities for citizens to publish their views;
- (c) Seeking out, from their various sources, information, news and statistics of interest to citizens and analysing, discussing, publishing and commenting on them within the limits of the law;
- (d) The right of journalistic publications, news agencies, editors and journalists to maintain the confidentiality of their sources of information or news obtained confidentially unless, in the course of a criminal case, the court rules otherwise with a view to safeguarding the security of the State, preventing crime or ensuring justice;

- (e) The right of citizens, political parties, cultural and social organizations and unions to express their views and ideas and publish their accomplishments in their various fields of activity.

265. Article 6 of the Law states:

The authorities shall seek to facilitate the task of journalists and researchers by providing information on their programmes and projects.

266. Article 7 of the same Law requires journalists and publications to refrain from publishing anything contrary to public order, providing as follows:

- (a) Publications shall refrain from publishing anything contrary to the principles of freedom, national responsibility, human rights and respect for the truth, and shall consider freedom of thought, opinion, expression and information a public right comparable to their own rights;
- (b) Periodicals intended for children and adolescents shall not contain any images, stories or news items that are incompatible with Palestinian mores, values or traditions.

267. Article 8 of the Law defines journalistic duties and ethics, emphasizing the need for all journalists to abide fully by the pertinent professional ethics, including the following:

- (a) To respect the rights and constitutional freedoms of individuals and their right to conduct their private lives as they wish;
- (b) To present material in an objective, comprehensive and balanced manner;
- (c) To be accurate, impartial and objective in commenting on news and events;
- (d) To refrain from publishing anything likely to give rise to violence, extremism or hatred or promote racism or sectarianism;
- (e) To refrain from exploiting journalistic material in order to promote or detract from any commercial product.

268. In the area of international human rights instruments, the Universal Declaration of Human Rights, article 18, provides as follows:

Everyone has the right to freedom of thought, conscience and religion; this right includes freedom to change his religion or belief, and freedom, either alone or in community with others and in public or private, to manifest his religion or belief in teaching, practice, worship and observance.

269. Furthermore, the Universal Declaration and the International Covenant on Civil and Political Rights both affirm the right to freedom of opinion and expression. Article 19 of the Declaration provides:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

270. Article 19 of the Covenant reads as follows:

1. Everyone shall have the right to hold opinions without interference.

2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

271. Article II of the Declaration on Fundamental Principles concerning the Contribution of the Mass Media to Strengthening Peace and International Understanding, to the Promotion of Human Rights and to Countering Racialism, Apartheid and Incitement to War, proclaimed by the General Conference of the United Nations Educational, Scientific and Cultural Organization at its twentieth session, on 28 November 1978, provides:

1. The exercise of freedom of opinion, expression and information, recognized as an integral part of human rights and fundamental freedoms, is a vital factor in the strengthening of peace and international understanding.
2. Access by the public to information should be guaranteed by the diversity of the sources and means of information available to it, thus enabling each individual to check the accuracy of facts and to appraise events objectively. To this end, journalists must have freedom to report and the fullest possible facilities of access to information. Similarly, it is important that the mass media be responsive to concerns of peoples and individuals, thus promoting the participation of the public in the elaboration of information.
3. With a view to the strengthening of peace and international understanding, to promoting human rights and to countering racialism, apartheid and incitement to war, the mass media throughout the world, by reason of their role, contribute to promoting human rights, in particular by giving expression to oppressed peoples who struggle against colonialism, neo-colonialism, foreign occupation and all forms of racial discrimination and oppression and who are unable to make their voices heard within their own territories.
4. If the mass media are to be in a position to promote the principles of this Declaration in their activities, it is essential that journalists and other agents of the mass media, in their own country or abroad, be assured of protection guaranteeing them the best conditions for the exercise of their profession.

272. Article III of the Declaration reads:

1. The mass media have an important contribution to make to the strengthening of peace and international understanding and in countering racialism, apartheid and incitement to war.
2. In countering aggressive war, racialism, apartheid and other violations of human rights which are inter alia spawned by prejudice and ignorance, the mass media, by disseminating information on the

aims, aspirations, cultures and needs of all peoples, contribute to eliminate ignorance and misunderstanding between peoples, to make nationals of a country sensitive to the needs and desires of others, to ensure the respect of the rights and dignity of all nations, all peoples and all individuals without distinction of race, sex, language, religion or nationality and to draw attention to the great evils which afflict humanity, such as poverty, malnutrition and diseases, thereby promoting the formulation by States of the policies best able to promote the reduction of international tension and the peaceful and equitable settlement of international disputes.

B. Alleged violations of freedom of the press by the Palestinian authorities

273. In order to obtain an idea of the nature, scale and substance of the violations alleged in the Goldstone report, the Commission contacted all the Palestinian human rights institutions that have, in its opinion, reliably observed and documented the violations in the West Bank. The purpose was to provide the Commission with all information that had been collected and documented by those institutions, in addition to their reports, statements and contributions.

274. All the reports of the organizations concerned with monitoring and documenting press freedoms and the exercise by Palestinians of the freedom of opinion and expression, in addition to the statements issued and contributions submitted by those organizations, indicated that press freedoms in the West Bank were the object of a number of violations, the most important of them being the following:

(a) The arrest and detention of journalists by the Palestinian security services and their interrogation with regard to their journalistic work, their political affiliation or their audio, visual or written publications;⁴¹

(b) The torture and subjection of some to degrading and humiliating treatment when detained or arrested by Palestinian security services, who disregard the provisions of the Code of Criminal Procedure (Law No. 3 of 2001) concerning the requirement that such persons should be transferred to the Office of the Public Prosecutor or the civil courts and that they should not be held in custody for more than 24 hours;

(c) The obstruction of the practice of journalism by the security services on grounds relating to journalists' political affiliation or in order to prevent them from publishing or researching subjects which the security services did not wish to have investigated;

(d) The confiscation of professional items and equipment and materials, which the security services retained in order to peruse their content or prevent journalists from using them, thereby thwarting the journalists in their work.

C. Complaints received by the Commission concerning alleged violations of press freedoms in the West Bank

275. On the basis of complaints and the hearings conducted by the Commission with journalist complainants regarding the unlawful practices to which they had

⁴¹ Statement documented by the Commission and registered as No. m/S-40/2010.

been subjected in the West Bank, as well as the reports of the Palestinian Centre for Development and Media Freedoms (MADA), and human rights organizations, specifically, the Palestinian Centre for Human Rights in Gaza, the Independent Commission for Human Rights and the Samir Kassir Foundation, the Commission came to the conclusion that the law enforcement agencies had violated press freedoms and the rules and guarantees which must be respected and applied in the case of arrest and detention of journalists. The most serious violations noted by the Commission during the hearings it conducted with journalists included the following:

- Arrest and detention of journalists by security services, on the basis of journalists’ work;
- Subjection of detained journalists to torture and ill-treatment;
- Attacks on and hampering of journalists in the performance of their work;
- Confiscation of professional items and equipment;
- Threatening and intimidation of journalists;
- Pressure to compel some journalists to collaborate with security agencies;
- Disregard by the detaining services of court release orders in respect of detained journalists.⁴²

276. The following statements, documented by the Commission, are evidence of the violations to which journalists have been subjected because of their journalistic work. The statements were documented by the Commission during the hearings it conducted with journalists who complained about their subjection to excesses or violations perpetrated by Palestinian National Authority agencies in the West Bank.

277. One of the violations documented by the Commission in this area was the arrest of the journalist Mustafa Ali Abdallah Sabri, who was detained by all the security services — General Intelligence, Preventive Security and Military Intelligence — because of his work as a journalist. The statements made by him to the Commission on 8 May 2010 contain the following: “On 14 August 2007, I was arrested by the General Intelligence Service in the city of Qalqilya after being summoned by telephone. I was detained by that Service for five days. During detention I was interrogated about my work as a journalist, and during the period of interrogation I was subjected to torture, *shabah* and degrading and harsh treatment, being held throughout the period of detention in a cell 180 centimetres long by 90 centimetres wide. After five days of detention I was released, after signing an agreement to respect the laws of the Palestinian National Authority ... I was also arrested on 5 May 2008, this time by the General Intelligence Service in Qalqilya, and detained for three days, during which they did not question me at all ... On 29 July 2008, I was summoned by General Intelligence Service for publishing in the press the facts about the humiliation to which I had been subjected by that Service, and was detained for 14 days. After that, I was transferred to the military court on the charge of having attacked a General Intelligence Service officer. He was an officer whom I had pushed, during one of my detentions, after he slapped me in the face. I remained in detention until 11 September 2008, when I was released by the military police pursuant to a Palestinian Supreme Court ruling that I should be released on that date ... The moment I stepped out of the door of the military police centre in Qalqilya, a General Intelligence Service force apprehended me

⁴² These violations appear in the section on detention and torture in the West Bank.

and transported me to General Intelligence Service headquarters, where I remained in detention until 19 September 2008 ... On 21 April 2009, a force from the Preventive Security Service in Qalqilya arrested me. On that occasion my home was searched and my press archives were confiscated. After 15 days of detention I was transferred to the city hospital because of elevated glucose levels and high blood pressure. I remained there for two days. Before being taken to hospital I had been subjected to beating, torture and *shabah* ... Forty-three days after my arrest I was transferred to the headquarters of the Preventive Security Service in Ramallah, where the situation was much worse, inasmuch as I was subjected to *shabah* for 18 days, hanging from the window or the door with my eyes blindfolded and my hands cuffed. While I was being subjected to *shabah*, the doctor, when he came for a visit, finding me stretched in *shabah*, requested that I should be transferred to a hospital in Ramallah. After I was given first-aid treatment, they returned me to *shabah* ... On 15 July 2009, the Palestinian Supreme Court ruled that I should be released. The Preventive Security Service did not execute the court order immediately, but delayed its execution for 10 days ...”⁴³

278. In another testimony regarding the arrest, detention and interrogation of journalists by the security services in relation to their work as reporters, one journalist reported to the Commission that on 11 November 2007, after he had finished filming an interview in her home in Hebron with the wife of the President of the Legislative Council, who is in the detention of the Israeli occupying forces, a Preventive Security force arrested him and his colleague in a degrading manner as they emerged from the President’s home and took them to Service headquarters in Hebron, where they confiscated their cameras and tape of the interview and interrogated them about their work at the Al-Aqsa television channel. They were detained for 20 days, after which they were released on bail.

279. In September 2008, the same journalist was arrested and detained for 15 days by the General Intelligence Service in Bethlehem on a charge of working for the Al-Aqsa satellite channel. He was again arrested by the security service in Bethlehem in July 2009 after being requested to appear at the headquarters of the service in that city. According to his testimony to the Commission, during that detention he was subjected to *shabah*, beating with whips and harsh and degrading treatment. He was released a month after his arrest.

280. In his testimony regarding that detention he said: “... They put me directly into a cell without questioning me; then they subjected me, blindfolded, to *shabah* and took turns beating me with a hose about seven times. I shouted to them that I was a journalist and should not be treated in that manner, whereupon they struck me in the face with the hose. I reacted by getting free of the bonds and pulled the cover off my head. The person who had been beating me stepped back and called the officer, and at that moment I saw around me some 10 people who were being tortured and subjected to *shabah*. When the officer arrived, they threw me on the ground and beat me. I kept screaming until the interrogation chief arrived. He also slapped me and ordered me not to argue and to keep quiet, then tied me and subjected me to *shabah* again...”⁴⁴

281. The same journalist was detained for 15 days in September 2009 by the Military Intelligence Service, and again in January 2010, and was also placed

⁴³ Statement documented by the Commission and registered as No. S/D-4/2010.

⁴⁴ Statement documented by the Commission and registered as No. S/D-5/2010.

under arrest for 10 days by the General Intelligence Service because of his work as a journalist.

282. In another hearing, held at the headquarters of the Commission on 4 May 2010, the journalist Sa'id Khwairi testified that on 24 January 2009 he had been arrested by the Preventive Security Service in Nablus after receiving a summons by telephone to appear at Service headquarters in that city.

283. As reported by Mr. Khwairi, immediately after arrest he was subjected to interrogation that focused on personal information, professional matters relating to his work as a journalist, his work at Al-Quds Satellite Channel and his connection to the Al-Aqsa Satellite Channel. On the second day, the journalist was transferred to Al-Junaid Prison, where he was subjected during his detention to a number of sessions that focused on the same information, until his release on 1 March 2009. He stated that he was placed in a cell in which not even the minimum health requirements were met. Conditions were so bad that he was taken to hospital. He also testified that he was told that if he wanted to end his detention, he should explain his connection with Hamas and the Al-Aqsa Satellite Channel as well as the connection of Al-Quds Satellite Channel with Hamas. He said that he felt that he was under constant surveillance by the Palestinian security services.⁴⁵

284. On 29 March 2009, General Intelligence Service men in the village of Deir Istiya, Salfit Governorate, intercepted Mr. Khwairi and the crews of Al-Quds Satellite Channel and the Ramattan News Agency while they were interviewing people in the village. The members of both crews were taken to General Intelligence Service headquarters in Salfit Governorate and questioned about the nature of their work in the village.

285. Journalist Qais Omar Darwish Omar [Abu Samra] stated in the hearing held at Commission headquarters on 4 May 2010, that on 21 February 2009, he, a native of the northern West Bank village of Saniriya, in Qalqilya Governorate, and working as a correspondent for the Jordanian newspaper *Al-Haqiqah al-Dawliya* and the Internet site IslamOnLine, received a written notice summoning him to appear at Preventive Security Service headquarters in Qalqilya. Next day, 22 February 2009, he duly reported and was detained for three days, during which he was questioned regarding about matters related to his work as a journalist.

286. On 22 June 2009, the Preventive Security Service in the West Bank arrested Qais, at his home in the village of Saniriya, Qalqilya Governorate, in the northern West Bank. He remained in detention for 88 days, during which he was subjected to lengthy periods of torture, including whipping, slapping and *shabah*; humiliation and ill-treatment; and psychological pressure exerted by sleep deprivation.

287. He mentioned in his statement that during his interrogation he was asked about his relationship to Hamas at the time of his university studies. He was also questioned about his work as a journalist and asked to cooperate with the Preventive Security Service in ascertaining the names of Hamas members in his village. He indicated that after his detention he had begun to suffer from panic and fear of being injured.⁴⁶

288. During a hearing with a journalist who asked to remain anonymous, it emerged that he had been arrested in Nablus on 5 March 2008 by the

⁴⁵ Statement documented by the Commission and registered as No. S/D-3/2010.

⁴⁶ Statement documented by the Commission and registered as No. S/D-2/2010.

Preventive Security Service and detained for 78 days, in the course of which he was asked about the nature of his journalistic work. He was not subjected to any physical torture, but endured psychological torture as a result of being confined in a prison cell for 40 days.

D. Opinion of the Commission on allegations of violations of press freedom

289. As a result of its hearings with complainants and human rights organizations concerned with press freedom, the Commission believes that the Palestinian authorities violated the provisions of the Palestinian Basic Law as amended in 2003, the Press and Publications Law (No. 9 of 1995) and the Code of Penal Procedure (Law No. 3 of 2001) concerning press freedom in the following areas:

290. It was clear to the Commission that all the arrests of the journalists who spoke to the Commission were made for political reasons by Palestinian National Authority security forces in the West Bank. Journalists were targeted on the grounds of their political affiliation or opinions, not on the basis that they had committed any violation of the rules governing the exercise of their profession and press freedoms that would have justified their being questioned.

291. Accordingly, the Commission considers that the detention and arrest to which the journalists were subjected on the above-mentioned grounds were illegal acts, because they were a blatant violation of the provisions of the Palestinian Basic Law, article 9, which affirms that all Palestinians are equal before the law and the courts, without distinction as to race, sex, colour, religion, political views or disability. Furthermore, article 19 of the Basic Law provides that freedom of opinion may not be prejudiced and that every person has the right to express his opinion and circulate it orally, in writing, or in any other form of expression or art, with due consideration to the provisions of law. Article 27 of the Basic Law also guarantees the freedom of the audio, visual and written media as well as the freedom to print, publish, distribute and broadcast, together with the freedom of individuals working in that field.

292. The successive arrest by the security agencies of the same journalist, who was no sooner released by one agency than he was rearrested and detained by another, implies, on the one hand, a lack of effective coordination between the security agencies and, on the other hand, a lack of mutual respect among the security agencies that enables one such agency to arrest a journalist who has just been released by another. Such procedures, in the view of the Commission, also mean that journalists are subjected to increased pressure and intimidation, because they constantly feel that they are being pursued, and this may affect their way of thinking and prompt them to carry out their work in accordance with the wishes and orientation of the authorities.

293. With regard to the lack of liability and accountability of persons who violate human rights and freedoms and to journalistic immunity and the inadmissibility of prosecuting or holding journalists accountable for their professional activity, the Commission considers that the failure to hold accountable those who violate human rights and the rights and freedoms guaranteed by the Palestinian Basic Law may have encouraged certain persons to violate the safeguards and protections for and inviolability of journalists that is set forth in national legislation.

294. It became clear to the Commission that the Palestinian Union of Journalists had done nothing to protect journalists from being prosecuted or

held accountable on the basis of their professional activity; the Union had therefore failed to carry out its professional role in defence of its members.

295. The Commission considers that bringing any journalist before the military judiciary or the Office of the Military Prosecutor or arresting and detaining a journalist on the basis of an arrest warrant issued by the Office of the Military Prosecutor or the military judiciary is not only a violation of the provisions of the Palestinian Basic Law as amended in 2003 and the Palestinian Code of Criminal Procedure (Law No. 3 of 2001), but is also a gross violation of the Press and Publications Law, all articles of which, and article 42 in particular, restricted to the Public Prosecutor and the competent civilian courts the authority to investigate journalists and hold them accountable in the event of their transgressing the duties and rules of the journalistic profession.

E. Violation of press freedoms in the Gaza Strip

296. While the Commission had no mandate pursuant to the Goldstone report to inquire into press-related violations in the Gaza Strip, it considers it appropriate to draw attention to the significance of reports of violations of freedom of the press in the Gaza Strip that it has obtained and documented. It is convinced that those violations must be mentioned and that they require the intervention of the de facto authority in the Gaza Strip in order to protect, guarantee and safeguard the inviolability of journalists in the Gaza Strip.

297. The violations of press freedoms in the Gaza Strip that have come to the attention of the Commission include the following.

298. On 19 March 2009, a journalist named Sakher Madhat Abu al-Awn, a correspondent of the Palestinian office of Agence France Presse, went to the headquarters of the internal security agency of the Ministry of the Interior of the de facto authority in Gaza, where he was interrogated as to the nature of his journalistic activity and accused of vilifying Hamas. The interrogators also asked about the nature of his work in the Union of Journalists and his relations with the International Federation of Journalists and the Federation of Arab Journalists and obtained his e-mail address and password.

299. On 29 November 2008, members of the police force of the de facto authority in the Gaza Strip stopped journalist Ala Salama, who lives in the town of Rafa and works as a correspondent of the local Al-Quds Radio station, when he was returning from the Rafa crossing point to his home in the town after finishing his work as a journalist covering developments in connection with the travel of pilgrims from the Gaza Strip. The policemen forced him into a jeep, blindfolded him and took him to some unidentified place, beating him up on the way there.

300. On 10 June 2009, the journalist Mohammed Zahdi al-Mashharawi, a correspondent of the Al-Quds satellite television channel, was attacked in Gaza City by members of the security service while he was covering a visit to Al-Shifa Hospital by an international delegation headed by Sheikha Hessa Al-Thani, United Nations Special Rapporteur on Disability.

301. On 12 August 2009, two security guards from the Ansar security compound belonging to the de facto authority in the Gaza Strip stopped a crew from the Al-Ittijah Satellite Channel that was carrying out its professional duties in the main street leading to the camp. The security guards took the crew, comprising the journalist Mazen al-Balbisi, correspondent, cameraman Jifara al-Safadi, and assistant cameraman Abdulrahman Zaqut, to headquarters, where an officer confiscated and destroyed the tape that was in the camera.

302. On 14 August 2009, the Ministry of the Interior of the de facto authority prevented the journalists and other media representatives from covering the events that took place in the town of Rafah in the south of the Gaza Strip which involved members of the security services and gunmen from the Izz al-Din al-Qassam Brigades, on the one hand, and gunmen from the group Jund Allah, led by Sheikh Abdul Latif Musa, on the other hand. The confrontation left over 28 people dead, including Sheikh Abdul Latif Musa, and dozens wounded. On 18 August 2009, the Ministry of the Interior of the de facto authority issued a press release claiming that the media had been prevented from filming the events in Rafah in order to protect the lives of the journalists and the feelings and sensitivities of the public.

303. On 31 August 2009, members of the Internal Security Service intercepted Ma'an News Agency correspondent Ibrahim Muhammad Qanan and cameraman Ahmad Ghabayin, while they were working in the al-Namsawi district in western Khan Younis. The two journalists had been preparing a report on United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) projects that had been disrupted by the blockade when they were intercepted by three members of the Internal Security Service, who took them in their vehicle to Service headquarters, where the two journalists remained inside the vehicle, in the courtyard. An officer came and inspected their press passes and questioned them as to the nature of their work and their relations with Palestine television.

304. On 10 October 2009, the journalist Ayman Muhammad al-Shaikh Salama, a correspondent of the Al-Quds satellite television channel, was severely beaten by a policeman while in the al-Amal district to the west of the town of Khan Younis in the south of the Gaza Strip while he was gathering information on the campaign to eliminate acts of aggression being conducted by Khan Younis municipality in cooperation with the police. The journalist was taken to Nasser Hospital in the town.

VII. Violation of freedom to form associations in the West Bank

305. The Palestinian Basic Law as amended in 2003 affirms the right of Palestinians to form associations and to participate in political life. Article 26 of the Law provides as follows:

Palestinians shall have the right to participate in political life both as individuals and in groups. In particular, they shall have the following rights:

1. To form, establish and join political parties in accordance with the law;
2. To form and establish unions, guilds, associations, societies, clubs and popular institutions in accordance with the law;
3. To nominate candidates and vote in elections in order to select representatives, who shall be elected by public ballot, in accordance with the law;
4. To hold public office and positions in accordance with the principle of equality of opportunity;
5. To conduct private meetings without the presence of police officers, and to conduct public meetings, gatherings and processions, within the limits of the law.

306. The Law of Palestinian Charitable Associations and Community Organizations (Law No. 1 of 2000) affirms the legal right of Palestinians to form and establish associations and community organizations for various community activities, and article 1 of the Law provides that Palestinians have the right freely to engage in social, cultural, professional and scientific activities, including the right to establish and run associations and community organizations.

307. Palestinian legislation, in its approach to the right to form associations, conforms to the provisions and principles of international human rights law, in particular, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, both of which explicitly recognize the right to form associations as one of the fundamental rights and freedoms which States are bound to guarantee and make available to individuals.

308. That right was affirmed and guaranteed in the Universal Declaration of Human Rights, article 20, which provides that everyone has the right to freedom of peaceful assembly and association. The right to form associations is also affirmed in the International Covenant on Civil and Political Rights, article 22, which provides that everyone has the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

309. Because the right to form associations is one of the general rights and freedoms enshrined in the Basic Law, that right acquires the status and significance of a general right, which is to say that it belongs to the category of rights that require constructive action by a State, which should organize and establish them through explicit recognition of their legal status and affirmation of the enjoyment thereof by all members of society without distinction or discrimination.

310. The fact that this right has acquired the status of a general freedom imposes several obligations on States, principally, the mandatory duty of the State to intervene in a serious and effective manner to regulate the general freedoms and codify them in laws in order to guarantee that individuals are able to enjoy and exercise them.

311. Among the most important of the obligations imposed on the Palestinian National Authority by the freedom to form associations is the mandatory duty to refrain from any action or activity that is likely to restrict or impede the enjoyment by individuals of that right, or to derogate from it without good reason or legitimate justification that might require or justify such action. Those obligations also imply the duty to refrain from influencing individuals or preventing them from freely exercising this right.

A. Agencies entitled to register associations and monitor their activities at the level of the National Authority

312. Under the provisions of the Law of Charitable Associations and Community Organizations, the registration and monitoring of the work of community associations and organizations in the Palestinian territories is carried out by two governmental agencies, namely, the Ministry of the Interior and the competent ministry.

1. Palestinian Ministry of the Interior

313. The Palestinian Ministry of the Interior is responsible for registering charitable associations and community organizations and for recognizing them as legal persons after the entities concerned have submitted an application for registration that fulfils the legal conditions under Palestinian law, namely:

(a) Submission of an application in writing for registration of the association together with three copies of the association's by-laws to the Department for the Registration of Associations in the Palestinian Ministry of the Interior.

This condition is specified and emphasized in the Law of Charitable Associations and Community Organizations, article 4, paragraph 1, which stipulates that founders must submit a written application to the competent department of the Ministry of the Interior in compliance with all the relevant conditions, signed by at least three of the founders authorized to register and sign on behalf of the association or organization. The application must be accompanied by three copies of the by-laws signed by the members of the founding committee.

(b) Article 5 of the Law specifies the information that must be included in the by-laws of the association or organization.

Taking into consideration the provisions of the Law, by-laws must include the following information:

1. The name of the association or organization, its address, its purpose and its main headquarters;
2. The financial resources of the association or organization and how they are used or disposed of;
3. Conditions for and types of membership, reasons for termination of membership and membership fees;

4. The organizational structure of the association or organization, and the rules governing the amendment of its by-laws, and its merger or unification;
5. Procedures for convening the general assembly;
6. The means of financial supervision;
7. Rules governing the dissolution of the association or organization: how the resources and property of the association or organization are to be disposed of in the event of its dissolution.

(c) Issuance of a decision by the Minister of the Interior on the registration of the association.

314. When the founders submit an application for registration, and their application is in compliance with the requirements of the law, the Minister of the Interior shall issue a decision accepting the registration of the association or organization within two months of the submission of the application. Should no decision have been taken within two months of receipt of the application by the Ministry of the Interior, the association or organization shall be deemed to be registered under the Law, in accordance with article 4.

315. The Law also affirms, in article 4, paragraph 4, the right of the founders of the association, in the event that the Minister of the Interior issues a decision rejecting the application for registration, to contest the decision before the competent court, namely, the Supreme Court, within a period of 30 days from the date of receipt in writing of the decision rejecting the application of the association or organization.

(a) Law of Charitable Associations and Community Organizations

316. Under the Law of Charitable Associations and Community Organizations, the competence of the Ministry of the Interior with respect to such associations is restricted to the following:

- Registering associations or community organizations that meet the requisite conditions;
- Auditing, in accordance with article 6 of the Law, the finances of the association. In this connection, the Act makes it a condition that the minister of the competent ministry shall issue a letter of authorization to the Minister of the Interior requesting that the Ministry of the Interior audit the finances of the association in order to establish that the assets of the association have been used for the purposes for which they were allocated and in accordance with the provisions of the Law and the by-laws of the association or organization;
- Receiving statements concerning amendments or changes that have been made to the location of headquarters, by-laws, objectives or purposes of the association or organization or any complete or partial change in its board of directors, in accordance with article 12 of the Associations Law;
- Forming of transitional committees to manage the association as specified in article 22 of the Law, which entitles the Minister of the Interior to appoint a transitional committee from among the members of the general assembly of the association or organization to carry out the functions of the board of directors for a maximum period of one month; and the convening the general assembly within the same period to elect a new board of directors.

317. The competence of the Minister of the Interior to appoint such transitional committees shall be limited and shall not be exercised other than in one of the following two cases:

- If all members of the board of directors of the association or organization resign;
- If some of the members of the board of directors of the association or organization resign and the remaining members of the board are unable to regard themselves as constituting a transitional committee, in which case the Minister shall convene the general assembly of the association within one month of those resignations in order to elect a new board of directors.

(b) Annulment of the registration of the association and termination of its status as a body corporate

318. Under the above-mentioned law, the competence of the Minister of the Interior includes the power to annul the registration of an association and terminate its status as a body corporate if, within a period of one year from its being registered by the Ministry, an association has not commenced operations, unless that inactivity is caused by force majeure.

(c) Dissolution of an association and the termination of its status as a body corporate

319. On the basis of article 37 of the Law, the Minister of the Interior is entitled to issue a decision dissolving an association or organization in cases where an association or organization substantially violates its own by-laws or contravenes any of the basic requirements of the Law pertaining to the registration and constituting a fundamental consideration in the decision by the Ministry to register and accredit that association or organization.

320. Accordingly, any transgression or violation by the association or organization of the basic requirements exhaustively listed in article 5 of the Law empowers the Minister of the Interior to dissolve it.

321. In order to ensure that there is no unjust exercise of executive power in putting this procedure into effect, the Law explicitly provides that the Ministry must issue a written warning to the association or organization concerning the nature of the violation that it has committed against its by-laws before issuing the decision to dissolve it. The Law also obliges the Ministry to grant an association a grace period of three months in which it may rectify the violation and restore the status quo ante.

322. If the association or organization responds to the warning and remedies the violation of its by-laws, the warning is regarded as never having been issued and it is not permissible to dissolve the association or organization or terminate its status as a body corporate.

323. In order to guarantee that the Ministry of the Interior does not act in an arbitrary fashion and exploit its competence and authority with respect to existing associations and organizations, article 38 of the Law asserts the right of associations and organizations that have been adversely affected by the Minister's decision to dissolve them to contest that decision before the Supreme Court. In such cases, an association is entitled to continue to operate until such time as a final ruling is handed down.

2. The competent ministry

324. The competent ministry is the ministry within whose purview the main activity of the association falls: the nature of the objectives and purposes of an association as defined in its by-laws determines which ministry shall be considered competent. For example, the Palestinian Ministry of Health is the competent ministry with respect to associations working in the field of health and the Ministry of Education is the competent ministry with respect to associations concerned with education, the eradication of illiteracy or teacher training.

325. Pursuant to the above-mentioned Law, the competent ministry is the body with the authority to monitor the work of associations and supervise performance of their obligations and application of their by-laws and the provisions of the Law.

B. The rights of associations under the Palestinian Law on Associations

326. The body of legislation governing the activities of associations on Palestinian soil consists of the Law on Associations (No. 1 of 2000) and Council of Ministers Decision No. 9 of 2003 concerning the implementing regulation for that Law.

327. The Law consists of nine sections and 45 articles, which address various legal issues relating to associations and organizations, including the nature of the legal relationship between associations and the executive authority.

328. The 70 provisions of the regulation adopted by Council of Ministers Decision No. 9 of 2003 serve as guidelines for implementing the Law on Associations and for the registration and operation of associations.

329. The main rights and obligations attached to the registration and operation of associations under the Law and its implementing regulation may be summarized as follows:

1. An association has the right to register if it meets the conditions for registration. The law affirms that any association that meets those conditions has the right to be registered.

2. Associations have the right to open branches and conduct income-generating projects. The Law on Associations, article 15, states that associations and organizations are entitled to organize activities and establish income-generating projects provided the revenues are used to cover the expenses of activities that they undertake in the public interest. Associations and organizations may set up branches inside Palestine.

3. The authorities may not interfere with the composition of association boards, or with the holding and conduct of meetings and activities. The implementing regulation, article 46, provides that an association shall be administered by its board as provided for in its by-laws, including its basic statute, so long as there is no conflict with the Law on Associations. Every association shall have a board of directors and a general assembly. No government agency may interfere with or seek to influence the conduct of the meetings, elections or activities of any association.

4. No association may be dissolved without prior notification and a three-month grace period in which to settle its affairs.

5. An association shall not be subject to seizure of assets, closure or search of its headquarters except by order of the competent legal authority. The Law on Associations, article 41, provides that it is not permissible to seize the assets of any association or organization, or to close or conduct a search of its headquarters or any of its premises or branches without an order issued by a competent judicial body.

6. Associations have the right to amend their by-laws and goals on condition that they inform the competent department or ministry within one month of the date of such amendment. The implementing regulation, article 45, states that the founders of an association shall have the right to establish its by-laws freely and without interference from any Government agency.

7. An association has the right to legal appeal. In order to protect associations and organizations from abuse of authority by the Government, the Law on Charitable Associations and Community Organizations affirms that an association or organization adversely affected by a ministerial decision to dissolve it or revoke its registration has the right to appeal that decision before the competent legal body, namely, the Supreme Court. The same Law provides that if the registration of any association or organization is revoked by ministerial decision, the reasons must be stated in writing. The association or organization has the right to contest the decision before the competent court.

C. Alleged violations by the Palestinian authorities of the freedom to form associations

330. In order to obtain an idea of the nature and scale of violations alleged by the Goldstone report in this regard, the Commission contacted all the Palestinian human rights institutions that, in its opinion, reliably observed and documented such violations in the West Bank. These included Al-Haq, the Independent Commission for Human Rights, the Palestinian Network of Non-Governmental Organizations and the Jerusalem Legal Aid and Human Rights Centre. It asked those institutions to supply the Commission with documented instances of infringement or violation by the Palestinian authorities of the right of Palestinians to form charitable associations and non-governmental organizations.

331. The reports received by the Commission from those institutions were unanimous in stating that a number of violations of the right to form associations had been committed by the authorities in the West Bank, notably the Ministry of the Interior and the security services. The accounts of violations committed by the authorities in the West Bank contained in those reports may be summarized as follows:

1. Transitional committees consisting of persons who were not members of associations were appointed to administer and run those associations in the place of boards elected by association members. According to the complaints division of the Independent Commission for Human Rights, 11 such transitional committees appointed by the Palestinian Ministry of the Interior replaced elected boards in the West Bank in 2009.⁴⁷

⁴⁷ "The status of associations under the Palestinian National Authority in 2009: report of the Palestinian Independent Commission for Human Rights," Special Report No. 68, p. 13.

2. Supreme Court decisions overturning orders by the authorities to appoint transitional committees for associations were not enforced.

3. Palestinian security services prohibited some associations from carrying out their work and threatened board members with arrest if they defied such prohibitions.

4. Palestinian security services searched the headquarters of associations and confiscated documents and equipment.

5. Association branches were shut down and barred from operating.

6. Associations were required to submit administrative and financial reports to the Ministry of the Interior.

7. The Ministry of the Interior made prior approval a requirement for the opening of bank accounts.

8. The Ministry of the Interior made security service approval of founding members a requirement for the registration of the association.

D. Complaints received by the Commission of alleged violations of the freedom to form associations

332. The Commission received five complaints of violations by the Ministry of the Interior and the security services of the right to form associations.⁴⁸ After examining those complaints and supporting documents, holding hearings for the complainants on 4 and 8 May 2010, and for the representatives of the relevant human rights organizations,⁴⁹ it became clear to the Commission that there was evidence to support the allegations of violation by the authorities in the West Bank of the above-mentioned right. Testimony by witnesses at hearings held by the Commission in the West Bank confirmed that the authorities had committed the following violations.

333. Interim committees had been appointed to administer and run some associations in place of the boards elected by association members. A number of human rights institutions interviewed by the Commission confirmed that this violation had occurred.⁵⁰ It was also confirmed by testimony from the Chairman of the Board of the Islamic Society for Orphan Care — Yatta, in Hebron Governorate. He testified that, on 19 August 2008, although the Society had received no warning from the Ministry of the Interior concerning any violation or illegal procedure on its part, he was surprised by the appearance at the Society of a group of persons that included an official of the Ministry of the Interior and an official of the Preventive Security Service. They presented him with an order issued by the Minister of the Interior, bearing the number 110 of 2008, informing him that persons who were not members of the Society had been appointed as an interim committee in order to administer and run the Society in place of its elected board, which was dismissed by the order. They took the keys to Society premises. Subsequently, the dismissed board members filed an appeal against the order of the Minister of the Interior before the

⁴⁸ These complaints were documented by the Commission and a list is annexed.

⁴⁹ The Commission held hearings for the relevant institutions on 20, 25, and 26 May 2010. Testimony was heard from Al-Haq, the Palestinian Independent Commission for Human Rights, the Palestinian Network of Non-Governmental Organizations and the Jerusalem Legal Aid Centre.

⁵⁰ Statement documented by the Commission and registered as No. j/D-35/2010, and statement documented by the Commission and registered as No. j/D-37/2010.

Palestinian Supreme Court. On 24 June 2009, the Court ruled that the order of the Minister of the Interior should be overturned. However, as of the date of the complainant's appearance before the Commission, the Ministry of the Interior had not complied with that ruling.⁵¹

334. Among the violations confirmed by the Commission was the closure of some associations ordered by the security services, which had prevented them from operating. The security services had threatened board members with arrest if they defied the order.

335. The chairman of one association testified that, on 29 May 2008, a General Intelligence unit shut down his association's headquarters and seized documents and other items. The Preventive Security Service also shut down a tailor's workshop attached to the association and seized its contents.

336. The same witness also testified that the closure order had been issued by General Intelligence headquarters in Ramallah on 28 May 2008 and executed the following day. A General Intelligence force raided the association, seized property and documents, and informed him that its activities had been banned and that any member of its board attempting to enter association headquarters would be arrested.

337. When the chairman of that association went to the Palestinian Ministry of Culture to enquire about the closure order he was informed that, because it was licensed, his association could continue to operate, but the Ministry could not guarantee the safety of any of its members. He was also informed by a Ministry official who dealt with associations that no order to close the association had been issued by the Ministry, and that the association's quarrel was with the security services. That official advised the association to solve its problem directly with the security services. As of the date of the chairman's testimony, the association remained closed. The General Intelligence Service confiscated the association's furniture, which, according to the witness, was subsequently used at the General Intelligence headquarters in Salfit.⁵²

338. Other witnesses testified that the association's headquarters had been raided, all its documents seized, its operations banned, and its board members repeatedly summoned for interrogation. It was barred from operating by the Military Intelligence and Preventive Security Services. The association received no official written notice of closure or ban on operations. It was only informed orally. As of the date of that testimony, the association remained unable to open its headquarters or carry out its work.⁵³

339. Some institutions that testified before the Commission also reported that the Ministry of the Interior had blatantly interfered in the activities and meetings of associations by insisting that it should be allowed to attend, supervise or monitor the associations' electoral processes and that the election results should be certified by the Ministry of the Interior.⁵⁴

⁵¹ Statement documented by the Commission and registered as No. j/D-27/2010.

⁵² Statement documented by the Commission and registered as No. j/D-30/2010.

⁵³ Statement documented by the Commission and registered as No. j/D-28/2010. The same incident appears in a statement documented by the Commission and registered as No. j/D-29/2010.

⁵⁴ Statement documented by the Commission and registered as No. j/D-35/2010.

E. The Commission's findings on alleged violations of the right to form associations in the West Bank

340. The Commission conducted hearings at which both complainants and human rights organizations testified about violations of the right to form associations. An official interview was conducted with the Director of Public Relations and NGO Affairs of the Ministry of the Interior.⁵⁵ The Chairman of the Commission also met the Minister of the Interior, and the Commission considered the report submitted to the Commission by the Ministry of the Interior of the Palestinian National Authority on the Ministry's obligations with respect to the Goldstone report recommendations.⁵⁶ The Commission found that it was indeed the case that there had been violations and infringements of the freedom to form associations and that the Palestinian authorities had violated the provisions of the Law on Charitable Associations and Community Organizations and its implementing regulation in the following respects.

341. The orders from the Minister of the Interior appointing interim committees for some associations were not consistent with the provisions of the law. In particular, the committees in question were made up of persons who were not members of the associations. They were not appointed for a temporary one-month period for the purpose of conducting new elections for the association boards, and were therefore in violation of the Law on Charitable Associations and Community Organizations (No. 1 of 2000), article 22, paragraph 2, which provides that the Minister shall appoint a transitional committee from among the members of the general assembly in order to carry out the tasks of the board of directors for a period of time not exceeding one month, and to convene the general assembly within the same period of time in order to elect a new board of directors.

342. In the report which it submitted to the Commission, the Ministry of the Interior explicitly acknowledged the appointment of 20 interim association committees in 2009. However, the Commission was unable to assess the accuracy of that information.

343. In the course of shutting down the headquarters of some associations, the security services violated provisions of the Law on Charitable Associations and Community Organizations and, in particular, article 41, which prohibits seizure of the assets of any association or organization, or closing or conducting a search of its headquarters or any of its premises or branches without an order issued by a competent judicial body. In view of the fact that the closures, searches and seizures were done without an order from the competent judicial body, all such orders produced were null and void and illegal because they blatantly contravened the provisions of the Law.

344. Interference by the Ministry of the Interior in the conduct of association meetings was illegal. Such interference was in violation of the implementing regulation of the Law on Charitable Associations and Community Organizations, which explicitly prohibits the authorities from interfering with or influencing the conduct of an association's meetings, elections or activities.

345. The requirement that applicants wishing to found associations obtain security service approval was a violation of the provisions of the Law on Associations and its implementing regulation. Neither the Law nor the regulation includes such a requirement in the list of conditions for applicants

⁵⁵ Statement documented by the Commission and registered as No. j/D-31/2010.

⁵⁶ The report was submitted to the Commission on 20 April 2010.

registering an association. Moreover, the Commission regards the imposition of such a condition to be a blatant violation and infringement of the right of Palestinians to form associations, which is a constitutional right guaranteed by the Palestinian Basic Law as amended in 2003. This practice must be discontinued.

346. The requirement by the Ministry of the Interior that it be provided with annual administrative and financial reports also constitutes a violation of the provisions of the Law on Charitable Associations and Community Organizations. That Law, in article 13, explicitly identifies the government agency exclusively possessing the authority to require submission of such reports as “the competent Ministry,” and for the Palestinian Ministry of the Interior to do so was therefore a violation of the provisions of the law.

347. The Commission took note in this regard of the implementing regulation of the Law on Associations, article 49, which provides that associations must submit their financial and administrative reports to the registration department of the Ministry of the Interior. That is a blatant violation of the provisions of the Law on Charitable Associations and Community Organizations, and that provision should be ignored or amended in order to make it consistent with the Law on Associations.

348. Proper exercise by Palestinians of their right to form associations requires that the Ministry of the Interior rectify these violations by ceasing all practices, measures or activities that go beyond its competence under the Law on Charitable Associations and Community Organizations and its implementing regulation.

VIII. Violation in the West Bank of freedom to assemble peacefully

A. The freedom of peaceful assembly under Palestinian legislation

349. The Palestinian Basic Law as amended in 2003 affirms that Palestinians have the right to participate in political life both as individuals and in groups. They have the following rights in particular:

1. To form, establish and join political parties in accordance with the law;
2. To form and establish unions, guilds, associations, societies, clubs and popular institutions in accordance with the law;
3. To nominate candidates and vote in elections in order to select representatives, who shall be elected by public ballot, in accordance with the law;
4. To hold public office and positions in accordance with the principle of equality of opportunity;
5. To conduct private meetings without the presence of police officers, and to conduct public meetings, gatherings and processions, within the limits of the law.

350. The Law on Public Assemblies (No. 12 of 1998), article 2, provides for the right of citizens freely to hold public assemblies, meetings and marches, and prohibits infringement of that right except in accordance with the restrictions provided for in that Law, which are as follows:

- The organizers of a gathering must send written notification to the governor or chief of police at least 48 hours prior to the scheduled time of the gathering;
- Such notification must be signed by at least three of the gathering's organizers and must specify the place, time and purpose of the gathering;
- The governor or chief of police may place restrictions on the duration of the gathering or route of the march for the purpose of maintaining the flow of traffic, provided that he inform the organizers of such conditions in writing within 24 hours of receiving the notification.

351. Palestinian legislation on freedom of assembly is consistent with international human rights law, and in particular with the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, both of which explicitly include freedom of assembly among the basic rights and freedoms that States must provide to individuals.

352. The Universal Declaration of Human Rights, article 20, provides that everyone has the right to freedom of peaceful assembly and association. The International Covenant on Civil and Political Rights, article 22, provides that everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

B. Alleged violations by the Palestinian authorities of the freedom of peaceful assembly

353. In order to gain a sense of the scope and nature of violations alleged by the Goldstone report in this regard, the Commission contacted all the Palestinian human rights institutions involved in observing and documenting such violations in the West Bank. It asked those institutions to supply the Commission with documented instances of infringement or violation by the Palestinian authorities of the right of Palestinians to assemble peacefully.

354. The reports received by the Commission from those institutions stated that a number of violations of the right to freedom of assembly had been committed by the authorities in the West Bank, notably, the Ministry of the Interior and the security services. The accounts contained in those reports of violations committed by the authorities in the West Bank may be summarized as follows.

355. On 28 December 2008, the security services in the city of Hebron attacked participants at a march held in solidarity with the Gaza Strip after the Israeli aggression. The march, in which various Islamic and national factions took part, began on Sunday, 28 December 2008 in front of Red Cross headquarters. A number of demonstrators displayed Hamas banners, prompting the security services to intervene. Security services personnel fired into the air after some demonstrators threw stones at members of the security forces. Several citizens were injured in the attack on them by security forces personnel, including former National Unity Government Minister Issa Khairi al-Jabari and citizen Nabil Issa al-Jabari.

356. On Friday 2 January 2009, the Hamas movement called for a march in solidarity with the Gaza Strip in response to the Israeli aggression there. The march was scheduled to begin after Friday prayers at the Al-Husayn ibn Ali Mosque in Hebron. As the worshippers were leaving the Mosque after Friday prayers, a paramilitary police unit arrived and prevented the march from proceeding towards the main road. Meanwhile, participants pelted police and security men with stones and injured more than 10 of them. A number of participants were also injured when security personnel beat them with batons in an attempt to break up the march. Several rounds of gunfire were fired into the air, but no gunfire injuries were reported.

357. On 2 January 2009, families of prisoners being detained by the Palestinian National Authority in Hebron Governorate held a protest in front of the military checkpoint north of the Hebron Government office building at approximately 11.15 a.m. The protestors held signs demanding the release of their relatives. In the meantime, a military force comprising several security services arrived and a women's military force was called. The protest was broken up when the protesters were attacked with batons and sprayed with gas, which caused numerous casualties. Citizen Lami Khatir was detained.

358. On 2 January 2009, national and Islamic forces held a peaceful demonstration in Ramallah in solidarity with the people of the Gaza Strip and in protest against the Israeli attack on Gaza. During the march a number of participants raised Hamas flags. Palestinian security forces intervened and used force to break up the march. A number of participants were injured and some 20 persons were arrested.

359. On 5 January 2009, the student bodies at Birzeit University organized a peaceful demonstration which proceeded from the campus of the university towards the Attara intersection, where the occupying forces maintained a military checkpoint. When at least 400 male and female students reached the

centre of the town of Birzeit, Palestinian security forces attempted to prevent them from continuing to the Israeli checkpoint. The participants clashed with the security forces, which resorted to force in order to disperse the gathering. As a result, at least 50 male and female students were injured.

360. As regards alleged violations of freedom of assembly, the Commission received a single complaint, from Mr. Issa al-Ja'bari, who declined to attend the hearing convened by the Commission. The representatives of human rights organizations heard by the Commission referred to individual acts and violations carried out by certain members of the security services in attendance at peaceful gatherings. However, the situation has effectively prevented the Commission from forming a firm conviction regarding the nature of the violations of freedom of assembly. Nevertheless, the Commission believes that the following points must be stressed:

- The Palestinian authorities should respect freedom of assembly. They should allow and facilitate its exercise in accordance with the obligations and procedural principles established by law;
- The authorities and the security services should operate on the assumption that peaceful gatherings are a right and a fundamental freedom. The security services should be present in order to protect participants and facilitate their movement, rather than to restrain them;
- Any attempt on the part of the authorities to prevent or hinder the exercise of that right through restrictions or procedures not provided for by law constitutes a violation of the right to freedom of assembly;
- Human rights organizations have alleged that violations were committed by the security services in dispersing peaceful gatherings. However, the authorities have not effectively investigated the allegations, and have not responded in earnest to the reports, statements and comments of human rights organizations.

IX. Detention and torture in the Gaza Strip

361. Hamas forcibly seized power and took control of the Gaza Strip on 14 June 2007. Since then, that Palestinian territory has been controlled and administered by Hamas and its armed forces and groups, particularly the Izz al-Din al-Qassam Brigades. The Brigades were especially prominent in the first few months, as Hamas sought to impose and consolidate its control of the Gaza Strip. The Brigades clearly assumed a security role, taking fundamental responsibility for law enforcement, arrests, imprisonment, questioning and prosecution. During that phase, the Brigades administered a number of imprisonment and detention centres.

362. Since those events, the Palestinian territory has been controlled and governed by two administrations. The official Palestinian administration, represented by the Palestinian National Authority and its institutions and security apparatus, continued to govern the West Bank, or what is known in Palestinian terms as the northern governorates. The Gaza Strip, which is known as the southern governorates, fell under the control of Hamas and elements of the armed forces, administration and parties affiliated to or supportive of Hamas.

363. After Hamas took power, a series of events convulsed the Palestinian territories, and both sides perpetrated violations. As a result, respect for human rights and freedoms deteriorated.

364. Both sides curtailed and infringed several rights and freedoms, including the right to life; the right to freedom of opinion and expression; the right to assume public office; the right to freedom of association; the right of peaceful assembly; the right to respect for private life; the right to liberty and security of person; the right not to be subjected to arbitrary arrest or detention; the right not to be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence; the right not to be subjected to torture or to degrading treatment that violates human dignity; the right to receive and impart information; and freedom of the press. These and other rights were frequently and repeatedly violated by both sides on the pretext that the situation was extraordinary, or that certain measures were necessary in order to preserve security and public order in the areas under their control.

365. In terms of implications and repercussions, what is happening and being decided in the Gaza Strip goes beyond the conduct of domestic affairs. In practice, it would be closer to the truth to state that a new, independent system of government and institutions is being formed. A number of facts point towards that conclusion:

- The de facto authority in the Gaza Strip has refused to recognize or comply with decisions and orders issued by the President and administration of the Palestinian National Authority;
- The military and security institutions of the Palestinian National Authority have ceased to fulfil their duties in the Gaza Strip. Their authority has been assumed by Hamas, its Executive Force, and the internal security forces, which were reformed under new leadership after Hamas had seized power;
- All security and military installations under the Palestinian National Authority have been taken over by the Izz al-Din al-Qassam Brigades;
- The leadership of the Palestinian police force has been replaced, and connections with the official police force in the West Bank severed;

- Senior officials have been isolated and replaced with Hamas sympathizers. Public sector institutions and structures have been reformed in accordance with the wishes and orientation of Hamas;
- The Palestinian judicial authority has been placed under new leadership. A Supreme Justice Council independent from that of the Palestinian National Authority has been formed. The new body has been tasked with administering the judiciary and supervising appointments, promotions and similar functions. Judges at courts in the Gaza Strip have been replaced with individuals affiliated to Hamas. A new head of the Supreme Court of Gaza has been appointed. The legal system of Hamas is now independent from the legitimate judiciary;
- The Palestinian Public Prosecutor was relieved of his functions with immediate effect and, in violation of his prerogative for staffing and supervision, the Office of the Public Prosecutor has been staffed with individuals loyal to Hamas.

A. Parties responsible for preserving security in the Gaza Strip

366. After forcibly seizing power, Hamas took control of the security apparatus and, in particular, the intelligence and preventive security services. A new body known as the Internal Security Agency was formed with responsibility for law enforcement throughout the Gaza Strip. The Agency, which is part of the de facto Ministry of the Interior, is staffed with Hamas sympathizers and elements of the Izz al-Din al-Qassam Brigades and Executive Force,⁵⁷ the latter having been merged with the newly formed Interior Security Agency. The Agency also incorporated members of the original security forces and army who chose to

⁵⁷ On 20 April 2006, the Minister of the Interior of Palestine decided to form a new security service, the Executive Force, under his direct control. Its function was to assist him in reining in the state of anarchy and restoring peace and public order. The establishment of the Executive Force sparked a major crisis in relations between the Presidency and the Government. The President rejected the Force and issued a presidential decree explicitly refusing to recognize or cooperate with it.

The decree in question, Presidential Decree No. 28 of 2006, reads as follows:

The Chairman of the Executive Committee of the Palestine Liberation Organization,
President of the Palestinian National Authority, Commander-in-Chief of the Palestinian Forces,

Having considered the Palestinian Basic Law of 2003 as amended and the Law of 2005 concerning service in the security forces,

Acting in the public interest and in exercise of his prerogatives,

Decrees as follows:

Article 1

The decision of the Minister of the Interior dated 20 April 2006, which establishes a new security force comprising armed resistance groups under his direct responsibility, is hereby revoked. That decision contravenes the Law of 2005 concerning service in the security forces, article 3, which states that any new security force must form a part of the three agencies specified therein.

Article 2

The decision of the Minister of the Interior dated 20 April 2006 concerning appointments and promotions of officers is revoked. According to the Law of 2005 concerning service in the security forces, articles 19 and 20, the Minister does not have the authority to make such appointments and promotions. That Law entrusts that task to the Committee of Officers, whose decision is binding once it is endorsed by the President of the Palestinian National Authority.

Article 3

All leaders, officers, non-commissioned officers and members of the security forces are requested not to comply with the decisions specified in articles 1 and 2, and to consider them null and void.

The concerned parties are requested to take all necessary steps in order to implement the provisions of this Decree, which shall be binding from the date of its issuance and shall be published in the Official Gazette.

retain their positions. However, they were required as a precondition to sever all ties to the Government in the West Bank.

367. As events in the Gaza Strip have shown, the Internal Security Agency is assisted in enforcing the law by elements of Hamas and, in particular, the Izz al-Din al-Qassam Brigades, which are the primary military wing of Hamas. Those forces have been called upon in particular situations, notably when the security and stability of the de facto authority are threatened.

368. The Internal Security Agency fulfils the following functions in the Gaza Strip:

- Preserving public order and security; protecting life, property and assets;
- Preventing, detecting and investigating crime; arresting and prosecuting offenders;
- Administering prisons and guarding prisoners;
- Enforcing laws, regulations and orders; assisting the authorities in the fulfilment of their duties in accordance with the law;
- Directing and policing road traffic;
- Supervising gatherings and processions in streets and public places.

B. Legislation setting forth the duties of law enforcement officials in the Gaza Strip

369. The de facto authority in the Gaza Strip has continued to enforce the legislation enacted before the split. The following are still applicable: Law No. 8 (2005) concerning service in the security forces, which sets forth the mission, duties and obligations of security forces in the Gaza Strip; Law No. 6 (1998) concerning reform and rehabilitation centres (prisons); Law No. 12 (1998) concerning public gatherings; the Palestinian Code of Criminal Procedure (Law No. 3 of 2001); the Revolutionary Penal Code (1979) of the Palestine Liberation Organization; and (Law No. 74 of 1936 as amended), the Penal Code that was in force under the British Mandate.

370. In the second half of 2008, members of the pro-Hamas Change and Reform Bloc in the Legislative Council of the Gaza Strip issued the Law of 2008 concerning criminal procedure in the army, which is currently enforced by military courts in the Gaza Strip.

C. Conditions for arrest and detention under current legislation and international instruments

371. As has been explained, the de facto authority in the Gaza Strip continues to apply the provisions of the Palestinian Basic Law; the Code of Criminal Procedure (Law No. 3 of 2001), Law No. 6 (1998) concerning prisons, and the Law concerning service in the security forces. As a result, the security services in the Gaza Strip remain bound by the conditions for arrest, detention and imprisonment set forth in the Code of Criminal Procedure.

372. The de facto authority in the Gaza Strip must therefore comply with all of those provisions. In particular:⁵⁸

- No person may be subjected to coercion or torture. All persons deprived of their freedom shall receive appropriate treatment;
- Individuals may be arrested or imprisoned only pursuant to an order issued by the competent authority;
- Law enforcement officials must take statements from arrested individuals immediately. If there is no justification for their release, they must be transferred to the competent deputy public prosecutor within 24 hours;
- Homes may be entered and searched only with a warrant issued by the Office of the Public Prosecutor, or in the presence of a member of the Office. The resident of the home must have been accused of perpetrating or being an accessory to a crime or offence. Alternatively, there should be strong evidence that the individual is concealing objects connected with a crime;
- The Office of the Public Prosecutor has sole responsibility for prosecutions. The Code of Criminal Procedure, article 99, states that the deputy public prosecutor must conduct a physical inspection of the suspect prior to questioning, document any visible injuries and establish their cause;
- Suspects are entitled to legal representation during the investigation;
- After the prisoner has been questioned, the Office of the Public Prosecutor may request that the competent court extend his detention in accordance with the law;
- Law enforcement officials must immediately convey the detainee to a police station. Where there is no warrant, the prison official who takes the detainee into custody must immediately ascertain the reasons for detention. Such custody shall in no event exceed 24 hours, and the Office of the Public Prosecutor shall be notified immediately;
- Individuals may be detained or imprisoned only in a prison or in a legally specified place of detention. Prisoners may be accepted only pursuant to an order from the competent authority, and may not be detained beyond the period specified in the order;
- If it is decided that a detainee should be released on bail, the official responsible or the director of the prison shall release him, provided that he has not also been arrested or detained on some other charge;
- Prisons must be inspected. The Code of Criminal Procedure provides that the Office of the Public Prosecutor and the heads of the courts of first instance and courts of appeal shall inspect prisons and other places of detention under their jurisdiction in order to ensure that no person is unlawfully imprisoned or detained. They shall examine and make copies of the prison records and detention orders. They shall make contact with inmates in order to hear any grievances. Directors and officials shall offer them every assistance in obtaining the information sought.

⁵⁸ The guarantees incumbent on the de facto authority in the Gaza Strip are the same as those set out in the section on detention and torture in the West Bank. In order to avoid repetition, specific references have not been included.

373. The conditions set forth in international instruments, specifically, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the Convention against Torture and Other Cruel, Inhuman or Degrading Punishment, continue to apply to arrest and imprisonment procedures in the Gaza Strip.⁵⁹

374. The Commission believes that the de facto authority in the Gaza Strip has a duty and a responsibility to respect the obligations referred to, for a number of reasons, including the following:

- The Basic Law of Palestine incorporates most of those obligations. It follows that many of those safeguards have become binding as a part of domestic legislation. The de facto authority in the Gaza Strip must therefore respect and enforce them;
- The principles enshrined in those instruments have acquired force of law. This applies specifically to the right to life and human dignity, and to the prohibition of torture and other degrading treatments that violate human dignity. Such principles are incumbent on all the international contracting parties, i.e. States, and also on other parties, including the de facto authority in the Gaza Strip, which cannot use the pretext that it is not a party to those agreements and has not declared its commitment to them;
- In the Declaration of Independence, which is a constitutional document, the Palestine Liberation Organization announced its adherence to the Universal Declaration on Human Rights. The latter is therefore binding on Palestinians, including Hamas, which participated in legislative elections in accordance with domestic law, the Basic Law, the Oslo Accords and the Declaration of Principles concluded between the Palestine Liberation Organization and the Israeli side.

375. In view of Hamas's forcible seizure and exercise of power, the Commission believes that events in the Gaza Strip constitute internal armed conflicts as defined by the Protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of non-international armed conflicts (Protocol II), concluded in 1977. Protocol II, article 1, reads as follows:

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.

2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts.

376. The Commission believes that Hamas, having seized, taken over and subsequently exercised effective power in the Gaza Strip, is committed not only to the aforementioned instruments, but also to the safeguards provided for in Protocol II as binding international law.

⁵⁹ Those guarantees and conditions have been described in the section regarding detention and torture in the West Bank. In order to avoid repetition, they are not repeated here.

377. Article 4 of the Protocol states as follows:

1. All persons who do not take a direct part or who have ceased to take part in hostilities, whether or not their liberty has been restricted, are entitled to respect for their person, honour and convictions and religious practices. They shall in all circumstances be treated humanely, without any adverse distinction. It is prohibited to order that there shall be no survivors.

2. Without prejudice to the generality of the foregoing, the following acts against the persons referred to in paragraph 1 are and shall remain prohibited at any time and in any place whatsoever:

(a) Violence to the life, health and physical or mental well-being of persons, in particular murder as well as cruel treatment such as torture, mutilation or any form of corporal punishment;

(b) Collective punishments;

(c) Taking of hostages;

(d) Acts of terrorism;

(e) Outrages upon personal dignity, in particular humiliating and degrading treatment, rape, enforced prostitution and any form of indecent assault;

(f) Slavery and the slave trade in all their forms;

(g) Pillage;

(h) Threats to commit any of the foregoing acts.

3. Children shall be provided with the care and aid they require, and in particular:

(a) They shall receive an education, including religious and moral education, in keeping with the wishes of their parents, or in the absence of parents, of those responsible for their care;

(b) All appropriate steps shall be taken to facilitate the reunion of families temporarily separated;

(c) Children who have not attained the age of fifteen years shall neither be recruited in the armed forces or groups nor allowed to take part in hostilities;

(d) The special protection provided by this Article to children who have not attained the age of fifteen years shall remain applicable to them if they take a direct part in hostilities despite the provisions of subparagraph (c) and are captured;

(e) Measures shall be taken, if necessary, and whenever possible with the consent of their parents or persons who by law or custom are primarily responsible for their care, to remove children temporarily from the area in which hostilities are taking place to a safer area within the country and ensure that they are accompanied by persons responsible for their safety and well-being.

378. Moreover, Hamas must respect and comply with the following safeguards contained in article 6 of the Protocol:

2. No sentence shall be passed and no penalty shall be executed on a person found guilty of an offence except pursuant to a conviction

pronounced by a court offering the essential guarantees of independence and impartiality.

In particular:

(a) The procedure shall provide for an accused to be informed without delay of the particulars of the offence alleged against him and shall afford the accused before and during his trial all necessary rights and means of defence;

(b) No one shall be convicted of an offence except on the basis of individual penal responsibility;

(c) No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under the law, at the time when it was committed; nor shall a heavier penalty be imposed than that which was applicable at the time when the criminal offence was committed; if, after the commission of the offence, provision is made by law for the imposition of a lighter penalty, the offender shall benefit thereby;

(d) Anyone charged with an offence is presumed innocent until proved guilty according to law;

(e) Anyone charged with an offence shall have the right to be tried in his presence;

(f) No one shall be compelled to testify against himself or to confess guilt.

3. A convicted person shall be advised on conviction of his judicial and other remedies and of the time limits within which they may be exercised.

4. The death penalty shall not be pronounced on persons who were under the age of eighteen years at the time of the offence and shall not be carried out on pregnant women or mothers of young children.

D. Human rights violations perpetrated by Palestinian security services during arrest and detention

379. In order to obtain an idea of the nature and scale of the violations alleged in the Goldstone report, the Commission contacted all of the Palestinian human rights institutions that have, in its opinion, reliably observed and documented the violations in the Gaza Strip and the West Bank. These included the Palestinian Centre for Human Rights, the Al-Mezan Centre and the Al-Dameer Association for Human Rights in the Gaza Strip. The Commission also contacted human rights institutions active in the West Bank which have documented the human rights situation in the Gaza Strip, including Al-Haq, the Al-Dameer Association, the Independent Commission for Human Rights and the Jerusalem Legal Aid Centre. The purpose was to provide the Commission with all information that had been collected and documented by those institutions, in addition to their reports, statements and contributions.

380. All the reports, testimonies and statements received by the Commission from those organizations are in agreement that law enforcement officials of the de facto authority in the Gaza Strip committed violations in the performance of arrests and detentions. Reports and statements noted that the security services in the Gaza Strip had committed a number of violations in the performance of

arrest, detention and investigation procedures, which may be summarized as follows:

1. Such arrests were linked to the Palestinian political situation, in that the detainees were affiliates, supporters or sympathizers of the Palestinian National Liberation Movement (Fatah);
2. Law enforcement officials in the security services of the Gaza Strip, in the majority of cases of arrest and detention, failed to respect due legal process;
3. Detainees were mistreated and subjected to cruelty;
4. Detainees were not referred to the Office of the Public Prosecutor within the statutory time limits prescribed by the Palestinian Code of Criminal Procedure;
5. Civilian detainees were brought before military courts;
6. Detainees were subjected to torture and other forms of humiliating and degrading treatment as a means of extracting confessions regarding acts ascribed to them or to others.

E. Complaints received by the Commission concerning detention-related violations

381. The Commission received complaints from human rights organizations, parliamentary blocs, relatives of detained persons and released detainees concerning arrest and detention-related human rights violations by law enforcement officials in the Gaza Strip. Eleven complaints were submitted directly by individuals in the Gaza Strip.⁶⁰

382. After reviewing and studying the above-mentioned complaints and their attachments, the Commission found that the claims were substantiated. The individuals heard by the Commission via videoconference⁶¹ from the Gaza Strip stated that officials had committed the following violations.

383. Law enforcement officials belonging to the Internal Security Service did not identify themselves; they wore masks while conducting raids, searches and arrests.

384. The majority of the complainants heard by the Commission in connection with imprisonment, torture and killings referred to that practice. One of the witnesses said: "I was imprisoned on 12 February 2009. I was taken from in front of my house by masked Internal Security men armed with handguns. They took me in a green Jeep Magnum, a military vehicle."⁶²

385. Another witness said: "On the day of the ceasefire after the Gaza conflict, six masked youths attacked a supermarket owned by my brother. They took my brother and vandalized the supermarket. About a quarter of an hour later, they came to the house where my brother and I live".⁶³

386. Another complainant said: "A dozen or so masked men in civilian clothes came to my house. I was not at home at the time. My father met them and said that I was not there. He sent my brother to fetch me and I came home. They

⁶⁰ These complaints were documented by the Commission and a list is annexed.

⁶¹ The Commission spoke to 11 individuals about complaints regarding detention.

⁶² Statement documented by the Commission and registered as No. T-ayn-ghayn-1/2010.

⁶³ Statement documented by the Commission and registered as No. T-ayn-ghayn-2/2010.

told me that they had come for me. When my father asked them to identify themselves, they showed their Internal Security identification”.⁶⁴

387. Another statement said: “At about 1 a.m., I was awoken by unusual knocking on the door. I went and asked who was knocking. They said it was the police and told me to open the door. I did so, and four individuals came in. They were wearing masks with only their eyes showing. They were armed with Kalashnikovs, and one of them had a handgun. I asked them what they wanted; they said they wanted to search the house”.⁶⁵

388. Individuals were imprisoned and detained in places other than those designated by law. Some were held in a mosque. Others were held and questioned in hospitals, homes and undisclosed locations.

389. One of the testimonies states as follows: “On 17 January 2009, some Internal Security agents came to my house with a search warrant from Internal Security. They searched the house, then took me away with them. They told my wife: ‘We will bring him back in half an hour’. I found the house surrounded by over 20 individuals, some of them soldiers and some civilians, all wearing black masks. A man took me away and said, ‘Do you know in whose company you are?’ I answered, ‘Internal Security’. They took me to a place called Ali Ibrahim Wadi. Before I arrived, they pulled a mask over my head and the questioning began. They questioned me on the charge that I was collaborating with the Ramallah Government. They accused me of spying on the Al-Qassam organization and sending reports to that Government. All of them beat me from every direction”.⁶⁶

390. Another account states as follows: “They said to me, ‘Hamada, we want you for five minutes’. When my father asked for their identity, they showed Internal Security cards. They took me on foot to the road that runs by the building site. There, they pulled my jacket over my head and took me to an abandoned house. I do not know who owned it. They said, ‘You have five minutes to confess to how you got the weapons you have’. They started to hit my face and whip my legs. They kept hitting me continuously for 30 to 45 minutes, then they brought me out and told me I was under house arrest for three months”.⁶⁷

391. All the security agencies, whether or not they are legally authorized to make arrests, failed to respect the Palestinian Code of Criminal Procedure, which provides that no arrest warrant may be executed without a court order. Rather, individuals were brought to security headquarters by force or seized in raids. On other occasions the person was summoned by telephone to a meeting with the security body, whereupon he was immediately apprehended and arrested.

392. When entering and searching homes, the security services did not respect the requirement to show judicial orders. Numerous homes were broken into and searched without any such order being shown, which constitutes a clear violation of the sanctity of those homes.

393. Legal provisions governing the duration of custody were violated. In ordinary circumstances, as previously mentioned, the pertinent Palestinian laws allow the authorized agency to detain and arrest persons for a period of 24

⁶⁴ Statement documented by the Commission and registered as No. T-ayn-ghayn-3/2010.

⁶⁵ Statement documented by the Commission and registered as No. T-ayn-ghayn-6/2010.

⁶⁶ Statement documented by the Commission and registered as No. T-ayn-ghayn-6/2010.

⁶⁷ Statement documented by the Commission and registered as No. T-ayn-ghayn-3/2010.

hours. After that period, the arrested person must immediately be released or transferred to the Office of the Public Prosecutor or the competent court in order for their status to be determined.

394. In the majority of cases of arrest which it documented, the Commission found that the security services ignored those time limits and did not observe the binding legal provisions. Many persons were detained for periods longer than those provided by law. Moreover, none of the detainees were brought before the Office of the Public Prosecutor or the competent court.

395. Violence, abuse, beatings and humiliation occurred during imprisonment. In many cases, the security services of the de facto authority in the Gaza Strip treated prisoners in a degrading manner that violated human dignity. Force and violence were used. As shown by the statements obtained by the Commission from arrested persons or their relatives concerning the facts surrounding arrest, the Palestinian security services in general did not comply with the rules and criteria governing arrests, in particular those relating to proper treatment and the avoidance of beating, degradation and recourse to violence.

396. One of the testimonies heard by the Commission states as follows: "On 18 January 2009 at 9 p.m., two policemen came to my home. They said, and I quote: 'You are being asked for by the Chief of Police'. I went with them, as I thought, to the police station, but found that I was in fact being taken to the premises of the Red Crescent in Khan Younis. Before I arrived there, they told me that police headquarters had moved. They then took me to another place, the new housing units in the Al-Amal neighbourhood. Ten minutes later, a group of masked men arrived and took me to a place some 30 metres away from the housing units. The masked men, 15 or so people, began to beat me with truncheons. They did not say anything or accuse me of anything. After they had beaten me for about half an hour, they called a Red Crescent emergency vehicle, which took me, along with another person who had been beaten, to the Nasser Hospital".⁶⁸

397. Another testimony states as follows: "After the war and the Israeli attack of January 2009, my house in Izbet Abd Rabbo, in east Jabaliyah, was destroyed by the Israelis. They stationed themselves in a part of the house. I was in the house with my wife, my 25-year-old disabled son and my other children. When the war ended and the Red Cross let me leave, I left the house and stayed with in-laws in the Sheikh Radwan area. I was not able to obtain clothes for myself or my family, so I borrowed some clothes from volunteers in Sheikh Radwan. The clothes were threadbare, and made me look suspicious and different from the locals. I was approached by four individuals in civilian clothes who refused to identify themselves. They were carrying wireless devices and driving a Skoda marked as a taxi. They blindfolded me and took me to an undisclosed location, where I was interrogated for five days. During that time, a number of accusations were made against me, notably that I was collaborating with Ramallah and Israel, on the grounds that there were Umm al-Fahem, Abu Dhabi and Ramallah numbers in my mobile phone. I denied all of the accusations during the questioning. Only one kind of food was brought to me. I was kept blindfolded with my hands tied, which was torture. My feet were tied throughout the day except during meals. I was allowed to go to the toilet once a day. The worst torture was that none of my relatives or family

⁶⁸ Statement documented by the Commission and registered as No. T-ayn-ghayn-7/2010.

knew where I was. However, I was not verbally abused, hit or humiliated. The greatest surprise came after five days, when they apologized to me”.⁶⁹

398. As regards torture resulting in death, the accounts heard by the Commission show that numerous detainees were beaten, tortured or treated in a manner that violated their human dignity, in order to extract information or confessions regarding their own or other peoples’ actions or words.

399. It is clear from those accounts that the security services in the Gaza Strip used extremely harsh methods of extracting information and confessions. Those methods resulted in the deaths of a number of prisoners, including one Jamil Nasr. The victim’s mother, Nuha Issa Assaf of the Al-Daraj neighbourhood, Gaza City, made the following statement: “My son was less than 20 years old. Jamil was working in the tunnels. They imprisoned him on 9 March 2009. We have a neighbour named Muhammad Isam Abu Thurayya; the people who imprisoned him were the judicial authorities investigating the theft of 130,000 shekels from Muhammad. They accused some other people alongside my brother, and took him to the ‘Abu Musa Halas Cafe’, a torture centre in the Al-Daraj neighbourhood. The investigators tortured him in order to make him confess, using every form of torture. They kept him for four days. During all of that time, he was tortured and denied food and drink. On 12 March 2009, he was moved to the Al-Tuffah police station. My son was in a very bad state. We went to the Al-Tuffah police station on the Friday to visit him. They let us see him for 10 minutes. Whenever I looked at him, he would put a hand over his head. He told us that he was vomiting his food and that there was blood in his urine. We asked the policeman who was present to take him to hospital. After my husband threatened to go to the Red Cross, he was brought under guard to the Al-Shifa Hospital in Gaza City and placed in intensive care. He was losing consciousness, and the Hospital was carrying out dialysis because he had suffered kidney failure. He remained in that condition for 12 days, and then died despite an attempt to resuscitate him. That was on Monday at 2 a.m. The corpse was autopsied on the order of the Office of the Public Prosecutor and without our permission. We have obtained a medical report, which I will provide to the Commission, stating that he died as a result of torture”.

F. Opinion of the Commission regarding arrest and detention procedures in the Gaza Strip

400. It transpires from the cases of imprisonment in the Gaza Strip which were documented by the Commission that law enforcement officials frequently went beyond, and indeed violated, the applicable conditions and safeguards. On the basis of the Commission’s hearings, in addition to the reports and information provided by Palestinian human rights organizations, particularly significant points emerge that are set forth below.

401. On the basis of those hearings, reports and documents, the Commission believes that the security services of the de facto authority in the Gaza Strip imprisoned sympathizers of Fatah and others in reaction to the political disagreement between Fatah and Hamas. Most of those arrests proved to be motivated by political considerations, and therefore constitute arbitrary and unlawful imprisonment.

402. It is clear from the hearings that most of the complaints of mistreatment and abuse involved the Internal Security Service in the Gaza Strip.

⁶⁹ Statement documented by the Commission and registered as No. T-ayn-ghayn-9/2010.

403. It is clear that the Office of the Public Prosecutor of the Gaza Strip was remiss in performing the role entrusted to it by law, because it was incumbent on the members of the Office, under article 126 of the Palestinian Code of Criminal Procedure, to inspect prisons and other places of detention under their jurisdiction in order to ensure that no person is unlawfully imprisoned or detained. They are also responsible for consulting and making copies of prison records and detention orders and for contacting inmates and hearing any grievances. Moreover, the directors and officials shall offer them every assistance in obtaining the information sought.

404. Consequently, it was incumbent on the Office of the Public Prosecutor of the de facto authority in the Gaza Strip not only to intervene in order to prevent any arrest or detention that fell outside the remit of the prisons, but also to initiate public prosecutions against anyone in breach of these conditions as the perpetrator of a crime. It has also been established that the Office of the Public Prosecutor failed to intervene in order to prevent members of the security apparatus and other armed groups from usurping the prerogatives of the powers which, under the law, had the status of judicial police. Such practices became widespread.

405. It is clear that violations of human dignity, including treatment during arrest, beating, abuse, humiliation and the subjection of arrested persons to torture or to physical or psychological pressure in order to obtain information or confessions were not isolated cases of individual conduct in the detention and investigation centres of the Internal Security Service. Such practices occurred in all of the cases of arrest and detention documented or heard by the Commission. They therefore appear not to have been limited to an individual or a specific area; they were used universally in order to manage detainees, conduct investigations and obtain confessions. The Internal Security Service has thus breached the provisions of the Palestinian Basic Law, article 13, which affirms that no person shall be subject to coercion or torture and that all persons deprived of their freedom shall receive appropriate treatment.

406. Law enforcement services in the Gaza Strip used numerous forms and methods of torture, including the following:

- Severe beatings delivered with hands, feet and truncheons;
- Collective beating of the detainee, with more than one person involved in the beatings and other acts of aggression;
- Whipping with water hoses;
- *Shabah*, where the detainee's hands are tied behind him and pulled up by fastening the bonds to a door, window or other object, so that the person subjected to this form of torture remains virtually suspended in the air, a process that may last for periods of varying duration, even several days in succession, the person being granted brief periods of respite;
- Threats and intimidation;
- Detention in cramped cells measuring roughly 1 metre by 2 to 3 metres;
- Beatings on the soles of the feet with sticks, done by shackling and raising the detainee's feet, whereupon he is beaten with sticks or clubs for variable lengths of time, then required to walk in order to obscure the blood congestion resulting from the beating.

407. Lack of effective supervision of detention centres contributed to the scale and frequency of torture. The Commission has found that the parties legally

responsible for detention centres administered by the Intelligence and Preventive Security Services did not exercise effective supervision.

408. The Commission believes that the lack of genuine, effective accountability for agents guilty of torture and unlawful detention encouraged the widespread use of torture.

409. The Commission therefore believes that the de facto authority in the Gaza Strip must recognize and fulfil its responsibilities to hold accountable and prosecute all who break the law with regard to arbitrary and illegal arrests and the crime of torture and other forms of harsh and degrading treatment.

X. Violation of the right to life in the Gaza Strip

410. In the Palestinian Basic Law as amended in 2003, the right to life does not receive the attention given to the other basic rights and freedoms set forth in chapter II. In our view, that is one of the shortcomings of the Basic Law. The right to life is the original right from which all other human rights are derived; its omission or denial detracts from their value.

411. The right to life and personal safety is inherent, and may not be infringed in any circumstance, even when society or the State is affected by an extraordinary event.

412. The right to life is enshrined in international human rights instruments. The Universal Declaration of Human Rights, article 3, states that everyone has the right to life, liberty and security of person. The International Covenant on Civil and Political Rights, article 6, provides that every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

413. Human Rights Committee General Comment No. 6, adopted at the Committee's sixteenth session in 1982, states that the right to life enunciated in article 6 of the Covenant is the supreme right from which no derogation is permitted even in time of public emergency. It is the foundation on which all other human rights depend.

414. In order to obtain an idea of the nature and scale of the violations alleged in the Goldstone report, the Commission contacted all of the Palestinian human rights institutions that have, in its opinion, reliably observed and documented the violations in the Gaza Strip and the West Bank. These included the Palestinian Centre for Human Rights, the Al-Mezan Centre and the Al-Dameer Association for Human Rights in the Gaza Strip. The Commission also contacted human rights institutions active in the West Bank which have documented the human rights situation in the Gaza Strip, including Al-Haq, the Al-Dameer Association, the Independent Commission for Human Rights and the Jerusalem Legal Aid Centre. The purpose was to provide the Commission with all information that had been collected and documented by those institutions, in addition to their reports, statements and contributions.

415. The reports, testimonies and accounts provided by those organizations are all in agreement that dozens of killings took place in the Gaza Strip. The 2009 report of the Independent Commission for Human Rights refers to 22 extrajudicial killings and 23 killings in unclear circumstances.⁷⁰ Al-Haq states that 33 individuals were killed during the first four months of 2009.⁷¹

416. Analysis of incidents monitored and documented by these organizations shows that violation of the right to life in the Gaza Strip has taken various forms, including the following:

- Direct killing and extralegal and extrajudicial executions by law enforcement agencies in the Gaza Strip or by armed groups affiliated to the de facto authority in the Gaza Strip, targeting persons charged with committing certain acts or convicted by the military and civil courts;
- The arrest of individuals and their liquidation, after interrogation, by agencies affiliated to the de facto authority in the Gaza Strip.

⁷⁰ Annual report of the Independent Commission for Human Rights, p. 68 et seq.

⁷¹ Al-Haq provided a report giving the names of the victims.

A. Complaints received by the Commission concerning violations of the right to life

417. The Commission received a series of complaints from Palestinian human rights organizations, parliamentary blocs and victims' relatives concerning violation of the right to life in the Gaza Strip by security agencies affiliated to the de facto authority in the Gaza Strip or by groups affiliated to Hamas.

418. After reviewing and studying of the substance of those complaints and their attachments and the hearings held for victims' relatives,⁷² it became clear to the Commission that there is evidence to support the truth of allegations of violation of the right to life by the security services affiliated to the de facto authority in the Gaza Strip. The statements of persons in the Gaza Strip, which the Commission heard via videoconference,⁷³ affirm that the security services in the Gaza Strip, the Izz al-Din al-Qassam Brigades and other armed groups affiliated to the de facto authority have committed violations of the right to life.

B. Opinion of the Commission regarding violations of the right to life

419. After analysing everything uncovered by the hearings held for the relatives of murder victims, the Commission is of the view that the law enforcement agencies in the Gaza Strip carried out widespread extralegal executions during the Israeli assault on the Gaza Strip.

420. Extralegal and summary execution is defined as the execution of political opponents or persons suspected of committing an offence by armed forces, officials or groups supported by Government agencies, without prior judicial measures. The phrase, "extralegal and summary execution" includes arbitrary execution, whether for political reasons or for religious or ideological reasons.

421. Review of the murder of numerous individuals in the Gaza Strip indicates that the description of extralegal execution clearly applies.

1. The targeted killings of convicted persons by the security services affiliated to the de facto authority in the Gaza Strip

422. Numerous testimonies heard by the Commission affirm the reality of targeted killings. In his statement, the father of one victim said, "... Akram was killed during the Israeli assault on Gaza ... They sent word to us to go to Al-Shifa Hospital in Gaza, where I identified Akram's body in the mortuary. I found six bullet holes in his chest and head. I did not see who fired the shots but he was a prisoner in Saraya prison in Gaza ... He had been sentenced to death before Hamas seized power ...".⁷⁴

423. The father of another victim stated, "... On 26 March 2003, my son was arrested by the authorities on suspicion of having committed murder. He was tried and sentenced to death the same year, having been accused of three murders. He was tried by a civil court, the Gaza Court of First Instance. My son was held at Saraya prison, awaiting execution. The verdict was appealed before the Court of Cassation which, to date, has not delivered its ruling. On 28 December 2008, during the Israeli assault on Gaza, the Saraya facility was bombed by the Israelis,

⁷² The Commission held 17 hearings for the relatives of murder victims.

⁷³ The Commission heard the testimony of 11 persons concerning complaints relating to murder.

⁷⁴ Statement documented by the Commission and registered as No. q-gahyn-21/2010.

after which my son escaped with other prisoners and came home. After a few days, he went to the Rafah area, where the Internal Security Service arrested him on 20 January 2009. He was held until 21 January 2009, when he was executed with another person, by the name of Said Zaghil. His body was taken to Al-Shifa Hospital. He had a bullet hole behind the ear. An autopsy was conducted by the pathologist at the hospital, who stated that he had been killed by a bullet that was lodged in his brain. The pathologist and prosecutor's office refused to provide us with a report determining the cause of death ...".⁷⁵

2. The targeted killing of accused persons by the de facto authority in the Gaza Strip

424. Numerous testimonies heard by the Commission substantiate allegations of such killings.

425. The wife of a victim of execution stated the following: "... My husband was arrested about a year and a half before the war and charged with spying for Israel. He confessed under torture and remained in custody. He was being held at Saraya when the war began. When the Israelis bombed Saraya, he was injured when a wall fell on his shoulder and leg, causing bleeding, and he was taken to hospital. While he was receiving treatment there, three persons dressed in military uniform appeared and shot him in the head. The hospital was full of people and it was in full view of the police. I was in the hospital, at reception, and heard the shot fired. I went to the place and found him lying on the bed with two shots to the head, one in his forehead and the other close to his nose. The gunmen were unmasked but I do not know which faction they belonged to ...".⁷⁶

426. The statement of the wife of another victim included the following: "... My husband's brother received an anonymous call, telling him, 'Go and look for your brother where he has been dumped.' Following this call, we went out to look for him. Eventually, we were told that there were bodies at Al-Shifa Hospital, so we went to the hospital mortuary and found my husband there, with three bullet holes in his head, abdomen and chest ... Previously, on 29 January 2009, my husband had called to say that he was in a safe place and in safe hands. In 2008, my husband had been charged with murder and acquitted by the court but was taken back to prison a few days after his release, on 22 October 2008. When I checked with the legal affairs section at Saraya prison, they told me that they suspected my husband was an Israeli agent. Forty days later, I visited my husband and they told me that he was an Israeli agent. On ... I received notification from the military judiciary that I had to present myself to them. They interrogated me and told me that my husband had enemies whom they suspected of the murder. It is my belief that the Internal Security Service killed my husband ...".⁷⁷

427. One of the complainants heard by the Commission stated the following: "... He was to have appeared before the court but no verdict had been delivered by the time of the Hamas takeover in Gaza. After the coup, he was acquitted and released. He was shown on television saying that he had been unjustly treated. He stayed at home for eight months. Then they arrested someone who informed against my son. He was arrested and taken back to prison, where he was at the time of the assault on Gaza. When Saraya prison was bombed by Israel, my son made his way out along with others and came home. He then went to his grandfather's house in Khan Younis. There, Arafat Abu'l Rish

⁷⁵ Statement documented by the Commission and registered as No. q-gahyn-18/2010.

⁷⁶ Statement documented by the Commission and registered as No. q-gahyn-20/2010.

⁷⁷ Statement documented by the Commission and registered as No. q-gahyn-22/2010.

appeared with a group of masked men, took him from his grandfather's house and beat him in the street... They took him to a vacant plot and killed him there, in full view of everyone ...".⁷⁸

428. Another complainant heard by the Commission stated: "... My husband, aged 40, was arrested on 25 July 2008, accused of belonging to Fatah. While under arrest, he was tortured. He told me that the methods they tortured him with included loss of blood and cuffing in the *shabah* position. For three months there was no information about him until, during the war against Gaza, the detainees were freed and my husband was among them. He had been held at Saraya prison in Gaza City but had not been convicted of anything ... My husband was accused in connection with explosions in Gaza. They took him from Saraya and murdered him in an area known as Nafaq, with two shots to the head, one from each side. I saw my husband when we were contacted by people from the hospital and were told we had to come and take Hamza. We found him in the mortuary. To this day, I do not know who murdered my husband and I have heard nothing. The day he got out of Saraya prison, he came home but was shot in the legs by the Internal Security Service. He arrived at the house bleeding. I brought a doctor to the house for him and he treated him. There was no damage to the bone. He had been receiving treatment for 20 days or more when, one night, masked men came to the house, terrifying the household. We hid him from them then, but another time masked men came to the house and took him away. I do not know who they were or where they took him. Their faces were covered and they wore civilian clothes. They were armed with pistols. They took my husband at around midnight ... He was shot at 4 a.m. The masked men came in a military vehicle. I believe that the Internal Security Service killed my husband. My husband was an ordinary citizen but he belonged to Fatah ...".⁷⁹

429. Another complainant said, "At 1 a.m. on Thursday, 29 January 2009, there was a knock at the door. My husband and the children and I were asleep. My husband, may God have mercy on him, got up and opened the door to find a group of armed and masked men. There were about 15 of them, possibly more. He tried to shut the door to prevent them from coming in. Before that, however, he asked them who they were and they said that they were the security services. We were trying to stop them ... but after that he stopped resisting and opened the door. All of them came into the house ... and took my husband away with them but we did not know where to. In the morning, I went to the police station and reported the incident ... At around noon on 2 February 2009, my husband's cousin came to tell me that my husband had been found at Kamal Adwan Hospital ... with torture marks visible on his body and a bullet hole in his head ...".⁸⁰

430. The Commission's review of the list of persons killed in the first quarter of 2009 in the Gaza Strip⁸¹ shows that some 17 persons found guilty, accused or detained by the security services in the Gaza Strip had been killed.

3. Targeted killing by the de facto authority in the Gaza Strip of persons sympathetic to the political opposition

431. One of the statements heard by the Commission contained the following: "... On Tuesday, 27 March 2009, a group of heavily armed masked men arrived at my house in three military jeeps and knocked at the door. My wife went to

⁷⁸ Statement documented by the Commission and registered as No. q-gahyn-19/2010.

⁷⁹ Statement documented by the Commission and registered as No. q-gahyn-14/2010.

⁸⁰ Statement documented by the Commission and registered as No. q-gahyn-13/2010.

⁸¹ The Commission obtained this list from Al-Haq organization.

the door before me and asked them who they were. They told her they wanted Usama. I went out to ask them who they were and they told me they were from the Internal Security Service. I asked them for a warrant from the Public Prosecutor before I would hand over my son to them. They refused, saying that they were Internal Security and produced identification cards. I told them that Usama would not come out even if they brought down the house on us. I was eventually able to send a message to my cousin, who is a Hamas official. My cousin arrived and asked me what was going on. I asked him, in his capacity as a local official, to take Usama under his protection. He said that there was nothing against him. Afterwards, Usama came out and they put him into one of the jeeps. We learned the next day that they had taken him to Bilal ibn Rabah Mosque in the Zeitoun district. Bound hand and foot, he was guarded by one unarmed man. He asked the guard to undo his shackles so that he could go to the toilet, whereupon he pushed the guard and fled but was pursued by two other guards who demanded he give himself up. They fired three shots, the third one hitting him in the shoulder but, although bleeding, he carried on running until he reached a shop door. At that point, the police arrived and took Usama to Al-Shifa Hospital. When he arrived at the hospital, a doctor who knew him took him to the operating theatre to perform surgery. The doctors reassured Usama's relatives and transferred him to the intensive care ward. However, Internal Security men came in, entering through the radiology department and using the doctors' elevator. They took him on the bed from the intensive care ward to the lift. According to the medical report in my possession, they suffocated him: the report states that the cause of death was asphyxiation. Having suffocated him, they left him in the lift and asked one of the hospital staff to confirm whether or not he was dead ... The reason for my son's death was that he was a prominent member of Fatah. In 2006, he was kidnapped for three days ... I might add that, at 11 p.m., someone came and told me, 'We regret Usama's death but ask you not to appear in front of the media and we will consider him a martyr.' That person is well known. His name is Ahmed Atallah and he is in charge of the military judiciary. I refused, so they sent five or so armed and masked men in a car to warn me not to appear on television ... After my appearance on the satellite channels, the Hamas spokesman, Ihab al-Ghoussein, made a statement saying that my son had been killed as a result of a family feud and that there would be an investigation. Subsequently, Taher al-Nunu came on and said that Usama's murder was due to a family feud and that there would be an investigation".⁸²

C. Extralegal execution in the Gaza Strip in the light of international human rights law

1. Commitments deriving from instruments aimed at countering extralegal execution

432. Economic and Social Council resolution 1984/50 on safeguards guaranteeing protection of the rights of those facing the death penalty, adopted on 25 May 1984, affirms the need for States to observe all the legal safeguards in respect of the death penalty and the conditions of its implementation. Paragraphs 4 to 9 of the annex to that resolution provide as follows:

4. Capital punishment may be imposed only when the guilt of the person charged is based upon clear and convincing evidence leaving no room for an alternative explanation of the facts.

⁸² Statement documented by the Commission and registered as No. q-ghayn-23/2010.

5. Capital punishment may only be carried out pursuant to a final judgement rendered by a competent court after legal process which gives all possible safeguards to ensure a fair trial, at least equal to those contained in article 14 of the International Covenant on Civil and Political Rights, including the right of anyone suspected of or charged with a crime for which capital punishment may be imposed to adequate legal assistance at all stages of the proceedings.
6. Anyone sentenced to death shall have the right to appeal to a court of higher jurisdiction, and steps should be taken to ensure that such appeals shall become mandatory.
7. Anyone sentenced to death shall have the right to seek pardon, or commutation of sentence; pardon or commutation of sentence may be granted in all cases of capital punishment.
8. Capital punishment shall not be carried out pending any appeal or other recourse procedure or other proceeding relating to pardon or commutation of the sentence.
9. Where capital punishment occurs, it shall be carried out so as to inflict the minimum possible suffering.

433. As is evident, those provisions and principles establish a set of safeguards — safeguards which must be granted to the accused to enable him to defend himself and counter any violation of or arbitrary action against his rights.

434. Moreover, the tenets and provisions of international law categorically and unequivocally prohibit any authority, whether a civil authority in an independent region and State or a military authority in an occupied territory, from carrying out physical elimination, premeditated killing and the arbitrary and extralegal execution of individuals, regardless of the reasons and motives for doing so, and regardless of whether the authorities seek to inflict punishment for specific actions and practices or the intent is to take revenge, retaliate or deter and terrorize the population.

435. The Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, annexed to Economic and Social Council resolution 1989/65 of 24 May 1989, state that Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions.

436. Paragraph 2 of the Principles states that, in order to prevent extra-legal, arbitrary and summary executions, Governments shall ensure strict control, including a clear chain of command over all officials responsible for apprehension, arrest, detention, custody and imprisonment, as well as those officials authorized by law to use force and firearms.

437. The Principles set forth other provisions, including:

- Governments shall ensure that persons deprived of their liberty are held in officially recognized places of custody, and that accurate information on their custody and whereabouts, including transfers, is made promptly available to their relatives and lawyer or other persons of confidence.
- Qualified inspectors, including medical personnel, or an equivalent independent authority, shall conduct inspections in places of custody on a

regular basis, and be empowered to undertake unannounced inspections on their own initiative, with full guarantees of independence in the exercise of this function. The inspectors shall have unrestricted access to all persons in such places of custody, as well as to all their records.

- Governments shall make every effort to prevent extra-legal, arbitrary and summary executions through measures such as diplomatic intercession, improved access of complainants to intergovernmental and judicial bodies, and public denunciation. Intergovernmental mechanisms shall be used to investigate reports of any such executions and to take effective action against such practices. Governments, including those of countries where extra-legal, arbitrary and summary executions are reasonably suspected to occur, shall cooperate fully in international investigations on the subject.
- There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances. Governments shall maintain investigative offices and procedures to undertake such inquiries ... [The investigation] shall include an adequate autopsy, collection and analysis of all physical and documentary evidence, and statements from witnesses. The investigation shall distinguish between natural death, accidental death, suicide and homicide.
- The investigative authority shall have the power to obtain all the information necessary to the inquiry. Those persons conducting the investigation shall have at their disposal all the necessary budgetary and technical resources for effective investigation. They shall also have the authority to oblige officials allegedly involved in any such executions to appear and testify. The same shall apply to any witness. To this end, they shall be entitled to issue summons to witnesses, including the officials allegedly involved, and to demand the production of evidence.
- ... Governments shall pursue investigations through an independent commission of inquiry or similar procedure. Members of such a commission shall be chosen for their recognized impartiality, competence and independence as individuals. In particular, they shall be independent of any institution, agency or person that may be the subject of the inquiry. The commission shall have the authority to obtain all information necessary to the inquiry and shall conduct the inquiry as provided for under these Principles.
- Complainants, witnesses, those conducting the investigation and their families shall be protected from violence, threats of violence or any other form of intimidation. Those potentially implicated in extra-legal, arbitrary or summary executions shall be removed from any position of control or power, whether direct or indirect, over complainants, witnesses and their families, as well as over those conducting investigations.
- Governments shall ensure that persons identified by the investigation as having participated in extra-legal, arbitrary or summary executions in any territory under their jurisdiction are brought to justice. Governments shall either bring such persons to justice or cooperate to extradite any such persons to other countries wishing to exercise jurisdiction. This principle shall apply irrespective of who and where the perpetrators or the victims are, their nationalities or where the offence was committed.

- ... an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their hierarchical authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions.
- The families and dependents of victims of extra-legal, arbitrary or summary executions shall be entitled to fair and adequate compensation within a reasonable period of time.

438. The Commission affirms that it bases its case on the sum of its findings on extralegal executions, the substance of the hearings and the safeguards to protect persons against such practices and crimes established by international principles and standards.

2. Failure of the de facto authority in the Gaza Strip to prosecute and hold accountable the perpetrators of crimes of extralegal killing

439. The connivance of the authorities may, perhaps, be confirmed by the statement one woman made to the Commission: "... On 14 January 2009, during the war ... I opened the door to find masked men, one of whom entered the house ... They told me that they wanted Zahir. My husband's sister called to him to come to the masked men and I came down with my husband. They took my husband outside and, after a minute, I went into the street. I saw the masked men running away with my husband and I ran after them, screaming. The masked men went into the Bayyarat area and I returned home and then submitted a report to the police. The next day, we received the news that he had been found dead, his hands and neck bound, and was in the Kamal Adwan Hospital. The family went to fetch him from the hospital. I accuse Hamas of killing my husband. Two days after the incident, Hamas released a statement announcing that his death was the result of the war and that they considered him a martyr. We received threats by mobile telephone and were told not to speak about the incident. I know that it was Hamas men who killed my husband. Hamas held them in custody for two weeks. They made us give an undertaking not to interfere and that Hamas would hold them to account."

440. The lack of real accountability for the perpetrators of these violations in the Gaza Strip and the failure of the de facto authority to assume responsibility for protecting persons from such violations has led to the widespread incidence of extralegal executions. Those who carry out such practices know that they are immune and protected by the authorities from accountability or prosecution.

441. Accordingly, the Commission is of the view that the de facto authority in the Gaza Strip must undertake to implement a policy of non-impunity and affirm that no person, commander, official or individual is immune from prosecution and accountability for crimes and violations committed against rights and freedoms.

442. The seizure of power in the Gaza Strip by the members of Hamas does not exempt them or members of affiliated armed organizations and groups from the duty of respect for the rights and freedoms of individuals, specifically, respect for the right to life and the impermissibility of punishing any person without a fair trial. They must also avoid infringements against the dignity and humanity of individuals and subjecting them to torture or other forms of degrading or inhuman treatment.

XI. Conclusions

443. After reviewing the status of human rights and freedoms in the Palestinian territories, hearing the accounts of Palestinian human rights organizations that document violations and monitor the human rights situation in the West Bank and the Gaza Strip, and completing the investigation of all parties connected with the violations which the United Nations Fact-Finding Mission alleges were committed, the Commission came to the following conclusions.

444. Most of the arrests in the Palestinian territories of the West Bank and the Gaza Strip are related to the Palestinian political situation. In the view of the Commission, arbitrary arrests are the result of the political split and the existence of two authorities, in the West Bank and Gaza, inasmuch as most of the arrests made in the West Bank target persons belonging to or associated with Hamas, its supporters and others protected by political forces or groups allied with or sympathetic to Hamas, while the arrests made in the Gaza Strip target persons belonging to or associated with Fatah, its supporters and others protected by political forces or groups allied with or sympathetic to Fatah.

445. Law enforcement officials in the security services in the West Bank and the security services belonging to the de facto authority in the Gaza Strip do not, in most arrest and detention cases, comply with the rules on legal procedure; furthermore, detainees are subjected to ill-treatment and cruelty.

446. Law enforcement officials in the security services in the West Bank and the security services belonging to the de facto authority in the Gaza Strip do not fulfil the legal requirement whereby detainees must be transferred to the Public Prosecutor within the statutory time limits, as prescribed by the Palestinian Code of Criminal Procedure.

447. Civilian detainees are brought before the military judiciary in both the West Bank and the Gaza Strip.

448. In many cases the security services in the West Bank ignore and fail to execute civil court release orders or execute those orders fraudulently.

449. Detainees are subjected to torture and other forms of humiliating and degrading treatment, as a means of extracting confessions from them regarding acts ascribed to them or to others, both by the security services in the West Bank and by the security services of the de facto authority in the Gaza Strip.

450. Cases of direct killing and extrajudicial execution by law enforcement agencies, or by armed groups connected to the de facto authority in the Gaza Strip, targeting persons accused of committing certain acts or sentenced by the military and civil courts have been noted, as have cases of civilians being detained and then eliminated, after interrogation, by the agencies of the de facto authority in the Gaza Strip.

451. Failure by the de facto authority in the Gaza Strip to prosecute and hold to account those who perpetrate crimes of extrajudicial execution and the absence of real accountability for those who commit such violations have been noted, as has the shirking by that authority of its responsibility to protect individuals against such violations. This has led to the widespread occurrence of extrajudicial executions by individuals, who are reassured by the knowledge that they are immune and will be shielded by the authority from accountability or prosecution.

452. Various violations by official bodies, specifically, the Ministry of the Interior and the security services in the West Bank, have been noted in respect

of the right to form associations, including the appointment of transitional committees comprising persons who are not members of those associations to run them in the place of elected association members. Cases of the Palestinian security services prohibiting associations from carrying out their work and threatening to arrest members of their boards of directors should they defy such prohibitions have also been noted, as well as other violations of the law;

453. A number of violations by official agencies, specifically, the General Personnel Council and the departments and directorates of various Palestinian ministries, of the right to hold a public position in the West Bank has been noted. The most serious of such violations is the cancellation of the appointment or the dismissal, by the Palestinian authorities in the West Bank, of hundreds of persons employed in education and other public positions, on the basis of the political affiliation of the dismissed person, and the refusal of the security services to recommend their appointment. The security services of the de facto authority in the Gaza Strip play a similar role when they carry out what are known as security clearance procedures, and determine appointments on the basis of a person's political affiliation;

454. A series of violations of press freedoms in the Palestinian territories, both the West Bank and the Gaza Strip, were noted. The most egregious of these included the arrest, detention and interrogation of journalists by the security services on the basis of their journalistic work, in relation either to their political affiliation or to their publication of written, audio or visual material; the subjection of some of them to torture and degrading and humiliating treatment during their detention or arrest by the security services; and the prevention and hindrance by the security services of the practice of journalism either because of the political affiliation of the journalists or in order to prevent the journalists from publicizing or researching subjects which the security services did not wish to be investigated.

XII. Recommendations

455. In view of the foregoing, and following the completion by the Commission of its work pursuant to the legal mandate defined in General Assembly resolution 64/10, the Commission submits the following set of recommendations.

456. The Office of the Military Prosecutor and the military judiciary should be instructed to: refrain from taking decisions on the arrest and detention of civilians; discontinue the interference of the military courts in the affairs of the civil courts; and hand over all persons arrested and detained by the military judiciary to the competent civil courts.

457. The protocol of cooperation and understanding between the Office of the Public Prosecutor and the Office of the Military Prosecutor, concluded between the two parties on 28 June 2006, should be rescinded. Under that protocol, the Office of the Public Prosecutor granted permission to the Office of the Military Prosecutor to exercise the competence and powers conferred on the Public Prosecutor by law with regard to the institution and conduct of public proceedings in respect of the offences provided for in the Penal Codes of the West Bank and the Gaza Strip.

458. The security services of the Palestinian National Authority must respect legal requirements when exercising the powers to apprehend, detain and arrest and must not effect any arrest or detention without having obtained a prior judicial order. They must also observe the time limits relating to custody specified in the Code of Criminal Procedure; refrain from holding detainees or prisoners anywhere other than in the places designated for that purpose; and respect the sanctity of homes and private places, which they must not enter or search without a prior court order. The competent Palestinian authorities must also prohibit the exercise by the Military Intelligence Service of the power to detain and arrest with regard to non-military persons.

459. The Palestinian Office of the Public Prosecutor must make use of its powers to inspect prisons and places of detention under its jurisdiction in order to ensure that no unlawfully arrested person or inmate is held there, and must intervene to prevent detentions or arrests from being effected other than in prisons. The Office of the Public Prosecutor must also take action to prevent security service individuals, especially in the Military Intelligence Service, who do not have judicial police authority from arrogating to themselves the powers of those who do possess that authority under the law;

460. All law enforcement officials must respect and execute civil court orders relating to the release of detainees. The Commission has confirmed that some security services, including the Preventive Security Service, the General Intelligence Service and the Military Intelligence Service, refuse to execute civil court orders for the release on bail of detainees or persons held in custody. Such persons continue to be detained regardless of the civil court order for their release.

461. The arrest and detention of civilians by the Office of the Military Prosecutor and the military judiciary must cease, inasmuch as they constitute a clear and outright arrogation of the authority of the civil judiciary, in addition to depriving civilians of the right to appear before the appropriate court, as affirmed and guaranteed by national laws and international human rights instruments. Furthermore, the Commission is of the opinion that the arrogation by the Office of the Military Prosecutor and the military judiciary of the power to arrest and detain civilians has set a precedent for the exercise by all military

security services of judicial police functions with respect to civilians, thus curtailing the rights and freedoms guaranteed by the Basic Law and the Palestinian Code of Criminal Procedure.

462. The Office of the Military Prosecutor and the military judiciary must cease the practice of trying cases that fall within the jurisdiction of the civil courts and relate to persons whose disputes and offences those courts are competent to try. That practice constitutes a clear attack on individuals' rights and freedoms, particularly in view of the fact that the Palestinian civil judiciary, through its highest judicial authority, namely, the Supreme Court, has affirmed in dozens of court decisions that the trial and arrest of Palestinian civilians by the Office of the Military Prosecutor and the military judiciary are unlawful and cannot be permitted.

463. All persons detained and arrested by the Palestinian National Authority and the de facto authority in the Gaza Strip who have not been brought before the competent civil courts must be released.

464. All forms of torture, physical abuse and ill-treatment in the course of interrogations and investigations must be banned. The Commission has established that the security services have gone to extremes in their use of all forms of torture and degrading treatment during the various stages of detention for the purpose of extracting information and inducing detainees to confess to acts or statements ascribed to them or to others.

465. The official authorities in the West Bank must discharge their responsibility to hold accountable and prosecute those who violate the law, whether by acts of arbitrary detention, by crimes of torture or other forms of cruel or degrading treatment or by violations of other rights and freedoms. Indeed, the Commission is convinced that the absence of effective and genuine accountability for those who have committed the crime of torture and the members of the security services who have broken the rules and regulations governing arrest and detention has helped to increase the frequency of such violations and been conducive to their occurrence.

466. The Palestinian National Authority must investigate all crimes of extrajudicial killing and execution that have taken place in the Gaza Strip, in order to ensure the accountability of those who ordered the crimes to be committed, those who instigated their perpetration and those who committed them. The perpetrators of the crimes must not escape punishment and must be held to account.

467. The de facto authority in the Gaza Strip must take the requisite legal steps to end raid, search and arrest operations by masked persons acting in violation of the law. It also has the obligation to bring to an end operations involving the arrest and detention of persons in places other than those designated by law.

468. The security services of the de facto authority in the Gaza Strip must abide by the provisions of the Palestinian Code of Criminal Procedure which state that no arrest may be effected without a prior court order; that the sanctity of homes and private places must be respected and may not be entered without a prior court order; and that the permitted custodial time limits must be respected.

469. The de facto authority in the Gaza Strip must ban all forms of torture, physical abuse and ill-treatment in the course of interrogations and investigations. The Commission has established that the security services belonging to the de facto authority have gone to extremes in their use of all forms of torture and degrading treatment during the various stages of detention.

470. The de facto authority in the Gaza Strip must discharge its responsibilities under national law and international humanitarian law by prosecuting and holding to account those who violate the law, whether by extrajudicial execution, by acts of arbitrary detention or by crimes of torture or other forms of cruel or degrading treatment.

471. The de facto authority in the Gaza Strip must cease to refer civilians to military courts, for such referral constitutes a violation of the rights of the accused person, who must be tried before the appropriate court.

472. It is incumbent on the Palestinian National Authority and the de facto authority in the Gaza Strip to redress the situation of all public employees who have been dismissed from their posts by returning them to those posts in the West Bank and the Gaza Strip, and compensating them for the damage sustained, given that most cases of dismissal were based on political affiliation rather than professional grounds or grounds of competency.

473. The condition imposed by Government agencies in the West Bank and the Gaza Strip that an employee must obtain the approval of the security services as one of the requirements for appointment to an official post must be abolished, inasmuch as such approval is unlawful and constitutes a clear violation by Government agencies of the Palestinian Basic Law and the Civil Service Law.

474. The security services in the West Bank and the Gaza Strip must cease to arrest, interrogate and prosecute journalists by reason of the work they perform and must not hamper journalists in their work, inasmuch as such acts constitute a clear and explicit violation of the right to freedom of opinion and expression and freedom of the press, which are guaranteed under both national and international law.

475. Interference by the Ministry of the Interior of the Palestinian National Authority in the work of community associations by appointing transitional committees comprising persons who are not members of those associations to run associations in the place of elected associations members must cease, inasmuch as that practice is in violation of the law.

476. The Ministry of the Interior of the Palestinian National Authority must respect and execute Palestinian Supreme Court decisions that reverse official decisions in connection with the appointment of transitional committees to run associations.

477. The security services of the Palestinian National Authority must respect the work of community-based associations and cease to interfere in their affairs; moreover, they must not close them, search them or seize their assets without valid legal grounds.

478. The Palestinian National Authority and the de facto authority in the Gaza Strip must ensure that all victims of violations of human rights and freedoms receive compensation and justice proportionate to the degree and gravity of those violations.

479. With respect to torture and other forms of degrading treatment, the competent Palestinian authorities must remedy the shortcomings and deficiencies of penal legislation in the Palestinian territory by adopting clear legislative texts that criminalize and punish such practices in a manner that is in keeping with their gravity. The Commission deems it necessary for such laws to be consistent with the provisions of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, which entered into force in 1987, because that Convention is a peremptory legal reference that must be respected and applied by all who are subject to international law.

480. The Palestinian National Authority should form a Palestinian committee of judicial authorities, civil society organizations and official bodies to follow up the implementation of the present recommendations.

481. Palestinian combatants, in their armed struggle to obtain their legitimate right of self-determination, must respect the rules governing the behaviour of combatants during fighting established in the principles and provisions of international humanitarian law and public international law and comply fully with the guarantees and principles pertaining to the protection of civilians in international armed conflicts laid down in those rules.

482. The United Nations must discharge its legal responsibility to ensure that the right of the Palestinian people to self-determination, freedom and liberation from Israeli occupation and hegemony is implemented, because the continuation of the Israeli occupation of Palestinian territory has resulted not only in the denial of the collective rights of the Palestinian people, but also in the abandonment and disappearance of the human rights and freedoms of Palestinians, who are subjected at every turn to the erosion of their dignity and humanity by the acts and practices of the occupier, including murder, disappearance, banishment, confiscation of property, prevention of movement and travel, and the oppressive siege of the Gaza Strip.

Annexes

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Annex 1

General Assembly resolution 64/10

64/10. Follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict

The General Assembly,

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

Recalling the relevant rules and principles of international law, including international humanitarian and human rights law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949,¹ which is applicable to the Occupied Palestinian Territory, including East Jerusalem,

Recalling also the Universal Declaration of Human Rights² and the other human rights covenants, including the International Covenant on Civil and Political Rights,³ the International Covenant on Economic, Social and Cultural Rights³ and the Convention on the Rights of the Child,⁴

Recalling further its relevant resolutions, including resolution ES-10/18 of 16 January 2009 of its tenth emergency special session,

Recalling the relevant Security Council resolutions, including resolution 1860 (2009) of 8 January 2009,

Recalling also the relevant resolutions of the Human Rights Council, including resolution S-12/1 of 16 October 2009,

Expressing its appreciation to the United Nations Fact-Finding Mission on the Gaza Conflict, led by Justice Richard Goldstone, for its comprehensive report,⁵

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

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

Gravely concerned by reports regarding serious human rights violations and grave breaches of international humanitarian law committed during the Israeli military operations in the Gaza Strip that were launched on 27 December 2008, including the findings of the Fact-Finding Mission and of the Board of Inquiry convened by the Secretary-General,⁶

Condemning all targeting of civilians and civilian infrastructure and institutions, including United Nations facilities,

¹ United Nations, *Treaty Series*, vol. 75, No. 973.

² Resolution 217 A (III).

³ See resolution 2200 A (XXI), annex.

⁴ United Nations, *Treaty Series*, vol. 1577, No. 27531.

⁵ A/HRC/12/48.

⁶ A/63/855-S/2009/250.

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

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

1. *Endorses* the report of the Human Rights Council on its twelfth special session, held on 15 and 16 October 2009;⁷

2. *Requests* the Secretary-General to transmit the report of the United Nations Fact-Finding Mission on the Gaza Conflict⁵ to the Security Council;

3. *Calls upon* the Government of Israel to take all appropriate steps, within a period of three months, to undertake investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice;

4. *Urges*, in line with the recommendation of the Fact-Finding Mission, the undertaking by the Palestinian side, within a period of three months, of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice;

5. *Recommends* that the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War,¹ undertake as soon as possible the steps necessary to reconvene a Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with article 1;

6. *Requests* the Secretary-General to report to the General Assembly, within a period of three months, on the implementation of the present resolution, with a view to the consideration of further action, if necessary, by the relevant United Nations organs and bodies, including the Security Council;

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

*39th plenary meeting
5 November 2009*

⁷ A/64/53/Add.1.

Annex 2**Decree of the President of the Palestinian National Authority
establishing the Commission****Decree No. () 2010****Concerning the formation of an independent commission to follow up the
Goldstone report**

The President of the State of Palestine,
Chairman of the Palestine Liberation Organization Executive Committee,
President of the Palestinian National Authority,

On the basis of the provisions of the Amended Basic Law of 2003 and its amendments,

Having considered the Decision of the Prime Minister dated 14 January 2010,

Having considered also the Goldstone report,

By virtue of the powers with which he is invested, and in the interests of the public, has decided as follows:

Article 1

To form an independent commission to follow up implementation of the recommendations made in the Goldstone report with respect to the Palestinian National Authority, composed of the following:

1. Issa Abu Sharar, Chairman
2. Zuhair al-Surani, member
3. Ghassan Farmand, member
4. Yasser al-Amuri, member
5. Nasser Rayyes, member

Article 2

1. To authorize that Commission to undertake the investigative duties and responsibilities required of it pursuant to the Goldstone report, and to work in accordance with the timetable provided for in that report.
2. The Commission shall submit its recommendations and the outcome of its work to the relevant authorities.

Article 3

The Commission shall appoint the experts and specialists it considers most appropriate to assist it in performing its duties.

Article 4

All relevant official and unofficial parties shall cooperate with the Commission and provide it with all the facilities and information necessary for it to perform its duties.

Article 5

All the relevant parties shall implement the provisions of this Decree with effect from its publication. The Decree shall be published in the Official Gazette.

Ramallah, 25 January 2010

(Signed) Mahmoud **Abbas**
President of the State of Palestine
Chairman of the Palestine Liberation Organization Executive Committee
President of the Palestinian National Authority

Annex 3**Statute of the Palestinian Independent Investigation Commission****Statute of the Palestinian Independent Investigation Commission established pursuant to the Goldstone report**

Pursuant to the decree of the President of Palestine issued on 25 January 2010 on the establishment of an independent investigation commission of inquiry in follow-up to the Goldstone report, and having considered United Nations General Assembly resolution 64/254; and the report of the Fact-Finding Mission headed by Justice Richard Goldstone that was established by the Human Rights Council with a view to investigating the facts in connection with the recent conflict in Gaza; and the international standards and principles governing the rules and procedures used for investigations into violations of international human rights law and international humanitarian law,

The Commission adopts the following Statute:

Part I**Headquarters and mandate of the Commission****Headquarters of the Commission**

Article 1

1. The headquarters of the Commission shall be in the city of Ramallah.
2. Unless otherwise decided, the Commission shall hold its meetings at its headquarters.
3. The Commission shall perform its functions and exercise its authority in the manner set forth in the present Statute, both within and beyond the Palestinian territories, as required.

Language of the Commission

Article 2

Arabic shall be the official language of the Commission and its working groups.

Mandate of the Commission

Article 3

1. The Commission shall be an independent legal person and shall enjoy the legal competence necessary for the performance of its functions and the fulfilment of its objectives.
2. The Commission shall perform its mandate to investigate the Palestinian contraventions and violations referred to in the report of the Fact-Finding Mission that was established by the Human Rights Council and headed by Justice Richard Goldstone.

Competence of the Commission *ratione loci* and *ratione materiae*

Article 4

The Commission shall perform its mandate and exercise its authority as specified in its Statute throughout the Occupied Palestinian Territory.

Limits of the competence of the Commission

Article 5

The Commission shall have no competence or jurisdiction beyond the Palestinian contraventions and violations referred to in the report of the Fact-Finding Mission that was established by the Human Rights Council.

Article 6

In the course of its duties, the Commission shall:

1. Investigate the violations attributed to Palestinians in the report of the Fact-Finding Mission;
2. Collect information, evidence and data related to its functions;
3. Record allegations or complaints of violations of human rights in the areas within its mandate;
4. Hold hearings;
5. Issue orders to obtain from official agencies such documents, papers, administrative orders, medical records and other sources of information as it shall deem necessary;
6. Summon persons and witnesses;
7. Make field visits to Government sites, detention centres and reform and rehabilitation centres;
8. Receive evidence and statements from witnesses and organizations located outside the Occupied Palestinian Territory;
9. Request any person or entity to submit to it any material in the possession of, held by or under the control of such person or entity, or anything else that the Commission regards as being relevant to the subject of the investigation or the hearing;
10. Take possession of any material or item connected with the investigation.

Legal framework governing the work of the Commission

Article 7

In the performance of its work and functions, the Commission shall be governed by the provisions of international human rights law, international humanitarian law, the firmly established and definitive principles of international law, the obligations of Palestine arising from its membership of the United Nations, the unilateral obligations of Palestine to respect and apply the four Geneva Conventions of 1949 and the body of domestic legislation in force in the Occupied Palestinian Territory.

Part II

Legal personality of the Commission and the conditions of its independence

Acquisition and loss of the legal personality of the Commission

Article 8

The existence of the Commission as a legal person shall commence with the issuance of the Presidential decree on its establishment and shall terminate upon completion of the purpose for which it was established or upon its dissolution by the entity that established it.

Independence of the members of the Commission

Article 9

1. The members of the Commission shall be independent in the performance of their work and shall be subject to no authority other than the law.
2. In the performance of their work, the members of the Commission shall not accept any instructions, guidance or interference from any authority, entity or person.

Oath of office

Article 10

1. Before assuming his functions, every member of the Commission shall take the following oath: "I swear by Almighty God that I shall perform my work as a member of this Commission with complete independence, integrity and impartiality and that I shall respect the law and the Statute of the Commission".
2. The Chairman of the Commission shall take the oath before the other members of the Commission present, and the members of the Commission shall take the oath before the Chairman of the Commission.

Commitments by members

Article 11

Members of the Commission undertake to be ready at all times to respond to a call from the Chairman to attend a meeting. They undertake to attend all investigation meetings and hearings, in order to ensure the proper conduct of the work of the Commission, unless excused from attending by an unforeseen eventuality that is justified under the rules and principles.

Duties of Commission members

Article 12

No member of the Commission shall be permitted, while a member of the Commission, to engage in any work or activity that is incompatible with his duties in the Commission. Members of the Commission shall also be prohibited from making any announcement or statement or from participating in any activity or work likely to cast doubt on his independence, impartiality or integrity.

Resignation

Article 13

1. The notice of resignation of a member of the Commission shall be submitted to the Chairman.
2. The Chairman shall inform the members immediately of any notice of resignation he receives.
3. The notice of resignation of the Chairman shall be submitted to the Commission Rapporteur.
4. The resignation of the Chairman or of a member of the Commission shall take effect from the date on which it is accepted by the members of the Commission, and the member who has resigned shall be immediately informed of that date.

Minimum number of members of the Commission

Article 14

1. If a member of the Commission resigns, the Commission shall continue its work with the remaining members.
2. If the Chairman of the Commission resigns, the Commission shall meet in order to elect from among its members a new Chairman to replace him.
3. The minimum number of members of the Commission shall be three.
4. If the number of members of the Commission falls below the required minimum, the Commission shall cease to carry out its work until such time as the required number is restored.
5. The Commission shall transmit to the President of the Authority the names of the persons proposed for membership of the Commission.

Competence of the Chairman of the Commission

Article 15

1. The Chairman shall represent the Commission at the local and international levels.
2. He shall supervise the work of the Commission and its subsidiary bodies.
3. He shall supervise the smooth running of the administrative work of the Commission.
4. He shall chair the meetings of the Commission and guide its discussions.
5. He shall ensure that the provisions of the present Statute are applied.
6. He shall call to order and adjourn all the meetings of the Commission.
7. During discussion of any agenda item, the Chairman may propose to the Commission the establishment of a time limit for each speaker as well as a limit on the number of times a member may speak during discussion of a particular issue. He may also close the list of speakers.
8. The Chairman may propose the postponement or closure of discussions as well as the adjournment or postponement of meetings.

Rapporteur of the Commission

Article 16

1. The Commission shall elect a rapporteur from among its members.
2. If the Chairman ceases to be a member of the Commission or resigns as Chairman, the Rapporteur shall assume the chairmanship pending the election of a new chairman.
3. The election referred to shall be by secret ballot and the candidate who receives the greatest number of member votes shall be elected.

Part III

Investigation meetings and hearings

Quorum

Article 17

Meetings of the Commission shall be valid if a simple majority of its members is present.

Procedures and guidelines for meetings

Article 18

The Commission may adopt any directives, guidelines or procedures, either general or specific, with respect to investigation meetings.

Orderly conduct of meetings

Article 19

1. No person may speak at a hearing unless that person has asked for the floor and has received the consent of the Chairman.
2. The Chairman may not prohibit a person from taking the floor other than for a reason required by the present Statute; in the event of disagreement on that matter, the Chairman shall seek the opinion of the members of the Commission who are present and shall make his decision without discussion on the basis of a relative majority.
3. If a speaker uses inappropriate language or mentions a matter that is improper or incompatible with the Statute, the Chairman shall draw the speaker's attention thereto and remind him of his duty to observe the Statute and, when necessary, may prevent him from continuing to speak.

Attendance at meetings

Article 20

1. Hearings shall be closed meetings, attendance at which shall be restricted to members of the Commission and persons who are being heard.
2. Apart from members of the Commission, the meetings may be attended only by members of the secretariat, interpreters and persons assisting the Commission, unless the Commission decides otherwise.

Impartiality and independence of members

Article 21

If one of the members of the Commission considers, for personal reasons, that he should withdraw from participation in the investigation, he shall immediately inform the Chairman of the Commission, who shall be permitted to appoint another member to replace him.

Invitation to victims and witnesses

Article 22

1. With a view to hearing their statements, the Commission shall invite victims of human rights violations referred to in the report of the Fact-Finding Mission to meet it, and shall request them to provide proof and evidence in support of their statements.

2. The Commission may investigate any evidence or data that it regards as having a bearing on the matter and, where possible, shall carry out its investigation at the scene of the events.

3. The Commission shall decide whether the evidence and data submitted by the parties are acceptable and reliable.

4. It shall establish the conditions and procedures for the hearing of witnesses.

5. It shall hold its investigative meetings with at least two members of the Commission in attendance.

6. The Commission may send one or more of its members to the scene of the events to carry out on-site inspections.

7. The Palestinian authorities shall ensure that the members of the Commission and the persons accompanying them have the privileges and immunities necessary for the exercise of their functions.

Immunity

Article 23

Immunity and the special procedural rules related to the official status of a person, whether under national or international law, shall not prevent the Commission from exercising its competence with respect to that person.

Hearings of persons

Article 24

The Commission may hear the statements of any person if it considers that the person has something to say that is important and necessary for the performance of its functions.

Invitation and summons

Article 25

The Commission shall invite persons whose testimony it wishes to hear or summon them to attend by means of notifications signed by the Chairman of the Commission; such notifications shall specify the time and place for the attendance of the person to whom the notification has been sent.

Refusal to attend

Article 26

If a person who is requested to attend refuses to do so or to comply with the notification of the Commission, the Chairman shall be entitled to call on the competent bodies to undertake the necessary legal procedures to induce the person to respect the Commission's request.

Oath to be taken by witnesses and experts

Article 27

The Commission shall ask witnesses and experts to take an oath to be decided by the Commission.

Verbal complaints

Article 28

If a person is unable, on account of disability or inability to read or write, to submit a complaint or request to the Commission, that person may present a solicitation, request, complaint, comment or testimony by audio-visual or other electronic means.

Investigation records

Article 29

A record shall be made of statements made by any person being heard and shall be signed by the registrar of the hearing, the members of the Commission attending the hearing and the person being heard. The date, time and place of the hearing shall be indicated in the record as well as the names of all those present during the hearing. The record shall also indicate any failure by a person to sign and the reasons for such failure.

Sound and video recording

Article 30

1. Any person appearing before the Commission shall be informed, in a language that he understands and speaks well, that a sound or video recording will be made of the hearing and that he has the right to object to such recording if he so wishes.
2. If a person appearing before the Commission objects to the making of a sound or video recording, what is said shall be recorded in written form.
3. If the hearing is interrupted, the incidence and time of the interruption shall be recorded before the end of the sound or video recording, as well as the time when the hearing is resumed.
4. At the conclusion of a hearing, the person appearing before the Commission shall be given the opportunity, prior to the closure of the record of the hearing, to clarify anything that he has said.
5. When the sound or video recording of a hearing has been completed, the seal of the Commission shall be affixed to the original recording tape in the presence of the person who has been heard and signed by the members of the Commission present and that person.

Documents of the inquiry

Article 31

All the documents relating to any investigation shall be entrusted to the Rapporteur of the Commission and shall be inventoried and kept under his responsibility until the investigation is concluded.

Assistance of experts

Article 32

1. The Commission may decide to seek the assistance of experts or advisers as it may deem appropriate.
2. Persons whose assistance is sought by the Commission shall be subject to the instructions and directives of the Chairman.

Confidentiality of the information and documents of the Commission

Article 33

1. No member of the Commission may divulge any item of information, report or document obtained by the Commission in the course of its investigation and hearings.
2. Throughout the period of their assignment and after it has expired, the members of the Commission, those assisting the investigation, experts and other persons assisting the Commission shall be under an obligation to maintain the confidentiality of the evidence and information with which they become acquainted while carrying out their work.

Confidentiality of investigation evidence and documents

Article 34

The Commission shall keep photocopied records at its headquarters of all investigation documents and evidence it has obtained, and only the members of the Commission, during the period of their assignment, shall have the opportunity to study those records.

Establishment of committees

Article 35

The Commission may establish special working groups and committees with limited membership to assist it in the procedures of the hearings and the inquiry, the recording of facts, the gathering of information and documents and other matters arising from the performance of Commission functions.

Decisions of the Commission and quorum for voting purposes

Article 36

1. The Commission shall take its decisions by consensus.
2. Any member who objects or has a reservation with respect to a decision shall be entitled to record the reasons and justifications for his objection or reservation and the reservation shall be kept with the decision.

Part IV**Protection of witnesses and informants and protective measures****Protection of informants and witnesses**

Article 37

1. The Commission shall provide the necessary protection and ensure the safety of victims and witnesses that provide information on violations who may face threats or have reason to believe that they may face threats or be interrogated or pursued by known or unknown parties.

2. The word “witness” shall mean anyone who has provided evidence or testimony, or will provide evidence or testimony, or who describes specific events that he witnessed; the protective measures shall be extended to all members of the family of an informant or witness and to members of his household.

3. The term “victim” shall apply to natural persons who suffer as a result of the perpetration of any crime falling within the scope of the competence of the Commission; the term “victim” shall also cover legal persons whose possessions have suffered direct harm or who have been prevented directly or indirectly from exercising their functions.

Protective measures

Article 38

Should the Commission be concerned that any actual or potential witness may be subjected to persecution, harassment or harm it shall:

1. Hear evidence in camera or in any place that the Commission regards as meeting the requirements of confidentiality and protection;
2. Keep the identity of providers of information and witnesses secret;
3. Avoid divulging or using evidence that is likely to reveal the identity of a witness;
4. Take any measures that the Commission considers appropriate in order to protect witnesses.

Relieving informants and witnesses of liability

Article 39

Victims who provide information on violations and witnesses shall be relieved of criminal, civil and administrative liability in respect of the events they have reported or the evidence they have submitted.

Prohibition on the calling of informants or witnesses to testify

Article 40

No party may issue a writ of summons to persons who provide information on violations, or to witnesses, and may not ask them to present testimony or submit information concerning their statements or the content or tenor of the evidence they gave to the Commission.

Part V

Final clauses

Preparation of the report of the Commission

Article 41

1. At the end of the inquiry, the Commission shall draft its report based on the outcome of the investigation it has conducted.
2. The Chairman shall submit the report to the parties concerned, together with all the recommendations that the Commission considers appropriate.
3. The Chairman shall record the date on which the report is sent to the parties concerned.

Implementing regulations

Article 42

The Commission shall issue such implementing regulations as it shall deem necessary in order to ensure the application of the provisions of the present Statute. It shall also issue financial and administrative rules concerning remuneration, allowances and expenses in connection with the performance of Commission functions, means of payment or reimbursement, and travel and subsistence allowances for those attending investigation meetings or to cover the cost of the travel and accommodation of the members of the Commission and the experts and officials accompanying them.

Commission documents

Article 43

1. Immediately after submitting its report, the Commission shall assemble and archive all its documents and records in special boxes which shall be closed and sealed with the seal of the Commission.
2. The boxes shall be kept by the Supreme Court of Palestine for a period of six months from the date of submission of the final report.
3. On the expiry of the said period, the boxes shall be opened and the documents and records of the Commission shall be destroyed in the presence of the Chairman and members of the Commission.

Amendments to the Statute

Article 44

The Commission may amend the present Statute by a decision of a majority of its members.

Annex 4**Resignation of Commission member Mr. Nasser Al-Rayyes and acceptance thereof****Al-Haq**

6 February 2010

H.E. Mr. Mahmoud Abbas

Chairman of the Executive Committee of the Palestine Liberation Organization

President of the Palestinian National Authority

Subject: My release from the Commission which you established pursuant to the report of Justice Richard Goldstone

Sir,

I wish to begin by conveying to you my sincere gratitude for the confidence you displayed by personally choosing me as a member of the Independent Investigation Commission thereby conferring on me a juridical and national responsibility that fills me with pride. Unfortunately, however, the requirements of impartiality, objectivity and independence mean that I am unable to act as a member of the Commission, as it is clear to me from a study of the legal conditions set forth in the United Nations model protocol on national commissions of inquiry that national authorities, in establishing a commission of inquiry, have an obligation to ensure no commission member has close links with any member of the Government or Governmental entity, any political party or organization involved in the perpetration of the alleged violations or any organization or group connected with the victims which might impair the credibility of the commission.

I am a legal adviser to a Palestinian organization involved with human rights and freedoms and with monitoring and documenting possible violations of, and offences against, those rights and freedoms. In both my personal capacity and through al-Haq organization, I also have links with and am the legal representative of numerous persons and bodies that have suffered from attacks against their rights and freedoms. Moreover, I was one of those who took part in the meetings of the United Nations Fact-Finding Mission chaired by Justice Richard Goldstone and testified on the situation of human rights and freedoms in the Occupied Palestinian Territory.

On the basis of the foregoing reasons, and in order to safeguard the impartiality and independence of the Commission and leave no room for any criticism, diminution, prejudice or suspicion with respect to its impartiality or independence on the part of any entity, I am hereby submitting my request to be excused from serving on the Commission. Nonetheless, I remain ready, both as an individual and as the representative of an entity, to offer help, information and technical advice as well as any support and assistance that the Commission may need. Both I and the institution are confident that such support for the success of the Commission will enable it to achieve the objective for which it was established and which is a patriotic and juridical responsibility.

Accept, Sir, the assurances of my highest consideration.

(Signed) Nasser **Al-Rayyes**
Adviser to the organization Al-Haq

Annex 5

Requests to provide the Commission with documented reports of human rights violations falling within the scope of its mandate, sent to the following non-governmental organizations:

- The Independent Commission for Human Rights
- Al-Haq
- The Al-Dameer Association for Human Rights
- The Jerusalem Legal Aid and Human Rights Centre
- The Democracy and Workers' Rights Centre

14 March 2010

Ms. Randa Siniora

Executive Director, Independent Commission for Human Rights

Re: The establishment of an independent commission pursuant to the Goldstone report

Madam,

On 25 January 2010, in response to General Assembly resolution 64/10, and pursuant to the report of the United Nations Fact-Finding Mission on the Gaza Conflict that was headed by Judge Richard Goldstone, the Palestinian President issued a decree concerning the establishment of an independent commission to investigate Palestinian human rights violations cited in that report.

The Commission is chaired by Judge Issa Abu Sharar, and its members include Judge Zuhair al-Surani, Mr. Ghassan Farmand and Mr. Yasser al-Amuri. It is investigating violations of human rights and freedoms that were committed by the Palestinian National Authority in the West Bank and by the de facto authority in the Gaza Strip.

The Commission will carry out its mandate to investigate violations committed by the Palestinian authorities in the West Bank in the following areas:

- Arbitrary arrest and torture, that is to say, unjustified arrest on the basis of an individual's political affiliation;
- Violation of the freedom to form associations, targeting of non-governmental organizations in order to prevent them from carrying out their activities, and failure to comply with court decisions regarding such organizations;
- Violation of freedom of the press;
- Violation of freedom of assembly;
- Discrimination in the public service sector on the basis of political affiliation.

The following violations committed by the Palestinian authorities in the Gaza Strip will also be investigated:

- Killings
- Arbitrary arrest
- Torture and ill-treatment

We at the Commission appreciate the outstanding role you play in defence of human rights and freedoms, and we hope that you will assist the Commission in achieving its goals by providing it with any documentation your organization has obtained of violations which fall within the scope of the Commission's mandate that occurred between 27 December 2008 and the end of March 2009. As part of its work the Commission will conduct a hearing with your institution, the time and location of which will be determined in due course.

Accept, Madam, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

14 March 2010

Mr. Shawan Jabarin

General Director, Al-Haq

Re: The establishment of an independent commission pursuant to the Goldstone report

Sir,

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Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

14 March 2010

Ms. Sahar Francis

Director, Al-Dameer Association for Human Rights

Re: The establishment of an independent commission pursuant to the Goldstone report

Madam,

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Accept, Madam, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

14 March 2010

Mr. Issam Aruri

General Director, Jerusalem Legal Aid and Human Rights Centre

Re: The establishment of an independent commission pursuant to the Goldstone report

Sir,

On 25 January 2010, in response to General Assembly resolution 64/10, and pursuant to the report of the United Nations Fact-Finding Mission on the Gaza Conflict that was headed by Judge Richard Goldstone, the Palestinian President issued a decree concerning the establishment of an independent commission to investigate Palestinian human rights violations cited in that report.

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Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

14 March 2010

Mr. Hasan Barghouthi

General Director, Democracy and Workers' Rights Centre

Re: The establishment of an independent commission pursuant to the Goldstone report

Sir,

On 25 January 2010, in response to General Assembly resolution 64/10, and pursuant to the report of the United Nations Fact-Finding Mission on the Gaza Conflict that was headed by Judge Richard Goldstone, the Palestinian President issued a decree concerning the establishment of an independent commission to investigate Palestinian human rights violations cited in that report.

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We at the Commission appreciate the outstanding role you play in defence of human rights and freedoms, and we hope that you will assist the Commission in achieving its goals by providing it with any documentation your organization has obtained of violations which fall within the scope of the Commission's mandate that occurred between 27 December 2008 and the end of March 2009. As part of its work the Commission will conduct a hearing with your institution, the time and location of which will be determined in due course.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

Annex 6

Letter to Mr. Omar Qinawi, Deputy Chief of Egyptian Intelligence

3 April 2010

General Omar Qinawi

Sir,

Allow me to begin by expressing our utmost gratitude and appreciation to you for graciously agreeing to meet in your office in Cairo on 27 February 2010 with the Chairman and members of the Palestinian Independent Investigation Commission established pursuant to the Goldstone report. We noted your solidarity, your genuine interest in the Palestinian cause and situation, and your evident readiness to provide whatever support you can to assist the Commission in the successful completion of its tasks.

The Commission apprised you of its options for carrying out the portion of its work related to the Gaza Strip if the de facto authority in Gaza persisted in its refusal to allow the Commission to pursue its mandate to investigate violations attributed to the authority. Those options were as follows:

1. To appoint an independent working group composed of experts of proven integrity, professionalism and impartiality to carry out the Commission's tasks in the Gaza Strip. In order to strengthen the group's professional credentials, we proposed that it should be headed by Mr. Cherif Bassiouni, an individual who is trusted and recognized by regional and international parties for his professionalism and long experience in that kind of work.
2. To delegate the task of investigating alleged Palestinian actions in the Gaza Strip to Palestinian civil society institutions that monitor and document such violations.
3. In the event that the two preceding options were rejected, the Commission proposed that meetings with institutions operating in the Gaza Strip should be held in the Arab Republic of Egypt, in order to hear testimony on human rights violations attributed to Palestinians in Gaza, and meet some of the victims of those violations.

You expressed the readiness to communicate on the Commission's behalf with relevant parties in the Gaza Strip. We should like you to inform us what has been accomplished in that regard.

We reiterate our gratitude and appreciation for your efforts, and hope to continue our cooperation and coordination in carrying out the Commission's tasks.

(Signed) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

Annex 7**Letter to Mr. Ahmed ben Helli, Deputy Secretary-General of the League of Arab States**

3 April 2010

Mr. Ahmed ben Helli

Deputy Secretary-General of the League of Arab States

Sir,

Allow me to begin by expressing our utmost gratitude and appreciation to you for graciously agreeing on 25 February 2010 to meet the Chairman and members of the Palestinian Independent Investigation Commission established pursuant to the Goldstone report. We noted your solidarity, your genuine interest in the Palestinian cause and situation, and the evident readiness of both yourself and Dr. Amre Moussa, Secretary-General of the League of Arab States, to overcome potential obstacles to progress in condemning the violations and crimes committed by the occupier against the Palestinian people.

The Commission apprised you of its options for carrying out the portion of its work related to the Gaza Strip if the de facto authority in Gaza persisted in its refusal to allow the Commission to pursue its mandate to investigate violations attributed to the authority. Those options were as follows:

1. To appoint an independent working group composed of experts of proven integrity, professionalism and impartiality to carry out the Commission's tasks in the Gaza Strip. In order to strengthen the group's professional credentials, we proposed that it should be headed by Mr. Cherif Bassiouni, an individual who is trusted and recognized by regional and international parties for his professionalism and long experience in that kind of work.
2. To delegate the task of investigating alleged Palestinian actions in the Gaza Strip to Palestinian civil society institutions that monitor and document such violations.
3. In the event that the two preceding options were rejected, the Commission proposed that meetings with institutions operating in the Gaza Strip should be held in the Arab Republic of Egypt, in order to hear testimony on human rights violations attributed to Palestinians in Gaza, and meet some of the victims of those violations.

You expressed the willingness of both the Secretary-General of the League of Arab States and yourself to intervene in order to enable the Commission to carry out its work in the Gaza Strip, and we hope that you have succeeded in that endeavour.

We should like you to inform us what has been accomplished in that regard. We reiterate our gratitude and appreciation for your efforts, and hope to continue our cooperation and coordination in pursuit of our common goals.

(Signed) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

Annex 8**Copy of the notice placed in newspapers by the Commission in April****Notice**

The Independent Investigation Commission established pursuant to the Goldstone report by decree of the President of the Palestinian Authority in response to General Assembly resolution 64/10, announces that it is initiating an investigation into violations of human rights and freedoms that are alleged to have been committed in the West Bank and Gaza Strip between 28 December 2008 and 31 March 2009.

The Commission's mandate covers the following violations alleged to have been committed by the Palestinian authorities in the West Bank:

- Arbitrary arrest and torture
- Violation of the freedom to form associations, targeting of non-governmental organizations in order to prevent them from carrying out their activities, and failure to comply with court decisions regarding those associations
- Violation of freedom of the press
- Violation of freedom of assembly
- Discrimination on the basis of political affiliation in the hiring and firing of employees in the public service sector.

The following violations alleged by the report to have been committed in the Gaza Strip will also be investigated:

- Killings
- Arbitrary arrest
- Torture and ill-treatment.

Any person who has been a victim of any of the above violations should file a complaint, either in person or through a relative or agent, with the Independent Investigation Commission established pursuant to the Goldstone report. The relevant forms can be filled out in person at Commission headquarters, or the complaint may be sent to Commission staff via fax, telephone or e-mail.

The Commission guarantees confidentiality, privacy, protection and immunity for all complainants and informants

Complaints may be submitted to Commission headquarters from any governorate in the West Bank or the Gaza Strip until 20 April 2010. Commission working hours are from Sunday to Thursday, from 9.00 a.m. to 4.00 p.m.

Address of the Commission: Ground Floor, Abraj al-Wataniyyah Building
Al-Quds Municipality Road
El-Bireh City

Telephone No.: 022410731, 022410833

Fax No.: 022410732

E-mail: ipalestinecgi@gmail.com



اللجنة الفلسطينية المستقلة للتحقيق وفقاً لتقرير غولdstون



اعلان

تعلن اللجنة الفلسطينية المستقلة للتحقيق وفقاً لتقرير غولdstون، والشكيلة بقرار من رئيس السلطة الوطنية الفلسطينية، اعمالاً لقرار الجمعية العامة للأمم المتحدة رقم ٢٠٠٨/١٢/٢٨ ولغاية ٢٠٠٩/٢/٣١، حيث ستمارس اللجنة ولايتها في التحقيق بالانتهاكات للدعى بارتكابها طبقاً للتقرير في الضفة الغربية بالجوانب التالية:

- * الاعتقال التعسفي والتعذيب.
- * انتهاك حرية تكوين الجمعيات، واستهداف وعدم تمكين للنظمات الأهلية من ممارسة عملها، وعدم تنفيذ قرارات المحاكم المتعلقة بهذه الجمعيات.
- * انتهاك الحريات الصحفية.
- * انتهاك حرية التجمع السلمي.
- * التمييز على اساس الانتماء السياسي في التعيين وفصل الموظفين لعاملين على خلفية الانتماء السياسي.
- * كما ستحقق اللجنة في الانتهاكات للدعى بارتكابها وفقاً للتقرير في قطاع غزة والتمثلة بالأمور التالية:
- * القتل.
- * الاعتقال التعسفي.
- * التعذيب وسوء المعاملة.

على كل شخص تضرر من الانتهاكات سالفة ان يتقدم بشكوى شخصية او بواسطة قريب أو وكيل، الى اللجنة الفلسطينية المستقلة للتحقيق وفقاً لتقرير غولdstون، سواء بالتوجه المباشر الى مقر اللجنة، لتعبئة النماذج الخاصة بذلك، أو عبر ارسال الشكوى بالفاكس أو الاتصال الهاتفي مع طاقم اللجنة ابو عبر لبريد الالكتروني.

تقدم الشكاوى في مقر اللجنة، من كافة محافظات الوطن في الضفة الغربية وقطاع غزة، لغاية ٢٠١٠/٤/٢٠.

**عنوان اللجنة: مدينة البيرة، شارع القدس (البابية)، بناية أبراج الوطنية،
 لطابق الأرضي، هاتف رقم ٠٢٢٤١٠٧٣١ أو ٠٢٢٤١٠٨٣٣ فا كس رقم ٠٢٢٤١٠٧٣٢
 البريد الالكتروني:**

Copy of the notice placed in newspapers by the Commission in April 2010

Annex 9

Press conference held by the Commission and press release

Wattan Media Centre

At a press conference at the Wattan Media Centre, the Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents an overview of its plan of work

The Palestinian Independent Investigation Commission held a press conference at the Wattan Media Centre, attended by Commission Chairman Issa Abu Sharar and Commission members Mr. Ghassan Farmand and Mr. Yasser al-Amuri, to inform the Palestinian public of progress achieved since its establishment by presidential decree on 25 January 2010.

Judge Issa Abu Sharar, Chairman of the Palestinian Independent Investigation Commission established pursuant to the Goldstone report, underlined the Commission's independence, professionalism and impartiality as an investigative fact-finding Commission, and stressed that the Commission would not countenance any attempt to interfere with or influence its work. He noted that the Commission was authorized to receive complaints and hear testimony from the victim of any violations that fell within its mandate. The Commission also had the authority to interview any Palestinian official implicated in such violations.

Abu Sharar added that investigations would focus on violations committed by Palestinians in the West Bank and the Gaza Strip, including killings, arbitrary arrest, torture, violation of the freedom to form associations and to assemble peacefully, and discrimination on the basis of political affiliation in the hiring and firing of dozens of Government employees.

Abu Sharar also drew attention to attempts made by the Commission since its establishment to gain access to the Gaza Strip in order to report on the Palestinian situation in its entirety, as requested by the United Nations. In that regard, he affirmed that the Commission's mandate covered all Palestinian territory and that as an independent entity, the Commission was unaffected by the current political polarization. He stressed that the Commission's failure would have negative consequences for Palestinians and might even result in the establishment of an international commission.

Abu Sharar invited anyone who had been a victim of any violation in the West Bank or the Gaza Strip to file a complaint with the Commission. He stressed that all files would be handled confidentially, and that the Commission would protect informants and victims. The Commission Chairman commended the cooperation shown by human rights institutions in the West Bank and the Gaza Strip that had submitted data and reports on the human rights situation during the period that fell within the scope of the Commission's mandate.

Abu Sharar closed his remarks by reiterating that the Commission's work would be conducted with impartiality and objectivity, and would rely for legal guidance on international human rights law, international humanitarian law, the Palestinian Basic Law, and other legislation in force in Palestine.

Wattan Media Centre — Al-Maahad Street, Ramallah, Palestine — P. O. Box 859 Ramallah — Tel. No.: 02 2980053/02 2987412 — Fax No.: 02 2959253 — E-mail: wattanmediacenter@wattan.tv

Wattan Media Centre**Palestinian Independent Investigation Commission established pursuant to the Goldstone report informs civil society organizations that it is ready to begin collecting complaints**

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report, in accordance with a recommendation adopted at its thirteenth meeting, held at its headquarters in Ramallah on Monday, 12 April 2010, sent letters to non-governmental human rights organizations asking them to publish on the home pages of their websites the Commission's notice that it was ready to receive complaints.

Wattan Media Centre — Al-Maahad Street, Ramallah, Palestine — P. O. Box 859 Ramallah — Tel. 02 2980053/02 2987412 — Fax 02 2959253 — E-mail: wattanmediacenter@wattan.tv

7 April 2010

Press Release

On 25 January 2010, His Excellency the Palestinian President Mahmoud Abbas issued a decree establishing an independent investigation commission pursuant to the report of the United Nations Fact-Finding Mission on the Gaza Conflict. The decree was in response to General Assembly resolution 64/10, which urged parties to set up national commissions to investigate the violations they are alleged by that report to have committed.

In response to that request, the Palestinian President established the Palestinian Independent Investigation Commission, comprising the following members:

Judge Issa Abu Sharar (Chairman);
Judge Zuhair al-Surani (member);
Mr. Ghassan Farmand (member);
Mr. Yasser al-Amuri (member);
Mr. Nasser al-Rayyes (member).

The Commission defined its tasks and mandate with reference to the Goldstone report as being to investigate violations alleged by that report to have been committed in the West Bank and the Gaza Strip. Those violations include the following:

- Arbitrary arrest and torture
- Violation of the freedom to form associations, targeting of non-governmental organizations in order to prevent them from carrying out their activities, and failure to comply with court decisions regarding such organizations
- Violation of freedom of the press
- Violation of freedom of assembly
- Discrimination in hiring and firing of employees in the public service sector on the basis of political affiliation.

The Commission will also investigate the following violations which are alleged to have been committed by the Palestinian authorities in the Gaza Strip:

- Killings
- Arbitrary arrest
- Torture and ill-treatment.

In addition, the Commission will investigate violations of international humanitarian law that are alleged by the report to have been committed by Palestinians in the Gaza Strip during the Israeli aggression there.

As soon as it had been established, the Commission met with a view to discussing the nature of its mandate and competence and means of carrying out its tasks. In order to safeguard its objectivity, independence and impartiality, the Commission deemed it necessary to begin by drafting a Statute based on international norms and principles and, in particular, the United Nations model protocol for national commissions of inquiry.

With a view to ensuring transparency, credibility and impartiality, Mr. Nasser al-Rayyes recused himself from the Commission because his membership conflicted with the provisions of the United Nations model protocol for national commissions of inquiry, notably the provision that

commission members should not be closely associated with any individual, government entity, political party or other organization potentially implicated in the alleged violations, or an organization or group associated with the victim. Mr. al-Rayyes had served as a legal advisor to Al-Haq, a Palestinian human rights institution that not only monitors and documents violations and infringements of human rights and freedoms, but had also been involved in the defence of a number of individuals and institutions whose rights and freedoms had been violated. Al-Haq was one of the institutions that had met the Fact-Finding Mission headed by Judge Goldstone, which had interviewed its legal advisor on the human rights situation in the Occupied Palestinian Territory. His resignation was accepted and the Commission decided to proceed with the remaining members.

After drafting its Statute and establishing its legal authority on the basis of the provisions and principles of international human rights law, international humanitarian law, the Palestinian Basic Law, and the relevant legislation in force in Palestine, the Commission decided to consider international precedents from analogous situations. It travelled to Cairo to meet Mr. Cherif Bassiouni, a renowned international legal expert who headed investigative commissions in the former Yugoslavia. The Commission discussed with him the specifics of its legal authority and ways of carrying out its mandate, particularly in the Gaza Strip.

While in Cairo, the Commission also met Mr. Ahmed ben Helli, Deputy Secretary-General of the League of Arab States, in order to discuss ways of enabling the Commission to carry out its work in the Gaza Strip. The following possibilities were open to the Commission in that regard:

1. The Commission would be permitted to operate in the Gaza Strip, given that its Statute made clear that it would conduct its work with the utmost professionalism and without being affected in any way by political considerations.
2. If that first option, which we considered to be the most professional and acceptable, was denied, the Commission would try to appoint an independent working group composed of experts of demonstrated integrity, professionalism and impartiality to carry out the Commission's tasks in the Gaza Strip. We proposed that such a group be headed by Mr. Cherif Bassiouni, an individual trusted and recognized by regional and international parties because of his professionalism and long experience in that kind of work.
3. The third option was for the Commission to delegate the task of investigating actions alleged to have been committed by Palestinians in the Gaza Strip to Palestinian civil society institutions that monitor and document violations.
4. In the event that all the preceding options were rejected, the Commission proposed to meet the relevant institutions in Egypt in order to hear testimony on human rights violations attributed to the Palestinians in Gaza, and meet Palestinian victims of human rights violations.

In view of the fact that the Commission received no response to its proposals, it has decided to conduct its tasks in accordance with the following timetable:

- (a) On 4 April 2010, the Commission placed notices in local newspapers that ran for two consecutive days, explaining the nature of its tasks

and the violations falling within the scope of its investigation in the West Bank and the Gaza Strip. The notices invite anyone who has been a victim of violations falling within the scope of the Commission's mandate in the West Bank or the Gaza Strip to file a complaint either in person or, if that was impossible, through a relative or agent. Given the obstacles to travel, the Commission decided to facilitate the process by offering victims the option of submitting their complaint via fax or e-mail.

- (b) The Commission has begun to gather and document reports, statements and letters from human rights institutions regarding violations falling within the scope of its mandate, and urges any Palestinian institutions that have documented such violations to contact the Commission and provide it with the relevant documents.
- The deadline for submission of complaints is 20 April 2010, after which the Commission will begin to study and analyse them.
 - The Commission will hold meetings with Palestinian human rights associations and local media institutions in order to discuss documented testimony and reports of violations alleged to have been committed by the Authority, and interview them about matters under investigation. Hearings will be held for the victims themselves to testify about their experiences.
 - After those hearings, the Commission will meet the Palestinian authorities in order to discuss violations alleged to have been committed by them and interview them on the matters under investigation.
 - At the designated time, the Commission will prepare a draft report summarizing its investigation of violations alleged to have been committed by the Palestinian side and making appropriate recommendations.
 - The Commission will then submit its final report to the competent parties.

Timetable for Commission activities in the Gaza Strip

- Given the difficulty of access by the Commission to the Gaza Strip and the political obstacles to fulfilment of the Commission's mandate there, it has been decided after consultations among Commission members to defer drafting an action plan and timetable for the investigation of violations alleged to have been committed by the authorities in the Gaza Strip until the League of Arab States responds to our request.

Annex 10

Invitation to the Change and Reform Bloc to meet the Commission

13 April 2010

Members of the Change and Reform Bloc

Re: Arranging a meeting with the Change and Reform Bloc

Sirs,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and, pursuant to a recommendation adopted at the Commission's thirteenth meeting that coordination of its work should be facilitated by holding a meeting with the Change and Reform Bloc of the Legislative Council, would be grateful if you could make arrangements for such a meeting to take place on Thursday, 15 April 2010 at 10.00 a.m. at Commission headquarters.

Accept, Sirs, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

Annex 11

Request to the Secretary-General of the Legislative Council to arrange a meeting with representatives of the parliamentary blocs and lists, and with the coordinators of the parliamentary groups

13 April 2010

Mr. Ibrahim Khreisheh

Secretary-General of the Palestinian Legislative Council

Re: Arranging a meeting with the heads of the parliamentary blocs in the Legislative Council

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and, pursuant to a recommendation adopted at the Commission's thirteenth meeting to facilitate coordination of its work by holding a meeting with the representatives of the parliamentary blocs and lists, and with the coordinators of the parliamentary groups, would be grateful if you could make arrangements for such a meeting to take place on Sunday, 18 April 2010 at 12.00 noon at Commission headquarters.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman, Independent Investigation Commission
established pursuant to the Goldstone report

Annex 12**Letters to the following rights organizations requesting them to post the Commission's notice on their websites:**

- Gaza Mental Health Centre
- Committee for the Defence of Rights and Freedoms
- Independent Commission for Human Rights
- Red Cross, Gaza
- Al-Mezan Centre for Human Rights
- United Nations, Gaza
- Palestinian Centre for Human Rights
- Al-Dameer Association for Human Rights

13 April 2010

Mr. Eyad el-Sarraj
Gaza Mental Health Centre

Re: Publication of notice

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and with reference to the above matter, would be grateful if you could display the enclosed notice at the headquarters of your organization and post it on the home page of your organization's website.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

12 April 2010

Mr. Adel Abu Jahal
Chairman of the Committee for the Defence of Rights and Freedoms
Palestinian Bar Association

Re: Distribution of notice

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and with reference to the above matter, would be grateful if you could display the enclosed notice at Palestinian Bar Association headquarters and distribute it to the greatest possible number of lawyers and others, with the proviso that the text of the notice must be adhered to.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

13 April 2010

Ms. Randa Siniora
Independent Commission for Human Rights

Re: Publication of notice

Madam,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and with reference to the above matter, would be grateful if you could display the enclosed notice at the headquarters of your organization and post it on the home page of your organization's website.

Accept, Madam, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

13 April 2010

Red Cross Headquarters

Re: Publication of notice

Sirs,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and with reference to the above matter, would be grateful if you could display the enclosed notice at the headquarters of your organization and post it on the home page of your organization's website.

Accept, Sirs, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman

Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

13 April 2010

Mr. Issam Younis
Al-Mezan Centre

Re: Publication of notice

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and with reference to the above matter, would be grateful if you could display the enclosed notice at the headquarters of your organization and post it on the home page of your organization's website.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

13 April 2010

Mr. Jamal Hamad, Spokesman
United Nations Headquarters
Gaza

Re: Publication of notice

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and with reference to the above matter, would be grateful if you could display the enclosed notice at the headquarters of your organization and post it on the home page of your organization's website.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

13 April 2010

Mr. Iyad Alami
Palestinian Centre for Human Rights

Re: Publication of notice

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and with reference to the above matter, would be grateful if you could display the enclosed notice at the headquarters of your organization and post it on the home page of your organization's website.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

13 April 2010

Mr. Khalil Abu Shammala
Al-Dameer Association for Human Rights

Re: Publication of notice

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments, and with reference to the above matter, would be grateful if you could display the enclosed notice at the headquarters of your organization and post it on the home page of your organization's website.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Annex 13

**Covering letter from the Minister of the Interior of the
Palestinian National Authority enclosing a report on claims
regarding the Ministry of the Interior**

**Palestinian Liberation Organization
Palestinian National Authority
Minister of the Interior**

15 April 2010

Judge Issa Abu Sharar
Chairman
Palestinian Independent Investigation Commission established pursuant to the
Goldstone report

Sir,

Pursuant to the instructions of President Abu Mazen, please find attached
the report of the Ministry of Interior concerning the claims regarding the
Palestinian National Authority Ministry of the Interior set forth in the
Goldstone report.

Accept, Sir, the assurances of my highest consideration.

(Signed) Said **Abu Ali**
Minister of the Interior

[Added by hand:]

On the basis of the Commission decision, we adopt the letter and attached
report as a Commission document.

[signature illegible]

20 April 2010

Annex 14**Request to the Samir Kassir Foundation to provide the Commission with its documentation on violations of press freedom**

Ref: ICGR/5/57/2010

18 April 2010

Ms. Giselle Khoury
Chairperson of the Board of Directors
Samir Kassir Foundation

Madam,

On 25 January 2010, in implementation of General Assembly resolution 64/10, His Excellency the Palestinian President, Mahmoud Abbas, issued a decree establishing the Palestinian Independent Investigation Commission established pursuant to the Goldstone report, with the goal of investigating violations of human rights and freedoms, including violations of press freedoms, that are alleged by the Goldstone report to have been committed in the West Bank and Gaza Strip.

In view of our interest in investigating violations of press freedoms in the Palestinian territories by the Palestinian authorities in the West Bank and Gaza Strip, we would be grateful if you would kindly provide us with all reports and statements your Foundation has documented and issued on the status of press freedoms in the Palestinian territories between 1 January 2009 and the present date. Please note that, in the interests of transparency, professionalism and impartiality, the Commission report will credit your Foundation as the source of all the quotations or data taken from such reports and statements.

In conclusion, we express our deep appreciation for your pioneering role and effort in defence of freedom of the press and dissemination of the culture of democracy in the Arab world. We hope that we will continue to cooperate and coordinate in enabling the Commission to fulfil its duties.

Accept, Madam, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman

Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Annex 15

Letter to the Independent Commission for Human Rights concerning coordination of hearings with victims of and witnesses to violations involving murder/arrest and torture in the Gaza Strip to be conducted by videoconference at the offices of the Independent Commission for Human Rights in Ramallah and Gaza

28 April 2010

Ms. Randa Siniora
Executive Director
Independent Commission for Human Rights

Re: The holding of simultaneous hearings in the West Bank and Gaza Strip

Madam,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments and would like to inform you that it will hold hearings with a select group of victims of human rights violations in the Gaza Strip during the first week of May 2010.

Given the impartiality and credibility of the Independent Commission for Human Rights and its commitment to the standards of protection for those who report violations and to other international safeguards, and in view of the impossibility of travelling to the Gaza Strip, the Commission would like to hold those sessions simultaneously, via videoconference, at the offices of the Independent Commission for Human Rights in the Gaza Strip and in Ramallah in the West Bank, in order to make it possible for the members of the Commission to hear the victims of violations.

We would appreciate a prompt response, in order to enable the administrative team to arrange a timetable for the hearings that does not conflict with your working hours and commitments.

In conclusion, we express our deep appreciation for your pioneering role and effort in defence of human rights and freedoms. We hope that we will continue to cooperate and coordinate in enabling the Commission to fulfil its duties.

Accept, Madam, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Annex 16**Letter to the Chairman of the General Personnel Council,
requesting a copy of the security directives issued by the
Council of Ministers, and the response**

Ref: ICGR/12/76/2010

2 May 2010

Mr. Hussein al-Araj
Chairman, General Personnel Council

Re: Providing the Commission with a copy of the resolution concerning the security check

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments and would like to request you to provide it with a copy of the directives issued to the General Personnel Council by the Secretary-General of the Council of Ministers, pursuant to which a security check is considered to be an essential condition for appointment to a public position, in accordance with resolution 18, adopted on 9 September 2007 by the Council of Ministers.

Thank you for your cooperation.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

**Palestinian National Authority
General Personnel Council**

Date: 6 May 2010

Judge Issa Abu Sharar
Chairman, Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Re: Providing the Commission with a copy of the resolution concerning the security check

Sir,

The General Personnel Council presents its compliments, and refers to your letter of 2 May 2010, in which you requested a copy of the directives issued to the General Personnel Council by the Secretary-General of the Council of Ministers, pursuant to a security check is considered to be an essential condition for appointment to a public position, we attach a copy of the letter dated 9 September 2007 which we received from the Secretary-General of the Council of Ministers concerning the above matter.

Accept, Sir, the assurances of my highest consideration.

(Signed) Hussein **al-Araj**
Chairman, General Personnel Council

**Palestinian National Authority
Council of Ministers
Secretariat of the Council of Ministers**

Ref: 2007/CSCM/2115

Date: 9 September 2009

Mr. Jihad Hamdan
Chairman, General Personnel Council

Re: Conduct of security check

Sir,

The Secretariat of the Council of Ministers presents its compliments and advises you of the resolution of the Council of Ministers adopted at weekly session No. 18, held on 3 September 2007, pursuant to which a security check is to be conducted as part of the appointment process. The General Personnel Council is responsible for the appointment process and must therefore liaise with the security services in this regard.

Kindly take the measures necessary to implement the resolution.

Thank you for your cooperation.

Accept, Sir, the assurances of my highest consideration.

(Signed) Saadi **al-Krunz**
Secretary-General of the Council of Ministers
Head of the Prime Minister's Office

Annex 17

**Letter to the Secretary-General of the Council of Ministers,
requesting that the Commission should be provided with
security resolutions relating to public sector employees, and
the response**

Ref: ICGR/2/75/2010

2 May 2010

Mr. Naim Abu Hommos
Secretary-General of the Palestinian Council of Ministers

Re: Request for copies of Council of Ministers resolutions that are pertinent to
the Commission's work

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments and would like to request Your Excellency to provide it with a copy of resolution 18, adopted by the Council of Ministers at its session on 9 September 2007, pursuant to which a security check is considered to be an essential condition for appointment to a public position. We would also like to request you to provide the Commission with a copy of the directives issued by the Secretary-General of the Council of Ministers pursuant to that resolution.

Thank you for your cooperation and interest in enabling the Commission to fulfil its task.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

**Palestinian National Authority
Council of Ministers
Secretariat of the Council of Ministers**

Ref: CSCM/2010/1000

Date: 11 May 2010

Mr. Issa Abu Sharar
Chairman, Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Re: Security

Sir,

The Secretariat of the Council of Ministers presents its compliments and, with reference to your letter of 2 May 2010 requesting a copy of the Council of Ministers resolution concerning security, we would like to explain to you that, in the course of its deliberations during session 18 on 9 September 2007, the Council of Ministers discussed security measures as one of the conditions for the appointment of staff, in accordance with the Civil Service Law. The Council considered that this measure is normal, and is applied in many countries of the world, given the sensitivity of work in Government establishments and the Government's desire to maintain the security and safety of Government establishments and departments, thereby enabling it to provide the population with optimum service.

Thank you for your understanding and cooperation.

Accept, Sir, the assurances of my highest consideration.

(Signed) Naim **Abu Hommos**
Secretary-General of the Council of Ministers

**Palestinian National Authority
Council of Ministers
Secretariat of the Council of Ministers**

Ref: 2007/CSCM/2115

Date: 9 September 2009

Mr. Jihad Hamdan
Chairman, General Personnel Council

Re: Conduct of security check

Sir,

The Secretariat of the Council of Ministers presents its compliments and advises you of the resolution of the Council of Ministers adopted at weekly session No. 18, held on 3 September 2007, pursuant to which a security check is to be conducted as part of the appointment process. The General Personnel Council is responsible for the appointment process and must therefore liaise with the security services in this regard.

Kindly take the measures necessary to implement the resolution.

Thank you for your cooperation.

Accept, Sir, the assurances of my highest consideration.

(Signed) Saadi **al-Krunz**
Secretary-General of the Council of Ministers
Head of the Prime Minister's Office

Annex 18

Invitation to community organizations in the West Bank to attend hearings at the headquarters of the Commission:

- Palestinian Network of Non-Governmental Organizations
- Independent Commission for Human Rights
- Al-Haq
- Democracy and Workers' Rights Centre
- Jerusalem Legal Aid Centre
- Al-Dameer Association
- Treatment and Rehabilitation Centre for Victims of Torture

17 May 2010

**Coordinating Committee of the Palestinian Network of
Non-Governmental Organizations**

Subject: Arrangements for a hearing with your organization concerning violations of human rights

Ladies and Gentlemen,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. Having concluded its hearings with complainants who alleged that rights and freedoms within the Commission mandate had been violated, the Commission feels it necessary to complete its investigation by holding hearings with civil society organizations, in order to take their statements on the violations allegedly committed by the Palestinian National Authority in the West Bank.

In view of the attention paid by your organization to monitoring, documenting and following up cases of arrest, torture, dismissal from employment, peaceful assembly and associations, the Commission wishes to invite you to come to its headquarters at 10 a.m. on Thursday, 20 May 2010, or to mandate whomsoever you may consider appropriate, with a view to hearing your organization's views. We also hope that you will provide us with copies of any relevant official correspondence and any replies from the parties concerned.

Accept, Ladies and Gentlemen, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

17 May 2010

Ms. Randa Siniora

Director-General of the Independent Commission for Human Rights

Subject: Arrangements for a hearing with the Independent Commission for Human Rights concerning violations of human rights

Madam,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. Having concluded its hearings with complainants who alleged that rights and freedoms within the Commission mandate had been violated, the Commission feels it necessary to complete its investigation by holding hearings with civil society organizations, in order to take their statements on the violations allegedly committed by the Palestinian National Authority in the West Bank.

In view of the attention paid by the Independent Commission for Human Rights to monitoring, documenting and following up cases of arrest, torture, dismissal from employment, peaceful assembly and associations, the Commission wishes to invite you to come to its headquarters at 10.30 a.m. on Thursday, 20 May 2010, or to mandate whomsoever you may consider appropriate, with a view to hearing your organization's views. We also hope that you will provide us with copies of any relevant official correspondence and any replies from the parties concerned.

Accept, Madam, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman

Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

17 May 2010

Mr. Sha'wan Jabarin

Director-General of Al-Haq

Subject: Arrangements for a hearing with Al-Haq concerning violations of human rights

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. Having concluded its hearings with complainants who alleged that rights and freedoms within the Commission mandate had been violated, the Commission feels it necessary to complete its investigation by holding hearings with civil society organizations, in order to take their statements on the violations allegedly committed by the Palestinian National Authority in the West Bank.

In view of the attention paid by your organization to monitoring, documenting and following up cases of arrest, torture, dismissal from employment, peaceful assembly and associations, the Commission wishes to invite you to come to its headquarters at 11.30 a.m. on Thursday, 20 May 2010, or to mandate whomsoever you may consider appropriate, with a view to hearing your organization's views. We also hope that you will provide us with copies of any relevant official correspondence and any replies from the parties concerned.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman

Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

17 May 2010

Mr. Hassan Barghouti

Director-General of the Democracy and Workers' Rights Centre

Subject: Arrangements for a hearing with the Democracy and Workers' Rights concerning violations of human rights

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. Having concluded its hearings with complainants who alleged that rights and freedoms within the Commission mandate had been violated, the Commission feels it necessary to complete its investigation by holding hearings with civil society organizations, in order to take their statements on the violations allegedly committed by the Palestinian National Authority in the West Bank.

In view of the attention paid by your organization to monitoring, documenting and following up cases of arrest, torture, dismissal from employment, peaceful assembly and associations, the Commission wishes to invite you to come to its headquarters at 11 a.m. on Thursday, 20 May 2010, or to mandate whomsoever you may consider appropriate, with a view to hearing your organization's views. We also hope that you will provide us with copies of any relevant official correspondence and any replies from the parties concerned.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman

Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

17 May 2010

Mr. Issam Aruri

Director-General of the Jerusalem Legal Aid Centre

Subject: Arrangements for a hearing with your organization concerning violations of human rights

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. Having concluded its hearings with complainants who alleged that rights and freedoms within the Commission mandate had been violated, the Commission feels it necessary to complete its investigation by holding hearings with civil society organizations, in order to take their statements on the violations allegedly committed by the Palestinian National Authority in the West Bank.

In view of the attention paid by your organization to monitoring, documenting and following up cases of arrest, torture, dismissal from employment, peaceful assembly and associations, the Commission wishes to invite you to come to its headquarters at 1 p.m. on Thursday, 20 May 2010, or to mandate whomsoever you may consider appropriate, with a view to hearing your organization's views. We also hope that you will provide us with copies of any relevant official correspondence and any replies from the parties concerned.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman

Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

17 May 2010

Ms. Sahar Francis

Director-General of Al-Dameer Association

Subject: Arrangements for a hearing with your organization concerning violations of human rights

Madam,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. Having concluded its hearings with complainants who alleged that rights and freedoms within the Commission mandate had been violated, the Commission feels it necessary to complete its investigation by holding hearings with civil society organizations, in order to take their statements on the violations allegedly committed by the Palestinian National Authority in the West Bank.

In view of the attention paid by your organization to monitoring, documenting and following up cases of arrest, torture, dismissal from employment, peaceful assembly and associations, the Commission wishes to invite you to come to its headquarters at 12 noon on Thursday, 20 May 2010, or to mandate whomsoever you may consider appropriate, with a view to hearing your organization's views. We also hope that you will provide us with copies of any relevant official correspondence and any replies from the parties concerned.

Accept, Madam, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman

Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

17 May 2010

Mr. Mahmoud Sahwil

Director-General of the Treatment and Rehabilitation Centre for Victims of Torture

Subject: Arrangements for a hearing with your organization concerning violations of human rights

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. Having concluded its hearings with complainants who alleged that rights and freedoms within the Commission mandate had been violated, the Commission feels it necessary to complete its investigation by holding hearings with civil society organizations, in order to take their statements on the violations allegedly committed by the Palestinian National Authority in the West Bank.

In view of the attention paid by your organization to monitoring, documenting and following up cases of arrest, torture, dismissal from employment, peaceful assembly and associations, the Commission wishes to invite you to come to its headquarters at 12.30 p.m. on Thursday, 20 May 2010, or to mandate whomsoever you may consider appropriate, with a view to hearing your organization's views. We also hope that you will provide us with copies of any relevant official correspondence and any replies from the parties concerned.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**

Chairman

Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Annex 19**Letter from the United Nations concerning the date for delivery of the report**

Permanent Observer Mission of Palestine to the United Nations

New York, 4 June 2010

Top priority

Sir,

I have the honour to transmit herewith a letter dated 27 May 2010 from the United Nations Secretariat concerning General Assembly resolution 64/254, of 26 February 2010, entitled "Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict". In that letter, the Secretariat requests to be provided by 12 July 2010 with written information regarding steps that the Palestinian side may have taken or be in the process of taking with a view to conducting investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice. That information will enable the Secretary-General of the United Nations to prepare a report on implementation of the above-mentioned resolution, pursuant to paragraph 5 thereof.

Please take the necessary action, in order to permit us to duly relay the requisite information to the United Nations Secretariat by the aforementioned date.

Accept, Sir, the assurances of my highest consideration.

(Signed) Riyad **Mansour**
Ambassador
Permanent Observer

Please convey a copy to H.E. the Minister for Foreign Affairs

H. E. Mr. Salam Fayyad
Prime Minister

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EXECUTIVE OFFICE OF THE SECRETARY-GENERAL
CABINET DU SECRETAIRE GENERAL

REFERENCE:

The Secretariat of the United Nations presents its compliments to the Permanent Observer Mission of Palestine to the United Nations and has the honour to refer to General Assembly resolution 64/254 of 26 February 2010, entitled "Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict".

In operative paragraph 2 of that resolution, the General Assembly:

"Reiterates its call upon the Government of Israel to conduct investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the United Nations Fact-Finding Mission [on the Gaza Conflict], towards ensuring accountability and justice".

In operative paragraph 3 of that same resolution, the General Assembly:

"Reiterates its urging for the conduct by the Palestinian side of investigations that are independent, credible and in conformity with international standards into the serious violations of international humanitarian and international human rights law reported by the Fact-Finding Mission, towards ensuring accountability and justice"

In operative paragraph 4 of its resolution, the General Assembly:

"Reiterates its recommendation to the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War,² to reconvene as soon as possible a Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with article 1, bearing in mind the convening of such a Conference and the statement adopted on 15 July 1999 as well as the reconvening of the Conference and the declaration adopted on 5 December 2001".

In operative paragraph 5 of its resolution 64/254, the General Assembly:

"Requests the Secretary-General to report to the General Assembly, within a period of five months, on the implementation of the present resolution, with a view to the consideration of further action, if necessary, by the relevant United Nations organs and bodies, including the Security Council".

In order to assist the Secretary-General in fulfilling his responsibilities under this last paragraph, the Secretariat hereby requests the Permanent Observer Mission to provide the Secretariat by 12 July 2010 with written information regarding the steps that the Palestinian side may have taken, or be in the process of taking, further to the urging of the General Assembly in operative paragraph 3 of its resolution.

The Secretariat is sending similar *notes verbales* to the Permanent Mission of Israel to the United Nations and the Permanent Mission of Switzerland to the United Nations requesting written information regarding steps taken further to the exhortation and the recommendation of the General Assembly in operative paragraphs 2 and 4, respectively, of its resolution.

The Secretariat of the United Nations avails itself of this opportunity to express to the Permanent Observer Mission of Palestine to the United Nations the assurances of its highest consideration



27 May 2010

Annex 20

Invitation to the Director of Public Relations and Non-Governmental Organization Affairs, Ministry of the Interior, to attend a hearing

Ref: ICGR/18/107/2010

7 June 2010

Ms. Fadwa Shaer
Director of Public Relations and Non-Governmental Organization Affairs
Ministry of the Interior

Re: Attendance at hearing

Madam,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. As you will be aware, on 25 January 2010, in implementation of General Assembly resolution 64/10, the Palestinian President issued a decree establishing an independent commission to follow up the Goldstone report, with the goal of investigating infringements and violations referred to in the report of the Fact-Finding Mission headed by Judge Richard Goldstone.

The Commission, consisting of Judge Issa Abu Sharar, Chairman, and Judge Zuheir Sourani, Mr. Ghassan Farmand and Mr. Yasser Amouri, members, was established in order to investigate violations of human rights and freedoms committed by the Palestinian National Authority in the West Bank and by the de facto authority in the Gaza Strip.

The Commission will exercise its mandate to investigate violations in numerous fields that were committed by Palestinian bodies in the West Bank, including violation of the freedom to form associations, the targeting of non-governmental organisations (NGOs) and obstruction of their work, and the failure to implement court rulings relating to NGOs.

In view of the fact that the Commission received a number of complaints alleging that the Ministry violated the right to establish associations, and given that the Commission has concluded its hearings with complainants and civil society organizations in respect of this matter, we hope that you, in the interests of the success of the Commission's work and accomplishment of its purpose, will report to the Commission's office at 10.30 a.m. on Tuesday, 8 June 2010, in order to enable it to hear your observations on the violations allegedly committed by the Ministry.

Accept, Madam, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman

Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

To cancel or arrange another appointment, please contact Ms. Maram Masruji,
telephone No.: 0598934224

Annex 21**Invitation to the Minister of the Interior to attend a hearing**

Ref: ICGR/18/108/2010

8 June 2010

H.E. Mr. Said Abu Ali
Minister of the Interior

Re: The scheduling of a hearing at Commission offices

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. As you will be aware, on 25 January 2010, in implementation of General Assembly resolution 64/10, the Palestinian President issued a decree establishing an independent commission to follow up the Goldstone report, with the goal of investigating infringements and violations referred to in the report of the Fact-Finding Mission headed by Judge Richard Goldstone.

The Commission, consisting of Judge Issa Abu Sharar, Chairman, and Judge Zuheir Sourani, Mr. Ghassan Farmand and Mr. Yasser Amouri, members, was established in order to investigate violations of human rights and freedoms committed by the Palestinian National Authority in the West Bank and by the de facto authority in the Gaza Strip.

The Commission will exercise its mandate to investigate violations in numerous fields that were committed by Palestinian bodies in the West Bank, including arrest and torture, violation of the freedom to form associations, the targeting of non-governmental organisations (NGOs) and obstruction of their work, failure to implement court rulings relating to NGOs and violation of press freedoms and the right to peaceful assembly.

In view of the fact that the Commission received a number of complaints and heard statements from persons and organizations concerning violation by the security services affiliated to the Ministry of the rights of detainees, some of whom were subjected to torture, and violation by the Ministry's department for NGOs of right to establish associations, we hope that Your Excellency, in the interests of the success of the Commission's work and accomplishment of its purpose, will meet the members of the Commission at the Commission's office at a time to be arranged with Your Excellency, in order to enable it to hear your observations on the violations allegedly committed by the Ministry.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman

Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Annex 22

Letter to the Governor of the Palestine Monetary Authority requesting the legal basis for procedures for the opening of bank accounts by associations and the reply thereto

14 June 2010

H.E. Mr. Jihad al-Wazir
Governor, Palestine Monetary Authority

Re: Request to provide the Commission with a copy of the Palestine Monetary Authority resolution that stipulates that the Ministry of the Interior must approve applications from associations to open bank accounts

Sir,

The Palestinian Independent Investigation Commission established pursuant to the Goldstone report presents its compliments. As you will be aware, on 25 January 2010, in implementation of General Assembly resolution 64/10, the Palestinian President issued a decree establishing an independent commission to follow up the Goldstone report, with the goal of investigating infringements and violations referred to in the report of the Fact-Finding Mission headed by Judge Richard Goldstone.

The Commission, consisting of Judge Issa Abu Sharar, Chairman, and Judge Zuheir Sourani, Mr. Ghassan Farmand and Mr. Yasser Amouri, members, was established in order to investigate violations of human rights and freedoms committed by the Palestinian National Authority in the West Bank and by the de facto authority in the Gaza Strip.

The Commission will exercise its mandate to investigate violations in various areas committed by Palestinian bodies in the West Bank, including violations of the freedom to form associations, which became apparent through our hearings with individuals and organisations. When we questioned the Director of Public Relations and Non-Governmental Organization Affairs of the Ministry of the Interior on certain matters relating to the stipulation by the Ministry of the Interior that associations must obtain the approval of the Ministry before they could be authorised to open a bank account, she stated that the measure had been put in place pursuant to a resolution of the Palestinian Monetary Authority, concerning which the Authority had officially notified the Ministry.

Kindly provide us with a copy of that resolution. The Commission also hopes that the Monetary Authority will explain the legal justification for that measure, if there is one.

Accept, Sir, the assurances of my highest consideration.

(Signed) Issa **Abu Sharar**
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report

Palestine Monetary Authority

Date: 22 June 2010

Justice Issa Abu Sharar
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report
Ramallah, Palestine

Re: Procedures for the opening of bank accounts by associations

Sir,

With reference to the above subject and your letter No. ICGR/12/111/2010 of 14 June 2010 requesting a copy of the Palestine Monetary Authority resolution which stipulates that associations must obtain Ministry of the Interior approval before the opening of bank accounts may be authorised, we have the pleasure to provide the following clarification:

1. The procedures for the opening of bank accounts in all sectors are regulated by instruction No. 9/2009 of 24 December 2009, clause 8/1/5 of which regulates the opening of accounts by associations on the basis of the provisions of the Banking Law. The approval of the Ministry of the Interior or Ministry of Labour, as appropriate, is required for accounts to be opened. That requirement is part of the framework for the regulation of the relationship between banks and the banking authorities and is consistent with the Money Laundering Law.
2. It is considered important to obtain Ministry of the Interior or Ministry of Labour approval of association accounts because of the need for the following:
 - (a) To ascertain that the association's registration remains valid and has not been cancelled or undergone change, particularly given that a bank account may be opened some time after the association has been registered;
 - (b) To ascertain the accuracy of the names of persons authorised by the Ministry of the Interior to sign on behalf of the association at the bank, any changes occurring thereto and the extent of the power to sign.

Accept, Sir, the assurances of our highest consideration.

[signatures illegible]
Palestine Monetary Authority

**National Anti-Money Laundering Committee
Financial Follow-up Unit
Palestine**

No: NALC/121/7/2010

Date: 6 July 2010

Justice Issa Abu Sharar
Chairman
Palestinian Independent Investigation Commission
established pursuant to the Goldstone report
Ramallah, Palestine

Re: Legal justification

Sir,

The National Anti-Money Laundering Committee presents its compliments, and having studied your letter No. ICGR/12/111/2010 of 14 June 2010, enquiring about the legal justification for the letter of approval for associations to open bank accounts, I have the pleasure to provide the following clarification:

The Basic Law guarantees and safeguards public freedoms, and legal provisions regulate the rights and duties of natural and legal persons, thereby ensuring legal stability and embodying the concept of a legal basis for the regulation of relations in society.

The crime of money laundering is transnational, which has prompted the international community to formulate international standards to eradicate that crime and protect society from its harmful effects. "Know your customer" is a first step towards combating money laundering and fostering transparency in the early stage of a relationship with a customer, be it a natural or a legal person. The Money Laundering Law, article 5, paragraph 1, grants the competent authorities the power to investigate the extent to which registered legal persons are transparent.

On the basis of the foregoing, and in order to promote the creation of a transparent environment, particularly in respect of the banking sector, and pursuant to the principles of jurisprudence and the rule which says, "the particular qualifies the general", article 6 of the Money Laundering Law (Law No. 9 of 2007), obliges financial institutions to identify and verify customers, whether natural or legal persons, by means of documents, data and official records. That requirement is set forth in detail in the annex to instruction No. 1/2009 concerning anti-money laundering issued by the National Anti-Money Laundering Committee. That instruction stipulates the requirements for dealing with natural or legal persons, which include a letter from the competent ministry identifying the authorised account signatories on behalf of an association, in order to ensure that they are vouched for by a trusted official body. That measure is held to be consistent with and based upon the provisions of the Law. Furthermore, under article 13 of the same Law, the supervisory authorities, of which, under the provisions of the law, the Palestine Monetary Authority is one, are granted regulatory powers to issue instructions on the rules for identifying and verifying natural and corporate customers.

Accept, Sir, the assurances of my highest consideration.

(Signed) Jihad **al-Wazir**
Chairman, National Anti-Money Laundering Committee

Annex III**Note verbale dated 12 July 2010 from the Permanent Mission of Switzerland to the United Nations addressed to the Secretariat**

The Permanent Mission of Switzerland to the United Nations presents its compliments to the Secretariat of the United Nations and has the honour to refer to its note of 27 May 2010 requesting the Permanent Mission to report on steps taken by Switzerland in implementation of paragraph 4 of General Assembly resolution 64/254 of 26 February 2010 entitled "Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict".

In compliance with the specified deadline, the Permanent Mission has the honour to transmit herewith its report to the Secretariat.

Appendix

Status of the talks on follow-up to paragraph 4 of General Assembly resolution 64/254

1. On 26 February 2010, the United Nations General Assembly adopted resolution 64/254 entitled “Second follow-up to the report of the United Nations Fact-Finding Mission on the Gaza Conflict”. In paragraph 4 of the resolution, the General Assembly reiterated “its recommendation to the Government of Switzerland, in its capacity as depositary of the Geneva Convention relative to the Protection of Civilian Persons in Time of War, to reconvene as soon as possible a Conference of High Contracting Parties to the Fourth Geneva Convention on measures to enforce the Convention in the Occupied Palestinian Territory, including East Jerusalem, and to ensure its respect in accordance with article 1, bearing in mind the convening of such a Conference and the statement adopted on 15 July 1999 as well as the reconvening of the Conference and the declaration adopted on 5 December 2001”.

2. The General Assembly first recommended that Switzerland take such action on 5 November 2009 in resolution 64/10. In accordance with that recommendation, and in its capacity as depositary of the 1949 Geneva Conventions, Switzerland organized a round of consultations in Geneva in December 2009. The outcome of that round is contained in the annex to the Secretary-General’s report of 4 February 2010 (A/64/651). The preliminary consultations, in which only a limited number of actors took part, failed to reveal a dominant trend for or against the holding of a Conference of High Contracting Parties, or a view on the contribution to the civilian population affected of a reconvened Conference of High Contracting Parties to the Fourth Geneva Convention; in other words, it was uncertain what results could be expected for what issues. Switzerland had been encouraged to hold its own discussions on topics that could be addressed at such a Conference.

3. In order to implement the recommendations of the General Assembly and follow up the outcome of the round of consultations, Switzerland appointed an Ambassador on special mission with the specific task of managing the process. Switzerland also conducted deliberations on the topics that could be addressed at the Conference, bearing in mind that the Conference must be inclusive, constructive, consensual and conducive to a concrete result.

4. The question of access to Gaza emerged from the deliberations as a possible topic. Working with specialists in the subject, Switzerland devised an access regime and presented it through a series of talks in New York, Washington and Brussels. It transpired from those talks that the question of establishing a regime for access to Gaza should be distinct from that of convening a Conference of High Contracting Parties. The urgent nature of the situation in Gaza required a swift response on the part of the international community. A Conference of High Contracting Parties therefore did not appear to be the appropriate forum to consider the issue. It was also pointed out that the General Assembly’s recommendations to Switzerland applied not merely to the Gaza Strip but to the Occupied Palestinian Territory as a whole. With those concerns in mind, Switzerland continued its deliberations and identified two further topics that could be examined at a Conference of High Contracting Parties: the operationalization of common article 1 of the Geneva Conventions, and the legal issues related to situations of prolonged occupation.

5. In order to sound out the opinions of the High Contracting Parties and other interested parties on these topics, assess whether their positions had developed, and inform them of the steps it had taken since February 2010, Switzerland decided to hold another series of talks in Geneva from 25 June to 6 July 2010.

6. On that occasion, Switzerland held talks with the directly interested parties, other interested parties in the region, the permanent members of the Security Council, the outgoing and incoming Presidents of the European Union, the coordinators of the regional groups, and a number of High Contracting Parties from all of the regional groups. The League of Arab States, the Organization of the Islamic Conference, the International Committee of the Red Cross and the Office of the United Nations High Commissioner for Human Rights were all informed.

7. The talks were conducted in an oral and informal manner. At them, Switzerland reiterated its belief that a Conference of High Contracting Parties should be inclusive, constructive and consensual, and should not act as a platform for political accusations. The Conference should be aimed at promoting a significant improvement in the situation of the civilian population, and should contribute to strengthening international humanitarian law. Switzerland expressed those considerations and sought the views and ideas of the High Contracting Parties and other interested parties consulted. The positions adopted at the talks fell into three categories:

- (1) A first group was in favour of convening a Conference.
- (2) A second group was firmly opposed to convening a Conference.
- (3) A third group comprising a significant number of the High Contracting Parties consulted did not have a definitive opinion for or against the holding of a Conference, but expressed reservations concerning the added value of another Conference and feared that it could be used for political purposes.

8. In sum, once again the talks did not reveal a dominant trend for or against the holding of a Conference of High Contracting Parties. Nor did they clarify whether there was a prevalent opinion among the High Contracting Parties and other interested parties with regard to the content and modalities of such a Conference. However, it did become apparent that the third group would not be able to form a view on whether or not a Conference was necessary until it had a clearer idea of the possible agenda, modalities and outcome.

9. In order to conduct more in-depth deliberations on those questions and to engage in dialogue with all concerned actors, Switzerland was encouraged to continue the discussions through an informal working group. Switzerland will take the necessary measures towards that end as soon as possible.



General Assembly

Distr.: General
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Seventy-seventh session

Item 69 of the provisional agenda*

Promotion and protection of human rights

Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel

Note by the Secretary-General**

The Secretary General has the honour to transmit to the General Assembly the report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel, submitted in accordance with Human Rights Council resolution [S-30/1](#).

* [A/77/150](#).

** The present report was submitted after the deadline in order to reflect the most recent information.



Report of the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel

Summary

The Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and Israel hereby submits its first report to the General Assembly. The report addresses the Israeli occupation of Palestinian land, its purported de jure and discernible de facto annexation, the human rights implications for Palestinians and the legal consequences of such actions.

I. Introduction

1. In its resolution [S-30/1](#), the Human Rights Council established an independent international commission of inquiry with a mandate to investigate, in the Occupied Palestinian Territory, including East Jerusalem, and in Israel all alleged violations of international humanitarian law and all alleged violations and abuses of international human rights law leading up to and since 13 April 2021.
2. The Commission is made up of three members: Navanethem Pillay (South Africa), Miloon Kothari (India) and Christopher Sidoti (Australia). Secretariat support is provided by the Office of the United Nations High Commissioner for Human Rights (OHCHR).
3. In its first report to the Human Rights Council, at its fiftieth session ([A/HRC/50/21](#)), the Commission noted the strength of credible evidence that Israel has no intention of ending the occupation, has clear policies for ensuring complete control over the Occupied Palestinian Territory, and is acting to alter the demography through the maintenance of a repressive environment for Palestinians and a favourable environment for Israeli settlers. The present report will be focused on those elements with a view to investigating the human rights and legal consequences of the prolonged occupation, including whether, as part of its occupation regime, Israel has, to all intents and purposes, “annexed” wholly or partly the Occupied Palestinian Territory, and providing concrete recommendations to relevant stakeholders.

II. Methodology and cooperation

4. In its resolution [S-30/1](#), the Human Rights Council called upon all relevant parties to cooperate fully with the Commission and to facilitate its access. The Commission is grateful to the Government of the State of Palestine for its continued cooperation with the Commission. The de facto authorities in Gaza contacted the Commission and indicated their willingness to cooperate. The Government of Egypt continued to indicate its willingness to cooperate with the Commission but has not yet responded to the Commission’s request to be given access the Gaza Strip through the Rafah crossing.
5. The Commission continues to regret the lack of cooperation on the part of Israel, along with its refusal to allow entry into Israel and to permit access to the Occupied Palestinian Territory, despite the desire of the State of Palestine to allow the Commission to visit.
6. The report is based on interviews conducted with primary and secondary sources up to 31 July 2022, as well as on research, in-person and online discussions with stakeholders and submissions received following a call for submissions issued on 22 September 2021.

III. Applicable international law and the occupation regime

7. The Commission laid out the applicable international legal framework in the Occupied Palestinian Territory and in Israel in its previous report to the Human Rights Council¹ and in its terms of reference.² The Occupied Palestinian Territory, including

¹ [A/HRC/50/21](#), paras. 14–25.

² Available at www.ohchr.org/sites/default/files/2022-01/TORs-UN-Independent_ICI_Occupied_Palestinian_Territories.pdf.

East Jerusalem and Gaza, and the occupied Syrian Golan are currently under belligerent occupation by Israel, to which international humanitarian law applies concurrently with international human rights law.

8. It is unclear in international law and practice when a situation of belligerent occupation becomes unlawful. While the origins of the situation are different, the International Court of Justice found in an advisory opinion that the continued presence of South Africa in Namibia was illegal. In addition, in examining the continued refusal of South Africa to abide by Security Council resolutions, the Court found that by occupying the territory of Namibia without title, South Africa incurred international responsibilities arising from a continuing violation of an international obligation.³

9. The occupation of territory in wartime is, under international humanitarian law, a temporary situation, which deprives the occupied Power of neither its statehood nor its sovereignty. Occupation as a result of war cannot imply any right whatsoever to dispose of territory.⁴ Protected persons who are in occupied territory must not be deprived of their rights under international humanitarian law and international human rights law as a result of any attempts to annex the whole or part of the occupied territory.

10. A number of legal experts have identified several principles that, when adhered to, may be used to determine the legality of an occupation. These include whether sovereignty and title are not vested in the occupying power, the occupying power is entrusted with the management of public order and civil life in the occupied territory, the people under occupation are the beneficiaries of that trust in view of their right to self-determination, and the occupation is temporary.⁵

11. In the present report, the Commission focuses on two indicators that may be used to determine the illegality of the occupation: the permanence of the Israeli occupation, already noted in its previous report to the Human Rights Council at its fiftieth session,⁶ and actions amounting to annexation, including unilateral actions taken to dispose of parts of the Occupied Palestinian Territory as if Israel held sovereignty over it.

12. With regard to annexation, the Commission finds it important to distinguish between *de jure* and *de facto* annexation. *De jure* annexation is the formal extension of a State's sovereignty into a territory recognized under its domestic law (but not necessarily under international law). *De facto* annexation is a term that was used by the International Court of Justice in its advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory:⁷

³ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16, paras. 108, 109, 111, 115, 117–127 and 133.

⁴ See International Committee of the Red Cross (ICRC), commentary of 1958 on article 47 of the Convention relative to the Protection of Civilian Persons in Time of War. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=C4712FE71392AFE1C12563CD0042C34A>.

⁵ See Orna Ben-Naftali, Aeyal Gross and Keren Michaeli, "Illegal occupation: framing the Occupied Palestinian Territory", *Berkeley Journal of International Law*, vol. 23, No. 3 (2005), pp. 554 and 555. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has identified the following test of illegality: annexation, permanence of occupation, not acting in the best interests of the occupied people and not administering the territory in good faith (see A/72/556, paras. 28–38).

⁶ See A/HRC/50/21, paras. 69 and 70.

⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, paras. 75–78.

The Court considers that the construction of the wall and its associated régime create a “fait accompli” on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation.⁸

13. De facto annexation implies a gradual or incremental process in which it is not always clear at what point the threshold has been crossed. The transition involves establishing “facts on the ground” that are intended to be irreversible and permanent while avoiding any formal proclamation in order to evade diplomatic and political repercussions.⁹

IV. Nature of the control exerted by Israel in the territories that it occupies¹⁰ and the situation inside Israel

A. East Jerusalem

14. Israel has applied its domestic law to East Jerusalem since 1967, through several dedicated laws, and it has also transferred ownership of land to the State to facilitate the expansion of its control and the establishment of Israeli settlements¹¹ on Palestinian land.¹² In 1967, Israel unilaterally incorporated 70,000 dunams¹³ of Palestinian land into the municipal area of Jerusalem.¹⁴ By means of a series of laws, Israel has also enabled its Government to transfer property rights from Palestinians in East Jerusalem to the State and allowed Israeli settler organizations to initiate eviction proceedings.¹⁵ The designation of national parks has further served to expand Israeli-controlled areas and strategic contiguity.¹⁶ Over one third of East Jerusalem has been expropriated for the construction of Israeli settlements, and only 13 per cent of the annexed area is currently zoned for Palestinian construction.¹⁷ More recent developments, such as government decision 3790 (2018), have raised concerns that

⁸ Ibid., para. 121.

⁹ See A/73/447, para. 30.

¹⁰ For the purposes of the present report, “the territories that Israel occupies” and equivalent terms are a reference to East Jerusalem, the Syrian Golan, Gaza and the West Bank outside East Jerusalem.

¹¹ In United Nations reports on the Occupied Palestinian Territory, the term “settlements” is used in English versions and “colonies” in French versions. In the present report, the Commission adheres to those usages and will examine the legal terminology in the future.

¹² In accordance with the Land (Acquisition for Public Purposes) Ordinance of 1943, as amended in 1946. See Efrat Cohen-Bar and others, *Trapped by Planning: Israeli Policy, Planning, and Development in the Palestinian neighborhoods of East Jerusalem* (Jerusalem, Bimkom – Planners for Planning Rights, 2014). See also Ir Amim, “Settlements and national parks”, available at www.ir-amim.org.il; and Amnon Ramon and Yael Ronen, *Residents, not Citizens: Israeli Policy towards the Arabs in East Jerusalem 1967–2017* (Jerusalem Institute for Policy Research, 2017), pp. 49, 50 and 56.

¹³ The following conversion rates have been used for the purposes of the present report: 1 acre equals 4.04686 dunams; 1 hectare equals 10 dunams; one km² equals 999.64 dunams.

¹⁴ See A/HRC/22/63, para. 25. See also Cohen-Bar and others, *Trapped by Planning*, p. 8.

¹⁵ See Norwegian Refugee Council, “Legal memo: the absentee property law and its application to East Jerusalem”, February 2017; Amnesty International, *Israel’s Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity* (London, 2022), p. 114; and Adalah, “The legal implications of land registration procedures implemented by Israel in East Jerusalem”, 14 July 2022, available at www.adalah.org.

¹⁶ Terrestrial Jerusalem, “The strategic encirclement of Jerusalem’s old city – the emergence of a settler-controlled biblical realm”, 2022, on file, pp. 7 and 8; and Ir Amim, “Settlements and national parks”.

¹⁷ See United Nations, Office for the Coordination of Humanitarian Affairs, “The planning crisis in East Jerusalem: understanding the phenomenon of ‘illegal’ construction”, April 2009.

the Government of Israel is paving the way for the establishment of new settlements and further dispossession of Palestinians.¹⁸

15. To date, 14 settlements have been established in East Jerusalem with a total population of more than 229,000 persons.¹⁹ The restrictive planning and zoning regimes in East Jerusalem, which have obstructed adequate housing, infrastructure and livelihoods for Palestinians, have contributed to shrinking space for Palestinians.²⁰ Israeli policies continue to encroach on Palestinian homes and spaces, with at least 218 Palestinian households in East Jerusalem currently at risk of imminent forced eviction owing to cases brought before Israeli courts, primarily by Israeli settler organizations.²¹ The Commission notes that the choice of location of some new settlements, such as Gi'vat Hamatos, further reduces the likelihood of ending the occupation and violates the right of Palestinians to self-determination.²² An outer layer of settlements, beyond the municipal boundaries of Jerusalem, has also contributed to severing the geographical contiguity between East Jerusalem and the rest of the occupied West Bank. This includes the plan for the E1 area in eastern Jerusalem (outside the municipal boundary), intended to reinforce the settlements in the Ma'ale Adumim area and connect them with Jerusalem, which would divide the West Bank into two separate entities.²³

16. The legislative and administrative measures undertaken by Israel since 1967 have been firmly rejected by the Security Council and the General Assembly. Following the enactment of the Basic Law: Jerusalem, Capital of Israel in 1980, which solidified the purported de jure annexation of East Jerusalem, the Security Council reaffirmed that the acquisition of territory by force is inadmissible. It further decided not to recognize the Law and such other actions by Israel that, as a result of the Law, are intended to alter the character and status of the city.²⁴

B. The Syrian Golan

17. The Syrian Golan, in the south-eastern part of the Syrian Arab Republic, was occupied by Israel in the war of 1967. Part of the area, including the town of Qunaytirah, was returned to the Syrian Arab Republic in the Agreement on Disengagement between Israeli and Syrian Forces of 1974.²⁵ The occupied Syrian Golan was purportedly annexed in 1981 through a dedicated law under which Israel extended its jurisdiction, law and administration to the Golan.²⁶ The Security Council has definitively rejected that act as unlawful.²⁷ Only the United States of America has recognized the purported annexation.

¹⁸ See www.gov.il/he/departments/policies/dec3790_2018 (in Hebrew).

¹⁹ See Peace Now, "Jerusalem". Available at <https://peacenow.org.il/en/settlements-watch/settlements-data/jerusalem>.

²⁰ See A/HRC/49/85, para. 11. See also Office for the Coordination of Humanitarian Affairs, "West Bank, East Jerusalem: key humanitarian concerns", 21 December 2017; and Cohen-Bar and others, *Trapped by Planning*, p. 39.

²¹ See A/HRC/49/85, para. 25, A/76/336, para. 35, and S/2021/584, para. 6.

²² See, for example, Peace Now, "Givat Hamatos – a new Israeli neighborhood in East Jerusalem", 13 October 2011.

²³ A/HRC/49/85, para. 6.

²⁴ See Security Council resolution 478 (1980). See also United Nations, Committee on the Exercise of the Inalienable Rights of the Palestinian People, "The status of Jerusalem" (New York, 1997), p. 24. Available at www.un.org/unispal/wp-content/uploads/2016/07/The-Status-of-Jerusalem-English-199708.pdf.

²⁵ S/11302/Add.1.

²⁶ Law on the Golan Heights of 1981. Available in Hebrew at https://fs.knesset.gov.il/10/law/10_lsr_211778.PDF.

²⁷ See Security Council resolution 497 (1981).

18. On 1 June 1967, approximately 90,000 Syrians were living in the Golan. One month later, that number was 6,396. A delegation of the International Committee of the Red Cross noted that most of the refugees from the Golan had been expelled.²⁸ From 1967, settlements were used in the Golan to create facts on the ground that irreversibly established Israeli control over the territory. Today, there are 34 settlements in the Golan. In December 2021, the Government of Israel approved a plan to add 7,300 housing units in the Golan over the following five years to double the number of residents there, as well as to establish two new settlements.²⁹

C. Gaza

19. Israel occupied the Gaza Strip in the war of 1967 and proceeded to expropriate land and establish settlements shortly afterwards. By 1997, it had established 19 settlements on 23,000 dunams of land, housing some 5,000 settlers.³⁰ Although Israel disengaged from Gaza in 2005, the Commission notes that Israel continues to occupy the territory by virtue of the control it exercises over, inter alia, the airspace and territorial waters of Gaza, as well as its land crossings at the borders, supply of civilian infrastructure, including water and electricity, and key governmental functions such as the management of the Palestinian population registry.³¹

20. Gaza has also been subjected to blockade imposed by Israel and support by Egypt since the de facto authorities assumed certain governance functions in 2007. This blockade has been tightened and loosened several times since then. It restricts the movement of people and goods into and out of the territory. The blockade has been widely condemned as a policy that may amount to collective punishment.³²

D. Israel

21. The Commission has found several similarities between the treatment of Palestinians by Israel inside Israel in the period since 1948, and its policies in the Occupied Palestinian Territory.

22. Between 1948 and 1966, approximately 85 per cent of the Palestinians in Israel lived in three areas that were subject to a military regime and came under three military governors.³³ Israel maintained that it had instituted the regime for security reasons, since each of the three areas shared a border with “enemy countries”. According to a government investigation into the military regime, Israel had sought to address a perceived risk that Palestinians residing inside Israel would collaborate with neighbouring Arab countries against its security interests; another purpose was to control and reduce the number of Palestinian refugees seeking to return to their homes.³⁴

²⁸ See Akevot Institute, “Displacement in the Heights: how the population of the Golan Heights vanished in 1967”, 19 September 2022, illustration marked as “Annex to Moreillon’s letter”. Available at www.akevot.org.il/en/article/displacement-in-the-golan/#popup/acfbb382d6c3e88ba2b9e112e710a627.

²⁹ See www.gov.il/he/departments/news/spoke_golan261221 (in Hebrew).

³⁰ See A/52/172-E/1997/71, para. 26.

³¹ See A/HRC/50/21, para. 16.

³² See A/74/468, para. 22, A/73/420, para. 7, and A/72/565, para. 28.

³³ See <https://storymaps.arcgis.com/stories/81adbee036594229ac65032b8fb80e07?locale=he> (in Hebrew).

³⁴ Akevot Institute, “Security settlements and the question of land: the Ratner Committee report on military rule and its secret annex”, 24 February 1956.

23. Although the military regime ended in 1967, its legacy continues. In 2022, Palestinian citizens of Israel are still subjected to discriminatory policies including the confiscation of land, demolitions and evictions that affect in particular the Bedouin in the Negev and Palestinians residing in other areas of Israel. In addition, several Israeli laws discriminate against Palestinian citizens of Israel. For example, the Nation State Law of 2018 gives only Jews the right to self-determination in Israel and removes the status of Arabic as an official language alongside Hebrew.³⁵ In addition, the Citizenship and Entry into Israel Law (Temporary Order) restricts further family reunification and hinders the right to marry the person of one's choice.³⁶

E. The West Bank outside East Jerusalem

24. Under the Oslo Accords, the West Bank was divided into three areas: A, B and C (excluding East Jerusalem and the Gaza Strip). Over 60 per cent of the West Bank was designated as Area C, where Israel retains near-exclusive control.³⁷ While not replacing obligations under international law, the Accords assigned the Palestinian Authority civil and security jurisdiction over Area A and civil control over Area B. The Accords provided that the Palestinian Authority would gradually assume control over the West Bank in a phased manner, except for issues that would be negotiated in permanent status negotiations.³⁸

The Israeli settlements enterprise

“In light of the current negotiations on the future of Judea and Samaria, it will now become necessary for us to conduct a race against time. During this period, everything will be mainly determined by the facts we establish in these territories and less by any other considerations. This is therefore the best time for launching an extensive and comprehensive settlement momentum (...)”

Source: World Zionist Federation, “Settlement in Judea and Samaria – strategy, policy and plans” (A/36/341-S/14566, annex).

25. From the beginning of the occupation, Israel has established or facilitated the establishment of hundreds of civilian settlements in the Occupied Palestinian Territory in an enterprise that is the most significant driver of its protracted occupation and that is in contravention of international law. Israel has spent billions of dollars on the construction of settlements and of infrastructure to support them, including roads, water and sewerage systems, communications and power systems,

³⁵ See CERD/C/ISR/CO/17-19, paras. 13–15, and CCPR/C/ISR/CO/5, para. 10. See also Adalah, “The discriminatory laws database”, 25 September 2017; Jerusalem Legal Aid and Human Rights Center, “Families divided: Israel passes new citizenship law, fortifies apartheid regime”; and Adalah, “Adalah petitions Israeli Supreme Court against new citizenship law banning Palestinian family unification”.

³⁶ See Knesset, “Knesset plenum passes Citizenship and Entry into Israel Bill into law”, 10 March 2022; Jerusalem Legal Aid and Human Rights Center, “Families divided”; and Adalah, “Adalah petitions Israeli Supreme Court”.

³⁷ See Office for the Coordination of Humanitarian Affairs, “Area C of the West Bank: key humanitarian concerns”, update, August 2014.

³⁸ See Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (A/51/889-S/1997/357, annex), art. XI, para. 2.

security systems, and educational and health care facilities.³⁹ One of the core principles of the laws of belligerent occupation is that the occupying Power must protect the fundamental interests of the population under occupation, including through the prohibition of the transfer of its own civilian population into the territory it occupies.⁴⁰ Article 49 of the Fourth Geneva Convention was intended to prevent the transfer by occupying Powers of portions of their own population to occupied territory for political or racial reasons or to colonize the territories.⁴¹

26. While all Israeli settlements are considered illegal under international law, Israel makes a distinction between “authorized” settlements and unauthorized outposts, which it considers illegal. Nonetheless, Israel has been providing outposts with essential services including electricity and security and has been allocating them farming and grazing land.⁴² In April 2022, the Israeli Attorney General’s Office issued a legal opinion according to which outposts located on “State land” could be connected to the official electricity grid.⁴³ To date the Government of Israel has retroactively authorized 23 outposts by bringing them within the jurisdiction of nearby settlements or granting them independent settlement status. According to Peace Now, two established outposts have been evacuated, but the Government is reportedly in the process of retroactively authorizing at least 12 more.⁴⁴

27. Israel has attempted through legislative action to authorize settlements and outposts built on private Palestinian land. The 2017 Regularization Law applies to settlements built on private Palestinian land or without prior authorization before the Law came into effect.⁴⁵ In 2020, the Supreme Court of Israel annulled the law on the grounds that it infringed rights codified in the Basic Law: Human Dignity and Liberty, as it would result in the expropriation of private Palestinian land and transfer the ownership of the land to settlers.⁴⁶ The Court decided, however, that outposts built on private Palestinian land could be authorized if they had been established in “good faith”. In 2022, the Supreme Court determined that the outpost Mitzpeh Kramim need not be evacuated because the expropriation of private land met the good-faith test and that “market regulations”⁴⁷ applied to outposts.⁴⁸ In the decision, the Court effectively gave carte blanche to the approval of outposts on private Palestinian land in the West Bank.

³⁹ See TD/B/EX(71)/2, paras. 40 and 66. See also Kerem Navot, “The Wild West: grazing, seizing and looting by Israeli settlers in the West Bank”, May 2022. See also Yesh Din, *Plundered Pastures: Israeli Settler Shepherding Outposts in the West Bank and Their Infringement on Palestinians’ Human Rights*, position paper, December 2021.

⁴⁰ Fourth Geneva Convention, arts. 27 and 49.

⁴¹ See ICRC, commentary of 1958 on article 49 of the Convention relative to the Protection of Civilian Persons in Time of War. Available at <https://ihl-databases.icrc.org/ihl/COM/380-600056?OpenDocument>.

⁴² See Kerem Navot, “The Wild West” and Yesh Din, “Plundered pastures”.

⁴³ On file. According to the legal opinion, Palestinian villages in Area C may also be connected to the official electricity grid.

⁴⁴ See Peace Now, “West Bank population”. Available at <https://peacenow.org.il/en/settlements-watch/settlements-data/population>.

⁴⁵ The Judea and Samaria Settlement Regulation Law (2017). Available in Hebrew at www.nevo.co.il/law_html/law01/501_553.htm.

⁴⁶ Supreme Court decision of 9 June 2020 in cases Nos. 1308/17, 2055/17. Available in Hebrew at <https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts%5C17%5C080%5C013%5Cv48&fileName=17013080.V48&type=2>.

⁴⁷ The term “market regulations” refers to land purchased from the Commissioner of Government Property and Abandoned Lands in Judea and Samaria that was believed to be State land at the time of the transaction, when in fact it was private property. See <https://lawjournal.huji.ac.il/sites/default/files/2020-11/mishpatim-50-2-307.pdf> (in Hebrew).

⁴⁸ Supreme Court Decision of 27 July 2022 in case No. 6364/20. Available in Hebrew at <https://storage.googleapis.com/haaretz-cms-prod/df/d2/89f3ad634b02a194f7aac204a15b/gada.pdf>.

28. Between June 2021 and June 2022, six new outposts were established.⁴⁹ During that period, several members of the Government explicitly expressed support for the erection of outposts as well as for judicial decisions retroactively authorizing them.⁵⁰ On 20 July 2022, hundreds of settlers gathered in six separate locations to establish new outposts. The Israeli security forces issued a statement declaring such actions illegal⁵¹ and deployed significant military and civilian police forces. However, despite announcing their plans in advance, settlers were allowed access to the locations, erected temporary structures and were only later removed by security forces.⁵²

29. Funding for settlements and outposts reportedly comes from a variety of State and non-State sources, private donors and funds raised through Israeli and non-Israeli non-profit groups,⁵³ including private organizations, such as Nahala and Amana.⁵⁴ The Settlement Division of the World Zionist Organization plays a key role in establishing and supporting settlements and outposts. The Settlement Division was established in 1971 and is funded by the Government of Israel, although it is not a State entity. The Settlement Division actively supports and funds outposts. For example, it supports the regularization of outposts with regard to their connection to the electrical grid and the preparation of building plans.⁵⁵

30. The establishment, maintenance and expansion of Israeli settlements throughout the West Bank, including in East Jerusalem, has fragmented and isolated Palestinians from their lands as well as from other Palestinian communities. The Commission emphasizes that wherever settlements are located, they have a cascading impact on Palestinians throughout the West Bank. By largely failing to enforce the law, continuing to retroactively authorize outposts, ignoring settler violence originating in outposts⁵⁶ and not applying legal sanctions against settlers breaking the law, Israel sends a clear message to settlers that outposts are a viable, quasi-legal option for erecting new settlements and expanding Israeli presence in the West Bank.

⁴⁹ Peace Now reported of four instances between June 2021 and June 2022 in which outposts were founded but settlers evicted immediately after their foundation, and a rise in demolition of small outposts of “hill-top” youth. See Peace Now, “The government of unequivocal annexation: deepening of the settlement project, dispossession and oppression – one year of the Israeli government headed by Yair Lapid and Naftali Bennett”, June 2022.

⁵⁰ See https://twitter.com/Ayelet_Shaked/status/1549851212199202821 (in Hebrew); and <https://twitter.com/gidonsaar/status/155230355646777537> (in Hebrew).

⁵¹ Joint statement by the Israel Defense Forces and Israel police of 20 July 2022. Available in Hebrew at www.idf.il/%D7%9B%D7%AA%D7%91%D7%95%D7%AA-%D7%95%D7%A2%D7%93%D7%9B%D7%95%D7%A0%D7%99%D7%9D/2022/%D7%99%D7%95%D7%9C%D7%99/%D7%90%D7%99%D7%95%D7%A9-%D7%9B%D7%95%D7%97%D7%95%D7%AA-%D7%91%D7%99%D7%98%D7%97%D7%95%D7%9F-%D7%A9%D7%98%D7%97%D7%99%D7%9D-%D7%A6%D7%91%D7%90%D7%99%D7%9D-%D7%A1%D7%92%D7%95%D7%A8%D7%99%D7%9D-%D7%97%D7%95%D7%A7-%D7%9E%D7%90%D7%97%D7%96%D7%99%D7%9D-%D7%91%D7%9C%D7%AA%D7%99-%D7%97%D7%95%D7%A7%D7%99%D7%99%D7%9D/.

⁵² See www.inn.co.il/news/571834 (in Hebrew). See also Hagar Shezaf, “Israeli forces evacuate short-lived outposts set up by West Bank settler movement”, *Haaretz*, 21 July 2022; and Hagar Shezaf, “Settlers camp out in six locations across the West Bank, planning to establish new outposts”, *Haaretz*, 20 July 2022.

⁵³ Uri Blau, “From N.Y.C. to the West Bank: following the money trail that supports Israeli settlements”, *Haaretz*, 7 December 2015. See also http://peacenow.org.il/wp-content/uploads/2020/11/TheCombina_Heb1.pdf, pp. 7 and 8 (in Hebrew).

⁵⁴ See A/HRC/49/85, para. 42. See also Hagar Shezaf, “How a Jewish settler group raised millions to set up illegal outposts”, *Haaretz*, 20 July 2022.

⁵⁵ See www.gov.il/BlobFolder/reports/work_plan290622/he/work_plan290622.pdf, art. 7 (in Hebrew).

⁵⁶ See paras. 67 and 68 of the present report.

Expropriation and exploitation of land and other natural resources

31. Since the occupation began, Israel has used military justifications to issue permanent and temporary closure orders for vast areas in the West Bank. In practice, much of the land has been used not for military purposes but for the construction of settlements. Israel has declared approximately 18 per cent of the West Bank closed military zones, including in area C.⁵⁷ Over half of Area C (1.765 million dunams) has been officially designated closed military zones. Israeli settlers have cultivated over 14,000 dunams of land in closed military areas, some of which is private Palestinian land.⁵⁸

32. In a decision issued in 1979, the Supreme Court of Israel determined that the expropriation of land by military orders for the construction of settlements contravened international law.⁵⁹ However, Israel continued to declare military firing zones that were then used for other purposes. In the 1980s, the area of Masafer Yatta in the south Hebron hills was declared a restricted military zone, referred to as firing zone 918, which affected dozens of Palestinian families who had lived in the area since before 1948.⁶⁰ Newly released minutes of meetings between officials of the Government of Israel and the Settlement Division indicate that Israel established military zones for non-military reasons, including for the establishment and expansion of settlements.⁶¹ In 1981, then Minister of Agriculture Ariel Sharon met with the Settlement Division and proposed the establishment of a firing zone in the south Hebron hills with the explicit purpose of countering the spread of the Arab villagers on the mountainside toward the desert.⁶²

33. Israel has declared large areas of land State land, relying on the 1967 Order Regarding Government Property (Judea and Samaria) (No. 59), 5727-1967, which stipulates that the Custodian of Absentee Property Department may take possession of government property and take any measures he or she deems necessary for that purpose.⁶³ Israel has declared over 750,000 dunams in the West Bank State land under the Order.⁶⁴ Israel has also used a process of mapping land (which it has termed the “survey lands” procedure) that is based on the Ottoman Land Code to determine

⁵⁷ See Office for the Coordination of Humanitarian Affairs, “The humanitarian impact of Israeli-declared ‘firing zones’ in the West Bank”, August 2012.

⁵⁸ See Kerem Navot, *A Locked Garden: Declaration of Closed Areas in the West Bank*, March 2015, pp. 10–15.

⁵⁹ Supreme Court decision of 22 October 1979 in case No. 390/79. Available in Hebrew at <https://hamoked.org.il/items/1670.htm>. See also B’Tselem, *Under the Guise of Legality: Israel’s Declarations of State Land the West Bank* (Jerusalem, February 2012), pp. 9 and 12.

⁶⁰ See B’Tselem, “Masafer Yatta communities Israel is trying to drive out”, 1 January 2013. Available at www.btselem.org/south_hebron_hills/masafer_yatta.

⁶¹ See Yuval Abraham, “Classified document reveals IDF ‘firing zones’ built to give land to settlers”, +972 Magazine, 11 July 2022.

⁶² See Akevot, “Document exposed by Akevot: Ariel Sharon instructed IDF to create training zone to displace Palestinians”, 9 August 2020, available at www.akevot.org.il/en/news-item/document-revealed-by-akevot-ariel-sharon-instructed-idf-to-create-training-zone-to-displace-palestinians/. See also minutes of meeting between the Committee for Settlement of the Government and the World Zionist Organization, 12 July 1981, available in Hebrew at www.akevot.org.il/wp-content/uploads/2020/08/1981-07-12-%D7%95%D7%A2%D7%93%D7%AA-%D7%A9%D7%A8%D7%99%D7%9D-%D7%9C%D7%94%D7%AA%D7%99%D7%A9%D7%91%D7%95%D7%AA-%D7%A4%D7%A8%D7%95%D7%98%D7%95%D7%A7%D7%95%D7%9C-%D7%9E%D7%9C%D7%90-%D7%9E%D7%9B%D7%95%D7%9F-%D7%A2%D7%A7%D7%91%D7%95%D7%AA.pdf.

⁶³ See B’Tselem, *Land Grab: Israel’s Settlement Policy in the West Bank*, (Jerusalem, May 2002), p. 52. See also B’Tselem, *Under the Guise of Legality*, p. 13.

⁶⁴ See Kerem Navot, *Blue and White Make Black: The Work of Blue Line Team in the West Bank*, December 2016, pp. 6 and 42.

whether land is uncultivated or is insufficiently cultivated and so may be classified as State land.⁶⁵

34. Parcels of land in the West Bank have been designated as nature reserves and parks. To date, Israel has declared about 48 nature reserves with a total area of approximately 383,600 dunams, representing around 12 per cent of Area C and around 7 per cent of the entire West Bank.⁶⁶ In January 2020, the Minister of Defence of Israel declared seven new national parks on over 130,000 dunams of land, and the expansion of 12 existing reserves. According to Peace Now, 20,000 dunams of that land is privately owned by Palestinians who will be barred from cultivating it or further building on it.⁶⁷

35. In addition to expropriating land, Israel has taken control of all water resources in the West Bank and has been using much of the water for its own purposes. Through military order No. 92 (1967), Israel asserted its control over the three primary sources of water in the West Bank and prohibited Palestinians from constructing new water installations or maintaining existing installations without a military permit. At the same time, Israel has developed its own water infrastructure for its settlements and has done the same in Israel.⁶⁸

36. Land has also been used for Israeli industrial and economic activity through the establishment of industrial zones throughout the West Bank. Israel has encouraged companies to move their operations to those zones by providing financial incentives, permits and licenses that are rarely granted to companies providing services to Palestinians.⁶⁹ Israel has taken strong measures to discourage States and businesses from distinguishing between Israeli-manufactured products and those coming from settlements.⁷⁰

37. As at 2015, there were 11 Israeli-operated quarries in Area C producing 10 million to 12 million tons of raw materials including rock, gravel and other minerals. Of those, approximately 10 million tons was transferred to Israel. West Bank quarries generate growing revenue for Israel and form an important component

⁶⁵ Ibid., pp. 6, 7 and 39.

⁶⁶ See Peace Now, “The Minister of Defense approved the declaration of the largest nature reserve in 25 years in the West Bank”, 24 May 2022.

⁶⁷ See https://twitter.com/naftalibennett/status/1217372351911866369?ref_src=twsrc%5Etfw%7Ctwcamp%5Etweetembed%7Ctwterm%5E1217372351911866369%7Ctwgr%5Edc7765b546f118b60ef9d4da93dbb32b48287d60%7Ctwcon%5Es1_&ref_url=https%3A%2F%2Fwww.zman.co.il%2F88980%2F (in Hebrew). See also Hagar Shezaf, “Israeli defense chief approves new West Bank nature reserves to ‘develop Jewish settlement’”, *Haaretz*, 15 January 2020; and Peace Now, “The Minister of Defense approved the declaration of the largest nature reserve in 25 years in the West Bank”.

⁶⁸ See A/HRC/48/43, para. 18. See also United Nations, “Israel’s policy on the West Bank water resources”, 1980, available at www.un.org/unispal/document/auto-insert-206852/; Jerusalem Media and Communication Centre, *Israeli Military Orders in the Occupied Palestinian West Bank (1967–1992)*, available at www.jmcc.org/Documentsandmaps.aspx?id=622; and Amnesty International, “Israel/Occupied Palestinian Territories: demand dignity: troubled waters – Palestinians denied fair access to water”, 27 October 2009.

⁶⁹ See A/HRC/37/39, paras. 43 and 44.

⁷⁰ See, for example, Middle East Monitor, “Israel threatens Norway with ‘adverse’ impact following change in settlement labels”, 13 June 2022; Barak Ravid, “Israel considers suing EU over decision to label settlement products”, *Haaretz*, 19 November 2015.

of the Israeli raw materials market.⁷¹ In 2015, Israel received 74,102,235 shekels⁷² from royalties and user fees paid by quarries operating in the West Bank.⁷³

38. Quasi-governmental entities have played a role in expropriating land and managing its allocation to settlements.⁷⁴ The Jewish National Fund, for example, was established in 1901 with the aim of purchasing land in the region for Jewish settlement. After 1967, it acquired land from Palestinians in the West Bank to facilitate the establishment of settlements and expanded its other areas of activity to supporting settlements.⁷⁵ In August 2022, Israeli media reported that the Jewish National Fund had voted to allocate 61 million shekels for the purchase of land owned by Palestinians in the Jordan Valley, located on a closed military zone.⁷⁶

39. Land is a key natural resource, integral to the Palestinian identity and economy. Palestinians currently can build on less than 1 per cent of the land in Area C,⁷⁷ owing to Israeli planning policies and the expropriation of more than 2 million dunams of land by Israel since 1967. Israel has expropriated land throughout the West Bank for a variety of purposes, including settlement construction, industrial zones, farming and grazing land for settlers, and roads, in contravention of international law.⁷⁸

40. Under international law, an occupying Power is entitled to a limited use of natural resources of an occupied territory. Article 55 of the Regulations respecting the Laws and Customs of War on Land of 1907 stipulates that an occupying Power may only act as administrator and usufructuary of public buildings, real estate, forests, and agricultural estates. In doing so, it must safeguard the capital of those properties and administer them in accordance with the rules of usufruct. In addition, articles 28 and 47 of the Hague Regulations, along with article 33 of the Fourth Geneva Convention, prohibit the act of pillage. This applies to all types of property, whether belonging to private persons or to the State.⁷⁹ Pillage is also a war crime under the article 8 (2) (b) (xvi) of the Rome Statute of the International Criminal Court.

Restrictive planning, zoning and development

41. Under the Oslo Accords, planning, zoning and development in Area C was to be undertaken temporarily by Israel. However, this responsibility has still not been passed on to the Palestinian Authority, which has severely restricted Palestinian

⁷¹ Ministry of Housing, report by the Committee to Examine Land Policies in the Quarrying Sector, April 2015, pp. 10 and 11. Available in Hebrew at www.gov.il/BlobFolder/policy/balnikov/he/balnikov_final_report_26042015.pdf.

⁷² As at 2 September 2022, the conversion rate was 3.40 shekels for one United States dollar.

⁷³ See <https://s3-eu-west-1.amazonaws.com/files.yesh-din.org/%D7%A0%D7%99%D7%99%D7%A8+%D7%A2%D7%9E%D7%93%D7%94+%D7%9E%D7%97%D7%A6%D7%91%D7%95%D7%AA/38443.pdf> (in Hebrew).

⁷⁴ For more on the World Zionist Organization, see para. 31 of the present report.

⁷⁵ See Peace Now, “Involvement of KKL-JNF and the settlement division in the settlements”, p. 2. Available at http://peacenow.org.il/wp-content/uploads/2020/02/KKL_Settlement-Division-Fact-Sheet.pdf.

⁷⁶ See Hagar Shezaf, “Israel recruited the Jewish National Fund to secretly buy Palestinian Land for settlers”, *Haaretz*, 15 July 2021. See also Hagar Shezaf, “JNF approves funds to buy Palestinian-owned Jordan Valley land at Israel’s request”, *Haaretz*, 3 August 2022; and <https://peacenow.org.il/jnf-tender-for-land-registration> (in Hebrew).

⁷⁷ See TD/B/EX(71)/2, para. 33.

⁷⁸ See B’Tselem, *State Business: Israel’s Misappropriation of land in the West Bank through Settler Violence* (Jerusalem, November 2021), p. 7; See also B’Tselem, *Land Grab*, p. 47; and Office for the Coordination of Humanitarian Affairs, “Area C of the West Bank: key humanitarian concerns”, update, August 2014.

⁷⁹ See ICRC, commentary of 1958 on article 33 of the Convention relative to the Protection of Civilian Persons in Time of War. Available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=36BD41F14E2B3809C12563CD0042BCA9>.

development opportunities.⁸⁰ Israel has used its control of planning and zoning to impose substantial restrictions on building and construction that apply primarily to Palestinians, restrict Palestinians' use of land, and support the development of settlements.

42. Israel prohibits Palestinian construction in 70 per cent of Area C because of its designation as State land, natural reserves or military zones; in addition, Israel imposes substantial zoning restrictions in the remaining 30 per cent.⁸¹ Most Palestinian applications for building permits are rejected by Israel on the grounds that the relevant area has not been zoned for construction, even when the land is owned by the applicant.⁸² Permits are rarely given to Palestinians for building residential structures or structures for economic activities, or to develop infrastructure. Over the 10-year period lasting from 2009 to 2018, only about 2 per cent of applications for construction permits was approved.⁸³ In 2019 and 2020, 32 plans and permits for Palestinians were approved and 310 plans were rejected, while the Civil Administration of Israel approved plans for 16,098 units in Israeli settlements.⁸⁴

43. According to Israeli regulations, construction also needs to be aligned with British Mandate regional outline plans that zone extensive areas for only a few main uses: roads, agriculture, development, and nature and beach reserves.⁸⁵ The Israeli Civil Administration and the Israeli courts continue to rely on these outdated plans when deciding on Palestinian construction permit requests while, at the same time, approving hundreds of new master plans to change the zoning to allow for the construction of Israeli settlements.⁸⁶

44. While the Palestinian Authority is officially responsible for the provision of education and medical and other services in Area C, the Civil Administration controls the issuance of permits for construction and for the expansion of schools and clinics and in doing so significantly impedes the Palestinian ability to provide such services.⁸⁷ Palestinians in Area C consequently suffer from insufficient and inadequate planning, which disproportionately affects marginalized communities such as Bedouin and herding communities.⁸⁸

45. Statements made by Israeli officials indicate that Palestinian construction is seen as an impediment to Israeli settlement of the West Bank, requiring action such as confiscation, demolitions and displacement, as well as a reduction in the number of international aid projects for infrastructure for Palestinians in

⁸⁰ See United Nations Human Settlements Programme (UN-Habitat), *Spatial Planning in Area C of the Israeli Occupied West Bank of the Palestinian Territory, Report of an International Advisory Board*, May 2015, p. 10.

⁸¹ See Office for the Coordination of Humanitarian Affairs, OCHA Special Focus, "Restricting space: the planning regime applied by Israel in Area C of the West Bank", December 2009. See also Office for the Coordination of Humanitarian Affairs, "Area C of the West Bank: key humanitarian concerns", update, August 2014; and TD/B/EX(71)/2, para. 33.

⁸² Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin for the Occupied Palestinian Territory January–May 2021. Available at www.un.org/unispal/document/ocha-humanitarian-bulletin-for-occupied-palestinian-territory-jan-may-2021/.

⁸³ See Peace Now, "(Dis)approvals for Palestinians in Area C – 2009-2020", 31 January 2021.

⁸⁴ Ibid.

⁸⁵ See Office for the Coordination of Humanitarian Affairs, "Restricting space". See also Limor Yehuda and others, *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank*, Association for Civil Rights in Israel, October 2014, p. 100.

⁸⁶ See UN-Habitat, *Spatial Planning in Area C*, p. 23.

⁸⁷ Office for the Coordination of Humanitarian Affairs, "Restricting space".

⁸⁸ See UN-Habitat, *Spatial Planning in Area C*, p. 10.

Area C.⁸⁹ Demolitions are linked to the expansion of settlements, as large-scale demolition orders are issued in locations where Israeli settlements have been allocated land for expansion.⁹⁰ The Commission notes that the planning and zoning regime applied by Israel reflects a clearly discriminatory approach, as it is a highly restrictive one targeted at Palestinian construction, while a much more permissive regime is applied to planning and zoning in settlements.

Extension of Israeli law in the West Bank

46. Since the start of the occupation, Israel has extended its legal domain in the West Bank, which has resulted in far-reaching changes to the applicable law and, in practice, two sets of applicable law: military law and Israeli domestic law, which has been extended extra-territorially to apply only to Israeli settlers. This has been done through military orders,⁹¹ legislation⁹² and Supreme Court decisions⁹³ and includes criminal law, national health insurance law, taxation laws and laws pertaining to elections.⁹⁴ There are also separate legal systems for enforcing traffic laws and an institutional and legislative separation in the planning and building regime.⁹⁵

47. This dual legal system provides greater enjoyment of human rights for Israelis than for Palestinians and is therefore discriminatory. It forms part of the complaint by the State of Palestine against Israel under the International Convention on the Elimination of All Forms of Racial Discrimination.⁹⁶ There are stark differences between the two legal systems, in particular with regard to criminal law, with significant implications for the rights of Palestinians. For example, under military law, holding and waving Palestinian flags during demonstrations and assemblies of Palestinians is regarded as a security threat, so that Palestinians' freedom of expression and freedoms of peaceful assembly and association are severely restricted.⁹⁷

⁸⁹ See B'Tselem, "The annexation that was and still is", no date, p. 4, available at www.btselem.org/sites/default/files/publications/202010_the_annexation_that_was_and_still_is_eng.pdf. See also <https://main.knesset.gov.il/Activity/committees/ForeignAffairs/News/pages/pr290720.aspx> (in Hebrew).

⁹⁰ See UN-Habitat, *Spatial Planning in Area C*, p. 20. See also Office for the Coordination of Humanitarian Affairs, "Demolitions and forced displacement in the occupied West Bank, January 2012", 26 January 2012; and Diakonia International Humanitarian Law Resource Centre, "Rule of law: a veil of compliance in Israel and the oPt 2010–2013", March 2014, p. 9.

⁹¹ Military Order Concerning the Administration of Local Councils (Judea and Samaria) (No. 892), 5741–1981, and Military Order Concerning the Administration of Regional Councils (Judea and Samaria) (No. 783), 5739–1979.

⁹² Law to Extend the Emergency Regulations (Judea and Samaria—Jurisdiction and Legal Aid).

⁹³ For example, Supreme Court decision in case No. 04/10104, sect. 2 (4), p. 95. Available in Hebrew at https://supremedecisions.court.gov.il/Home/Download?path=PediVerdicts/61/2&fileName=SA2_2_10104-04.pdf&type=4.

⁹⁴ See Limor Yehuda and others, *One Rule, Two Legal Systems*, p. 6. See also *Yesh Din, The Israeli Occupation of the West Bank and the Crime of Apartheid: Legal Opinion*, position paper, June 2020, pp. 40–42.

⁹⁵ See Limor Yehuda and others, *One Rule, Two Legal Systems*, pp. 7 and 8.

⁹⁶ See https://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/1_Global/INT_CERD_ISC_9325_E.pdf, paras. 146–156.

⁹⁷ See Order Concerning the Prohibition of Acts of Incitement and Hostile Propaganda (Judea and Samaria) (No. 101), 5727–1967.

V. The intent underlying the occupation regime applied by Israel

48. In its official position on the settlements, Israel notes the Jewish presence in the territory for thousands of years and the recognition in the Mandate for Palestine, adopted by the League of Nations in 1922, of the “historical connection of the Jewish people with Palestine”.⁹⁸ Palestinians have vehemently opposed Israeli settlements, noting that they “have no legal validity, constitute flagrant breaches under international law, namely the Fourth Geneva Convention, and constitute a major obstacle to peace”.⁹⁹

49. From the early days of the occupation, Israel has emphasized external security threats as a key factor in its settlements policy. In 1977, the head of the World Zionist Organization Settlement Division, Mattityahu Drobless, prepared what is known as the Drobless settlement plan for the West Bank (issued in 1978), in which he recalled the large “eastern rejectionist front” including the Syrian Arab Republic, Iraq, the Islamic Republic of Iran and Saudi Arabia as a key threat to the eastern border of Israel, which required Israel to ensure that the border was as far as possible from dense urban, industrial and economic centres on the coastal plain. Establishing settlements was seen as a buffer for mobilizing the army and protecting the country.¹⁰⁰ It placed civilians at risk, contrary to international law.¹⁰¹ Israel now has a peace treaty with Jordan, which alone borders the West Bank. The settlements now are directed towards internal control, not external threats.

50. The Commission acknowledges the significant detrimental impact of armed attacks and security incidents on Israeli and Palestinian citizens and residents. For example, during the second intifada, between September 2000 and August 2007, altogether 1,024 Israelis were killed by Palestinian armed groups in the West Bank and in Israel, 69 per cent of them civilians. During the same period, 4,228 Palestinians were killed by Israeli forces, approximately 59 per cent of them civilians.¹⁰² While Israel may take measures within its own territory to ensure the security of its civilian population, many of its actions are undertaken in the Occupied Palestinian Territory and are based on the premise that Palestinians are a security risk, and that it is therefore justifiable to limit their rights.¹⁰³ The Commission notes that, while Israel has a duty to ensure the safety and well-being of its own citizens, its duty in the occupied territory is also to ensure the overall protection, security and welfare of people under occupation.¹⁰⁴ International law cannot be selectively applied; it must be implemented in its entirety.

51. The Commission notes that successive Governments of Israel, regardless of political composition, have promoted the expansion of settlements while officially stating support for the “two-State solution”.¹⁰⁵ Although Israel has occasionally acted to implement some policies for Palestinians – such as allowing them access to work

⁹⁸ See note by the Secretary-General on the question of Palestine: text of Mandate (A/292). See also Israel, Ministry of Foreign Affairs, “Israeli settlements and international law”, 30 November 2015, available at www.gov.il/en/Departments/General/israeli-settlement-and-international-law.

⁹⁹ See S/PV.7853.

¹⁰⁰ See A/36/341-S/14566, annex.

¹⁰¹ See www.molad.org/images/upload/files/National-security-and-settlements.pdf (in Hebrew).

¹⁰² See Office for the Coordination of Humanitarian Affairs, OCHA Special Focus “Israeli-Palestinian fatalities since 2000 – key trends”, August 2007.

¹⁰³ B’Tselem, *Forbidden Roads: Israel’s Discriminatory Road Regime in the West Bank* (Jerusalem, August 2004), p. 3.

¹⁰⁴ ICRC, “West Bank: Israel must abide by international humanitarian law”, 13 September 2018.

¹⁰⁵ For the most recent example, see United States of America, White House, “Remarks by President Biden and Prime Minister Yair Lapid of the State of Israel”, 14 July 2022.

in Israel and approving extremely limited construction,¹⁰⁶ those do little to improve the overall lives of Palestinians or to advance an end to the occupation and a real, just solution. On the contrary, the continuous expansion by Israel of settlements and related infrastructure actively contributes to the entrenchment of the occupation and makes the “two-State solution” an increasingly unviable option. This strategy has allowed successive Governments of Israel to uphold the appearance of agreement with the international community while maintaining its permanent occupation and de facto annexation policies largely undisturbed.¹⁰⁷

52. Israeli officials have publicly expressed their country’s intention to make the settlements irreversible and annex all or part of Area C. On 10 September 2019, then Prime Minister Netanyahu announced his intention to annex the Jordan Valley and northern Dead Sea region, if and when he would be re-elected.¹⁰⁸ Although the plan was later shelved, in August 2020, he asserted, referring to Israeli sovereignty over the West Bank: “The issue of sovereignty is still on the table”.¹⁰⁹

53. In a speech to settlers in Elkana on 17 May 2022, then Prime Minister Bennet emphasized the perpetual nature of the settlements, as already comprising an integral part of the State of Israel:

With the help of God, we will also be here at the celebrations of Elkana’s fiftieth and seventy-fifth, 100th, 200th and 2,000th birthdays, within a united and sovereign Jewish State in the Land of Israel.¹¹⁰

VI. Human rights consequences of the occupation¹¹¹

54. The Commission notes with serious concern that, despite regular reports by numerous United Nations bodies and the international community, the level of violence and Israeli measures to sustain its occupation have increased over time, as well as the number of persons affected.¹¹² The extensive human rights violations and abuses, along with violations of international humanitarian law noted in these reports, are a direct result of the Israeli occupation. This section does not cover the full range of rights that are affected by the occupation and is focused primarily on Area C of the West Bank. The Commission emphasizes that all areas of the Occupied Palestinian Territory are affected by Israeli occupation policies, which include incursions and raids by the Israeli security forces throughout the West Bank and East Jerusalem that often result in civilian casualties that include children.¹¹³

¹⁰⁶ See A/76/433, para. 34.

¹⁰⁷ Akiva Eldar, “Israel’s New politics and the fate of Palestine”, *The National Interest*, vol. 120 (August 2012), p. 6.

¹⁰⁸ See www.kan.org.il/item/?itemid=58577 (in Hebrew).

¹⁰⁹ Prime Minister Netanyahu in a speech on 13 August, 2020. Available in Hebrew at <https://13tv.co.il/item/news/politics/politics/netanyahu-press-uae-1109997/>.

¹¹⁰ Prime Minister Bennett, during a visit to the Elkana local council to mark its forty-fifth anniversary, 17 May 2022. Available in Hebrew at www.youtube.com/watch?v=LeY_IYNC8ik.

¹¹¹ The quotes that follow in boxes have been taken from interviews conducted with victims in the period May–July 2022, unless stated otherwise. The present chapter is based on meetings with interlocutors and interviews with victims and witnesses in the period March–July 2022.

¹¹² See, for example, A/HRC/49/87, para. 5.

¹¹³ Office of the United Nations High Commissioner for Human Rights, Facebook page entitled “UN human rights – Palestine”, post of 1 July 2022. Available at www.facebook.com/UNHumanRightsOPT.

A. Coercive environment

“They come at night when we are asleep, and they throw stones at the doors and windows. We do not go out, but they provoke us until we go out. They provoke us with very harsh insults: We will deprive you of the land and burn and expel you, this place is ours, and we will get it back.”

Palestinian woman, Governorate of Hebron

55. Israel has created and is maintaining a complex environment of coercion,¹¹⁴ which includes the demolition of homes and the destruction of property, excessive use of force by security forces, mass incarceration, settler violence, restricted movement through checkpoints and roads, and limitations on access to livelihoods, basic necessities, services and humanitarian assistance.¹¹⁵

56. The 34,000 Palestinians living in or near the H2 area of Hebron are separated from the rest of the city by 22 checkpoints and experience a coercive environment on a daily basis.¹¹⁶ They struggle to get access to even basic medical care in violation of their right to the highest attainable standard of physical and mental health.¹¹⁷ This especially affects pregnant women, the elderly and those with disabilities in need of emergency treatment and health care.

57. Where this coercion leads people to leave their homes, it can also constitute an element of the crime against humanity of deportation or forcible transfer of population under article 7 (1) (d) of the Rome Statute. In July 2022, 19 Palestinian households, comprising 100 people, left their herding community of Ra’s al-Tin in Area C. Some of the families told the Office for the Coordination of Humanitarian Affairs that they had moved because their living conditions had become intolerable, citing occupation-related coercive measures imposed on them by the Israeli authorities and by Israeli settlers, who are often armed. Some community members said that Israeli officials had explicitly ordered them to move into Area B.¹¹⁸

58. The coercive environment has an especially severe impact on Palestinian children, who experience a constant military presence, frequent clashes and acts of violence, restrictions on movement, and home demolition and destruction of infrastructure and property. Since the beginning of 2022, a total of 20 children have been killed in the West Bank and there are currently 56 outstanding demolition orders against schools in the West Bank including East Jerusalem.¹¹⁹ Since 1967, thousands of children have been displaced and forcibly transferred as a result of the demolition of 28,000 Palestinian homes. Consequently, children’s right to the highest attainable

¹¹⁴ For example [A/HRC/34/39](#), para. 41.

¹¹⁵ See Norwegian Refugee Council, “Impacts of annexation on humanitarian relief and development in the West Bank: frequently asked questions”, June 2020, on file.

¹¹⁶ See B’Tselem, “List of military checkpoints in the West Bank and Gaza Strip”, 11 November 2021. See also Médecins sans frontières, “We are all afraid”: Settler attacks against Palestinians in Hebron on the rise”, 16 August 2021.

¹¹⁷ See Médecins sans frontières, “Providing mental health care to Palestinians living under occupation”, 6 May 2022. See also Idit Avrahami and Noam Sheizaf, *H2: The Occupation Lab*, documentary film, 2022.

¹¹⁸ Office for the Coordination of Humanitarian Affairs, “About 100 Palestinians leave Ras a Tin”, 3 August 2022.

¹¹⁹ United Nations, “Statement of Lynn Hastings, United Nations Resident and Humanitarian Coordinator in the Occupied Palestinian Territory”, 28 August 2022.

standard of mental and physical health is severely compromised.¹²⁰ Reports indicate a high rate of school dropouts, with specific risks of child labour for boys and early marriages for girls. Girls are often taken out of school out of concern for their safety in the coercive environment, while boys drop out largely because of pressure to contribute to the household finances. Boys also face specific human rights violations, including an increased risk of death and injury inflicted by Israeli security forces during clashes, incidents of stone-throwing and protests, as well as incarceration.¹²¹

“My daughter and I were going out one day and when we were crossing the Wadi al-Ghrus checkpoint, the soldiers told me my daughter had metal on her. They said it was in her bra and they wanted to check it. I asked why they wanted to search her in the street when there was no female soldier there to do it. I refused to put her through that, but they did not listen, and in the end they refused to allow us to pass.”

Palestinian woman, Governorate of Hebron

59. The cumulative effects of occupation practices, including restrictions on movement, have affected the equal rights of women and girls and impeded their self-reliance. Women and girls are specifically vulnerable to gender-based violence as they go about their everyday activities.¹²² Searches by male soldiers and harassment, including at checkpoints, have affected the movements of women and girls and have served to deprive them of equal access to family life, education, health care and employment.¹²³ Women and girls have also been subjected to harassment and violent attacks by settlers.¹²⁴ Victims and witnesses have reported the use of racist and sexist language by male and female settlers and soldiers directed towards them or towards female family members, causing them anxiety, fear and feelings of humiliation.¹²⁵

¹²⁰ See Save the Children, “‘Danger is our reality’: the impact of conflict and the occupation on education in the West Bank of the occupied Palestinian territory”, 2020, p. 5. See also Save the Children, “‘Hope under the rubble’: the impact of Israel’s home demolition policy on Palestinian children and their families”, pp. 4–6, 12 and 13; and Occupied Palestinian Territories Education Cluster, *Education Cluster Strategy Palestine 2020–2021*, 2020, p. 9.

¹²¹ See Occupied Palestinian Territories Education Cluster, *Education Cluster Strategy Palestine 2020–2021*, pp. 8–11. See also [E/ESCWA/CL2.GPID/2020/TP.29](#), pp. 30 and 31; [A/HRC/43/67](#), para. 51.

¹²² See [TD/B/67/5](#), para. 33; [A/HRC/46/63](#), para. 21; [A/HRC/50/21](#), para. 61; and [E/ESCWA/CL2.GPID/2020/TP.29](#), p.11. For a definition of gender-based violence, see Committee on the Elimination of Discrimination against Women, general recommendation No.19, para. 6 and general recommendation No. 35 (2017), para. 14.

¹²³ Convention on the Elimination of All Forms of Discrimination against Women, arts. 10–12. Also reported by multiple other sources, for example B’Tselem, “Occupation routine: soldiers detain Palestinian girl, 13, after settlers claim to see her holding knife”, 30 June.

¹²⁴ See [A/HRC/12/48](#), footnote 713; [A/HRC/35/30/Add.1](#), paras. 66 and 67; [A/HRC/46/63](#), para. 11; and [CEDAW/C/ISR/CO/6](#), paras. 30 and 31.

¹²⁵ See B’Tselem, “Sexism, homophobia and harassment by settlers and soldiers: life’s routine in Hebron (video)”, 11 July 2021. See also B’Tselem, “‘You can take your camera and stick it straight up your big ass’”, 29 August 2017; and Idit Avrahami and Noam Sheizaf, *H2: The Occupation Lab*.

B. Demolitions, forced evictions, forced displacement and transfer

“The demolition of houses, as you know, threatens the existence and the safety of us as human beings. Therefore, it has a noticeable direct psychological and emotional impact on us, especially women and children, as the home is the safest place for them.”

Palestinian man, Governorate of Hebron

60. The occupation policies implemented by Israel result in violations of the right of Palestinians to an adequate standard of living.¹²⁶ Palestinian homes are frequently demolished, since Palestinians are largely unable to obtain a building permit and so build without one. Israeli authorities issued almost 20,000 demolition orders in Area C between 1988 and 2020.¹²⁷ To date, more than 8,500 structures have been demolished in the Occupied Palestinian Territory.¹²⁸

61. International humanitarian law provides that private property in occupied territories must be respected and cannot be confiscated.¹²⁹ It also provides that any destruction by the occupying Power of property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.¹³⁰

62. The demolition and confiscation of livelihood structures, such as shops, animal shelters, walls and warehouses, as well as of infrastructure, such as water pipes, cisterns and roads, has had a substantial impact on Palestinians’ access to livelihoods. Since the beginning of 2022, Israel has demolished 500 structures in the Occupied Palestinian Territory, 153 of which were related to agriculture and 136 to livelihoods.¹³¹

63. Bedouin and herder communities are at a particular risk of demolitions, forced evictions and forcible transfer. Israeli authorities have used overt coercion in forcing them to leave their homes and make way for Israeli use of the land. Among those affected are the Palestinian herder communities in Masafer Yatta, which have been subjected to several waves of demolitions and evictions.¹³² On 4 May 2022, the Supreme Court of Israel ruled that the forcible transfer of Palestinians and the demolition of their communities in Masafer Yatta were legal.¹³³ The ruling violates international legal prohibitions on the destruction of property and deportation or forcible transfer of the civilian population of an occupied territory.

¹²⁶ International Covenant on Economic, Social and Cultural Rights, art. 11. See also [E/C.12/ISR/CO/4](#), paras. 48 and 49.

¹²⁷ See B’Tselem, “Planning Policy in the West Bank”, 11 November 2017. See also Office for the Coordination of Humanitarian Affairs, “Demolition orders against Palestinian structures in Area C – Israeli Civil Administration data”.

¹²⁸ Office for the Coordination of Humanitarian Affairs, “Data on demolition and displacement in the West Bank” (follow the link “more breakdowns”). Accessed on 23 August 2022.

¹²⁹ The Hague Regulations, art. 46.

¹³⁰ Fourth Geneva Convention, art. 53.

¹³¹ Office for the Coordination of Humanitarian Affairs, “Data on demolition and displacement in the West Bank” (follow the link “more breakdowns”). Accessed on 23 August 2022.

¹³² [A/HRC/49/85](#), para. 26.

¹³³ Supreme Court decision in case No. 413/13 and case No. 1039/13. Available in Hebrew at <https://supremedecisions.court.gov.il/Home/Download?path=HebrewVerdicts%2F13%2F130%2F004%2Fn89&fileName=13004130.N89&type=2&fbclid=IwAR03oMksoLjnT2qD1Zk1eEhbmrrfbGhCXm517cdRVh1GQB9B2eR6FmHUkr0>.

C. Settlements and violence

“Even though settlers have repeatedly attacked members of my family, none of my complaints to the police have been taken seriously. I filed complaints both with the Israeli police and the Palestinian liaison office, but nothing has happened and no one has been charged. No one is held accountable, and the violence continues.”

Palestinian man, Governorate of Hebron

64. Settler violence is a key manifestation of the coercive environment, with incidents increasing in number and severity over the years. From January to July 2022, there were 398 settler attacks in the West Bank, with 84 attacks resulting in casualties. By comparison, there were 496 attacks during the whole of 2021 and 358 attacks in 2020.¹³⁴ The severity of the attacks has also increased; recently there have been verified reports of settlers carrying out attacks while Israeli security forces were nearby, and of Israeli security forces attacking Palestinians alongside settlers.¹³⁵ The Defence Minister of Israel reportedly reaffirmed in December 2021 the position that the Israeli military is responsible for intervening in settler attacks. In practice, the military permits settlers to be armed and rarely intervenes to protect Palestinians.¹³⁶ The Commission emphasizes that Israel as the occupying Power bears responsibility for protecting Palestinians against settler attacks. Such attacks violate the right of Palestinians to life, liberty and security of the person. Victims also have a right to an effective and timely remedy, including reparations, which is not ensured in relation to settler violence.¹³⁷

65. The laws of belligerent occupation require that the occupying Power take measures to restore and ensure, as far as possible, public order and safety to the population under occupation. International law specifically requires protected persons to be treated humanely and to be protected at all times, in particular against all acts of violence or threats thereof.¹³⁸

66. Israeli courts have charged few persons suspected of committing violent acts against Palestinians, which contributes to a prevailing climate of impunity.¹³⁹ Accountability measures have been particularly deficient in cases where settlers or the military alongside settlers have killed Palestinians.¹⁴⁰ **On the whole, the civilian and military security forces of Israel rarely protect Palestinians from settler violence. They have been documented standing by and observing violent attacks by settlers and, on occasion, collaborating with such attacks. Judicial authorities rarely hold settlers accountable.**

67. A significant number of settler-related violent incidents in the West Bank is linked to outposts.¹⁴¹ The combination of inadequate Israeli action to prevent the

¹³⁴ Office for the Coordination of Humanitarian Affairs, “Protection of civilians report, 2–15 August 2022”, 19 August 2022.

¹³⁵ A/HRC/49/85, para. 13.

¹³⁶ Yaniv Kubovich and Amos Harel, “Israeli army and police blame each other as settler violence rages on”, *Haaretz*, 7 February 2022.

¹³⁷ International Covenant on Civil and Political Rights, art. 2, para. 3, and arts. 6 and 9.

¹³⁸ Fourth Geneva Convention, art. 27.

¹³⁹ A/HRC/49/85, para. 20.

¹⁴⁰ *Ibid.*, paras. 21 and 22.

¹⁴¹ *Ibid.*, para. 40. See also Peace Now, “Violent settlement: the connection between illegal outposts and settler violence”, November 2021, available at http://peacenow.org.il/wp-content/uploads/2021/12/settlers_report_eng.pdf.

building of outposts or dismantle them, and the absence of significant accountability for settler violence has given settlers a general sense of lawlessness and impunity. The village of Burin near Nablus, for example, has repeatedly been attacked by settlers coming from the direction of the Giv'at Ronin outpost. During some of the attacks, settlers were reportedly escorted by Israeli security forces, who took no action to stop them.¹⁴²

68. In addition to settler violence, the erection of outposts and settlements generates violence, including lethal force, against Palestinians when they engage in protests. One example is the Evyatar outpost, south of Nablus, which was erected by settlers on 3 May 2021. In reaction to its establishment, Palestinians from Bayta town, on whose land the outpost was established, held almost daily demonstrations. Demonstrators threw stones and, on some occasions, Molotov cocktails toward Israeli forces. Israeli forces responded with live ammunition, rubber-coated metal bullets, tear-gas canisters and stun grenades, killing at least 10 Palestinians, including two children, and injuring more than 6,000 Palestinians, according to the Office for the Coordination of Humanitarian Affairs.¹⁴³

D. Deprivation of natural resources, livelihoods and an adequate standard of living

“We are not leaving our land. Our land is our main source of income, it’s our land and our fathers’ and grandfathers’ land. Where else would we go and what else would we live from?”

Palestinian man, Governorate of Hebron

69. Israeli policies outlined in the present report, such as those on the expropriation of natural resources and on building restrictions, have directly affected the economic, social and cultural rights of Palestinians, including their rights to housing, an adequate standard of living, food, water and sanitation, health care and education.

70. The complete control exerted by Israel over water resources is a key factor preventing Palestinians from accessing affordable and adequate water. This control, coupled with prohibitions on the construction of new water installations or carrying out maintenance on existing installations without a military permit, has put Palestinians at a heightened risk of water scarcity. Palestinians purchase water from official or private providers at a high cost, around six times higher than the national price.¹⁴⁴ The price of trucked water in the West Bank is three times more than the national price of piped water.¹⁴⁵

¹⁴² B’Tselem, “Burin, Nablus District: settlers attack Israeli activists with stones and clubs and vandalize cars”, 2 March 2022. See also B’Tselem, “Israeli settlers escorted by soldiers attack homes with stones in Burin, Nablus District”, 18 July 2022.

¹⁴³ Office for the Coordination of Humanitarian Affairs, “Data on casualties”, available at www.ochaopt.org/data/casualties. See also A/HRC/49/85, paras. 42–49.

¹⁴⁴ A/HRC/48/43, paras. 26–35 and 43.

¹⁴⁵ See Office for the Coordination of Humanitarian Affairs, Reliefweb, “Challenges accessing water in the West Bank”, 14 April 2021.

“Women are the cornerstones of our society. We do the cleaning, the cooking, and we produce the dairy products and herd the sheep. The occupation deprives us of electricity, water, roads, education – all of this affects the lives and the role of women in our communities. The men work outside the village and are not always here.”

Palestinian woman, Governorate of Hebron

71. The lack of affordable water affects herders in rural areas, as they require more water to maintain their livestock. In addition, as part of its demolition policies, Israel often confiscates water cisterns belonging to herder communities. For example, in the village of al-Jawaya in the south Hebron hills, three water cisterns were confiscated by the Civil Administration on 19 July 2022.¹⁴⁶ Women and girls are particularly affected by the shortage of water, as they have additional water-related needs for their hygiene and privacy, and are expected to secure water for domestic consumption, cleaning and washing, and for the care for children, the elderly and sick, and livestock.¹⁴⁷

72. Palestinian agriculture has suffered as a result of Israeli water policies, land expropriation and waste dumping.¹⁴⁸ Land available for Palestinian agriculture has been reduced from 2.4 million dunams in 1980 to around 1 million dunams in 2010, while the share of agriculture in the Palestinian gross domestic product has declined from 35 per cent in 1972 to just 4 per cent in recent years.¹⁴⁹

73. Women have suffered disproportionately from the decline of the agricultural sector because alternative employment opportunities have failed to emerge.¹⁵⁰ While approximately 60 per cent of Palestinian women worked in agriculture prior to the occupation, currently only 8 per cent work in the sector, mainly because of the loss of land and water.¹⁵¹ Moreover, other employment opportunities in Israel and Israeli settlements are primarily in the construction sector and/or require passage through Israeli checkpoints, which make them less viable for women.¹⁵² The labour force participation rate of Palestinians in the West Bank is sharply different for women and men. For women, it is estimated at 17 per cent, for men at 74 per cent. The rate for women remains among the 10 lowest in the world.¹⁵³ Women’s right to livelihoods is

¹⁴⁶ B’Tselem, “Israel demolishes home and 2 livestock enclosures and rest tent, and confiscates 3 water containers, al-Jawaya, South Hebron Hills”, 19 July 2022.

¹⁴⁷ See [E/ESCWA/CL2.GPID/2020/TP.29](#), pp. 23 and 35. See also Bimkom, “The effect of forced transfer on Bedouin women”, 2017; and Abdel-Rahman Al-Tamimi, *Environmental Challenges in Palestine “Gender Perspectives”*, Palestinian Working Women Society for Development (October 2021), pp. 16, 26 and 27.

¹⁴⁸ See Women’s Centre for Legal Aid and Counselling, “WCLAC’s shadow report for the Committee on Economic, Social and Cultural Rights, 66th Session – Israel Review, 2019”, p. 11. Available at <http://www.wclac.org/files/library/19/10/yekz3kqu2vf4q0o3xolozc.pdf>.

¹⁴⁹ See United Nations Conference on Trade and Development, *The Besieged Palestinian Agricultural Sector*, pp. 7 and 8. See also [TD/B/67/5](#), para. 31.

¹⁵⁰ See [TD/B/67/5](#), para. 31, and Women’s Centre for Legal Aid and Counselling, “WCLAC’s shadow report”, p. 11.

¹⁵¹ See International Labour Organization (ILO), *The Situation of Workers of the Occupied Arab Territories: Report of the Director-General – Appendix*, 2021 (ILO document ILC.109/DG/APP/2021), p. 18.

¹⁵² See [TD/B/67/5](#), para. 31.

¹⁵³ As at 2019. See [E/ESCWA/CL2.GPID/2020/TP.29](#), p. 32.

further harmed by persistent income gaps and by their limited control over other economic assets such as land and property.¹⁵⁴

74. The Commission finds that the policies that Israel has implemented have had a serious impact on the environment in violation of its obligations as an occupying Power to safeguard public and private properties of occupied territory, unless justified by military necessity.¹⁵⁵ They include construction, such as that of the wall, the destruction of olive, grape and orange orchards to the detriment of both biodiversity and ecosystems, the transfer of Israeli hazardous waste to treatment plants in the West Bank in contravention of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal,¹⁵⁶ the transfer of electronic waste,¹⁵⁷ the overexploitation of natural resources including water,¹⁵⁸ the lack of air-pollution control for Israeli industries in the West Bank and the considerable damage caused to agricultural land.¹⁵⁹

VII. Conclusions

A. Legality of the occupation: permanency and de facto annexation

75. **The Commission finds that there are reasonable grounds to conclude that the Israeli occupation of Palestinian territory is now unlawful under international law owing to its permanence and to actions undertaken by Israel to annex parts of the land de facto and de jure. Actions by Israel that are intended to create irreversible facts on the ground and expand its control over territory are reflections as well as drivers of its permanent occupation.** The settlement enterprise is the principal means by which those results are achieved. Statements made by Israeli officials provide further evidence that Israel intends the occupation to be permanent, as does the absence of actions intended to end the occupation, including in respect to a “two-State solution” or any other solution. By continuing to occupy the territory by force, Israel incurs international responsibilities arising from a continued violation of an international obligation, and remains accountable for any violations of the rights of the Palestinian people.

76. The Commission concludes that Israel treats the occupation as a permanent fixture and has – for all intents and purposes – annexed parts of the West Bank, while seeking to hide behind a fiction of temporariness. **Actions by Israel constituting de facto annexation include expropriating land and natural resources, establishing settlements and outposts, maintaining a restrictive and discriminatory planning and building regime for Palestinians and extending Israeli law extraterritorially to Israeli settlers in the West Bank.** The International Court of Justice anticipated such a scenario in its 2004 advisory opinion, in which it stated that the wall was

¹⁵⁴ See State of Palestine, Palestinian Central Bureau of Statistics, press report on the labour force survey results, 7 August 2019, p. 24, available at http://pcbs.gov.ps/portals/_pcbs/PressRelease/Press_En_7-8-2019-lf_3-en.pdf. See also E/ESCWA/CL2.GPID/2020/TP.29, pp. 32 and 33.

¹⁵⁵ Fourth Geneva Convention, art. 53.

¹⁵⁶ See United Nations Environment Programme, *State of Environment and Outlook Report for the occupied Palestinian territory 2020* (Nairobi, 2020), p. 112. See also www.basel.int/TheConvention/Overview/tabid/1271/Default.aspx.

¹⁵⁷ See TD/B/EX(71)/2, para. 48.

¹⁵⁸ See A/HRC/48/43. See also Office of the United Nations High Commissioner for Human Rights, “Israel’s exploitation of Palestinian resources is human rights violation, says UN expert”, 18 March 2019.

¹⁵⁹ See B’Tselem, “Made in Israel: exploiting Palestinian land for treatment of Israeli waste”, December 2017, p. 14.

creating a fait accompli on the ground that could well become permanent and tantamount to de facto annexation. This has now become the reality.

77. **The Commission emphasizes that the occupation and de facto annexation policies of Israel have had a severe impact on Palestinian lives throughout the West Bank and constitute grave violations and abuses of human rights as well as violations of international humanitarian law. The commitment of Israel to supporting this enterprise has resulted in a series of policies that are intended to sustain and extend the enterprise, which have negatively affected all areas of Palestinian life.** They include evictions, deportations and the forcible transfer of Palestinians within the West Bank, the expropriation, looting, plundering and exploitation of land and vital natural resources, movement restrictions and the maintenance of a coercive environment with the aim of fragmenting Palestinian society, encouraging the departure of Palestinians from certain areas and ensuring that they are incapable of fulfilling their right to self-determination. The Commission stresses that business enterprises are contributing to the expropriation and exploitation by Israel of Palestinian land and resources and are supporting the transfer of Israeli settlers into the Occupied Palestinian Territory.

78. The Commission has specifically paid attention to gender-based violations and finds that the policies implemented by Israel in the Occupied Palestinian Territory are having a pervasive discriminatory effect on Palestinian women. Those policies have placed women in a position of substantial economic and social vulnerability in comparison to men. The structural reasons that make women and girls vulnerable to the de facto annexation policies implemented by Israel remain unaddressed by all duty bearers. **Victims of gender-based violence, including of attacks, harassment and threats directed at women and girls by settlers, are not afforded protection from Israel or recourse to justice in areas under its control. All duty bearers, including Israel, have the obligation to take all appropriate measures to eliminate discrimination and violence against women, including by private actors.**¹⁶⁰

79. The Commission considers that the security concerns asserted by Israel as justifications for many of its policies cannot be looked at in isolation. Although Israel has some legitimate security concerns, **the Commission finds that a significant number of the policies and actions implemented by Israel in the West Bank are not intended to address these concerns, but rather that security is often used to justify the territorial expansion of Israel.** In addition, and notwithstanding security concerns, all actions implemented by Israel must remain in conformity with applicable international law. The permanent dispossession of the Palestinian people and the denial of their basic rights will never be a recipe for achieving sustainable security.

80. Moreover, certain “security” policies, including settler-only roads, closures, restrictions on the freedom of movement and punitive home demolitions, are based on discriminatory and otherwise unlawful measures and appear to constitute collective punishment against an entire population. The Commission emphasizes that, as the occupying Power, Israel has the duty to ensure the protection, security and welfare of the people living under its occupation and to guarantee that they can live as normal a life as possible, in accordance with their own laws, culture and traditions.

81. The purported de jure annexation by Israel of East Jerusalem is unequivocally unlawful, null and void, and has been recognized as such by the United Nations. The

¹⁶⁰ Convention on the Elimination of All Forms of Discrimination against Women, art. 2. See also Committee on the Elimination of Discrimination against Women, general recommendation No. 35 (2017), para. 24.

Commission emphasizes that the situation for Palestinians in East Jerusalem continues to deteriorate as Israel expands its East Jerusalem settlements and applies measures and policies intended to further reduce Palestinian space and coerce them to leave their homes.

82. Israel remains in occupation of Gaza by virtue of the control exercised over, inter alia, its airspace and territorial waters, its land crossings at the borders and its supply of civilian infrastructure, including water and electricity.

83. In relation to the situation in Israel itself, the Commission has reviewed the treatment of Palestinian citizens of Israel and notes that they are still subjected to discriminatory laws and public policies, including in the areas of education, housing and construction, and employment, a matter that the Commission intends to examine in a future report.

84. **In the view of the Commission, the permanent occupation and de facto annexation by Israel, including the actions undertaken by Israel as identified in the present report, cannot remain unaddressed.** The International Court of Justice should be requested to advise on the legal consequences of the continued refusal by Israel to end its occupation and of the steps it has taken to entrench its control and expansion into the occupied area through de facto annexation, and on the obligations of third States and the United Nations to ensure that Israel respects international law.

B. International criminal law

85. The Commission concludes that some of the policies and actions carried out by the Government of Israel that are leading to permanent occupation and therefore to de facto annexation may constitute elements of crimes under international criminal law. Specifically, the Commission draws attention to the establishment of settlements in the Occupied Palestinian Territory in a breach of article 49 of the Fourth Geneva Convention. Consistent with the preliminary examination findings of the Prosecutor of the International Criminal Court,¹⁶¹ the Commission finds on reasonable grounds that war crimes may have been committed under article 8 (2) (b) (viii) of the Rome Statute in relation to the transfer of parts of the occupying Power's own population into the West Bank.

86. The Commission also finds that the policies identified in the present report that have contributed to the forced displacement of the Palestinian population from certain areas, altered the demographic composition of the Occupied Palestinian Territory and resulted in Palestinian communities being almost completely encircled by Israeli settlements, may constitute the crime against humanity of deportation or forcible transfer of population under article 7 (1) (d) of the Rome Statute. Such policies, appear to form part of an intentional, widespread and systematic attack directed at the Palestinian population with the aim of forcibly transferring them from parts of the West Bank to alter the demographic make-up. These acts may also amount to the crime against humanity of persecution under article 7 (1) (h) of the Rome Statute.

87. The Commission also finds that the looting, plundering and exploitation of natural resources by both private persons and commercial entities for private or personal use, as highlighted in paragraph 37 of the present report, may amount to the war crime of pillage under the article 8 (2) (b) (xvi) of the Rome Statute.

¹⁶¹ Office of the Prosecutor of the International Criminal Court, "Situation in Palestine: summary of preliminary examination findings". Available at www.icc-cpi.int/sites/default/files/items/Documents/210303-office-of-the-prosecutor-palestine-summary-findings-eng.pdf.

88. Along with the direct perpetration of such crimes and the responsibility of political leaders, military commanders and other superiors, the Commission intends to explore the criminal responsibility of persons facilitating the commission of crimes through actions that aid, abet or otherwise assist.

C. Third-party responsibility

89. The International Court of Justice has emphasized that, under article 1 of the Fourth Geneva Convention, every State party is under an obligation not to recognize the illegal situation resulting from the construction of the wall in the Occupied Palestinian Territory and not to render aid or assistance in maintaining the situation created by such construction. It has further expressed the view that the United Nations, especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime.¹⁶²

90. Articles 146 to 148 of the Fourth Geneva Convention further require States parties to provide penal sanctions for persons committing, or ordering to be committed, grave breaches. Several such grave breaches have been identified in the present report, such as the unlawful deportation or transfer, or unlawful confinement of a protected person, and the extensive destruction and expropriation of property not justified by military necessity and carried out unlawfully and wantonly.

VIII. Recommendations

91. **The Commission recommends that the Government of Israel:**

(a) **Comply fully with international law and end without delay its 55 years of occupation of the Palestinian and Syrian territories;**

(b) **Comply with its obligations under international humanitarian law and international human rights law, including, specifically, with regard to the obligation to respect, protect and fulfil the right of the Palestinian people to self-determination and its right to freely utilize natural resources, under international human rights law, including article 1 of both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.**

92. **The Commission recommends that the General Assembly:**

(a) **Urgently request an advisory opinion from the International Court of Justice on the legal consequences of the continued refusal on the part of Israel to end its occupation of the Occupied Palestinian Territory, including East Jerusalem, amounting to de facto annexation, of policies employed to achieve this, and of the refusal on the part of Israel to respect the right of the Palestinian people to self-determination, and on the obligations of third States and the United Nations to ensure respect for international law;**

(b) **Transmit the present report to the Security Council and request that it consider further action to bring to an end the illegal situation resulting from the permanent occupation imposed by Israel, and call upon the Security Council to require Israel to immediately bring its permanent occupation to an end.**

¹⁶² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004*, p. 136, paras. 159 and 160.

93. The Commission recommends that the Office of the Prosecutor of the International Criminal Court prioritize the investigation into the situation in the Occupied Palestinian Territory and, in addition to identifying direct perpetrators and those exercising command responsibility, investigate those aiding, abetting or otherwise assisting in the commission of crimes under the Rome Statute, including by providing the means for their commission.

94. The Commission recommends that the Security Council urgently consider measures to ensure that Israel immediately complies with its international legal obligations and with prior Council resolutions, including those in which the Council has called for an end to the occupation, has declared the acquisition of territory by force inadmissible and has found that settlement activity constitutes a flagrant violation of international law.

95. The Commission recommends that States Members of the United Nations uphold their obligations under international law, including their extraterritorial human rights obligations, and obligations under the common article 1 to the four Geneva Conventions and articles 146, 147 and 148 of the Fourth Geneva Convention, including by investigating and prosecuting persons suspected of committing or otherwise aiding and abetting or assisting in the commission or attempted commission of crimes under international law in the Occupied Palestinian Territory.



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Human rights questions: human rights situations and reports of special rapporteurs and representatives

Question of the violation of human rights in the occupied Arab territories, including Palestine

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on violations of international humanitarian law and human rights in the Palestinian territories occupied since 1967, submitted by John Dugard, Special Rapporteur, pursuant to Commission on Human Rights resolutions 1993/2, section A, and 2001/7 and Economic and Social Council decision 2001/246.

* In accordance with General Assembly resolution 55/222, part III, paragraph 10, the present report is being submitted on 4 October 2001 so as to include as much updated information as possible.



**Report of the Special Rapporteur of the Commission on
Human Rights on the situation of human rights in the
Palestinian territories occupied by Israel since 1967**

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I. Introduction

1. The current Special Rapporteur, John Dugard (South Africa), was appointed in July 2001. In August 2001, the Special Rapporteur undertook a mission to the Occupied Palestinian Territories and Israel. Meetings were held with Palestinian and Israeli non-governmental organizations, international agencies in the region and members of the Palestinian Authority. Unfortunately, the Special Rapporteur was not able to meet with Israeli authorities as the Government of Israel made it clear at the outset of his appointment that it would not cooperate because of objections it has to the terms of his mandate. (This matter is discussed below.) On this mission, the Special Rapporteur met with interlocutors in the Gaza Strip, Jerusalem and the West Bank. The Special Rapporteur also visited Rafah, Beit Jala and Shu'afat to see the destruction of houses and property, and Jericho, to examine the manner in which the city had been closed by means of trenches cutting off access roads.

2. In February 2001, the Special Rapporteur visited the area as the chairperson of the Human Rights Inquiry Commission established pursuant to Commission on Human Rights resolution S-5/1 of 19 October 2000. That Inquiry Commission spent more time in the area, consulted more widely with informed persons and prepared a more comprehensive report (E/CN.4/2001/121) than the present report. The Human Rights Inquiry Commission criticized the excessive use of force employed by the Israeli Defense Force, the assassination of prominent Palestinians, the presence and expansion of settlements in the West Bank and Gaza, the activities of settlers and the closure of Palestinian areas, which has resulted in the widespread violation of economic and social rights. The Commission made a number of recommendations designed to bring an end to the military occupation of the Occupied Palestinian Territories and to establish a dispensation that meets the legitimate expectations of the Palestinian people concerning the realization of their right to self-determination and the genuine security concerns of the people of Israel.

3. The present report is based on the two visits made to the area in 2001, consultation and discussion with persons outside the area, the study of materials on the situation in the Occupied Palestinian Territories and wide media coverage.

II. The mandate of the Special Rapporteur

4. The mandate of the Special Rapporteur is to be found in two instruments. In resolution 1993/2, section A, the Commission on Human Rights decided to appoint a Special Rapporteur with the following mandate:

“(a) To investigate Israel’s violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967;

(b) To receive communications, to hear witnesses, and to use such modalities of procedure as he may deem necessary for his mandate;

(c) To report, with his conclusions and recommendations, to the Commission on Human Rights at its future sessions, until the end of the Israeli occupation of those territories.”

In resolution 2001/7, the Commission on Human Rights welcomed the recommendations contained in the reports of the High Commissioner for Human Rights (E/CN.4/2001/114) and the Human Rights Inquiry Commission (E/CN.4/2001/121), urged the Government of Israel to implement them and requested “the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, acting as a monitoring mechanism, to follow up on the implementation of those recommendations and to submit reports thereon to the General Assembly at its fifty-sixth session and the Commission at its fifty-eighth session”.

5. The mandate of the Special Rapporteur has been criticized by a number of States, particularly Israel, on the ground that it singles out Israel for special attention as a violator of human rights despite the fact that, since the implementation of the Oslo Accords (A/51/889-S/1997/357), and related agreements the control of the lives of over 90 per cent Palestinians has passed to the Palestinian Authority, which now has full control over the so-called “A” zones which include most Palestinian cities and towns. There would be substance in this criticism if the mandate of the Special Rapporteur were to investigate and report on Israel’s violations of human rights in the Occupied Palestinian Territories without regard to the military occupation of those territories. This would be unfair as the Palestinian Authority does, for instance, have full jurisdiction over the administration of justice in the “A” zones and in most societies it is in this field that most violations of human rights occur. The mandate of the Special Rapporteur is not, however, to investigate human rights violations in the Occupied Palestinian Territories outside the context of military occupation. Resolution 1993/2, section A makes it clear that the Special Rapporteur is required to investigate violations of international humanitarian law committed by the occupying authority — *Israel* — until the end of the Israeli occupation of the Occupied Palestinian Territories. There is a close connection between international humanitarian law and human rights — a connection reaffirmed by the General Assembly in its resolution 2675 (XXV). It is therefore impossible to examine violations of international humanitarian law or general international law without reference to human rights norms, particularly in a situation of prolonged occupation of the kind that continues to prevail in the Occupied Palestinian Territories. The mandate therefore includes the investigation of human rights violations committed by Israel in the Occupied Palestinian Territories, but only in the context of military occupation. It is the prolonged military occupation of the Occupied Palestinian Territories which makes the mandate of the Special Rapporteur unusual and which distinguishes it from other special rapporteurships established by the Commission on Human Rights.

III. The occupation as the root cause of the conflict

6. In 1967, Israel occupied the West Bank and Gaza Strip. This occupation continues some 34 years later. Israel has invoked a number of arguments to support its legal claim that the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 1949 is not applicable to the Palestinian territories occupied by Israel since 1987, including East Jerusalem. First, it argues that as the sovereignty of Jordan over the West Bank was questionable and Egypt never asserted sovereignty over Gaza, there was no sovereign Power at whose expense Israel occupied these territories. Consequently, although Israel is a party to

the Fourth Geneva Convention of 1949, it maintains that it is not bound by law to treat the territories as occupied territories within the meaning of the Fourth Geneva Convention. Secondly, it now argues that, even if the above argument is incorrect, that Israel can no longer be viewed as an occupying Power in respect of the “A” areas, accommodating the majority of the Palestinian population, because effective control in those areas has been handed over to the Palestinian Authority.

7. Neither of those arguments is tenable in law. The first, premised on a strained interpretation of article 2 of the Geneva Convention, fails to take account of the fact that the law of occupation is concerned with the interests of the population of an occupied territory rather than those of a displaced sovereign. The second, that Israel is no longer an occupying Power because it lacks effective control over “A” areas of the Occupied Palestinian Territories, is likewise unacceptable. The test for the application of the legal regime of occupation is not whether the occupying Power fails to exercise effective control over the territory, but whether it has the ability to exercise such power, a principle affirmed by the United States Military Tribunal at Nürnberg *In re List and others (The Hostages Case)* in 1948. The Oslo Accords leave Israel with ultimate legal control over all of the Occupied Palestinian Territories and the fact that for political reasons it has generally chosen not to exercise this control over the “A” zones, when it undoubtedly has the military capacity to do so (as illustrated by the Israeli military incursion into the “A” zone town of Beit Jala in August 2001), cannot relieve Israel of its responsibilities as an occupying Power.

8. The international community therefore rejects the argument that the Fourth Geneva Convention is inapplicable to the Occupied Palestinian Territories. Repeated resolutions of the Security Council and the General Assembly call upon Israel to comply with the prescriptions of the Convention and reject the purported annexation of East Jerusalem by Israel. For the international community, the Fourth Geneva Convention is the governing law.

9. Violence in the Occupied Palestinian Territories and Israel during the past several months has tended to obscure the fact that the root cause of the present conflict in the region is military occupation. Media reports are so concerned with the killing of Palestinian leaders by carefully directed missiles and with suicide bombings within Israel that the fact of occupation is overlooked. At times, the conflict is portrayed as if it were an international conflict between two States, employing different instruments of war, over “disputed territories”. At other times, it is portrayed as an internal conflict with the rebels employing terror as a military strategy. The United States-brokered “Tenet ceasefire plan” (*Ha'aretz*, June 14, 2001), while a laudable attempt to end the violence in the region, nowhere mentions the military occupation in its concern for security and crisis management. It should not, however, be forgotten that Israel occupied the West Bank (including East Jerusalem) and the Gaza Strip by force in 1967; that this occupation should be brought to an end, as by its very nature military occupation is a temporary phenomenon pending an acceptable peace settlement; and that until the occupation is terminated, Israel, as the occupying Power, is obliged to comply with the Fourth Geneva Convention.

10. The present report focuses on military occupation as the root cause of the present conflict in the Occupied Palestinian Territories and Israel, as the cause of the violation of human rights and humanitarian law in the region. It aims to restore

occupation to centre stage. The violence in the region, whether caused by Israeli rocket-ships or Palestinian suicide bombers, is to be deplored and condemned. It is the immediate cause of the loss of life, of the violation of the right to life, that features pre-eminently in all human rights conventions. However, it is not the ultimate explanation for the violation of basic human rights in the region. This must be found in the military occupation of a people by an occupying power.

IV. Violence and loss of life

11. Since the start of the second intifada, in September 2000, over 530 Palestinians have been killed and over 15,000 injured. More than 150 Israelis have been killed. Most of those killed and injured have been civilians.

12. The first few months of the second intifada were characterized by violent clashes between Palestinian protesters, whose weapons were stones and molotov cocktails, and the Israel Defense Force. Most deaths and injuries were the result of gunfire from the Israel Defense Forces. In its report, the Human Rights Inquiry Commission found that the Israel Defense Forces had responded in a disproportionate manner to protesters and was guilty of the excessive use of force (E/CN.4/2001/121, paras. 44-52). Since then, the situation has changed radically as the Palestinians have moved from protest to armed force and the Israelis have responded by using heavier weaponry. Today, most Palestinian deaths have resulted from missile attacks directed at selected individuals suspected of terrorism, but which, inevitably, have also killed innocent bystanders, and from shootings carried out by soldiers and settlers, often after an exchange of gunfire. Israeli deaths have largely been caused by terrorist bombs in Israel itself and by gunfire directed at settlers on bypass roads or in the proximity of settlements.

13. In February 2001, the Human Rights Inquiry Commission had difficulty in categorizing the situation as a non-international armed conflict, defined by the Appeals Chambers of the International Criminal Tribunal for the Former Yugoslavia in the *Tadic* case as “protracted armed violence between governmental authorities and organized armed groups”. Today, as a result of the frequent exchanges of gunfire between the Israel Defense Forces and Palestinian gunmen, it is probable that this threshold has been met, albeit on an irregular and sporadic basis. However, while the Israel Defense Forces are now engaged in both law enforcement and action in armed conflict, and may therefore be entitled to greater latitude in the exercise of its powers as an occupying force, it is not freed from all restraints under international humanitarian law and human rights law. It is still obliged to observe the principle of distinction requiring that civilians not be made the object of attack “unless and for such time as they take a direct part in hostilities” (a principle reaffirmed in article 51(3) of Additional Protocol 1 to the Geneva Conventions). In addition, the Israel Defense Forces are obliged to comply with the principle of proportionality, which requires that injury to non-combatants or damage to civilian objects not be disproportionate to the military advantages derived from an operation. Above all, the Israel Defense Forces are subject to article 27 of the Fourth Geneva Convention, which stipulates that “protected persons are entitled in all circumstances, to respect for their persons and shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof ...”.

14. Both Israelis and Palestinians have violated important norms of humanitarian law and international law as the confrontation has changed its character. Israel's freely acknowledged practice of selected assassination or targeted killings of Palestinian activists cannot be reconciled with provisions of the Fourth Geneva Convention, such as articles 27 and 32, which seek to protect the lives of protected persons not taking a direct part in hostilities. They also violate human rights norms that affirm the right to life and the prohibition on execution of civilians without trial and a fair judicial process. There is no basis for killing protected persons on the basis of suspicion that they have engaged or will engage in terroristic activities. In addition, many civilians not suspected of any unlawful activity have been killed in these targeted killings, in the bombing of villages or in gunfire exchanges, in circumstances indicating an indiscriminate and disproportionate use of force.

15. The force employed by Palestinians is also contrary to the norms of international law. The shooting of settlers cannot be justified. Despite the fact that the settlements violate article 49(6) of the Fourth Geneva Convention, and the fact that the settlers' presence in the Occupied Palestinian Territories is illegal, settlers remain civilians and cannot be treated as combatants, unless, of course, they are engaged as soldiers in the Israel Defense Forces. The planting of bombs in public places in Israel, resulting in loss of life of innocent civilians, is contrary to emerging norms of international law, now codified in the 1998 International Convention for the Suppression of Terrorist Bombings (General Assembly resolution 52/164), article 2 of which criminalizes such conduct. The extent to which these actions are subject to the control of the Palestinian Authority is uncertain. No doubt it could do more to prevent the shooting of settlers and the culture of violence that produces suicide bombers. On the other hand, despite Israeli claims to the contrary, it seems unlikely that Palestinian violence is subject to any centralized control. In this respect, it differs from the Israeli use of force.

16. The failure of attempts to end the violence, either by calls for a ceasefire from the parties to the conflict, or from third States (notably the United States), or by security arrangements brokered from outside (such as the Tenet plan), suggests that the time has come for some international presence in the region to monitor and reduce the use of violence. This obvious conclusion was affirmed by the G8 Foreign Ministers in their meeting in Rome on 18 and 19 July 2001. Despite this, attempts to persuade the Security Council to approve such a plan have failed. The Special Rapporteur finds it difficult to understand why no serious attempt has been made by the international community to persuade Israel to accept such a presence (the Palestinian Authority having already agreed to an international presence). International monitors or peacekeepers have been employed in many less threatening situations in the world and there is no reason why the Occupied Palestinian Territories should be treated differently.

V. Occupation and the second intifada

17. The principal cause of the second intifada and of the escalating violence, in the view of the Special Rapporteur, is the continuing occupation — an occupation which has continued for over 34 years in the face of condemnation by the United Nations; an occupation whose substance (albeit not form) remained unaltered throughout the period of negotiations resulting from the Oslo Accords; an occupation that continues to frustrate and humiliate Palestinians. In the opinion of the Special Rapporteur,

peace will not be restored to the region until there is clear evidence of an intention on the part of the occupying Power to put an end to the occupation. At present, however, there is little evidence of such an intention. On the contrary, the signs of occupation have intensified since the start of the second intifada. Expanding settlements, demolition of houses and the destruction of property, restrictions on freedom of movement and the economic blockade are a constant reminder to Palestinians of the occupation.

A. Settlements

18. The international community is united in its categorization of Jewish settlements in the West Bank and Gaza as contrary to article 49(6) of the Fourth Geneva Convention, which prohibits an occupying power from transferring parts of its own civilian population into the territory it occupies. Numerous resolutions of the Security Council and the General Assembly have condemned the settlements as illegal.

19. Today, there are some 190 settlements in the West Bank and Gaza, inhabited by approximately 380,000 settlers, of whom some 180,000 live in the East Jerusalem area. Settlements are linked to each other and Israel by a vast system of bypass roads (from which Palestinian vehicles are excluded), which have a 50 to 75-metre buffer zone on each side of the road in which no building is permitted. These settlements and roads, which separate Palestinian communities and deprive Palestinians of agricultural land have fragmented both land and people. In effect, they foreclose the possibility of a Palestinian State as they destroy the territorial integrity of the Palestinian territory.

20. The relationship between settlers and Palestinians is an unhappy one and each side views the other with hostility, anger and suspicion. Protected by the Israel military, and exempt from the jurisdiction of the courts of the Palestinian Authority, settlers have committed numerous acts of violence against Palestinians and destroyed Palestinian agricultural land and property. Since the beginning of the second intifada, incidents of settler violence have dramatically increased. Palestinian hostility towards settlers has grown alarmingly since the start of this intifada and most of the Israelis killed in the present conflict have been settlers or soldiers charged with the task of protecting settlements and roads leading to settlements.

21. That peace is impossible without a complete freeze on all settlement activity was emphasized by the "Mitchell report" of 20 May 2001 (report of the Sharm Al Sheikh Fact-finding Committee). The response of the Government of Israel to that recommendation was far from satisfactory. It declared that "it is already part of the policy of the Government of Israel not to establish new settlements. At the same time, the current and everyday needs of the development of such communities must be taken into account". In other words, the "natural growth" of the settlements will continue.

22. The evidence of the continued expansion of settlement activity is all too clear. During his visit, the Special Rapporteur saw evidence of this in the form of construction activity in the settlements of Har Homa and Pisgat Ze'ev and in the extension of the buffer zones adjacent to bypass/settler roads in the Gaza Strip. He also received evidence of the growth in the number of housing units, the expansion of the territorial limits of settlements by means of caravan outposts established

adjacent to settlements, and of an increase in the settler population in the West Bank and Gaza from 203,067 in December 2000 to 205,015 in June 2001. Generous tax breaks and cheap housing in the settlements ensure that their growth will continue.

B. Demolition of houses and destruction of property

23. The demolition of houses in Palestinian territory, either for security purposes (as in Rafah) or for administrative reasons (as in the refugee camp of Shu'afat) continue. Since September 2000, over 300 homes have been completely demolished (compared with 93 in 1999). The Special Rapporteur saw evidence of the demolition of houses in Rafah and Shu'afat by bulldozer and of the destruction of houses in Beit Jala by missiles. This action, on the part of the Israeli authorities, is difficult to reconcile with article 53 of the Fourth Geneva Convention, which prohibits the destruction of property except where rendered "*absolutely* necessary by military operations". While Israel sees this action as justified on grounds of military necessity, Palestinians see it as part of a larger design to restrict Palestinian growth, encourage Palestinian emigration and humiliate the people.

24. The creation of buffer zones for bypass roads and settlements has resulted in the "sweeping" of large areas of agricultural land by bulldozers. A total of 385,808 fruit and olive trees have been uprooted, and wells and agricultural constructions destroyed.

C. Closure and checkpoints: restrictions on freedom of movement

25. Since 29 September 2000, Israel has imposed severe restrictions on freedom of movement in the occupied territories. International borders with Egypt and Jordan have been closed, the Gaza Strip has been sealed off from the rest of the Palestinian territory and over a hundred checkpoints have been placed on roads in the West Bank. The Israel Defense Forces have placed checkpoints at the entrances to villages and entry and exit are often possible only via dirt roads, entailing enormous hardships. Trips that once took 15 minutes now take several hours. In some of the villages, mostly in areas near settlements and bypass roads, the dirt roads have also been blocked with large concrete blocks and piles of dirt, and residents are imprisoned in their villages. The Special Rapporteur visited the city of Jericho, which has been encircled by a deep trench to deny vehicles access to the city except through an Israel Defense Forces checkpoint.

26. The cumulative effect of these restrictions on the freedom of movement of people and goods is understandably perceived by the Palestinians affected as a siege. It has resulted in severe socio-economic hardships in the Palestinian territory. The internal closures have effectively sealed Palestinian population centres and restricted movement from one locality to another. The restriction on the entry of Palestinians into Israel has meant denial of access to their places of work in Israel to an estimated 115,000 Palestinians. The economic results have been devastating: the families of these workers are now suffering from a complete lack of income, threatening them with destitution. Over 50 per cent of the Palestinian workforce is now unemployed. Health and education have also suffered. Ambulances are prevented from transporting the sick to hospitals and some schools have been unable to operate owing to curfews and closures.

27. Road checkpoints have become a regular feature of Palestinian life. Palestinians are obliged to wait for lengthy periods while Israeli soldiers check vehicles and inspect identity documents. In order to avoid these delays Palestinians often abandon their cars or leave their taxi and cross the checkpoint on foot to catch a taxi on the other side of the checkpoint. This practice indicates the purpose of the exercise. It is not to prevent would-be suicide bombers from crossing checkpoints that lead to Israel, as any such person may walk around the checkpoint carrying heavy baggage. Rather, it is to humiliate Palestinians and to put pressure on them to cease resistance to Israeli occupation. In this sense, it is a collective punishment of the kind prohibited by article 33 of the Fourth Geneva Convention.

D. Orient House

28. On 10 August 2001, Israeli security forces seized and occupied Orient House, the political headquarters of the Palestinian people in East Jerusalem, in retaliation for a suicide bomb attack in West Jerusalem. This action, which may be seen as further evidence of a determination on the part of the Government of Israel to assert its authority as an occupying Power, has exacerbated an already tense situation and placed another obstacle in the path of peace.

VI. Concluding remarks

29. It is clearly necessary to bring the present violence in the Occupied Palestinian Territories and Israel to an end. Targeted killings of selected Palestinians by guided missiles, terrorist bombings in Israel and the indiscriminate killing of civilians by both sides must cease. That this is difficult to achieve is confirmed by the failures of numerous proclaimed ceasefires in recent months — failures for which both Israelis and Palestinians must accept responsibility. In these circumstances, there is a clear need for some international presence, either in the form of monitors or peacekeepers, to ensure that the ceasefire holds — or at least does better than at present. It is recommended that both Israel and the Palestinian Authority should agree to such an international presence. It is incumbent on the international community to ensure that such an agreement is forthcoming.

30. Israel's continued refusal to accept the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War as the governing law makes it imperative that the High Contracting Parties to the Convention convene as soon as possible to consider the applicability of the Convention and the violation of the Convention.

31. International humanitarian law and human rights norms have been seriously violated in the present conflict. Both Israelis and Palestinians should make every endeavour to promote respect for the rule of law. Israel's violation of the freedom of movement in the Occupied Palestinian Territories requires particular attention.

32. Settlements are an ever visible and aggravating sign of occupation and of Israel's illegal conduct as an occupying Power. It is not enough to merely impose a freeze on settlements. Steps must now start to dismantle settlements.

33. There is a need to rebuild confidence on both sides as a prelude to the resumption of negotiations leading to a permanent settlement. The Palestinians

could undoubtedly help to restore confidence by taking firmer measures to prevent terrorism in Israel. More is needed from Israel. Until Israel takes some action that indicates a willingness to contemplate the termination of the occupation, it is unlikely that the Palestinians will accept its good faith in negotiations aimed at a permanent settlement. Such action might take the form of a start in the dismantling of settlements: for example, the withdrawal of all settlements from the Gaza Strip. The Special Rapporteur appeals to the Government of Israel to take some action of this kind to restore confidence in the peace process.



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Human rights questions: human rights situations and reports of special rapporteurs and representatives

Question of the violation of human rights in the occupied Arab territories, including Palestine

Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on violations of international humanitarian law and human rights in the Palestinian territories occupied since 1967, submitted by John Dugard, Special Rapporteur, pursuant to Commission on Human Rights resolutions 1993/2, section A, and 2002/8 and Economic and Social Council decision 2002/243.

* A/57/150.

** In accordance with General Assembly resolution 55/222, part III, para. 10, the present report is being submitted beyond the 2 July deadline so as to include as much updated information as possible and the decision of the Economic and Social Council.

Executive summary

In the past several months, violence has escalated in both the Occupied Palestinian Territory and Israel. Israel has effectively reoccupied the Occupied Palestinian Territory and the peace process has completely stalled. Human rights and international humanitarian law have suffered drastically in the process.

Civilians are the main casualties of the conflict. Both Israel and Palestine have ignored the basic principles of distinction and proportionality in their actions against or involving civilians. Palestinian groups have been responsible for an increased number of suicide bombings in Israel and for the killing of settlers. The Israel Defense Forces (IDF) have been responsible for a heavy loss of life in their military incursions, particularly in Nablus and Jenin, and rocket attacks on militants. Many of those killed in both Israel and Palestine have been children.

IDF incursions in the West Bank have resulted in large-scale arrests and detentions. Detainees have been treated in an inhuman and degrading manner, sometimes constituting torture. These incursions have been characterized by a massive destruction of property, estimated by the World Bank at \$361 million.

Closures, checkpoints and curfews have destroyed freedom of movement for Palestinians, with disastrous consequences for human freedom, health, welfare and education.

Illegal settlements have continued to grow. Moreover, there is now a plan to build a fence or zone between Israel and the Occupied Palestinian Territory, which will result in a further annexation of Palestinian territory.

Fundamental norms of human rights law and international humanitarian law have been violated on a large scale. The destruction and disruption of the civil administration in the West Bank have serious implications for both the Palestinian people and the rule of law. Under the law, Israel, as the occupant, is obliged either to assume responsibility for civil administration itself or to permit the Palestinian Authority to carry out its functions properly. In terms of the Fourth Geneva Convention, all State Parties are required to ensure that this happens.

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I. Introduction

1. On 26 March 2002, the Special Rapporteur reported to the Commission on Human Rights at its fifty-eighth session on the situation of human rights in the Palestinian territories occupied by Israel since 1967. That report was based largely on a visit to the region in February 2002. Much has happened since then. Violence has escalated in both the Palestinian Territory and Israel, Israel has effectively reoccupied the Palestinian Territory and the peace process has completely stalled. Both the Security Council and the General Assembly have adopted resolutions, but to little avail.¹ The present report makes no attempt to give a full account of the events of the past few months or of the failed attempts to restore peace in the region, which are matters of public record that have received wide coverage in the media (see also A/ES-10/186). Instead, it focuses on the principal violations of human rights and international humanitarian law. Inevitably, much will happen in the Occupied Palestinian Territory between the writing of the present report and its presentation. An addendum will therefore be submitted later, based on a visit to the region planned for late August.

II. Human rights and terrorism

2. Since 11 September 2001, the response to terrorism has dominated the world's agenda and the protection of human rights has been reduced in importance. This is unfortunate as it is clear that the promotion and protection of human rights is the most effective method of combating terrorism. The relationship between terrorism and human rights is nowhere more evident than in the Middle East, where the violation of human rights in the Occupied Palestinian Territory has produced acts of terrorism in Israel, violating the most basic right to life, and this in turn has led to acts of military terror in the Occupied Palestinian Territory, with the inevitable suppression of basic human rights. In this situation, it serves little purpose to apportion immediate blame. It is far wiser to acknowledge that violations of human rights are a necessary consequence of military occupation and to address ways of ending this situation so that the cycle of violence is replaced by the increasingly difficult, but increasingly necessary, quest for peace and security.

III. Civilians: victims of the conflict

3. Civilians inevitably are the main casualties of armed conflict and civil strife. International humanitarian law seeks to limit harm to civilians by requiring that all parties to a conflict respect the principles of distinction and proportionality. The principle of distinction, codified in article 48 of the First Additional Protocol to the Geneva Conventions of 1977, requires that parties to the conflict shall "at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives". Acts or threats of violence, the primary purpose of which is to spread terror among the civilian population, are prohibited (article 51 (2)). The principle of proportionality codified in article 51 (5) (b) prohibits an attack on a military target which may be expected to cause incidental loss of civilian life, injury to civilians and damage to civilian objects which would be excessive in relation to the concrete and direct military advantage anticipated. That these

principles apply to both Israelis and Palestinians was confirmed by the High Contracting Parties to the Fourth Geneva Convention when, in a statement issued on 5 December 2001, they called on both parties to the conflict to:

“ensure respect for and protection of the civilian population and civilian objects and to distinguish at all times between the civilian population and combatants and between civilian objects and military objectives. They also call upon the parties to abstain from any measures of brutality and violence against the civilian population whether applied by civilian or military agents and to abstain from exposing the civilian population to military operations”.

Sadly, neither party to the conflict in the region has paid proper respect to these principles as the death toll has continued to rise. Since the start of the second intifada in September 2000, a total of 1,700 Palestinians and 600 Israelis have been killed. Most have been civilians.

4. Within Israel, most deaths have been caused by suicide bombers who have carried their lethal weapons of destruction on to buses and into busy shopping centres. Despite condemnation from the Palestinian Authority and prominent Palestinian community leaders — and the international community — this instrument of terror, which shows no regard for either the principle of distinction or that of proportionality, continues to be used by paramilitary Palestinian groups.

5. The Israel Defense Forces (IDF), presumably well educated in the rules of international humanitarian law, have likewise shown little regard for the principles of distinction or proportionality. Recent military incursions into the West Bank and the reoccupation of Palestinian towns and cities have resulted in heavy loss of civilian life. That was nowhere more apparent than in Operation Defensive Shield, in March and April 2002, in which the refugee camp of Jenin and the city of Nablus were subjected to heavy bombardment from air and land before IDF troops entered, employing bulldozers to facilitate their movement and allegedly using Palestinian civilians as human shields against snipers. Of the 80 persons killed in Nablus, 50 were civilians, and of the 52 killed in Jenin, 22 were civilians. Since November 2000, the IDF has targeted and killed a number of selected militants in precision bombings. These assassinations have often been carried out, however, with no regard for civilians in the vicinity. Of the 165 persons killed in such actions, at least one third have been civilians. A recent incident starkly illustrates the manner in which such attacks have sometimes been made. On 22 July, the IDF carried out a late night air strike, aimed at Hamas military leader Salah Shehada while he was in a densely populated residential area of Gaza City, which killed 15 persons (including 9 children) and injured over 150 others.

6. Many of the civilians killed have been children. In 2002, over 100 children have been killed, not in crossfire between Palestinian and Israeli forces, as is usually believed, but mainly when the IDF has randomly opened fire or shelled civilian neighbourhoods. Over 20 children have been killed “collaterally” in the course of the assassination of militants.

IV. Detentions, inhuman treatment and children

7. The assaults on Palestinian towns in March and April in Operation Defensive Shield and subsequent military operations in the West Bank have resulted in massive

arrests and detentions. In the period between 29 March and 5 May alone, some 7,000 Palestinians were arrested, of whom 5,400 had been released by that date.² In many towns and refugee camps, all males between the ages of 16 and 45 were arrested. Most were held for several days only. Arrests of this kind constitute a form of collective punishment as in most instances there has been no regard for the personal responsibility of those arrested. In many cases, arrested persons have been subjected to humiliating and inhuman treatment. They have been stripped to their underpants, blindfolded, handcuffed, paraded before television cameras, insulted, kicked, beaten and detained in unhygienic conditions. Those not released are held without trial or access to a lawyer. Some are held in administrative detention; others are held in terms of Military Order 1500, issued on 5 April to permit lengthy detention of those arrested since 29 March. Military Order 1500 authorizes incommunicado detention for up to 18 days — which may be renewed for up to 90 days. There are widespread allegations of torture, consisting of sleep deprivation, severe beating, heavy shaking, painful shackling to a small chair, subjection to loud noise and threats of action against family members.

8. In my report of 6 March to the Commission on Human Rights (E/CN.4/2002/32), I drew attention to serious allegations of inhuman treatment and torture, of the kind described in the preceding paragraph, of juveniles detained and imprisoned for political offences, particularly throwing stones at members of the IDF. I stressed that such treatment violated important norms of international law contained in the Convention on the Rights of the Child (art. 37), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (arts. 1, 6) and the Fourth Geneva Convention (arts. 27, 31, 32, 76). I accordingly called upon the Israeli authorities to conduct a thorough investigation into those allegations (detailed fully in the reports of non-governmental organizations) carried out by an independent body outside the military, police and prison services. Sadly, no such action has been taken. On the contrary, the position of children has deteriorated still further. It is estimated that between 10 and 15 of the thousands recently detained are children.³ Moreover, there is evidence that many have been subjected to the same humiliating and inhuman treatment (sometimes amounting to torture) as adults, described above.

V. Curfews, checkpoints and the reoccupation of Palestine

9. Since the start of the second intifada, in September 2000, Israel has imposed a stranglehold on the lives of Palestinians by means of restraints on freedom of movement. First came the closure of international borders and the sealing off of Gaza from the rest of the Palestinian Territory. Second came the erection of 120 checkpoints on roads in the West Bank. Third, in 2002, came the curfew, not of a town or neighbourhood, but of a substantial portion of the nation. It is these measures, vigorously enforced by the IDF, which constitute the reoccupation of the Palestinian Territory.

10. The IDF operation “Determined Path”, commenced in mid-June, has resulted in the reoccupation of seven of the eight major West Bank urban centres and adjoining refugee camps and villages. Between 18 and 25 June, curfews were imposed on Jenin, Qalquiliya, Bethlehem, Nablus, Tulkarem, Ramallah and Hebron. That has subjected over 700,000 persons to a regime similar to house arrest which confines them to their homes, except every third or fourth day when the curfew is

lifted for several hours to allow residents to obtain essential supplies. The curfew is strictly enforced by the IDF and there have been many incidents of shooting of civilians who had failed to observe the curfew.

11. That reoccupation by closure and curfew has affected every feature of Palestinian life. There have been shortages of basic foodstuffs; interference with medical services by the denial of access to doctors and hospitals; interruption of family contacts; and stoppages of education (at a particularly important time — that of end-of-year examinations). Municipal services, including water, electricity, telephones, and sewage removal have been terminated or interrupted; and the IDF has denied permission to repair damaged municipal service supply units. There has also been a near complete cessation of productive activity in manufacturing, construction and commerce as well as private and public services, which has had serious consequences for the livelihood of most of the population. Inevitably, the incidence of poverty has increased dramatically. In May, the World Food Programme estimated that food aid was a priority need for 620,000 Palestinians in the West Bank and Gaza.

12. No one is exempt from the curfew. Chairman Arafat himself has been confined to his compound in Ramallah and his supplies of electricity and water have been intermittently cut off.

VI. Destruction of property

13. The assaults on cities in the West Bank in Operation Defensive Shield, from 29 March to 7 May, left devastation in their wake. In Jenin, 800 dwellings were destroyed and many more damaged, leaving over 4,000 people homeless. Losses were estimated by the World Bank at \$83 million. In Nablus, there was extensive damage to the old city, including religious and historic sites. Repair costs have been estimated by the World Bank at \$114 million. Refugees were the hardest hit. In the military offensives of 27 February to 17 March and 29 March to 7 May, over 2,800 refugee housing units were damaged and 878 homes destroyed or demolished, leaving 17,000 persons homeless or in need of shelter rehabilitation. The World Bank estimates that Operation Defensive Shield caused physical damage amounting to \$361 million in the West Bank as a whole, compared with the \$305 million caused by damage in the first 15 months of the intifada.⁴ Private businesses suffered the most (\$97 million), followed by housing (\$66 million), roads (\$64 million) and cultural heritage sites (\$48 million).

14. In the past, there has often been a disciplined, retributive approach to the destruction of property. For instance, the houses of suspected militants have been demolished in a clinical display of collective punishment — a practice that continues to this day. The destruction of property in Operation Defensive Shield, however, had a wanton character that surprised even the harshest critics of the IDF. In many houses entered by the IDF, soldiers broke holes into the walls in order to reach neighbouring houses. Sometimes, holes were made from one apartment to another where it was possible for soldiers to have entered from a veranda or window. Worse still, there were reports of systematic trashing of homes, of wanton destruction of televisions and computers in homes, schools and office buildings and of looting.⁵

VII. Territorial integrity of the Occupied Palestinian Territory

A. Settlements

15. The international community is united in its categorization of Jewish settlements in the West Bank and Gaza as contrary to article 49 (6) of the Fourth Geneva Convention, which prohibits an occupying power from transferring parts of its own civilian population into the territory it occupies. In numerous resolutions, the Security Council and the General Assembly have condemned the settlements as illegal and, in their Declaration of 5 December 2001, the High Contracting Parties to the Fourth Geneva Convention reaffirmed that position.

16. Today, there are some 190 settlements in the West Bank and Gaza, inhabited by approximately 390,000 settlers, of whom some 180,000 live in the East Jerusalem area. Settlements are linked to each other and to Israel by a vast system of bypass roads that have a 50- to 75-metre buffer zone on each side in which no building is permitted. These settlements and roads, which separate Palestinian communities and deprive Palestinians of agricultural land, have fragmented both land and people. In effect, they foreclose the possibility of a Palestinian State as they destroy the territorial integrity of the Palestinian Territory.

17. The relationship between settlers and Palestinians is an unhappy one and each side views the other with hostility, anger and suspicion. Protected by the Israeli military, and exempt from the jurisdiction of the courts of the Palestinian Authority, settlers have committed numerous acts of violence against Palestinians and destroyed Palestinian agricultural land and property. Since the beginning of the second intifada, incidents of settler violence have dramatically increased. Palestinian hostility towards settlers has grown alarmingly since the start of this intifada and many of the Israelis killed in the current conflict have been settlers or soldiers charged with the task of protecting settlements and roads leading to settlements. In the past few months, acts of terrorism against settlers have escalated as Palestinian militants have attacked settlements or buses en route to settlements.

18. Despite threats to the life and security of settlers, the Government of Israel has made no attempts to reduce the number of settlers. Indeed, it has refused to provide them with assistance in returning to Israel and has encouraged them to stay on settlements by continuing to offer cheap housing, discounted loans and tax incentives.⁶

19. Assurances by the Government of Israel that it will limit the growth of settlements cannot be reconciled with the facts. Settlements have continued to increase, mainly by means of informal "outposts" established in the proximity of existing settlements, officially tolerated if not officially authorized; and by means of the construction of new housing units in existing settlements. Since February 2001, a total of 44 "outposts" have been constructed, according to Peace Now, the Israeli peace and human rights movement. In July 2002, steps were taken to destroy some of the smallest, unpopulated outposts, a step castigated by YESHA, the settlers' association, as an encouragement of terrorism. Politically, settlers wield considerable power within the Israeli body politic and this enables them virtually to dictate policy to the Government.

B. Fences and buffer zones

20. The failure to prevent Palestinian suicide bombers from reaching their targets in Israel has led to a new strategy on the part of the Government of Israel. This is the construction of a 360-kilometre security fence or zone comprising ditches, barricades, walls, monitored electrified fences and patrol roads to separate Israel from Palestine. The exact course and breadth of the fence/zone is uncertain but it is clear that it will not carefully follow the existing Green Line marking the pre-1967 borders between Israel and Jordan. Instead, it will encroach further on Palestinian territory by establishing a buffer zone several kilometres wide within Palestine and by incorporating settlements near to the Green Line. Moreover, it will incorporate East Jerusalem and neighbouring settlements, such as Ma'ale Adumim into Israel. This unilateral redrawing of the border in the name of security is simply a pretext for the illegal annexation of Palestinian territory.

VIII. The occupation from the perspective of international human rights and international humanitarian law

21. Speaking to the Security Council on 12 March 2002, the Secretary-General, Kofi Annan, called upon Israel to end its “illegal occupation” of the Palestinian Territory. Asked to explain why he used the term *illegal* to describe the occupation of the Palestinian Territory, he replied that “the Security Council and the General Assembly have both at various occasions declared aspects of Israeli occupation as illegal”. He noted, in particular, the building of settlements, the annexation of East Jerusalem and recent events in the region. The comments of the Secretary-General underscore the fact that it is by the law of occupation that Israel’s conduct must be judged and that many of its practices violate basic principles of that governing law.

22. The governing body of law is to be found in the Hague Regulations of 1907, the Fourth Geneva Convention of 1949, and international human rights conventions on civil and political rights, social, economic and cultural rights and the treatment of children, as supplemented by customary international law. That international human rights law forms part of the law of occupation is clear from article 27 of the Fourth Geneva Convention, which provides that the occupying power is to respect the fundamental rights of protected persons. According to the commentary of the International Committee of the Red Cross on this provision: “The right to respect for the person must be understood in its widest sense: it covers all the rights of the individual, that is, the rights and qualities which are inseparable from the human being by the very fact of his existence and his mental and physical powers; it includes, in particular, the right to physical, moral and intellectual integrity — an essential attribute of the human person” (p. 201). The “rights of the individual” have been proclaimed, described and interpreted in international human rights instruments, particularly the international covenants on civil and political rights, and economic, social and cultural rights of 1966, and in the jurisprudence of their monitoring bodies. These human rights instruments therefore complement the Fourth Geneva Convention by defining and giving content to the rights protected in article 27. This is borne out by the Vienna Declaration adopted by the World Conference on Human Rights in 1993, which states that:

“Effective international measures to guarantee and monitor the implementation of human rights standards should be taken in respect of people under foreign occupation, and effective legal protection against the violation of their human rights should be provided, in accordance with human rights norms and international law, particularly the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 14 August 1949, and other applicable norms of humanitarian law.”

A. Violations of human rights

23. The most basic and fundamental rights have been violated in the course of the conflict in both the Occupied Palestinian Territory and Israel itself. The right to life, upon which all rights depend, has suffered dramatically as a result of terrorist suicide bombings in Israel, attacks on settlers in the Occupied Palestinian Territory and violence against Palestinians by the IDF, including acts of terrorism, assassination, military incursion and the shooting of civilians. The right to human dignity, freedom from torture and arbitrary arrest and the right to a fair trial have been violated on a large scale by Israeli military interventions in the West Bank. Freedom of movement has been completely destroyed for Palestinians by closures, checkpoints and curfews; and the right to property has been dramatically undermined by military offensives. Economic, social and cultural rights have likewise suffered. Curfews, checkpoints and the destruction of housing have violated articles 11 to 13 of the 1966 International Covenant on Economic, Social and Cultural Rights, which together recognize the right of everyone to an adequate standard of living, including adequate food, clothing and housing, to the enjoyment of the highest attainable standard of physical and mental health, and to education. Sadly, many of the provisions of the Convention on the Rights of the Child have been violated. These include the right to life, to health care, to a standard of living adequate for the child’s physical, mental, spiritual, moral and social development, to education, to freedom from torture, inhuman treatment and arbitrary arrest, and to a fair trial as well as the obligation on States to “ensure to the maximum extent possible the survival and development of the child” (article 6 (2)). That Convention, moreover, requires States, in accordance with their obligations under international humanitarian law, “to ensure protection and care of children who are affected by an armed conflict” (article 38 (4)).

B. Violations of international humanitarian law

24. Many of the most basic principles of international humanitarian law have also been violated. As shown in paragraphs 3 to 6 above, neither party to the conflict has shown respect for the principles of distinction and proportionality in their actions against or affecting civilians. The prohibition on collective punishment “and likewise all measures of intimidation or of terrorism” contained in article 33 of the Fourth Geneva Convention has been violated in many ways by the IDF, including by the destruction of property, curfews, and the arrest of all men between the ages of 16 and 45. The wanton destruction of property carried out as part of Operation Defensive Shield, particularly in Nablus and Jenin, cannot be reconciled with article 53 of the Convention, which prohibits the destruction of property “except where such destruction is rendered absolutely necessary by military operations”.

C. Civil administration in a state of occupation

25. The law governing occupation, reflected in international custom, the Hague Regulations of 1907 and the Fourth Geneva Convention, is designed to ensure that, notwithstanding the security needs of the occupying power, the day-to-day lives of civilians in an occupied territory will continue normally. In today's world, this means that civilians must have adequate food, shelter, electricity and water; that municipal services such as garbage and sewage removal will continue; that the sick will have access to proper medical care; and that education will not be obstructed.

26. There is no single rule of international law that specifically states that a belligerent occupant is responsible for the civil administration of an occupied territory. There are, however, two sources of law that create such a responsibility: first, article 43 of the Hague Regulations and, second, provisions of the Fourth Geneva Convention. Article 43 is brief and fails to detail the obligations of the occupying power. It simply provides that:

“The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.”

The reason for the failure to spell out the duties of the occupant is that in 1907 “the establishment of a system of administration by the occupant was widely accepted in practice ... as mandatory”.⁷

27. The Fourth Geneva Convention complements this provision by imposing obligations on the occupant to ensure “the food and medical supplies of the population” and to “bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate” (article 55); to ensure and maintain “the medical and hospital establishments and services, public health and hygiene in the occupied territory” (article 56); and to facilitate “the proper working of all institutions devoted to the care and education of children” (article 50). Obligations to provide postal services, telecommunications and transport and to maintain public welfare institutions may also be inferred from the Fourth Geneva Convention and the Hague Regulations.⁸ Together, these provisions amount to an obligation on the occupant to establish an adequate civil administration in an occupied territory.

28. In terms of the Oslo Accords, the responsibility for civil administration in the West Bank and Gaza was transferred to the Palestinian Authority. Today, however, the identity of the authority responsible for the civil administration of the West Bank and Gaza is not so clear. The military operations of 2002 have effectively destroyed much of the infrastructure of the Palestinian Authority. Electricity and water supplies have been cut, municipal services terminated, access to food denied, health care obstructed and education seriously interrupted. Does this mean that Israel is now obliged to assume responsibility for the civil administration of the Occupied Palestinian Territory?

29. Although Israel has announced that it anticipates a prolonged occupation of the Palestinian Territory, it clearly does not intend resuming responsibility for the civil administration of the territory.⁹ Rather than do this, it is considering handing over some of the \$600 million due to the Palestinian Authority for customs' duties and

tax it has blocked since September 2000.¹⁰ Similarly, the Palestinian Authority, despite complaints that Israel has de facto scrapped the Oslo Accords, is understandably unwilling to contemplate surrendering the power of civil administration to Israel.

30. The current situation is untenable. Israel cannot, in terms of international humanitarian law, deny the Palestinian Authority the capacity to provide an adequate and functioning civil administration, and at the same time refuse to accept any responsibility for such an administration itself. In law, it is obliged either to assume this responsibility or to permit the Palestinian Authority to provide the services that comprise an adequate civil administration. There is a heavy burden on all parties to the Fourth Geneva Convention to take measures to ensure the restoration of a proper civil administration in the Palestinian Territory in accordance with their obligation under article 1 of the Convention “to ensure respect” for the Convention “in all circumstances”.

IX. Concluding remarks

31. The Occupied Palestinian Territory is a testing ground for human rights and humanitarian law. The great advances in these two bodies of law are undermined by a situation in which human rights and humanitarian law are denied and disregarded with no meaningful response from the international community. The rule of law is one casualty of the conflict in the Occupied Palestinian Territory, but the main casualties are the people of Palestine and of Israel.

Notes

¹ See Security Council resolutions 1397 (2002), 1402 (2002) and 1405 (2002) as well as General Assembly resolution ES-10/10.

² Statement by the State Attorney’s Office to the Israeli Supreme Court: HCJ 3239/02 *Iyyad Ishaq Mahmud Mar’ab et al v. Commander of IDF Forces in the Judea and Samaria Area*. Response by the Respondent, 5 May 2002, para. 14.

³ See the report on Israeli Practice towards Palestinian Children submitted by Defense for Children International, Palestine Section, to the Committee against Torture, May 2002.

⁴ *International Herald Tribune*, 16 May 2002.

⁵ Amnesty International, *Israel and the Occupied Territories: The Heavy Price of Israeli incursions*, 12 April 2002.

⁶ See further, B’Tselem, *Land Grab: Israeli Settlement Policy in the West Bank*, 2002.

⁷ E. Benvenisti, *The International Law of Occupation* (1993), pp. 4-5.

⁸ M. Greenspan, *The Modern Law of Land Warfare* (1959), pp. 230-235.

⁹ See the statements by Mr. Ben-Eliezer, Minister of Defence, and Major General Amos Gilad reported in the *International Herald Tribune*, 24 June.

¹⁰ *International Herald Tribune*, 23 July.



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Human rights questions: human rights situations and reports of special rapporteurs and representatives

Question of the violation of human rights in the occupied Arab territories, including Palestine

Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967

Addendum

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on his visit to the Occupied Palestinian Territory and Israel, from 25 to 30 August 2002.

Summary

1. As indicated in his main report to the General Assembly (A/57/366), the Special Rapporteur relates herewith his visit to the Occupied Palestinian Territory at the end of August 2002.
2. The Special Rapporteur visited the Occupied Palestinian Territory and Israel from 25 to 30 August. During that period, he paid field visits to Nablus and Jenin, where he inspected the damage caused by Operation Defensive Shield, and to Qalqiliya, where he saw the start of the great Wall of Separation between Israel and Palestine. He also visited Ramallah, Bethlehem and Jericho. The Special Rapporteur met with a wide range of people: Chairman Yasser Arafat and Mr. Sa'eb Erekat, Minister of Local Government of the Palestinian Authority; the governor of Nablus and the acting Governor of Jenin; the Mayor of Jenin; representatives of Palestinian, Israeli and international non-governmental organizations; and members of international humanitarian agencies. The visit served to confirm the accuracy of the

* A/57/150.



account of the situation described in the main report. However, the Special Rapporteur believes that the seriousness of the situation was understated in that report. The personal encounter with curfews, the devastated Jenin refugee camp, the badly damaged old city of Nablus, checkpoints where Palestinians are daily humiliated, Chairman Arafat's largely destroyed compound and interlocutors who told of their own suffering and those of others, transformed an intellectual appreciation of a humanitarian crisis into an emotional awareness of the human tragedy that is unfolding in Palestine.

3. The present addendum will not add to all the topics raised in the main report. Instead, it will focus on curfews and closures and their consequences; detentions; collective punishment; children; settlements; and the funding of the humanitarian crisis.

Security and human rights

4. Before turning to these issues it is necessary to say something about Israel's security needs and interests. There can be no doubt that Israel has legitimate security concerns. Waves of Palestinian suicide bombers have inflicted deep wounds on Israeli society. Israel has both a right and an obligation to protect its people from further attacks. At the same time, it is necessary to ask whether the measures resorted to by Israel, particularly curfews and closures, always serve a security need. Often they appear so disproportionate, so remote from the interests of security, that one is led to ask whether they are not in part designed to punish, humiliate and subjugate the Palestinian people. Israel's legitimate security needs must be balanced against the legitimate humanitarian needs of the Palestinian people. To the Special Rapporteur it appears that there is no such balance. Human rights have been sacrificed to security. This in turn produces a greater threat to Israeli security: the hopelessness of despair which leads inexorably to suicide bombings and other acts of violence against Israelis.

Curfews, closures and their consequences

5. It is difficult to describe curfews of the kind experienced in Nablus and Ramallah. Previously crowded, bustling cities, full of noise, movement and colour, transformed into ghost towns, with the silence of the city broken only by the rumbling of tanks and the sporadic gunfire of soldiers. Whole cities imprisoned behind walls. An imprisonment arbitrary in its application as none can predict when it will be lifted or when it might be reimposed; and brutal in its implementation as many have been shot and killed for failing to observe the rules of the curfew. It is less difficult to describe a military checkpoint. A group of young soldiers, with the arrogance of adolescence or its immediate aftermath, in dusty uniforms with ominous rifles over their shoulders, entrusted with arbitrary power over the movement of the people of Palestine. Long lines of vehicles or people presenting papers to soldiers behind concrete blocks, all aware that their movement is completely in the hands of these young foreign soldiers. The arrogance of the occupier and the humiliation of the occupied.

6. It is easier to describe the consequences of curfews and closures as they are backed by hard statistics. The subjection of over 700,000 persons in the main cities

to curfews, and the denial of access by the villagers to the cities, has resulted in unemployment, poverty, malnutrition and illness. Over 50 per cent of the population of the Palestinian Territory is unemployed. Poverty, based on two dollars or less consumption per day, is at 70 per cent in Gaza and 55 per cent in the West Bank. A total of 1.8 million Palestinians receive food aid or other forms of emergency humanitarian support from a variety of sources, notably the United Nations Relief and Works Agency for Palestine Refugees in the Near East, the World Food Programme and the International Committee of the Red Cross. Twenty-two per cent of children under the age of five suffer from acute or chronic malnutrition, while 20 per cent suffer from iron-deficiency anaemia. Mental health problems have increased alarmingly among children. Health care has suffered drastically as a result of the unavailability of medication and the inability to reach health centres. As usual, the situation in the refugee camps is particularly bleak, as was evident when the Special Rapporteur visited the Balata refugee camp near Nablus.

Detentions

7. The number of people subjected to administrative detention, that is lengthy detention without trial, has increased from less than 100 to 1,860. Of the 7,000 detainees, some 300 are children and 50 are women (including eight girls).

Collective punishment

8. The demolition of the homes of families as punishment for crimes committed against Israel by a family member has long been an Israeli practice. In August, the Israeli High Court denied judicial review in such cases, as had previously been the position, thereby giving military commanders complete discretion to order the demolition of houses. This clearly violates article 33 of the Fourth Geneva Convention which prohibits collective punishment.

9. On 3 September, the Israeli High Court issued a ruling allowing the forcible deportation of two Palestinians from their home town of Nablus to the Gaza Strip on the ground that they had allegedly assisted their brother (extrajudicially executed by Israeli forces on 6 August) to commit attacks against Israelis. Although the Court limited such deportations to “extreme cases”, it must be stressed that the decision to deport was not preceded by a trial to determine the deportee’s complicity. The right to a fair trial and the prohibitions on collective punishment (article 33 of the Fourth Geneva Convention) and forcible transfers (article 49 of the Convention) are violated by these measures.

Children

10. Children have suffered greatly as a result of military incursions into Palestinian territory and curfews and closures. Many have been killed or injured; some 300 have been arrested and detained; over 2,000 have been rendered homeless; two thirds live below the poverty line; 22 per cent of children under the age of five suffer from malnutrition; at least 330,000 have been confined to their homes by curfew; over 600,000 have been prevented from attending schools in the West Bank; and most have been seriously traumatized. During Operation Defensive Shield, 11

schools were destroyed, 9 vandalized, 15 employed as military outposts, 15 used as detention centres and 112 damaged. Teachers, like pupils, have often been unable to gain access to their schools as a result of closures. Palestinian leaders expressed great concern to the Special Rapporteur about the fate of schools, which opened on 31 August, in the face of curfews. Treatment of this kind leaves both physical and mental scars. Worse still, it breeds hatred for the occupier, which augurs ill for the future.

Settlements

11. The main report contains facts about settlements. On this visit, the Special Rapporteur had the opportunity to see the settlements in the Nablus and Jenin districts. Such a visit provides a clear explanation for many of the closures that obstruct Palestinian freedom of movement and strangle Palestinian society. Small mountain-top settlements, with populations of several hundred, are linked to each other and to Israel itself by settlers-only roads. Palestinian roads that cross these roads are sealed off, with the result that villagers are often compelled to make lengthy detours to reach markets, shops, workplaces, schools and hospitals in other villages or towns. Outside Jenin, for instance, the two settlements of Gannim (pop. 158) and Kaddim (pop. 148) are linked by a settlers-only road. The main road from Jenin to eight villages with a combined population of some 20,000 that previously crossed this road has been closed by bulldozers. Villagers who previously were only a 10-minute drive from Jenin must now use circuitous village roads, taking hours to reach Jenin. The basic freedoms of Palestinians to movement and to a decent livelihood are therefore sacrificed in the interest of the security and comfort of the alien settler community. The anger and humiliation this engenders among Palestinians is impossible to assess.

The paradox of humanitarian assistance

12. The gravity of the situation is indisputable. So is the need for humanitarian assistance on a massive scale. If this is not forthcoming, the Palestinian people will suffer irremediable harm. The Special Rapporteur therefore endorses, and adds his own voice to, calls for humanitarian assistance from the international community.

13. At the same time, it must be made clear that, by providing aid of this kind, the international donor community relieves Israel of the burden of providing such assistance itself and in this way might be seen to be contributing to the funding of the occupation. As is shown in paragraphs 26 and 27 of the main report, Israel itself is obliged, in terms of articles 50, 55 and 56 of the Fourth Geneva Convention, to ensure that the Palestinian people have food and medical supplies, to maintain medical services and to facilitate the working of educational institutions.



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Human rights questions: human rights situations and reports of special rapporteurs and representatives

Question of the violation of human rights in the occupied Arab territories, including Palestine

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on violations of international humanitarian law and human rights in the Palestinian territories occupied since 1967, submitted by John Dugard, Special Rapporteur, pursuant to Commission on Human Rights resolutions 1993/2, section A, and 2004/10.

* A/59/150.

Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967

Summary

The present report focuses upon the consequences of military incursions into the Gaza Strip, the violations of human rights and humanitarian law arising from the construction of the Wall and the pervasiveness of restrictions on freedom of movement.

In the past six months, the Israel Defence Forces (IDF) have carried out intensified military incursions into the Gaza Strip. This has been interpreted as a show of force on the part of Israel so that it cannot later be said that it had withdrawn unilaterally from the territory in weakness. In the course of these incursions, Israel has engaged in a massive and wanton destruction of property. Bulldozers have destroyed homes in a purposeless manner and have savagely dug up roads, including electricity, sewage and water lines. In Operation Rainbow, from 18 to 24 May 2004, 43 persons were killed and a total of 167 buildings were destroyed or rendered uninhabitable. These buildings housed 379 families (2,066 individuals). These demolitions occurred during one of the worst months in Rafah's recent history. During May, 298 buildings, housing 710 families (3,800 individuals), were demolished.

Israel has announced that it will withdraw unilaterally from Gaza. Israel intends to portray this as the end of the military occupation of Gaza, with the result that it will no longer be subject to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Geneva Convention) in respect of Gaza. In reality, however, Israel does not plan to relinquish its grasp on the Gaza Strip. It plans to retain ultimate control over Gaza by controlling its borders, territorial sea and airspace. Consequently, it will in law remain an Occupying Power still subject to obligations under the Fourth Geneva Convention.

The Wall that Israel is presently constructing within the Palestinian territory was held to be contrary to international law by the International Court of Justice on 9 July 2004. The Court held that Israel is under an obligation to discontinue building the Wall and to dismantle it forthwith. In its Advisory Opinion, the Court dismissed a number of legal arguments raised by Israel relating to the applicability of humanitarian law and human rights law. In particular, it held that settlements are unlawful. A week before the International Court of Justice gave its Advisory Opinion, the High Court of Israel gave a ruling on a 40-kilometre strip of the Wall in which it held that, while Israel as the Occupying Power had the right to construct the Wall to ensure security, substantial sections of the Wall imposed undue hardships on Palestinians and had to be re-routed.

Israel has announced that it will not comply with the Advisory Opinion of the International Court of Justice. It has indicated that it will abide by the ruling of its own High Court in respect of sections of the Wall still to be built but not in respect of completed sections of the Wall.

Israel claims that the purpose of the Wall is to secure Israel from terrorist attacks and claims that terrorist attacks inside Israel have dropped by over 80 per

cent as a result of the construction of the Wall. Two comments may be made on Israel's claims. First, there is no compelling evidence that suicide bombers could not have been as effectively prevented from entering Israel if the Wall had been built along the Green Line (the accepted border between Israel and Palestine) or within the Israeli side of the Green Line. Second, the evidence suggests that the following are more convincing explanations for the construction of the Wall:

- The incorporation of settlers within Israel;
- The confiscation of Palestinian land;
- The encouragement to Palestinians to leave their lands and homes by making life intolerable for them.

The course of the Wall indicates clearly that its purpose is to incorporate as many settlers as possible into Israel. This is borne out by the fact that some 80 per cent of settlers in the West Bank will be included on the Israeli side of the Wall. Furthermore, Benjamin Netanyahu, Minister of Finance of Israel and a former Prime Minister, openly acknowledged in the *International Herald Tribune* on 14 July 2004 that the purpose of the Wall was to include "as many Jews as possible".

Despite the fact that the International Court of Justice has unanimously held that settlements are unlawful, settlement expansion has substantially increased in the past year as has settler violence towards Palestinians. To aggravate matters, Israel is now proceeding with plans to incorporate the settlement of Ariel, 22 kilometres inside Palestinian territory. This action is prohibited by the International Court of Justice and cannot be reconciled with the decision of the Israeli High Court itself.

A further purpose of the Wall is to expand Israel's territory. Rich agricultural land and water resources have been seized along the Green Line and incorporated into Israel. This land seizure has been documented in earlier reports and in the Advisory Opinion of the International Court of Justice. In recent months, Israel has manifested its territorial ambitions in the Jerusalem area. The Wall is currently being built around an expanded East Jerusalem to incorporate some 247,000 settlers in 12 settlements and some 249,000 Palestinians within the Wall. It must be recalled that Israel's 1980 annexation of East Jerusalem is unlawful and has been declared "of no legal validity" by a resolution of the Security Council.

The seizure of land in East Jerusalem makes no sense from a security perspective because in many instances it will divide Palestinian communities. Moreover, it will have serious implications for Palestinians living in and near to East Jerusalem. First, it threatens to deprive some 60,000 Palestinians with Jerusalem residence rights of such rights if they happen to find themselves on the West Bank side of the Wall. Secondly, it will make contact between Palestinians and Palestinian institutions situated on different sides of the Wall hazardous and complicated. Thirdly, it will prohibit over 100,000 Palestinians in neighbourhoods in the West Bank who are dependent upon the facilities of East Jerusalem, including hospitals, universities, schools, employment and markets for agricultural goods, from entering East Jerusalem.

A third purpose of the Wall is to compel Palestinian residents living between the Wall and the Green Line and adjacent to the Wall, but separated from their land by the Wall, to leave their homes and start a new life elsewhere in the West Bank by making life intolerable for them. Restrictions on freedom of movement in the

“Closed Zone” between the Wall and the Green Line and the separation of farmers from their land will be principally responsible for forcing Palestinians to move. The Israeli High Court declared that certain sections of the Wall might not be built where they caused substantial hardship to Palestinians. Logically, this ruling is applicable to sections of the Wall that have already been built. However, the Government of Israel has indicated that it will not honour its own High Court’s ruling in respect of the 200-kilometre stretch of the Wall that has already been built.

Freedom of movement is severely curtailed in the West Bank and Gaza. The inhabitants of Gaza are effectively imprisoned by a combination of wall, fence and sea. Moreover, within Gaza freedom of movement is severely restricted by roadblocks which effectively divide the small territory. The inhabitants of the West Bank are subjected to a system of curfews and checkpoints that deny freedom of movement. West Bankers need permits to travel from one city to another. Permits are arbitrarily withheld and seldom granted for private vehicles. Several hundred military checkpoints control the lives of Palestinians. The Wall in the Jerusalem area threatens to become a nightmare as tens of thousands of Palestinians will be required to cross at one checkpoint each day — the Kalandiya checkpoint. Finally, as already indicated, a permit system governs the lives of residents between the Wall and the Green Line and those adjacent to the Wall. This permit system is operated in an arbitrary and capricious manner.

The restrictions on freedom of movement imposed by the Israeli authorities on Palestinians resemble the notorious “pass laws” of apartheid South Africa. These pass laws were administered in a humiliating manner, but uniformly. Israel’s laws governing freedom of movement are likewise administered in a humiliating manner, but they are characterized by arbitrariness and caprice. In one respect Israel has gone beyond the scope of apartheid law. It has introduced separate roads for settlers. “Road apartheid” was never a feature of the apartheid State.

The International Court of Justice indicated in its Advisory Opinion, which has been approved by the General Assembly, that there are consequences of the Wall for States other than Israel. States are reminded of their obligation not to recognize the illegal situation resulting from the construction of the Wall and not to render aid or assistance in maintaining the situation created by the construction of the Wall. Israel’s defiance of international law poses a threat not only to the international legal order but to the international order itself. This is no time for appeasement on the part of the international community.

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I. Introduction

1. On 9 July 2004 the International Court of Justice held that the Wall presently being built by Israel in the Occupied Palestinian Territory (OPT), including in and around East Jerusalem, is contrary to international law. It held that Israel is under an obligation to cease the building of the Wall on Palestinian territory and to dismantle it forthwith. It also held that Israel is under an obligation to make reparation for all damage caused by the construction of the Wall in the OPT. Finally, it held that all States are under an obligation not to recognize the illegal situation resulting from the construction of the Wall; that all States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Geneva Convention) are obliged to ensure that Israel complies with the provisions of that Convention; and that the United Nations should consider what further action is required to bring to an end the illegal situation resulting from the construction of the Wall.

2. In its reasoning, the Court dismissed a number of legal arguments raised by Israel which have been fundamental to Israeli foreign policy in respect of the OPT. It found that the Fourth Geneva Convention is applicable to the OPT and that Israel is obliged to comply with its provisions in its conduct in the Territory. In making this finding, it stressed that according to article 49 (6) of the Fourth Geneva Convention, Israeli settlements in the OPT “have been established in breach of international law”. The Court also found that the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child are binding on Israel in respect of its actions in the OPT. It moreover emphasized that the Wall “severely impedes the exercise by the Palestinian people of its right to self-determination”. Finally, the Court was sceptical about Israel’s reliance on a state of necessity to justify the construction of the Wall and held that Israel “cannot rely on a right of self-defence or on a state of necessity in order to preclude the wrongfulness of the construction of the Wall”.

3. Shortly before the International Court of Justice gave its opinion, the High Court of Justice of Israel gave a ruling on a portion of the Wall. Although the Court accepted that Israel as the occupying Power had the right to construct the Wall to ensure security, it held that certain sections of the Wall imposed undue hardships on Palestinians and had to be re-routed. This Court looked at the Wall largely from the perspective of proportionality, and asked the question whether the Wall’s route injured local inhabitants to the extent that there was no proportion between the injury suffered and the security benefit of the Wall. The Court found that some sections of the proposed route caused disproportionate suffering to Palestinian villages as they separated villagers from the agricultural lands upon which their livelihood depended.

4. The unlawfulness of the Wall is now clear under international law as expounded by the International Court of Justice. Moreover, large portions of the Wall would seem to qualify for unlawfulness under Israeli law as pronounced by the Israeli High Court. The Israeli argument that security considerations provide it with an absolute right to build the Wall in Palestinian territory can no longer stand. Terrorism is a serious threat to Israeli society and it may well be that the Wall prevents suicide bombers from reaching Israel. If this is the case, however, there is no reason why the Wall should not be routed along the Green Line or on the Israeli

side of the Green Line. On the relationship between terrorism and the law, one can do no better than refer to the statement of the Israeli High Court:

“We are aware of the killing and destruction wrought by terror against the State and its citizens. As any other Israelis, we too recognize the need to defend the country and its citizens against the wounds inflicted by terror. We are aware that in the short term, this judgement will not make the State’s struggle against those rising up against it easier. But we are judges. When we sit in judgement, we are subject to judgement. We act according to our best conscience and understanding. Regarding the State’s struggle against the terror that rises up against it, we are convinced that at the end of the day, a struggle according to the law will strengthen her power and her spirit. There is no security without law.” (See *Beit Sourik Village Council vs. the Government of Israel* (High Court of Justice 2056/04, para. 86).)

5. In previous reports, the Special Rapporteur has asserted legal positions in the face of Israeli objections. It is no longer necessary to engage in this exercise. The law is clear and it is now possible to focus on the consequences of Israel’s illegal actions and to consider ways and means of enforcing compliance with the law. The latter function falls to the United Nations, acting through both the General Assembly and the Security Council, and to individual States. This report will therefore focus upon Israel’s actions and the consequences of these actions.

II. Focus of the present report

6. The Special Rapporteur visited the OPT from 18 to 25 June 2004. He visited both Gaza (including Rafah) and the West Bank (Jerusalem, Ramallah, Bethlehem, Qalqiliya and surrounding villages, and Hebron and its vicinity). The focus of his attention was upon the consequences of military incursions into the Gaza Strip, the violations of human rights and humanitarian law arising from the construction of the Wall and the pervasiveness of the restrictions on freedom of movement. The present report reflects these concerns. However, the Special Rapporteur wishes to stress that there are many other violations of human rights in the OPT which continue to destroy the fabric of Palestinian society:

- Deaths and injuries. Since September 2000, over 3,000 Palestinians (including over 500 children) and almost 1,000 Israelis have been killed. More than 34,300 Palestinians and 6,000 Israelis have been injured. Most of those killed or injured were civilians;
- Assassinations. Israel continues to assassinate persons suspected of being militants. These assassinations are generally carried out without regard to loss of civilian life. On the contrary, the loss of civilian lives is simply dismissed as collateral damage. Some 340 persons have been killed in targeted assassinations, of which 188 have been targeted persons and 152 innocent civilians;
- Incursions. In the past year the Israel Defence Forces (IDF) have frequently engaged in military incursions into the West Bank and Gaza with a view to killing Palestinian militants. Frequently civilians are caught up in indiscriminate gunfire. On 28 June, for instance, in the course of an incursion

into Nablus, Dr. Khaled Salah, a lecturer at Najah University, and his 16-year-old son were killed at home — the victims of wanton gunfire by the IDF;

- Prisoners. There are some 6,000 Palestinian prisoners in Israeli prisons or detention camps, of whom 350 are children and 75 are women. Of these prisoners, only some 1,500 have actually been put on trial. Many of those detained report being subjected to torture or inhuman and degrading treatment;
- Curfews. Although there has been a decline in the use of curfews as a weapon by the Israelis in the past year, curfews are still imposed and have been resorted to with great frequency in Nablus;
- Humanitarian crisis. Poverty and unemployment are rampant in the OPT. International Labour Organization (ILO) figures show that an average of 35 per cent of the Palestinian population is unemployed. Sixty-two per cent of Palestinians are below the poverty line. According to a World Bank report of 23 June 2004, “The Palestinian recession is among the worst in modern history. Average personal incomes have declined by more than a third since September 2000.”

III. Gaza Strip

7. In recent months the IDF has carried out regular military incursions into the Gaza Strip. The worst-affected towns have been Rafah and Beit Hanoun. The reasons advanced by Israel for these incursions are, in the case of Rafah, the destruction of tunnels used for smuggling of arms and in the case of Beit Hanoun, the destruction of the capacity to launch Qassam rockets into Israel. However, these incursions must be seen in a broader political perspective. Israel has announced that it is planning to withdraw its settlements and military presence from Gaza. It clearly does not wish to be seen to be withdrawing in weakness, with the result that it has chosen to demonstrate its power in Gaza before it withdraws. Also, in order to maintain control over the border between Gaza and Egypt, Israel has decided to create a buffer zone along the “Philadelphi” route, which requires the destruction of homes in Rafah presently in the buffer zone. In June 2004 it was announced that Israel planned to build a moat or trench in this buffer zone.

8. In pursuance of the above policies, Israel has engaged in a massive destruction of property in Gaza. Sometimes property, the homes of suspected militants, has been destroyed for punitive reasons. Sometimes homes have been destroyed for strategic purposes, as in the case of homes along the Philadelphi route. Often, however, the destruction is wanton. Homes have been destroyed in a purely purposeless manner. Bulldozers have savagely dug up roads, including electricity, sewage and water lines, in a brutal display of power. Moreover, there has been a total lack of concern for the people affected. On 12 July 2004, in the course of a raid into Khan Younis, the IDF destroyed a house in which 75-year-old Mahmoud Halfalla, confined to a wheelchair, was present. Despite appeals to allow him to leave, the house was destroyed above him and he was killed.

9. The Special Rapporteur visited Block “O”, the Brazil Quarter and the Tel Es Sultan neighbourhood of Rafah in the wake of Operation Rainbow carried out by the IDF in May 2004 and met with families that had been rendered homeless in the exercise. In Operation Rainbow, 43 persons were killed, including 8 who were killed

in a peaceful demonstration on 19 May. From 18 to 24 May, a total of 167 buildings were destroyed or rendered uninhabitable. These buildings housed 379 families (2,066 individuals). These demolitions occurred during one of the worst months in Rafah's recent history. During May, 298 buildings, housing 710 families (3,800 individuals), were demolished in Rafah. Since the start of the intifada in September 2000, 1,497 buildings have been demolished in Rafah, affecting over 15,000 people. The Special Rapporteur was appalled at the evidence of wanton destruction inflicted upon Rafah. The Special Rapporteur is mindful of article 53 of the Fourth Geneva Convention which provides that any destruction by the occupying Power of personal property is prohibited except when such destruction is rendered absolutely necessary by military operations and that failure to comply with this prohibition constitutes a grave breach in terms of article 147 of the Fourth Geneva Convention requiring prosecution of the offenders. The time has come for the international community to identify those responsible for this savage destruction of property and to take the necessary legal action against them.

10. A report published by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in June 2004 stated that nearly 45 million United States dollars will be needed to re-house Palestinians rendered homeless by the Israeli army. The Special Rapporteur expresses the hope that the international community will respond positively to the appeal by UNRWA. However, he wishes to emphasize that in terms of the Fourth Geneva Convention, it is the responsibility of the occupying Power to ensure that adequate food and medical supplies are provided for the occupied population and to care for the general welfare of the occupied people. It is a gross violation of the Fourth Geneva Convention for the occupying Power to destroy houses, render the population homeless, create a need for food and medical services and then to refuse to carry out its responsibilities to provide for the concerns of the occupied people.

11. In July 2004 the IDF, accompanied by the customary bulldozers, invaded Beit Hanoun. Militants were killed and so were civilians. Homes were destroyed and by way of further punishment olive and orange trees were destroyed. On 13 July an UNRWA convoy carrying food to Beit Hanoun came under fire from the IDF.

12. The IDF frequently "sweeps" land and houses near settlements and settlement bypass roads, allegedly in the interest of the security of the settlements. The destruction of property in exercises of this kind often seems to exceed the limits of military necessity. The Special Rapporteur had occasion to witness such an excess near a settler bypass road outside Netzarim. Here, the IDF, after years of harassing the families occupying two houses near to a bypass road, piled earth with a bulldozer against the outer walls of the houses up to the height of the first floor. Water and electricity to the house were also cut off and families were ordered not to use first floor rooms facing the bypass road. This is but one example of the kind of military harassment to which Gazans are subjected in order to provide for the security of settlers.

13. The international community has responded positively to Israel's announcement of plans to withdraw unilaterally from Gaza. It has also followed with interest the political conflict within the territory between forces of the Palestinian Authority (PA) and militant groups. There is a danger that events of this kind may distract attention from the suffering of the people of Gaza. The people of Gaza are in fact imprisoned within their territory, subjected to serious restrictions of

movement within their territory, rendered unemployed and poverty-stricken by Israeli practices and, in many cases, made homeless by the IDF. This reality should not be overlooked.

14. Israel sees the political advantages in withdrawing from Gaza. In particular, it claims that it would no longer be categorized as an occupying Power in the territory subject to the Fourth Geneva Convention. In reality, however, Israel does not plan to relinquish its grasp on the Gaza Strip. It plans to maintain its authority by controlling Gaza's borders, territorial sea and airspace. That Israel intends to retain ultimate control over Gaza is clear from the Israeli disengagement plan of April 2004. This disengagement plan states in respect of Gaza, inter alia, that "The State of Israel will supervise and maintain the external land envelope, have exclusive control of the air space of Gaza and continue to carry out military activity in the Gaza Strip's maritime space. ... The State of Israel will continue to maintain a military presence along the border line between the Gaza Strip and Egypt (the Philadelphi route). This presence is a vital security need. In certain places a physical broadening of the area in which this military activity is carried out may be required." Another means of control that is being contemplated is the installation of high-tech listening devices in major buildings in the Gaza Strip in order to enable the Israeli authorities to monitor communications. This means that Israel will remain an occupying Power under international law. The test for application of the legal regime of occupation is not whether the occupying Power fails to exercise effective control over the territory, but whether it has the ability to exercise such power, a principle confirmed by the United States Military Tribunal in *In re List and others (The Hostages Case)* of 1948. It is essential that the international community take cognizance of the nature of Israel's proposed withdrawal and of its continuing obligations under the Fourth Geneva Convention.

IV. The Wall

15. The Wall is responsible for much of the suffering of the Palestinian people and, if continued, will be responsible for still greater suffering. As shown by the International Court of Justice, it violates both humanitarian law and human rights law and undermines the right of the Palestinian people to self-determination. For this reason the Wall has been the focus of special attention in two previous reports and remains a major focus of attention in the present report. In order to further his understanding of the consequences of the Wall from the perspective of human rights, the Special Rapporteur visited the Wall in the Jerusalem area (A-Ram, Abu Dis, Kalandiya, Beit Sourik and Biddu), Qalqiliya (Isla and Jayyous villages) and Bethlehem. Previously, the Special Rapporteur has visited villages in the Qalqiliya and Tulkarem region.

16. Israel claims that the purpose of the Wall is to secure Israel from terrorist attacks. It draws attention to the fact that statistics for the first half of 2004 show that terrorist attacks inside Israel have dropped by no less than 83 per cent compared to a similar period in 2003. Two comments may be made on this claim. First, there is no compelling evidence that this could not have been done with equal effect by building the Wall along the Green Line or within the Israeli side of the Green Line. Secondly, the evidence that the course of the Wall within Palestinian territory is required by security considerations is not conclusive. This is shown by the judgement of the Israeli High Court of Justice in *Beit Sourik Village Council vs. the*

Government of Israel. Here, the Israeli High Court weighed the security justifications for the course of the Wall in Palestinian territory advanced by the Israeli military commander against less intrusive security proposals suggested by the Israeli Council for Peace and Security, an independent body comprising retired Israeli military officers, and in several instances preferred the latter's proposals. The High Court's consideration of competing proposals for the course of the Wall in the context of security and proportionality demonstrates the difficulties inherent in such an exercise and brings into question the military justifications for the course of the Wall.

17. More convincing explanations for the construction of the Wall in the OPT are the following:

- To incorporate settlers within Israel;
- To confiscate Palestinian land;
- To encourage an exodus of Palestinians by denying them access to their land and water resources and by restricting their freedom of movement.

These explanations are considered below.

A. The incorporation of settlements

18. The course of the Wall indicates clearly that its purpose is to incorporate as many settlers as possible into Israel. This is borne out by the statistics which show that some 80 per cent of settlers in the West Bank will be included on the Israeli side of the Wall. If further proof of this obvious fact is required, it is to be found in an article written by Benjamin Netanyahu, Minister of Finance of Israel and a former Prime Minister, in the *International Herald Tribune* on 14 July 2004, in which he wrote: "A line that is genuinely based on security would include as many Jews as possible and as few Palestinians as possible within the fence. That is precisely what Israel's security fence does. By running into less than 12 per cent of the West Bank, the fence will include about 80 per cent of Jews and only 1 per cent of Palestinians who live within the disputed territories."

19. Settlements are, of course, unlawful under international law. This was the unanimous view of the International Court of Justice in its Advisory Opinion. The Court found that "The Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law", and that "the route chosen for the wall gives expression *in loco* to the illegal measures taken by Israel with regard to Jerusalem and the settlements" (paras. 120 and 122). Moreover, Judge Buergenthal, the sole dissenting judge in the Opinion, stated that he agreed that article 49 (6) of the Fourth Geneva Convention applied to the Israeli settlements in the West Bank from which it followed "that the segments of the wall being built by Israel to protect the settlements are *ipso facto* in violation of international humanitarian law" (para. 9).

20. Despite this, there is overwhelming evidence of settlement expansion in the West Bank. No longer does the Government of Israel even pay lip service to its claim of several years ago that it would "freeze" settlement expansion. New building starts in Israeli settlements increased by 35 per cent in 2003 and in early March 2004 the Israeli Ministry of Housing and Construction was engaged in

discussion with construction contractors for plans to market another 2,414 housing units over the coming year in settlements such as Kiryat Arba, Har Homa, Beitar Illit, Sur Hadar, Ma'aleh Adumim, Givat Zeev and Pisgat Zeev. New settlements are to be established in the Bethlehem area, and the settlement of Kidmat Zion is to be built near Abu Dis and that of Nof Zahav near Jabal Mukhaber. Mr. Sharon has furthermore announced that in return for dismantling settlements in the Gaza Strip and four small settlements in the northern West Bank (Ghanim, Khadim, Sa-Nur and Homesh), the remaining settlements in the West Bank will be consolidated and expanded. According to a 2004 report of the Director General of the International Labour Organization, "the settler population has continued to increase rapidly, at an annual rate of 5.3 per cent in the West Bank and 4.4 per cent in Gaza since 2000, reaching close to 400,000 persons in the occupied Palestinian territories. This is equivalent to 6 per cent of the Israeli population and 11.5 per cent of the Palestinian population in 2002. The increase in the settler population has been much faster than population growth in Israel (at 1.4 per cent per year over 2000 to 2002), thereby indicating more than natural demographic growth even allowing for higher fertility among settler families."

21. Settler expansion has unfortunately been accompanied by settler violence. Numerous incidents have been reported of settler attacks on Palestinians and their land and it is reported that there had been a 20 per cent increase in settler violence. There are also allegations of well poisoning by settlers. Settler behaviour is particularly disgusting in Hebron where settlers continuously harass Palestinians and damage their property. The Special Rapporteur had first-hand experience of this when the vehicle in which he was travelling with the Temporary International Presence in Hebron (TIPH) was spat upon by settlers and splattered with paint. Obstacles placed in the road by settlers were not removed despite a request by a TIPH official. On the contrary, members of the IDF laughingly indicated their approval of the action of the settlers and refused to intervene. This despite Israel's legal obligation to cooperate with TIPH.

22. Plans to incorporate more settlements within the Wall are being implemented. Steps are being taken to include the settlement of Ariel on the Israeli side of the Wall. In June 2004, Defence Ministry officials sent Palestinian residents of the town of Salfit, south of Ariel, preliminary appropriation orders for land upon which the Wall is to be built. This action is being taken despite assurances given to the United States that no such construction would be undertaken. Although the High Court of Israel in the *Beit Sourik* case did not rule on the question whether the Wall might be built to include settlements, it seems implicit in its judgement that the building of the Wall to incorporate settlements would be unlawful. This follows from the following passage in the Court's judgement:

"We accept that the military commander cannot order the construction of the Separation Fence if his reasons are political. The Separation Fence cannot be motivated by a desire to 'annex' territories to the State of Israel. The purpose of the Separation Fence cannot be to draw a political border. In [a previous case] this Court discussed whether it is possible to seize land in order to build a Jewish civilian town, when the purpose of the building of the town is not the security needs and defence of the area ... but rather based upon a Zionist perspective of settling the entire land of Israel. This question was answered by this Court in the negative" (para. 27).

B. Confiscation of Palestinian land

23. Another purpose of the Wall is to expand Israel's territorial possessions. Rich agricultural land and water resources have been seized along the Green Line and incorporated into Israel. On this visit, the Special Rapporteur witnessed the seizure of agricultural land in the region of the villages of Jayyous and Isla. The Wall has been built between Jayyous homes and rich Jayyous farmland, thereby separating Jayyous farmers from their land. The Wall separates Jayyous farmers from 120 greenhouses, 15,000 olive trees and 50,000 citrus trees. All seven of the town's water wells are on the Israeli side of the Wall. The same pattern was apparent near the village of Isla.

24. The route of the Wall in the south Hebron hills is also a source of concern. The Special Rapporteur visited the cave-dwellers in the Jimba region who are destined for removal from land they have occupied for generations. It is not clear whether the military have their eyes on this land for military exercises or whether it is intended for settlement expansion.

25. Nowhere are Israel's territorial ambitions clearer than in the case of Jerusalem. East Jerusalem was occupied by Israel in 1967 and illegally annexed to Israel in 1980. This annexation was internationally condemned and declared to be "of no legal validity" by a resolution of the Security Council. The territory annexed in this way amounts to 1.2 per cent of the occupied West Bank and has a Palestinian population of 249,000. These Palestinians are forced to have residence cards to live in their own territory. Certain benefits, particularly relating to health insurance, pensions and freedom of movement, attach to these residence rights. The land illegally incorporated into the Jerusalem municipality has been used to build illegal Israeli settlements in order to change the demographic make-up of the area. There are now 12 illegal Israeli settlements in this area and the total settler population in eastern Jerusalem amounts to 180,000. As a result of the creation of settlements in East Jerusalem, Palestinians with Jerusalem residence rights have been compelled to build houses outside the municipal limits of East Jerusalem.

26. In the last few months a wall has been built along the illegal border of East Jerusalem at places like Abu Dis, A-Ram and Kalandiya. This wall has a number of serious consequences. First, it gives effect to an illegal annexation and incorporates part of the city of Jerusalem (including the Holy Places) into Israel. Here it must be stressed that the Wall is to expand beyond the limits of the present Jerusalem municipality to incorporate an additional 59 square kilometres of the West Bank in what will be known as "Greater Jerusalem". (The total settler population of "Greater Jerusalem" (247,000) will amount to more than half of the Israeli settlers in the Occupied Palestinian Territory.) Second, it separates Palestinians from Palestinians and can in no conceivable way be justified as a security measure. Third, it threatens to deprive some 60,000 Palestinians who were previously resident within the Jerusalem municipal boundary of their residence rights. Fourth, it will divide families, some of whom carry Jerusalem residence documents and some of whom carry West Bank documents. Fifth, it makes contact between Palestinians and Palestinian institutions situated on different sides of the Wall hazardous and complicated. Sixth, it will affect 106,000 Palestinians in neighbourhoods in the West Bank who are dependent upon the facilities of East Jerusalem, including hospitals, universities, schools, employment and markets for agricultural goods. The Special Rapporteur met many Palestinian Jerusalemites who were seriously affected by the

construction of the Wall within Jerusalem. Unfortunately, their plight receives little attention as the international community has grown accustomed to the illegal annexation of Jerusalem. The Special Rapporteur stresses that the Wall incorporating Palestinian neighbourhoods in East Jerusalem into Israel is no different from the Wall in other parts of the West Bank which incorporates Palestinian land into Israel.

C. Forced exodus

27. A third purpose of the Wall is to compel Palestinian residents in the so-called "Seam Zone" between the Wall and the Green Line and those resident adjacent to the Wall, but separated from their lands by the Wall, to leave their homes and start a new life elsewhere in the West Bank by making life intolerable for them. This was acknowledged by the International Court in its Advisory Opinion (paras. 122 and 133).

28. Restrictions on freedom of movement in the Seam Zone pose particular hardships for Palestinians. Israel has designated the Seam Zone as a "Closed Zone" in which Israelis may travel freely but not Palestinians. Thus, over 13,500 Palestinians live in the Closed Zone, obliged to have permits to live in their own homes (see Order Regarding Security Regulations (Judea and Samaria) (No. 378) 5730/1970). Palestinians living within the West Bank with farms inside the Closed Zone moreover need permits to cross the Wall into this Zone, as do others who wish to visit the Zone for personal, humanitarian or business reasons. A recent study carried out by B'Tselem (the Israeli Information Centre for Human Rights in the Occupied Territories) demonstrates the arbitrary nature of the implementation of the permit system. Permits are to be granted for varying lengths of time depending on the kind of crop grown by the applicant. For example, olive growers should receive permits for October/November, the picking season, while owners of hothouses which require care throughout the year should be issued permits for a longer period of time. Testimonies given to B'Tselem by farmers in the area indicate that the authorities have constantly ignored the kind of crop being grown on the land. Sometimes olive growers have received permits for a period of three to six months while the owners of hothouses have received permits for shorter periods. In some cases, permits are granted for two weeks only. Moreover, about 25 per cent of the requests for permits to enter the Closed Zone were denied. Permits are rejected for failure to prove ownership and, in most cases, for security reasons. No reasons are given for the denial of a permit. Permits are intended to grant access to the Closed Zone through special gates in the Wall. In practice, these gates are not opened as scheduled. Farmers are compelled to wait at the gates for long periods of time until soldiers find it convenient to open the gates. For instance, the gates at Jayyous were opened for only 90 minutes a day (30 minutes each time). The arbitrary regime relating to the opening of gates has caused special problems during harvest time when intensive labour is required. (See *Not All It Seems: Preventing Palestinians' Access to their Lands West of the Separation Barrier in the Tulkarem-Qalqiliya Area.*)

29. In some instances, the Wall has been built with due regard to Palestinian homes. However, in some cases houses have been demolished where they are too close to the Wall. This is illustrated by the destruction of 10 homes and shops in the West Bank village of Azzun Atma in August 2004.

30. The main compulsion to leave the Closed Zone and the neighbourhood of the Wall is to be found in the separation of homes from land. All along the Wall, Palestinian homes are separated from their land. This report has above referred to the cases of Jayyous and Isla but they are not isolated examples. Many other villages have been similarly affected.

31. At this stage of the report, it is necessary to refer to the judgement of the High Court of Israel in the *Beit Sourik Village Council* case. In its judgement, the Court commented as follows upon the location of the Wall in the area north-west of Jerusalem near to Beit Sourik:

“82. ... The length of the part of the Separation Fence to which these orders apply is approximately 40 kms. It causes injury to the lives of 35,000 local inhabitants. 4,000 dunams of land are taken up by the route of the Fence itself, and thousands of olive trees growing along the route itself are uprooted. The Fence separates the eight villages in which the local inhabitants live from more than 30,000 dunams of their land. The great majority of these lands are cultivated, and they include tens of thousands of olive trees, fruit trees and other agricultural crops. The licensing regime which the military commander wishes to establish cannot prevent or substantially decrease the extent of the severe injury to the local farmers. Access to the lands depends upon the possibility of closing the gates, which are very distant from each other and not always open. Security checks, which are likely to prevent the passage of vehicles and which will naturally cause long lines and many hours of waiting, will be performed at the gates. These do not go hand-in-hand with the farmer’s ability to work his land. There will inevitably be areas where the Security Fence will have to separate the local inhabitants from their lands

“ ...

“84. The injury caused by the Separation Fence is not restricted to the lands of the inhabitants or to their access to these lands. The injury is of far wider scope. It is the fabric of life of the entire population. In many locations, the Separation Fence passes right by their homes. ...

“85. ... [W]e are of the opinion that the balance determined by the military commander is not proportionate. There is no escaping, therefore, a renewed examination of the route of the Fence, according to the standards of proportionality that we have set out.”

32. The Government of Israel has indicated that it completely rejects the Advisory Opinion of the International Court of Justice. The Government has, however, made it clear that it will abide by the decision of the Israeli High Court of Justice in respect of sections of the Wall still to be built. Central Command Chief Major-General Moshe Kaplinsky stated on 13 July that the “security establishment has decided that no barrier will be built that separates Palestinian farmers from their fields and, therefore, no gates for agricultural crossings will be built in any of the future sections of the Separation Fence”. Government statements indicate that there is no intention to review the 200 kms of the Wall that has already been built.

33. In the first place, the Special Rapporteur calls upon the Government of Israel to honour the Advisory Opinion of the International Court of Justice, which was approved by the General Assembly by 150 votes in favour on 20 July 2004. This Court, the judicial organ of the United Nations, has pronounced itself almost

unanimously against the legality of the Wall. Israel is therefore in law obliged to dismantle the Wall and to compensate Palestinians who have suffered as a result of its construction. If the Government of Israel declines to do this, it should at least honour the judgement of its own Supreme Court sitting as the High Court of Justice in the *Beit Sourik Village Council* case. From this judgement it is clear that substantial portions of the already constructed Wall fail to comply with the principles of proportionality expounded by the High Court. There is no reason why the Wall should not be dismantled where it fails to meet these requirements.

V. Freedom of movement

34. Freedom of movement is a freedom recognized by all international human rights instruments. Article 12 of the International Covenant on Civil and Political Rights provides that everyone shall “have the right to liberty of movement and freedom to choose his residence”. Despite this, serious restrictions are imposed on the freedom of movement of all Palestinians, whether in the Gaza Strip or in the West Bank. They are a source of constant humiliation and cause personal suffering and inconvenience to every Palestinian. In addition, these restrictions are primarily responsible for the decline of the Palestinian economy.

35. The inhabitants of Gaza are effectively imprisoned by a combination of wall, fence and sea. Gaza’s borders are rigorously patrolled by the IDF and passage in and out of Gaza is strictly controlled. While some Gazans are released to work in Israel when the security situation permits and a handful of officials and other privileged persons are permitted to leave and return to Gaza, the overwhelming majority of the people of Gaza are confined within its borders. Indeed, it is almost impossible for males between the age of 16 and 35, including medical patients and students, to leave Gaza through Rafah Terminal, which is the only exit from the Gaza Strip to Egypt. Within Gaza, freedom of movement is restricted by regularly and rigorously imposed roadblocks. The Gaza Strip is effectively divided into two by the checkpoint at Abu Houli on the main north-south road, Salah-Al-Din. There are also additional temporary and permanent road barriers in the north and south of the Gaza Strip and a number of areas, including Al Mawasi and Al Sayafa, are blocked off from the rest of the Gaza Strip by Israeli military patrols.

36. The inhabitants of the West Bank suffer from a variety of forms of restriction of movement. Residents of one city may not travel freely to another city in the West Bank: they require permits from the IDF for this purpose — and permits may be arbitrarily withheld. Permits are seldom granted for private vehicles. Anyone embarking upon a journey from one city to another city within the West Bank is subjected to IDF-controlled checkpoints, some permanent and some temporary. Checkpoints are also erected within cities and districts. There are several hundred checkpoints throughout the West Bank and Gaza, blocking traffic between villages and towns, between cities or into Israel. The checkpoint is not the sole instrument of restriction of freedom of movement. Although less frequently used than in past years, the curfew remains a regular occurrence, as illustrated by the experience of Nablus. This apparatus of control of freedom of movement of people and goods has precipitated the prevailing economic crisis and resulted in widespread unemployment and severe disruption to education, health care services, work, trade, family and political life.

37. Travel within both the Gaza Strip and the West Bank is aggravated by the presence of separate bypass roads linking the settlements to each other and settlements to Israel. Palestinians are prohibited from using these roads.

38. The Wall in the Jerusalem area threatens to become a nightmare. Those on the West Bank side of the Wall with West Bank identity documents will be denied access to work, schools, universities, hospitals and places of worship on the Israeli side of the Wall. Similarly, those on the Israeli side of the Wall will be denied access or find access seriously inconvenient to their places of work, educational institutions and hospitals on the West Bank side of the Wall. Many Palestinians with Jerusalem residence documents are married to West Bank identity document-holders. Whether they will be permitted to live together in Jerusalem remains to be seen. There is also a real fear that Jerusalem identity document-holders forced to live outside the Wall, as a result of the unavailability of property within East Jerusalem, will lose their Jerusalem residence rights. All the region's residents, numbering several hundred thousand, will be forced to pass through one large terminal at Kalandiya. Some of these persons will have West Bank identity documents and some will have Jerusalem residence permits. Although there are no clear estimates of the number of Palestinians who will have to pass through the Kalandiya terminal daily, it is clear that it will reach the tens of thousands. Most of those passing through to work or to school will reach the terminal at peak hours and great commotion can be expected. At this stage, it is simply impossible to predict the magnitude of the hardships to which the Palestinians living in and around Jerusalem will be subjected as a result of the Wall.

39. As indicated above, a special permit system applies for persons living or farming along the Seam Zone between the Wall and the Green Line. They require permits to move between home and agricultural land and often these permits are denied or granted for limited periods only. Moreover, the gates giving access to the Closed Zone are frequently not opened at scheduled times. In general, this system is operated in a totally arbitrary manner. The psychological implications of the Wall have recently been the subject of a study by the Palestinian Counselling Centre dated 29 June 2004. This report shows that persons living close to the Wall, particularly those who are obliged to pass through the gates of the Wall, have manifested severe psychosomatic symptoms from their state of anxiety.

40. The Special Rapporteur is unfortunately compelled to compare the different permit systems that govern the lives of Palestinians with the notorious "pass law" system which determined the right of Africans to move and reside in so-called white areas under the apartheid regime of South Africa. The South African pass laws were administered in a humiliating manner, but uniformly. The Israeli laws are likewise administered in a humiliating manner but they are not administered clearly or uniformly. The arbitrary and capricious nature of their implementation imposes a great burden on the Palestinian people. Restrictions on freedom of movement constitute the institutionalized humiliation of the Palestinian people. "Road apartheid" was unknown in South Africa. By creating separate and unequal roads for settlers and Palestinians, Israel has gone beyond the scope of restraints on freedom of movement imposed by apartheid.

VI. Conclusion

41. This report has focused on three issues: the destruction of property in Gaza, the consequences of the Wall and restrictions on freedom of movement. The Special Rapporteur has drawn attention to the serious violations of human rights and humanitarian law flowing from these actions of the Government of Israel. Israel is both legally and morally obliged to bring its practices and policies into line with the law. The High Court of Justice of Israel has rightly declared, “There is no security without law” (*Beit Sourik* case, para. 86).

42. As the International Court of Justice indicates in its Advisory Opinion, approved by the General Assembly, there are consequences of the Wall for States other than Israel. The Special Rapporteur reminds States of their obligation not to recognize the illegal situation resulting from the construction of the Wall and not to render aid or assistance in maintaining the situation created by such construction. In addition, all States parties to the Fourth Geneva Convention are obliged to ensure compliance by Israel with the international humanitarian law embodied in this Convention. Israel’s defiance of international law poses a threat not only to the international legal order but to the international order itself. This is no time for appeasement on the part of the international community.



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Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including East Jerusalem

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report submitted by John Dugard, Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967, in accordance with Commission resolutions 1993/2 A and 2005/7.

* A/60/150.

Report of the Special Rapporteur of the Commission on Human Rights on the situation of human rights in the Palestinian territories occupied by Israel since 1967

Summary

During the past year, Israel's decision to withdraw Jewish settlers and troops from Gaza has attracted the attention of the international community. This focus of attention on Gaza has allowed Israel to continue with the construction of the wall in Palestinian territory, the expansion of settlements and the de-Palestinization of Jerusalem with virtually no criticism. This report focuses principally on these matters.

Although uncertainty surrounds the full extent and consequences of Israel's withdrawal from Gaza, it seems clear that Gaza will remain occupied territory subject to the provisions of the Geneva Convention relative to the Protection of Civilians in Time of War, of 12 August 1949 (Fourth Geneva Convention) as a result of Israel's continued control of the borders of Gaza. The withdrawal of Jewish settlers from Gaza will result in the decolonization of Palestinian territory but not result in the end of occupation.

In its advisory opinion of 9 July 2004, the International Court of Justice held that the wall currently being built by Israel in the Occupied Palestinian Territory is contrary to international law. It accordingly held that construction of the wall should cease and that those sections of the wall that had been completed in the Occupied Palestinian Territory should be dismantled. The Government of Israel has paid no heed to the advisory opinion and continues with the construction of the wall.

The wall has serious consequences for Palestinians living in the neighbourhood of the wall. Many thousands are separated from their agricultural lands by the wall and are denied permits to access their lands. Even those who are granted permits frequently find that gates within the wall do not open as scheduled. As a result, Palestinians are gradually leaving land and homes that they have occupied for generations.

Most Jewish settlers in the West Bank are now situated between the Green Line (the accepted border between Israel and the Occupied Palestinian Territory) and the wall. Moreover, existing settlements in this zone — known as the "closed zone" — are expanding and new settlements are being built. Emboldened by the support they receive from the Government and the Israel Defense Forces (IDF), settlers have become more aggressive towards Palestinians and settler violence is on the increase.

The construction of the wall, the de-Palestinization of the "closed zone" and the expansion of settlements make it abundantly clear that the wall is designed to be the border of the State of Israel and that the land of the "closed zone" is to be annexed.

Israel has embarked upon major changes in Jerusalem in order to make the city more Jewish. Jewish settlements within East Jerusalem are being expanded and plans are afoot to link Jerusalem with the settlement of Ma'aleh Adumim with a population of 35,000, which will effectively cut the West Bank in two. Palestinian contiguity in East Jerusalem is being destroyed by the presence of Jewish settlements and by

house demolitions. Some 55,000 Palestinians presently resident in the municipal area of East Jerusalem have been transferred to the West Bank by the construction of the wall. The clear purpose of these changes is to remove any suggestion that East Jerusalem is a Palestinian entity capable of becoming the capital of a Palestinian State.

The international community has proclaimed the right of the Palestinian people to self-determination and the need to create a Palestinian State living side by side in peace and security with Israel. This vision is unattainable without a viable Palestinian territory. The construction of the wall, the expansion of settlements and the de-Palestinization of Jerusalem threaten the viability of a Palestinian State.

The occupation of the Occupied Palestinian Territory continues to result in major violations of human rights. There are some 8,000 Palestinian prisoners in Israeli jails, whose treatment is alleged to fall well below internationally accepted standards. Freedom of movement is radically undermined by over 600 military checkpoints. Social and economic rights are violated. A quarter of the Palestinian population is unemployed and half the population lives below the official poverty line. Health and education services suffer and Palestinians have severe difficulties in accessing safe water. Housing remains a serious problem as a result of house demolitions conducted by the IDF in previous years. Women suffer disproportionately from these violations of human rights.

In 2004 the International Court of Justice handed down an advisory opinion in which it condemned as illegal not only the construction of the wall but many features of the Israeli administration of the Occupied Palestinian Territory. The advisory opinion was endorsed by the General Assembly on 20 July 2004 in resolution ES-10/15. Since then little effort has been made by the international community to compel Israel to comply with its legal obligations as expounded by the International Court. The Quartet, comprising the United Nations, the European Union, the United States of America and the Russian Federation, appears to prefer to conduct its negotiations with Israel in terms of the so-called road map with no regard to the advisory opinion. The road map seems to contemplate the acceptance of certain sections of the wall in the Occupied Palestinian Territory and the inclusion of major Jewish settlements in the Occupied Palestinian Territory in Israeli territory. This process places the United Nations in an awkward situation as it clearly cannot be a party to negotiations that ignore the advisory opinion of its own judicial organ.

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I. Introduction

1. On 8 February 2005 the President of the Palestinian Authority, Mahmoud Abbas, and the Prime Minister of Israel, Ariel Sharon, meeting in Sharm el-Sheikh, Egypt, agreed on a ceasefire in terms of which Palestine agreed to stop all acts of violence against Israelis and Israel agreed to cease all military activity against Palestinians. This raised hopes of a peace that would ultimately result in negotiations leading to the creation of a Palestinian State. The past six months have seen the maintenance of an uneasy peace. Suicide bombings in Israel have not ceased: on 25 February a suicide bombing took place in Tel Aviv, killing four and wounding 50 persons and on 12 July a suicide bombing took place in Netanya, killing five and wounding 90. There have been over 200 attacks by non-State Palestinian actors against Israeli targets but few casualties have resulted from such attacks. Violence against Palestinians has also continued: over 70 Palestinians have been killed by the Israel Defense Forces (IDF); over 500 have been wounded; and targeted assassinations have resumed. There have been over 2,000 IDF incursions into Palestinian population centres. The main focus of attention during this period has been the withdrawal of Jewish settlers from Gaza. This event, which has caused major divisions in Israeli society, has understandably received considerable attention from the international community. This attention has, however, been at the expense of major violations of human rights and humanitarian law in the West Bank. Despite the fact that, according to a report of Switzerland in its capacity as depositary of the Geneva Conventions transmitted to the General Assembly on 30 June 2005, “the vast majority of States reaffirm that the applicable legal framework and the obligations of the parties [to the Geneva Conventions] were determined by the International Court of Justice in its advisory opinion of 9 July 2004 and cannot be called into question” (A/ES-10/304, annex, para. 22). The advisory opinion of the International Court of Justice, which was confirmed by the General Assembly in its resolution ES-10/15 of 20 July 2004, has been largely overlooked. This has allowed Israel to continue with the construction of the wall in Palestinian territory, the expansion of settlements and the de-Palestinization of Jerusalem. This report will focus principally on these matters.

2. In this report the term “wall” is used in preference to the more neutral terms “barrier” and “fence”. The term “wall” was carefully and deliberately used by the International Court of Justice in its advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (see A/ES-10/273 and Corr.1). The Special Rapporteur sees no reason to depart from this language.

II. Visit of the Special Rapporteur

3. The Special Rapporteur visited the Occupied Palestinian Territory from 26 June to 3 July 2005. He visited Gaza, where he had the opportunity to visit the Karni crossing and to view the destruction caused to Gaza International Airport. The Special Rapporteur visited the Palestinian side of the Rafah terminal crossing between Gaza and Egypt where he met a busload of returning Gaza residents who had waited on the Egyptian side of the border for three to four days in the sun as a result of slow processing by the Israeli immigration officials. (B’Tselem, in a recent publication entitled *One Big Prison* has described the treatment of Gazan residents by Israeli officials at the Rafah terminal as “arbitrary and disproportionate”.) While

in Gaza the Special Rapporteur met with representatives of United Nations agencies, of Palestinian non-governmental organizations (NGOs) and with private individuals.

4. The Special Rapporteur then proceeded to visit the West Bank, including East Jerusalem. He visited Ramallah, Hebron, Jerusalem and Bethlehem. He also visited communities in areas adjacent to the wall in the regions of Qalqiliya (Jayyous), Tulkarem (Ras), Hebron (Imneizel), Jerusalem (Beit Surik, Beit Dukku, Anata, Abu-Dis, A-Ram, Kalandiya) and Bethlehem (An Nu'man). He met with communities affected by settlements in Hebron, At Tuwani, Bethlehem and Jerusalem. In Jerusalem, the Special Rapporteur visited Silwan where 88 houses are subject to demolition orders. During this part of the visit the Special Rapporteur met with representatives of the Palestinian Authority, United Nations agencies, Israeli and Palestinian NGOs and private individuals, many of whom had suffered personally as a result of the construction of the wall and settlements.

III. Gaza

5. At the time of writing, the situation in Gaza is highly volatile. Settler groups opposed to the withdrawal of some 8,000 to 9,000 settlers have confronted the IDF in a violent manner. At the same time, Palestinian militants have fired rockets into neighbouring Israel and Jewish settlements and engaged in violence against the Palestinian Authority. The withdrawal of settlers is planned to take place between mid-August and mid-September and it seems that this withdrawal is destined to be accompanied by further violence.

6. This volatile situation is likely to give rise to an addendum to the present report. At this stage, it is only possible to raise questions about the process of withdrawal and the future status of Gaza.

7. Great uncertainty surrounds the details of the withdrawal. While one can understand the need for some element of surprise on the part of the IDF in order to carry out the withdrawal, the consequences of this uncertainty have serious implications for Palestinians. It seems highly likely that the withdrawal will result in major disruptions to road traffic and freedom of movement which, in turn, will have serious implications for the provision of foodstuffs, access to hospitals, schools and places of employment. In these circumstances, it is difficult to understand why the Government of Israel has not made plans with the Palestinian Authority to avoid a humanitarian disaster in the Palestinian community during the one-month withdrawal period. Fears have also been voiced that insufficient account has been taken of unexploded ordnance and landmines in the vicinity of settlements and the presence of asbestos materials in some of the settlement houses scheduled for destruction.

8. The future status of Gaza is unclear. It seems unlikely that the United Nations will be in a position to issue a statement proclaiming the end of Israeli occupation of Gaza after the withdrawal as a result of the continued control to be exercised by Israel over Gaza. Furthermore, the West Bank and Gaza constitute a "single territorial unit" in terms of the Oslo Agreements and it would be incomprehensible if a statement proclaiming the end of occupation for Gaza were made without addressing the continued occupation of the West Bank. There is no clarity in respect of Israel's plans or intentions for the future of Gaza. At the time of writing, the Palestinian Authority remains in doubt over the precise forms of control to be

exercised by Israel and how much freedom will be allowed to Gaza in its relations with the outside world and the West Bank. Israel has stated that it will relinquish control of the Philadelphi route between Gaza and Egypt if Egypt is prepared to patrol its side of the border. Israel has announced that Gaza Airport may not be reopened. While it is prepared to contemplate the construction of a harbour in Gaza, it seems that Israel will claim the right to police the territorial sea of Gaza. There is also a suggestion that Israel will build a concrete barrier in the sea along the border between Gaza and Israel. The future of the movement of persons and goods between Gaza and the West Bank and between Gaza and Egypt is still unknown. Israel has to date refused proposals that persons be allowed to travel freely between Gaza and the West Bank. Indeed, family reunification of the people of Gaza and the West Bank remains unacceptable to Israel. Goods will not be allowed to move freely from Gaza to the West Bank and vice versa. A proposal that a sunken highway in a 5-metre-deep trench surrounded by fences be constructed between Gaza and the West Bank to allow the passage of Palestinian persons and goods is still subject to discussion. It is highly possible that as far as goods are concerned, the cumbersome and strictly controlled back-to-back system of transport of goods at present practised at the Karni crossing will remain in force. Israel is reluctant to allow free passage of persons and goods between Gaza and Egypt. It has suggested that the present Rafah terminal between Gaza and Egypt be moved to a crossing point at Kerem Shalom where the boundaries of Israel, Egypt and Gaza meet as this would allow Israel to retain control over access to Gaza. Customs arrangements are still the subject of negotiation. In all these circumstances, the inevitable conclusion to be drawn is that Israel is not prepared to relinquish control over the borders of Gaza. Moreover, the IDF has announced that it will not hesitate to intervene militarily in Gaza after the withdrawal of settlers if Israel's security so requires.

9. It seems clear therefore that Gaza will remain occupied territory subject to the appropriate provisions of the Geneva Convention relative to the Protection of Civilians in Time of War, of 12 August 1949 (Fourth Geneva Convention). The jurisprudence of post-war Germany shows that the test for occupation is that of continued control. In the *Hostages Trial (United States of America v. Wilhelm List et al., 1949)* a military tribunal stated that it was not necessary for the occupying Power to occupy the whole territory so long as it "could at any time (it) desired assume physical control of any part of the country".¹

10. The withdrawal of Jewish settlers from Gaza should be seen as the decolonization of Palestinian territory. This does not affect Israeli control of the territory, which will remain. Consequently, Israel will remain an occupying Power in respect of Gaza, subject to the rules of international humanitarian law applicable to occupied territory. The humanitarian crisis which Gaza has suffered since 2000 will not disappear after Israel withdraws. Continued control will prevent economic recovery and Gaza will remain an imprisoned territory in which economic and social rights suffer seriously.

11. The uncertainty surrounding Israel's post-withdrawal plans has given rise to suggestions that Israel intends to delay decisions on matters such as customs, air and sea traffic, and the movement of persons and goods for an indefinite period. Slow decisions on such matters will further distract international attention from Israel's

¹ United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, vol. III, 1949, p.56.

territorial expansion in the West Bank. Twelve months of protracted negotiations between the Government of Israel and the Palestinian Authority on these matters will allow Israel to complete construction of the wall, the consolidation of settlement blocks, and fundamental changes to the character of Jerusalem.

IV. The wall

12. In its advisory opinion of 9 July 2004 the International Court of Justice held that the wall presently being built by Israel in the Occupied Palestinian Territory, including in and around East Jerusalem, is contrary to international law; that Israel is under an obligation to cease the building of the wall on Palestinian territory and to dismantle it forthwith; that Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory; that all States are under an obligation not to recognize the illegal situation resulting from the construction of the wall; that all States parties to the Fourth Geneva Convention are obliged to ensure that Israel complies with the provisions of that Convention; and that the United Nations should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall. On 20 July 2004 the General Assembly adopted resolution ES-10/15 in which it demanded that Israel comply with the legal obligations as mentioned in the advisory opinion. The resolution was adopted by 150 votes in favour, 6 against with 10 abstentions.

13. The Government of Israel refuses to accept the advisory opinion of the International Court of Justice. It does, however, pay some attention to the decision of its own High Court in the *Beit Sourik Village Council v. The Government of Israel* of 30 June 2004 which held that while the wall might be built to ensure security, it should not impose undue hardships on Palestinians. Unfortunately, this decision has not been applied to most sections of the wall constructed before the decision was handed down in July 2004.

14. On 20 February 2005 the Government of Israel marginally modified the planned route of the wall. In terms of this decision the wall, once completed, will be 670 km long compared with 622 km of the prior route. The new route runs for 135 km on the Green Line compared to 48 km of the prior route. The new route of the wall will follow the Green Line, or be close to the Green Line, in the locality of the Hebron Hills. It will penetrate more deeply into Palestinian territory further north to include settlements in the Gush Etzion block near Bethlehem, housing over 50,000 settlers. It has also been decided to include the settlement of Ma'aleh Adumim and Ariel on the Israeli side of the wall. This will result in some 10 per cent of Palestinian land being included in Israel. (The previous route resulted in the seizure of 12.7 per cent of the West Bank.) The wall will enclose, on the Israeli side, 170,000 settlers (not including those in East Jerusalem) and 49,000 Palestinians, living in 38 villages.

15. To date 213 km of the wall have been built from the northern border of the West Bank near Tubas to roughly Elkana in the centre, plus two segments in Jerusalem. Construction is still under way between Elkana and Jerusalem; around the settlements of Ariel and Immanuel; in and around East Jerusalem; and from Gush Etzion to Metzudat Yehuda on the southern border of the West Bank in Hebron Governorate. Although construction of the wall has progressed rapidly since the

advisory opinion of the International Court of Justice, the Israeli Prime Minister, Ariel Sharon, rebuked the defence establishment on 6 July for “taking too long” in the construction of the wall and instructed it to speed up its construction since there were no financial constraints. Petitions to the High Court against the course of the wall have been largely responsible for delays in the completion of the wall. An injunction restraining the building of the wall around the settlement of Ariel which will extend the wall 22 km into the West Bank was lifted on 17 May 2005 and work on the construction of the wall around the eastern border of this “finger” into Palestinian territory has been started. That Israel intends to enclose Ariel within the wall is clear from a statement by Mr. Sharon on 21 July 2005 that the Ariel block “will be part of the State of Israel forever” and that “it will always be an inseparable part of the State of Israel”.

16. The Special Rapporteur viewed the wall and construction sites of the wall in many areas. He visited the wall near Jayyous and Ras in Qalandiya and Tulkarem districts; around Rachel’s Tomb in Bethlehem; along the road to Kalandiya in A-Ram; over the hills of Abu-Dis and Anata; and Imneizel in the south Hebron Hills. The wall, or barrier as some prefer to call it, has been built without concern for the environment. It is ugly, and has resulted in the destruction of olive groves, citrus orchards and grazing fields and the disfigurement of towns and villages. In previous reports the Special Rapporteur has expressed the view that the wall seems to have been built without regard to security considerations in many areas (for instance, in some areas the wall is built in the valley below Palestinian villages). The most recent visit to the wall has confirmed this view.

17. The zone between the wall and the Green Line, the internationally accepted border between Israel and the West Bank, is known as the “closed zone” or “seam zone”. Within this zone, live some 49,000 Palestinians. A greater number of Palestinians, however, live on the West Bank side of the wall while their lands are in the “closed zone”. Both these Palestinian communities are seriously affected by the wall. Those living within the “closed zone” have difficulty in accessing family, hospitals, schools, markets and employment within the West Bank. Those living on the West Bank side of the wall require permits to access their own agricultural land. Whereas in previous years such persons were mainly refused permits for security reasons, today it appears that permits are mainly denied when the owner or user of land is unable to provide convincing evidence of ownership or title to the land. A landowner applying for a permit to access his own land must submit a land registration certificate. However, proof of ownership is alien to the traditional Palestinian land ownership system and has been resisted by Palestinian landowners over many generations. In part this can be ascribed to the fact that the registration of land under the Ottomans was very slow and little progress was made in respect of land registration during the British Mandate period or during the period of Jordanian rule before 1967. It is therefore not uncommon that people are unaware of the actual status of the land they are cultivating as they have not previously been required to prove ownership of the land. Much of this land has been held in families for generations according to traditional land tenure systems without registration. In these circumstances the demand for proof of land ownership or title to land is often an insurmountable obstacle. Permits are refused on this ground and because the applicant is considered to be too distant a relation of the landowner. In the Governorate of Tulkarem, in the period 1 March to 31 May 2005, 58 per cent of 315 applicants from Attil, Deir al Ghusun and Illar received permits; 22 per cent of 900

applicants from Akkaba received permits; and 19 per cent of 1,222 applicants from Baqa ash Sharqiya, Nazlat Issa and Abu Nar received permits. In Qaffin, with a population of 9,000, 600 families — between 3,000 and 3,600 people — have land and trees on the other side of the fence. In May 2005, 1,050 villagers applied for permits to access their land. Only 70 were granted permits, 600 received a negative reply and the rest, 380 people, received no reply at all. The reason most frequently given for rejection was that the applicant was too distant a relation to the landowner. Several sons and grandsons of landowners were denied permits because they were considered “distant relatives”. Between January and June 2005, some 3,545 applications for permits were submitted in the Tulkarem area. Of these, 2,404 were refused, mostly on the grounds of inadequate proof of relationship to the owner.

18. To aggravate the situation, the 25 gates that are supposed to provide access to the “closed zone” are frequently locked or opened in an arbitrary manner. Permit holders often have to wait for many hours for gates to open and sometimes they do not open at all. In May and June 2005 fires broke out in the “closed zone” but the IDF denied farmers access to their lands to put out the fire.

19. Houses too close to the wall are sometimes destroyed. On 27 July 2005 houses in the area of the town of Al-Khadr were destroyed.

20. Many persons whose land is adjacent to the “closed zone” find refused permits, closed gates and destroyed homes too much to bear. This explains why Palestinians are gradually leaving land and homes that they have occupied for generations. Figures are uncertain but it seems that 11,000 persons have already been displaced as a result of the construction of the wall. This new generation of displaced persons creates a new category of Palestinian refugee. The neglect and abandonment of land will allow the Israeli authorities to seize the land under the terms of an old Ottoman law and to hand it over to the settlers.

A. Settlements and the wall

21. Jewish settlements in the West Bank and Gaza are illegal. They violate article 49 (6) of the Fourth Geneva Convention and their illegality has been confirmed by the International Court of Justice in its advisory opinion on the wall. There can therefore be no justification for the retention of settlements. A fortiori, the expansion of settlements must be completely unacceptable to the international community.

22. Most settlers and settlements in the West Bank are to be found on the Israeli side of the wall. Some 170,000 settlers live in 56 settlements in the “closed zone”, that is 76 per cent of the settler population in the West Bank. New settlements or the expansion of existing settlements are being planned for the “closed zone”. The Special Rapporteur saw evidence of such an expansion near Jayyous where the settlement of Zufin is being expanded to encroach further on the fields of Jayyous farmers in the “closed zone”.

23. The expansion of settlements is clear to anyone who visits settlement sites. Cranes generally mark the skyline of settlements and there is abundant evidence of building activity. The figures confirm settlement growth and expansion. On 8 June 2005 the Israeli Central Bureau of Statistics reported that Israel had built almost twice as many settler homes in the first quarter of 2005 as in the same period of

2004. At the same time, housing starts in Israel itself fell 6 per cent from the first quarter of 2004.

24. Three major settlement blocks, the Gush Etzion block, the Ma'aleh Adumim block and the Ariel block — all of which are to be surrounded by the wall — will effectively divide Palestinian territory into cantons or Bantustans. These cantons will be linked by special roads or tunnels. This results in transportation contiguity as opposed to territorial contiguity. This means that Palestinians will be able access different parts of the West Bank but the territorial unity essential for the creation of a viable State will be absent.

25. The construction of the wall, the de-Palestinization of the “closed zone” and the expansion and construction of settlements in the “closed zone” make it abundantly clear that the wall is designed to be the border of the State of Israel and that the land of the “closed zone” is to be annexed. Already members of the IDF inform international representatives visiting the “closed zone” that it is part of Israeli territory. This is understandable as, after all, Israelis have free access to the “closed zone” whereas Palestinians require special permits to enter this zone. Further evidence of the fact that Israel views the wall as an international boundary is provided by the construction of checkpoint terminals in the wall which resemble international crossing points in size and structure. (Like the Karni crossing in Gaza, these terminals will also practice “back-to-back” crossing.) Writing in *Ha'aretz* of 12 July 2005, Knesset Member Ran Cohen stressed that Israelis increasingly refuse to accept the Green Line as the border between Israel and the West Bank. Further proof of Israel's intentions was provided by Mr. Sharon during his visit to Paris on 28 July 2005. Addressing a meeting of the Jewish community, Mr. Sharon stated that thanks to the disengagement from Gaza “Israel has gained unprecedented political achievements” including “a guarantee that the major population centres in Judea and Samaria [that is, the West Bank] will remain part of Israel in any final status agreement; and there will be no return to the 1967 borders...”.

26. In August 2005 Israel will withdraw Jewish settlers from four settlements in the northern West Bank: Ganim, Kadim, Homesh and Sa-Nur. Israeli Government spokesmen have vehemently denied that any further withdrawal of settlers from the West Bank is contemplated.

B. Settler violence

27. Statistics show that settler violence is on the increase. Sixty-eight incidents of settler violence were reported in May 2005 and 67 in June. Prosecutions of settlers are rare, and it seems that settlers are able to terrorize Palestinians and destroy their land with impunity. As on previous visits to Hebron, the Special Rapporteur was subjected to abuse from settlers. The Special Rapporteur also had occasion to visit the settlement at Tel Rumeida in Hebron. This settlement in the middle of Hebron has recently been expanded and there is increased pressure on the part of the settlers to drive out their Palestinian neighbours by a process of terrorization. A visit to the community of At-Tuwani provided further evidence of settler violence. Schoolchildren are beaten and terrorized by settlers on the way to school and wells and fields have been poisoned. Crops have been destroyed, sheep and goats stolen and poisoned. The police and IDF do little to protect cave dwellers, peasants and shepherds in this region.

V. Jerusalem

28. East Jerusalem is not part of Israel. On the contrary, it is occupied territory, subject to the Fourth Geneva Convention. Unfortunately, Israel's illegal attempt at annexation of East Jerusalem has obscured this truth. As a consequence world public opinion tends, incorrectly, to treat Israel's occupation of East Jerusalem as different from that of the West Bank and Gaza.

29. Israel has embarked upon major changes to the character of Jerusalem. In essence, these changes are designed to reduce the number of Palestinians in the city and to increase the Jewish population of the city and thereby to undermine Palestinian claims to East Jerusalem as the capital of an independent Palestinian State. That this is the purpose of the wall in Jerusalem was acknowledged by the Israeli Minister for Jerusalem Affairs, Haim Ramon, on 10 July when he stated that the route of the wall would make Jerusalem "more Jewish". He added, "The Government is bringing security to the city and will also make Jerusalem the capital of a Jewish and democratic State of Israel."

30. Jewish settlements within East Jerusalem are to be expanded. Already there are some 184,000 settlers in East Jerusalem who will find themselves between the wall and the Green Line. Now, the settlement of Ma'aleh Adumim, with a population of 35,000, is to be joined to Jerusalem by some 3,600 housing units to be constructed in the so-called "E1" area. These units will accommodate some 20,000 settlers. New settlements are also being built near Walajeh (Nof Yael), Har Homa (Har Homa II), Jabel Mukabbir (Nof Zion), Abu Dis (Kidmat Zion), Binyamin (Geva Binyamin) and Giv'at Ze'ev (Agan ha-Ayalot) to form a Jewish urban belt around Palestinian East Jerusalem.

31. Palestinian contiguity in East Jerusalem is to be disrupted by the demolition of Palestinian houses, the expansion of settlements and the creation of parks. This is evident in the Silwan region where 88 houses have been subjected to demolition orders to make way for a park. This will further the linking up of Jewish settlements in Silwan and adjacent areas, thereby destroying the contiguity of Palestinian neighbourhoods. Even in the Old City, Jewish settlements are expanding.

32. Some 230,000 Palestinians live in East Jerusalem. The wall in the Jerusalem area is being constructed to transfer many Palestinians with Jerusalem identity documents to the West Bank. This is best seen in the transfer of the Palestinian neighbourhood of Shuafat (which includes 11,000 refugees), and of Salaam and Dar Khamis neighbourhoods in Anata, presently within Jerusalem's municipal boundary, to the West Bank. This will result in the transfer of some 55,000 Palestinians from Jerusalem to the West Bank. To this figure we must add about another 50,000 people who have Jerusalem identity cards who live in the satellite communities of East Jerusalem outside the Jerusalem municipal boundary such as Al-Ram, who migrated to such communities because they could not find housing inside the city owing to the expropriation of land and building restrictions. This means that the wall harms over 40 per cent of East Jerusalem's 230,000 Palestinians. The Israeli historian Tom Segev states, "What is happening today in Jerusalem goes beyond security needs and reflects the essence of the original Zionist dream. Maximum territory, minimum Arabs."

33. In a recent report titled *The Jerusalem Powder Keg*, the International Crisis Group states:

“Stretching municipal boundaries, annexing Palestinian land and building new Jewish neighbourhoods/settlements, Israel has gradually created a municipal area several times Jerusalem’s earlier size. It has also established new urban settlements outside the municipal boundary to surround the city, break contiguity between East Jerusalem and the West Bank, and strengthen links between these settlements, West Jerusalem and the rest of Israel” (p.i.).

34. The changes described above may serve the political interests of Israel, but they do so at the expense of the Palestinian population. Not infrequently, family members have different identity documents. The wife may have Jerusalem identification while her husband may hold West Bank identification. Whether they will be permitted to live together remains to be seen. At present many Jerusalem identity holders are employed in the West Bank. Uncertainty surrounds the question whether they will be permitted to cross freely into the West Bank or whether they will have to choose between the West Bank and Jerusalem. Access to schools and hospitals will also present serious difficulties.

35. Jerusalem is an historical city of great beauty. The wall has done much to disfigure the city. Those responsible for planning and constructing the wall in Jerusalem have done so with complete disregard for the environment. All this has been done in order to transform Jerusalem into a Jewish city.

VI. The wall, settlements and self-determination

36. In its advisory opinion the International Court of Justice stressed the right of the Palestinian people to self-determination. In recent times politicians of all persuasions have given support to a two-State solution, with the States of Israel and Palestine living side by side in peace and security. This vision is unattainable without a viable Palestinian territory. The construction of the wall, the expansion of settlements and the de-Palestinization of Jerusalem are incompatible with the two-State solution. Interlocutors within both Israel and the West Bank warned the Special Rapporteur that with the two-State solution becoming increasingly difficult, if not impossible, consideration should be given to the establishment of a binational Palestinian State. The demography of the region increasingly points to such an outcome.

37. In its advisory opinion the International Court of Justice stated that it noted “the assurance given by Israel that the construction of the wall does not amount to annexation and that the wall is of a temporary nature”. The Court, however, considered “that the construction of the wall and its associated regime create a ‘fait accompli’ on the ground that could well become permanent, in which case, and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation” (para. 121). It is highly arguable that this stage has now been reached. The prohibition of the annexation of territory by force is, of course, one of the most fundamental principles of international law.

VII. Other human rights violations

38. The Special Rapporteur has focused in this report on what he considers to be the principal violations of human rights. The wall and settlements seriously

undermine the fundamental right of self-determination of the Palestinian people upon which all other rights depend. In large measure, the wall and settlements are a consequence of occupation. The regime of occupation by definition results in a violation of human rights. A prolonged occupation of the kind to which the Palestinian people have been subjected for 38 years inevitably poses a threat to most basic human rights. This is confirmed by the Palestinian experience.

A. Freedom of the person

39. In the past year Israel has released some 900 Palestinian prisoners. In the same period over 1,000 new prisoners have been taken. Consequently, there are still over 8,000 prisoners in Israeli jails. Of this number, some 120 are women. Over 300 children under the age of 18 are in Israeli detention centres. Forty per cent of them have been sentenced to imprisonment and 60 per cent are in pre-trial detention. Over 600 of those imprisoned are in administrative detention, that is, they are persons held without trial. Family visits remain a serious problem. As prisons are situated in Israel and many Palestinians are denied admission to Israel, a majority of prisoners receive no family visits. While the future of Palestinian prisoners from the West Bank and Gaza is subject to scrutiny under the Sharm el-Sheikh Agreement, Palestinian prisoners from East Jerusalem are overlooked. Prison conditions are harsh: prisoners live in overcrowded and poorly ventilated cells which they generally leave for only two hours a day. Allegations of torture and inhuman treatment of detainees and prisoners continue. Such treatment includes beatings, shackling in painful positions, kicking, prolonged blindfolding, denial of access to medical care, exposure to extreme temperatures and inadequate provision of food and water.

40. There are very few prosecutions of IDF soldiers for injury to Palestinians, despite the high number of casualties at the hands of the IDF. The impunity of the IDF was taken one step further in 2005 by a law passed by the Knesset in 2005, with retrospective effect to 2000, which seriously restricts the right of Palestinians to sue for damages incurred during the intifada. Palestinians will only be able to sue for traffic-related claims and cases in which a Palestinian suffered physical harm while being held in military detention.

B. Freedom of movement

41. Checkpoints in both the West Bank and Gaza continue to seriously undermine the freedom of movement. As of April 2005, the number of checkpoints has been reduced from around 680 to 605. However, greater recourse is now made to so-called "flying" checkpoints, that is, temporary military road checkpoints established at random. In May 2005, 368 "flying" checkpoints were recorded and in June 2005 there were 374 "flying" checkpoints. The implementation of the checkpoint regime violates human dignity. The extent to which this occurs is clear from a recent report by MachsomWatch, entitled *A Counterview: Checkpoints 2004*. MachsomWatch is an organization of some 500 Israeli women drawn from different backgrounds who, in the pursuit of peace in the region, voluntarily monitor the behaviour of the IDF at checkpoints. The cited report states:

“The checkpoint regime is arbitrary and random, and the regulations governing them change constantly, often dependent on the whim of a soldier on duty at the checkpoint... At the checkpoints ... we witness the methodical embittering of the Palestinians’ lives. ... Anyone who has seen the anxious smile on a man’s face as he extends his ID to be checked by an indifferent woman-soldier in the checking-position, cannot forget or disregard the injustice. We document the little humiliations and the tensions, day after day, the ignoring of the Palestinian Other’s humanity, as well as the expression of the overflowing rage of an occupied people” (pp. 8-10).

42. Although curfews are less frequently imposed than in previous years, this method of restricting freedom of movement is still resorted to. In May 2005, 23 curfews were imposed and in June there were 16.

C. Discrimination against women

43. Occupation and the wall unevenly violate women’s rights. Palestinian women are routinely harassed, intimidated and abused by Israeli soldiers at checkpoints and gates. They are humiliated in front of their families and subjected to sexual violence by both soldiers and settlers. There are approximately 120 Palestinian women prisoners of whom 11 are in administrative detention — that is, held without charge or trial. Women prisoners are subjected to gender-based violence while subject to investigation and in detention. Moreover, prison conditions raise concerns for their health and well-being. Restriction of movement owing to the occupation severely impedes Palestinian women’s access to education and health. Restrictions on movement limit opportunities for independence and decrease the number of women seeking formal education or employment as the culture of the region requires women to study and work from home. Women’s health has suffered as a result of their inability to reach health centres. Pregnant women are vulnerable to long waits at checkpoints. A number of unsafe deliveries in which both mothers and infants have died have occurred at checkpoints. From the beginning of the second intifada to March 2004, 55 Palestinian women have given birth at checkpoints and 33 newborns were stillborn at checkpoints, owing to delays or denial of permission to reach medical facilities. Unemployment and poverty resulting from the occupation have been shown to produce divorce and domestic violence. The Israeli Nationality and Entry into Israel Law of 2003 aims to stop family unification when one spouse is a resident of the Occupied Palestinian Territory. The result of this law is that thousands of affected family members live separately from each other with no legal means available to unify the family. The only way to maintain the unity of the family is to reside illegally in Israel, in permanent fear of investigation and expulsion. This places an immense burden on the psychological state of Palestinian women. The law, which does not apply to Israeli settlers living in the Occupied Palestinian Territory or to Israeli Jews marrying aliens, institutes a discriminatory system based on national origin and is directed exclusively against Palestinians.

D. Humanitarian crisis

44. The Occupied Palestinian Territory has a population of 3.8 million (2.4 million in the West Bank and 1.4 million in the Gaza Strip). Approximately 42 per cent of

the population (1.6 million) are registered refugees. There is a natural increase of 3.5 per cent.

45. Previous reports have drawn attention to the humanitarian crisis in the Occupied Palestinian Territory resulting from the occupation and the construction of the wall. Unemployment reached 25 per cent (34 per cent in Gaza and 23 per cent in the West Bank) in the last quarter of 2004. This is equivalent to 93,000 unemployed in Gaza and 133,000 in the West Bank. Loss of access to jobs in Israel is a major cause of unemployment. Approximately half of the population, or 1.8 million people, live below the official poverty line of US\$ 2.10 per day. Subsistence poverty, that is the inability to afford basic survival, is estimated at 16 per cent. Poverty is higher in Gaza (65 per cent) than in the West Bank (38 per cent). Poverty is the result of growing unemployment, closures, the loss of property caused by IDF house demolitions, land requisitions and the levelling of land. Agricultural incomes have dropped considerably as a result of the destruction of agricultural areas and the isolation of land and wells behind the wall.

46. Closure has limited the ability to access health and education services. The provision of health services has dropped remarkably as a result of restrictions in access. The quality of education has deteriorated because schools have been obliged to shorten teaching hours as a result of wall gate-opening times. Furthermore, children are forced to drop out of school either to help supplement diminishing family incomes or because their parents can no longer afford to send them to school.

47. Palestinians have faced severe difficulties in accessing safe water. Repeated IDF incursions have resulted in the destruction of water and sanitation infrastructure. Moreover, restrictions on movement have prevented Palestinians from reaching water supplies.

48. Although the IDF has discontinued punitive house demolitions and the past six months have not witnessed major house demolitions in the interests of so-called military necessity, there is a substantial shortfall of housing caused by IDF house demolitions in previous years. In Gaza many thousand persons still remain homeless. Houses are still demolished for failure to obtain a building permit. This form of house destruction, known as “administrative” demolitions, is still widely practised, particularly in Jerusalem. As it is virtually impossible for Palestinians to obtain building permits, many houses are built without permits. The occupants of such houses run the risk of arbitrary demolition.

E. Right to a clean environment

49. Many features of the occupation are carried out with scant regard for the environment of the Occupied Palestinian Territory. The wall has resulted in the disfigurement of the hills and towns of Palestine. The discharge of sewage from Jewish settlements onto Palestinian land is a serious problem. Many settlements in the West Bank have no form of treatment of industrial or domestic wastewater and the effluent flows into nearby Palestinian valleys without consideration of its environmental impact. Moreover, it is now proposed that solid waste from Israel is to be dumped in the Abu Shusha quarry in the district of Nablus. As noted above, lands in the At-Tuwani district have been deliberately poisoned by settlers.

VIII. The death penalty and the Palestinian Authority

50. The Special Rapporteur's mandate does not extend to human rights violations committed by the Palestinian Authority. It would, however, be irresponsible for a human rights special rapporteur to allow the execution of Palestinian prisoners to go unnoticed. Since 2002, the Palestinian Authority has refrained from carrying out the death penalty. In 2005, however, five Palestinian prisoners have been executed. The level of civilization of a society can be measured by its attitude towards the death penalty. The Special Rapporteur expresses the hope that these executions were aberrations and that the Palestinian Authority will in future refrain from this form of punishment.

IX. The Occupied Palestinian Territory and the international community

51. The withdrawal of settlers from Gaza is a momentous event. It will end the colonization of Gaza, free more land for Palestinians and result in the departure of the IDF from Gaza. It is a positive step and one to be welcomed. Gaza will, however, remain controlled, albeit not colonized. The human crisis in Gaza is likely to continue as the economy will further deteriorate because of Israeli control. Withdrawal from Gaza should not be allowed to divert attention from what is happening in the West Bank. The construction of the wall and the expansion of settlements seriously threaten the right to self-determination of the Palestinian people and undermine prospects for Palestinian statehood. The annexation of Palestinian territory is probably already a fait accompli.

52. After finding that the construction of the wall in the Occupied Palestinian Territory and its associated regime are contrary to international law, the International Court of Justice held that States are under an obligation not to recognize the illegal situation resulting from the construction of the wall and not to render aid or assistance. This requires that States refuse to recognize or support the permit system for accessing the "closed zone" or accepting goods produced in settlements between the wall and the Green Line. This has particular implications for States members of the European Union that import agricultural goods from Israeli territory. They are obliged to carefully scrutinize the origin of such goods and to refuse to accept produce emanating from the "closed zone".

53. The International Court held that Israel is under an obligation to make reparation for all damage caused by the construction of the wall in the Occupied Palestinian Territory, including in and around East Jerusalem. In pursuance of this finding the General Assembly in resolution ES-10/15 requested the Secretary-General to establish a register of damage caused to all natural or legal persons who have suffered as a result of the construction of the wall. On 11 January 2005 the Secretary-General wrote to the President of the General Assembly (A/ES-10/294) setting out the legal and institutional framework for such a register. This process has made little progress and appears to have been lost in the bureaucracy of the United Nations. This is unfortunate because the International Court of Justice clearly attached great importance to Israel's obligation to pay compensation for the destruction of homes, orchards, olive groves and agricultural land caused by the construction of the wall.

54. The Security Council is clearly disinclined to place pressure on Israel to implement the advisory opinion of the International Court of Justice. On 21 July, the Security Council decided not to embark on a consideration of the construction of the wall and the advisory opinion, following a briefing on the situation given to the Council by the Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General, Alvaro de Soto (see S/PV.5230 and Resumption 1). European States seem to share this approach. This is evidenced by a report in *Ha'aretz* of 28 July 2005 which says of a meeting between Mr. Sharon and President Chirac: "Israeli-Palestinian relations hardly came up in the meeting, Israeli participants said. Based on a prior understanding, the French avoided controversial issues, such as construction in West Bank settlements, the location of the separation fence and the (day after) the disengagement."

55. In resolution ES/10-15, the General Assembly invited Switzerland, in its capacity as the depositary of the Geneva Conventions, to conduct consultations and report to the Assembly on Israel's non-compliance with the Fourth Geneva Convention and to consider the possibility of resuming the Conference of High Contracting Parties to the Fourth Geneva Convention. The Government of Switzerland produced the report cited in paragraph 1 in which it found that there was little support for the convening of a conference, although it found that the majority of States believe that the legal framework for confronting the situation in Palestine was provided by the advisory opinion of the International Court of Justice. The Government proposed the establishment of two separate dialogue groups, one with Israel, the other with the Palestinian Authority, reporting to the Quartet (see A/ES-10/304, annex, para. 59). This demonstrates the confidence placed in the Quartet. The most recent statement of the Quartet, of 23 June 2005, however, raises the question whether this confidence is well placed. While this statement expresses the concern of the Quartet "over settlement activity", it fails to mention the construction of the wall, the expansion of settlements (as opposed to activity), the disfigurement of Jerusalem, the violation of human rights in the Occupied Palestinian Territory and self-determination of the Palestinian people (although Palestinian statehood is contemplated). This suggests that the Quartet and the road map process to which it is committed are not premised on the rule of law or respect for human rights. If this is so, the road map runs the risk of repeating the failures of the Oslo process which likewise took no account of human rights considerations. The mandate of the Special Rapporteur is to report on violations of human rights law and international humanitarian law in the Occupied Palestinian Territory. This mandate must surely extend to the attitude of States and international organizations to the situation in the Occupied Palestinian Territory. This compels the Special Rapporteur to question the approach of the Quartet.

56. The United Nations finds itself in a particularly difficult position. On the one hand it is a party to the Quartet; on the other hand it is obliged to comply with the advisory opinion of its own judicial organ. Although this opinion may be advisory to States, it accurately reflects the law governing the construction of the wall and may be described as the law of the United Nations. In addition, the International Court held that "the United Nations, and especially the General Assembly and the Security Council, should consider what further action is required to bring to an end the illegal situation resulting from the construction of the wall and the associated regime, taking due account of the present advisory opinion" (A/ES-10/273, advisory opinion, para. 160). This makes it clear that the United Nations is under a legal

obligation to take action to bring to an end the construction of the wall. This was confirmed by the General Assembly in resolution ES/10-15 of 20 July 2004.

57. The Government of Israel is determined to defer final status negotiations for as long as possible to enable it to establish as many facts on the ground as possible before such negotiations begin. The international community should be aware of this obvious fact and do its best to ensure that such negotiations commence forthwith. Only a resolution to the conflict which ends Israeli occupation of the Occupied Palestinian Territory, the construction of the wall, the expansion of settlements and the de-Palestinization of Jerusalem will lead to an environment in which there is hope for respect for human rights.



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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General*

The Secretary-General has the honour to transmit to the members of the General Assembly the report of John Dugard, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1997, submitted in accordance with Human Rights Council decision 1/102 in which the Council decided to extend, exceptionally for one year, the mandates and the mandate holders of the special procedures of the Commission on Human Rights.

Summary

The central feature of this report is the conflict in and the siege of Gaza. On 25 June 2006, following the capture of Corporal Gilad Shalit by Palestinian militants and the continued firing of home-made Qassam rockets into Israel, Israel commenced military incursions into Gaza and regular shelling of Gaza, causing numerous deaths and injuries, destruction of homes, agricultural land and infrastructure and resulting in the large-scale violation of human rights and international humanitarian law. In particular, Israel has violated the prohibition on the indiscriminate use of military power against civilians and civilian objects. The use of force has been disproportionate and excessive. This is a case of collective punishment of an occupied people in violation of the Fourth Geneva Convention. It is difficult to resist the conclusion that those responsible for this action are guilty of serious war crimes.

The situation in the West Bank has also deteriorated substantially.

* The submission of the report is delayed in order to reflect the most updated information and owing to consultations.



The Wall under construction in the Palestinian territory is no longer justified solely as a security measure by Israel but is now portrayed by the new Government of Israel as a political measure designed to annex 10 per cent of Palestinian land situated between the Green Line and the Wall, where some 76 per cent of the Israeli settler population lives. When the Wall is completed, an estimated 60,500 West Bank Palestinians living in 42 villages and towns will be enclosed in the closed zone between the Wall and the Green Line. The 500,000 Palestinians living near the Wall require permits to cross it, and it is estimated that 40 per cent of the applications for permits are refused.

Israel continues its policy of the de-Palestinization of Jerusalem. The Wall is constructed in such a way as to place about a quarter of East Jerusalem's Palestinian population of 230,000 in the West Bank. Such persons will in future require permits to access their employment and to visit friends, hospitals and religious sites in Jerusalem.

Settlements continue to expand, in violation of the Fourth Geneva Convention. The settler population in the West Bank and East Jerusalem now numbers over 440,000.

In south Hebron the low wall under construction will make it difficult for Palestinian communities located between the low wall and the Green Line to access their lands, schools and clinics.

Although Israel has abandoned earlier plans to construct the Wall along the spine of the West Bank and to formally incorporate the Jordan Valley into Israel, it has embarked on a plan to extend control over this area by means of the restriction of movement of Palestinians, the destruction of houses and the establishment of Jewish settlements.

The number of checkpoints has increased, from 376 in August 2005 to over 500. Permits for travel between different parts of the West Bank are granted sparingly and require Palestinians to subject themselves to arbitrary bureaucratic procedures. Nablus and Jenin, in particular, have been seriously affected by checkpoints, and are today in effect imprisoned cities. It seems that the main purpose of many checkpoints is to make Palestinians constantly aware of Israeli control of their lives and to humiliate them in the process. Since the war in Lebanon there has been a further tightening of checkpoints.

The demolition of houses remains a regular feature of the occupation. It has now become the practice to destroy houses in the course of effecting arrests in policing operations. The destruction of houses for reasons other than military necessity is prohibited by international humanitarian law.

The family life of Palestinians is undermined by a number of Israeli laws and practices. Recently, the Israeli High Court upheld a law which prohibits Israeli Arabs who marry Palestinians from living together with them in Israel. The Wall in Jerusalem has also resulted in the separation of families.

More than 10,000 Palestinians, including women and children, are imprisoned in Israeli jails.

The occupation of the Palestinian Territory is responsible for most human rights violations. This occupation is implemented in an unnecessarily harsh fashion by the Israeli authorities.

The humanitarian situation in both the West Bank and Gaza is appalling. At least 4 out of 10 Palestinians live under the official poverty line of less than US\$ 2.10 a day and unemployment stands at least 40 per cent. To aggravate matters, the public sector workforce, which accounts for 23 per cent of total employment in the Palestinian territory, is employed but unpaid as a result of the withholding of funds owed to the Palestinian Authority by the Government of Israel, amounting to \$50-\$60 million per month. In addition, the United States and the European Union have cut off funds to the Palestinian Authority on the ground that Hamas, the party elected to Government in January 2006, is listed under their laws as a terrorist organization. Non-governmental organizations working with the Palestinian Authority have likewise been affected by restrictions on funding.

In effect, the Palestinian people have been subjected to economic sanctions — the first time an occupied people have been so treated. This continues, despite the fact that Israel is itself in violation of numerous Security Council and General Assembly resolutions and has failed to implement the advisory opinion of the International Court of Justice of 9 July 2004.

The Quartet itself has no regard for the advisory opinion and fails even to refer to it in its public utterances. This has substantially undermined the reputation of the United Nations in the Occupied Palestinian Territory. Although Palestinians have a high regard for dedicated and committed United Nations workers on the ground, they have serious misgivings about the role of the United Nations in New York and Geneva.

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I. Introduction

1. I visited the Occupied Palestinian Territory (OPT) and Israel from 9 to 17 June 2006 in order to compile information for this report. Shortly after I left the Territory a serious crisis erupted in Gaza following the capture by Palestinian militants of an Israeli soldier, Corporal Gilad Shalit. This new development is described and examined in the context of secondary sources — press reports, reports of non-governmental organizations (NGOs), United Nations publications, etc.

2. During my mission I visited Jerusalem, Gaza, villages in the vicinity of Jerusalem which have been seriously affected by the construction of the Wall, Ramallah, Hebron and communities in the South Hebron Hills, Bethlehem and the Wall near Rachel's Tomb, the village of Wallaja, where house demolitions have occurred, the Jordan Valley, including Jericho and communities whose human rights are affected by Israeli policies and practices, Nablus, including the Balata refugee camp, the village of Jayyous on the perimeter of the Wall and farming communities living close to the Wall, and checkpoints around the city of Nablus and roads in its vicinity.

3. During the visit I spoke with a wide range of persons, both Palestinian and Israeli, about violations of human rights and international humanitarian law. I delivered a lecture at the Hebrew University in Jerusalem sponsored by the Minerva Centre for Human Rights and the International Committee of the Red Cross (ICRC). The lecture, which was attended by more than 100 persons, examined controversial questions of humanitarian law relating to the conflict in OPT. Unfortunately, I had no contact with Israeli officials as the Government of Israel does not recognize my mandate. The Government was, however, aware of my visit and placed no obstacles in the way of the visit.

4. The eruption of violence in Gaza following the capture of Corporal Shalit and the arrest of members of the Palestinian Legislative Council and the Palestinian Authority (see para. 11 below) was followed by Israel's invasion of Lebanon and large-scale violence in Lebanon, Israel and Gaza. It is not the purpose of this report to comment on events in Lebanon and along Israel's northern borders, as that falls outside my mandate. It will, however, fully examine the situation in Gaza. It should be mentioned that the events in Lebanon have to a large extent overshadowed violence in Gaza and along its borders.

5. In the present report "the Wall" is used instead of "barrier" or "fence". This term was carefully and deliberately used by the International Court of Justice in its 2004 advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 9 July 2006. I see no reason to depart from this language.

II. The question of occupation

6. Before turning to the substance of my report, there is a preliminary matter of concern which I wish to address. This is the question of occupation. The Government of Israel prefers to avoid acknowledging the fact that OPT, that is both the West Bank and Gaza, including East Jerusalem, is occupied territory. Instead, it prefers to speak about the "disputed territories" and to assert that the withdrawal of settlers and the Israel Defense Forces (IDF) from Gaza in August 2005 has

terminated the occupation of Gaza. This is a misconception of both law and fact. The International Court of Justice, the Security Council and the High Court of Israel itself have all asserted that OPT is and remains occupied territory and that, as such, it is governed by a special legal regime. According to this regime, Israel is bound to comply with both international humanitarian law and human rights law in its treatment of Palestinians. It is, admittedly, an unusual occupation in that it has continued for almost four decades. The protracted nature of the occupation does not, however, reduce the responsibility of the occupying Power. On the contrary, it increases its responsibility. The length of the occupation has led some to characterize the situation as one of colonialism or apartheid. Although Israel's conduct at times resembles that of a colonial Power or an apartheid regime, it is more correct to classify Israel as an occupying Power in OPT and to judge its actions in accordance with the international law rules applicable to occupation.

III. Gaza

7. In August 2005 Israel withdrew its settlers and armed forces from Gaza. Statements by the Government of Israel that the withdrawal ended the occupation of Gaza are grossly inaccurate. Even before the commencement of "Operation Summer Rains", following the capture of Corporal Shalit, Gaza remained under the effective control of Israel. This control was manifested in a number of ways. Israel retained control of Gaza's air space, sea space and external borders. Although a special arrangement was made for the opening of the Rafah border crossing to Egypt, to be monitored by European Union personnel, all other crossings remained largely closed. The closure of the Karni crossing for goods for substantial periods had particularly serious consequences for Gaza as it resulted in a denial of access to foodstuffs, medicines and fuel. A proposed scheme which would have allowed Gazans to visit family in the West Bank by means of bus convoys was never implemented. In effect, following Israel's withdrawal Gaza became a sealed off, imprisoned society. The effectiveness of Israel's control was further demonstrated by sonic booms caused by its overflying aircraft, designed to terrorize the population of Gaza, regular shelling of homes and fields along the border and targeted assassinations of militants, which, as in the past, were carried out with little regard for innocent civilian bystanders. The actions of IDF in respect of Gaza have clearly demonstrated that modern technology allows an occupying Power to effectively control a territory even without a military presence.

8. The question whether Gaza remains an occupied territory is now of academic interest only. In the course of the cynically named "Operation Summer Rains" that commenced on 25 June, the IDF has not only asserted its control in Gaza by means of heavy shelling, but has also done so by means of a military presence.

9. On 25 June 2006 a group of Palestinian militants attacked a military base near the Israeli Egyptian border. In retreating, they took Corporal Gilad Shalit with them as captive. They demanded the release of the women and children in Israeli jails in return for his release. This act, together with the continued Qassam rocket fire into Israel, unleashed a savage response from the Government of Israel. In the first place, it arrested 8 Hamas Cabinet ministers and 26 members of the Palestinian Legislative Council in Ramallah. At the time of writing this report, most of them remained in detention. While Israel claims that they are being held because of their support for terrorist activities, it is difficult to resist the notion that they are being

held as hostages, in violation of article 34 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention).

10. Israel's assault on and siege of Gaza in the course of "Operation Summer Rains" has taken many forms, described in the following paragraphs.

A. Bombardment of public utilities

11. On 28 June 2006 the Israeli Air Force (IAF) destroyed all six transformers of the only domestic power plant in the Gaza Strip. This plant supplied 43 per cent of Gaza's daily electricity. The rest is provided by the Israel Electrical Corporation. Approximately 700,000 Gazans, out of a population of 1.4 million, initially were without electricity. Currently, the Gaza Electrical Distribution Company (GEDCO) is load-sharing the remaining electricity supply from Israel, but the supply of power to households across the Gaza Strip is intermittent. As most of Gaza's water wells are powered through the national electrical grid, which has been destroyed, generators are being used to power wells, and the daily water supply to Gazan households has been reduced. The present situation relating to the reduction of power is likely to continue for at least another year. Israel's military operations have also destroyed the main water pipelines and sewerage networks. In addition, the frequent closure of the Nahal Oz pipeline, the only pipeline bringing fuel into the Gaza Strip, has affected the use of backup generators to power regular water supplies. Other power transformers have also been bombed.

12. The substantial reduction of the electricity and fuel supply, together with the disruption of water supplies, has impacted severely on the daily life of Palestinians who are without light at night and electricity to do their cooking. The sewers threaten to overflow. Hospitals have been radically affected and are forced to use generators to power life-saving equipment because of power outages.

B. Bombardment of public buildings and facilities

13. Israeli war planes have deliberately targeted public buildings in Gaza. The buildings housing the Ministries of the Interior, Foreign Affairs and the National Economy and the Office of the Prime Minister have all been destroyed. Such action serves no security purpose and can only be construed as an attempt to undermine the institutions of Government. Educational institutions have also been destroyed. Six bridges linking Gaza City with the central Gaza Strip have been destroyed, as have a number of roads. On 28 June IDF occupied Gaza International Airport and destroyed large parts of it.

C. Closure of borders

14. Since 25 June a number of schools have been substantially damaged in the military operations and difficulties are being experienced in repairing these schools in time for the start of the new school year.

15. Although the Rafah crossing is not directly controlled by Israel, IDF prevented European observers responsible for staffing the crossing from reaching it. It has, therefore, been closed since 25 June, only opening for brief periods. The closure of

the Rafah crossing for three weeks in July 2006 left more than 3,000 Palestinians stranded on the Egyptian side of the border in harsh conditions, including some 578 people deemed to be “urgent humanitarian cases”, who had been referred for medical treatment abroad. Eight Palestinians died as a result of their being denied proper medical treatment, shelter and water at the crossing.

16. The closure of the Rafah crossing has also had serious consequences for Palestinians on the Gaza side, particularly those living abroad who were in Gaza for family visits.

17. The Karni commercial crossing has been intermittently closed. The import of some food and medical supplies to Gaza has been permitted but the export of goods has been severely curtailed.

18. Israeli naval vessels have prevented Palestinian fishing along the coast, with the result that fish is no longer available in local markets.

D. Casualties

19. Since 25 June some 260 Palestinians (at least half of whom were civilians) have been killed, including 58 children. Some 800 people have been seriously wounded, including children and women. One Israeli soldier has been killed and 26 Israelis injured, including 12 injured by home-made rockets fired from Gaza.

E. Military incursions causing death and destruction

20. Since 25 June IDF has made numerous and repeated incursions into the Gaza Strip, killing civilians and destroying houses. The most serious incursions have been into Beit Hanoun, Beit Lahia, Sajiyeh, Deir el-Balah, the el-Maghazi refugee camp, Rafah and Khan Younis. In the course of these raids, carried out by tanks and bulldozers, houses have been seized and transformed into military bases. These houses have been severely damaged and several hundred houses have been destroyed. Schools run by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) have been attacked and damaged. Olive and citrus trees have been uprooted and farmland destroyed in land levelling operations. Roads, water pipes and electricity and telephone poles have been damaged. Many families have been compelled to flee their houses, and it is estimated that some 3,400 Palestinians are presently being sheltered by UNRWA as a result of the military action. Military incursions have been accompanied by heavy shelling and the bombing of houses, resulting in the death of many civilians.

F. Shelling and sonic booms

21. Israel has maintained unrelenting shelling of the Gaza Strip since 25 June. Several thousand shells have been fired, an estimated 200-250 each day. IAF had conducted several hundred aerial bombings and fighter jets have fired air-to-surface missiles. This has been accompanied by F-16s flying low and breaking the sound barrier over Gaza, causing sonic booms that are as loud as the actual bombardments. These sonic booms have caused widespread terror among the population, particularly children. If terrorism has any meaning, then it is surely this.

22. Palestinians are not blameless when it comes to shelling. Militants continue to fire Qassam home-made rockets indiscriminately into Israel, injuring Israeli civilians, damaging civilian infrastructure and causing fear among the civilian population living near the Gaza border. It is estimated that eight to nine rockets are fired each day.

G. Targeted assassinations

23. Targeted assassinations have continued, with the inevitable “collateral damage” to civilians.

H. Terrorism by telephone

24. The Israeli military has resorted to a new method of psychological terror. Palestinians in Gaza are telephoned by Israeli military intelligence agents and warned that their houses will be blown up in less than one hour. This threat is sometimes carried out and sometimes not. This tactic has inevitably caused psychological distress and panic amongst Palestinians. Palestinians forced to leave their homes in this way have become internally displaced persons forced to live in UNRWA school premises.

I. Hospitals and health

25. Hospitals continue to function but are seriously impaired. Generators are being used to operate X-ray departments and operation theatres. Referrals abroad of patients from the Gaza Strip have been severely affected by the present crisis. As noted above, checkpoints have been closed to patients and permits denied. Particularly serious problems have arisen in respect of the Rafah border crossing to Egypt. Essential drugs are also in short supply. On 27 July the Palestinian Authority Ministry of Health reported that 67 of the 473 items on the list of essential drugs were out of stock.

26. Public health is endangered by lack of safe drinking water and sewage leakage and reported cases of diarrhoea have increased by 163 per cent compared with the same period last year. It is feared that communicable diseases like cholera and poliomyelitis will reappear.

J. Food and poverty

27. The poverty level in Gaza stands at 75 per cent, which means that three quarters of the population is unable to feed itself without assistance, a 30 per cent increase in just over a year. This is mainly attributable to the siege. Food insecurity results in part from the absence of purchasing power as few people have sufficient money today to cover their family’s basic food needs. Food prices have inflated and supplies have been reduced as a result of the current operation. As noted above, fish is no longer available as a result of the sea blockade. Wheat flour mills, factories producing food and bakeries have been forced to reduce their production owing to power shortages. Furthermore, the loss of capacity to preserve perishable food in the

Gaza heat results in high food losses. Supplies of sugar, dairy products and milk are running extremely low as commercial supplies from Israel are limited.

28. As indicated above, water supplies have been seriously affected as a result of the destruction of the Gaza power plant and the bombing of pipelines. Consequently, drinking water is in short supply. UNRWA and ICRC have been compelled to supply water by means of water tankers.

K. Legal assessment of Israeli action

29. Israel's actions must be assessed in terms of both human rights norms and international humanitarian law. According to the International Court of Justice in its advisory opinion cited above, both these regimes are applicable to Israel's conduct in the Occupied Palestinian Territory.

30. Israel has violated a number of rights proclaimed in the International Covenant on Civil and Political Rights, particularly the right to life (art. 6), freedom from torture, inhuman or degrading treatment (art. 7), freedom from arbitrary arrest and detention (art. 9), freedom of movement (art. 12) and the right of children to protection (art. 24). It has also violated rights contained in the International Covenant on Economic, Social and Cultural Rights, notably "the right of everyone to an adequate standard of living for himself and for his family, including adequate food, clothing and housing", freedom from hunger, and the right to food (art. 11) and the right to health (art. 12).

31. Israel has, in addition, violated the most fundamental rules of international humanitarian law, which constitute war crimes in terms of article 147 of the Fourth Geneva Convention and article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Protocol I). These include direct attacks against civilians and civilian objects and attacks which fail to distinguish between military targets and civilians or civilian objects (arts. 48, 51 (4) and 52 (1) of Protocol I); the excessive use of force arising from disproportionate attacks on civilians and civilian objects (arts. 51 (4) and 51 (5) of Protocol I); the spreading of terror among the civilian population (art. 33 of the Fourth Geneva Convention and art. 51 (2) of Protocol I) and the destruction of property not justified by military necessity (art. 53 of the Fourth Geneva Convention). Above all, the Government of Israel has violated the prohibition on collective punishment of an occupied people contained in article 33 of the Fourth Geneva Convention. The indiscriminate and excessive use of force against civilians and civilian objects, the destruction of electricity and water supplies, the bombardment of public buildings, the restrictions on freedom of movement and the consequences that these actions have had upon public health, food, family life and the psychological well-being of the Palestinian people constitute a gross form of collective punishment. The capture of Corporal Shalit and the continued firing of Qassam rockets into Israel cannot be condoned. On the other hand, they cannot justify the drastic punishment of a whole people in the way that Israel has done.

IV. The West Bank

32. Many of Israel's policies and practices in the West Bank seriously impinge upon the human rights of Palestinians. The Wall presently under construction in Palestinian territory, checkpoints and roadblocks, settlements, an arbitrary permit system, the pervasive practice of house demolitions, targeted assassinations, and arrests and imprisonment violate a wide range of civil and political rights. Economic and social rights have also suffered from the humanitarian crisis resulting from the occupation.

The Wall

33. The Wall that Israel is presently building largely in Palestinian territory is clearly illegal. The International Court of Justice in its advisory opinion of 9 July 2004 asserted that it is contrary to international law and that Israel is under obligation to discontinue construction of the Wall and to dismantle those sections that have already been built forthwith. On 20 July 2004 the General Assembly adopted resolution ES-10/15 by 150 votes in favour, 6 against and 10 abstentions, in which it demanded that Israel comply with its legal obligations identified in the advisory opinion. The Israeli High Court of Justice, in a judgement delivered in September 2005 in *Mara'abe v. the Prime Minister of Israel* (HCJ 7957/04), dismissed the advisory opinion, arguing that the International Court of Justice had failed to have regard to the security considerations that had prompted the construction of the Wall. The basis of this judgement has now been undermined by the admission of the Government that the Wall is designed to serve a political purpose and not an exclusively security purpose. The admission that the Wall has in part been built to include West Bank settlements within the Wall and under Israel's direct protection has led the High Court to rebuke the Government for misleading it in the *Mara'abe* hearing and other challenges to the legality of the Wall.¹ That the purpose of the Wall is to acquire land surrounding West Bank settlements and to include settlements within Israel can no longer be seriously challenged. The fact that 76 per cent of the West Bank settler population is enclosed within the Wall bears this out.

34. On 30 April 2006 the Government of Israel revised the route of the Wall. It will now be 703 km long when completed, rather than 670 km. At present over 50 per cent of the Wall has been completed. When it is finished, an estimated 60,500 West Bank Palestinians living in 42 villages and towns will reside in the closed zone between the Wall and the Green Line. More than 500,000 Palestinians living within 1 km of the Wall live on the eastern side but need to cross it to get to their farms and jobs and to maintain family connections. Eighty per cent of the Wall is built within the Palestinian territory itself and in order to incorporate the Ariel settlement block, it extends some 22 km into the West Bank. At present, there are some 73 gates in the Wall, but only 38 of them are accessible to Palestinians, and only to those with the correct permit.

35. The Wall has serious humanitarian consequences for Palestinians living within the closed zone (the area between the Green Line and the Wall). They are cut off from places of employment, schools, universities and specialized medical care, and community life is seriously fragmented. Palestinians who live on the eastern side of

¹ *Haaretz*, 14 and 16 June 2006.

the Wall but whose land lies in the closed zone face serious economic hardship as a result of the fact that they are not able to reach their land to harvest crops or to graze their animals without permits. Permits are not easily granted. A host of obstacles are placed in the way of obtaining a permit. Bureaucratic procedures for obtaining permits are humiliating and obstructive. Although precise figures are not available, it seems that the number of permits refused may conservatively be estimated at 40 per cent. Reasons given for refusing permits range from security to failure to establish land ownership. The latter ground is now more frequently used by Israeli authorities as it has become clear that Palestinians, whose land ownership dates from a chaotic Ottoman system of land tenure, are frequently unable to prove ownership to the satisfaction of Israeli authorities determined to deny permits. The difficulties and humiliation occasioned by the process of applying for permits furthermore deters many Palestinians from applying. The fact that the opening and closure of gates leading to the closed zone are regulated in a highly arbitrary manner and frequently do not open as scheduled aggravates the situation.

36. Obstacles placed in the way of access to the closed zone have seriously affected farming in this zone. At a time when many Palestinians are returning to the land as a result of the non-payment of salaries to civil servants and the closure of many private businesses in the cities, the permit system seriously impacts upon Palestinian employment and livelihood.

37. Nearly 50 per cent of the Palestinian population in the Territory are refugees who fled their homes before Israeli armed forces in previous armed conflicts. Now a new category of internally displaced person is being created by the Wall. This arises from the confiscation of land and property to make way for the Wall, the denial of access to jobs, hospitals, schools and families in the West Bank and the refusal of permits to farm land in the closed zone. There are no comprehensive statistics on the subject. The Palestinian Central Bureau of Statistics has estimated that nearly 14,500 persons have been displaced by the Wall and B'Tselem, the Israeli human rights organization, has estimated that the Wall will displace some 90,000 Palestinians. In other regions, the forced displacement of persons by means of human rights violations is labelled ethnic cleansing.

V. Jerusalem and the Wall

38. The 75 km Wall around Jerusalem (of which only 5 km are on the Green Line) is the instrument being used to effect major changes in the city by seeking to ensure that Jerusalem assumes a predominantly Jewish character, which will undermine Palestinian claims to Jerusalem as the capital of an independent Palestinian State. This is being done by constructing the Wall through Palestinian neighbourhoods in East Jerusalem and classifying neighbourhoods on the eastern side of the Wall as belonging to the West Bank. This has serious implications for the human rights of some 230,000 Palestinians living in Jerusalem.

39. First, while Palestinians living on the west side of the Wall will be allowed to retain their Jerusalem identity documents, which entitle them to certain benefits, particularly in respect of social security, they will find it increasingly difficult to travel to cities in the West Bank such as Ramallah and Bethlehem, where many of them are employed. Moreover, if they elect to reside in the West Bank in order to be nearer to their places of work, they risk losing their Jerusalem identity documents

and the right to live in Jerusalem because under Israel's so-called centre of life policy, Palestinians must prove that they currently live in the city of East Jerusalem to maintain their Jerusalem residency rights. Residency rights may be withdrawn on political grounds. On 2 July 2006 the Government of Israel revoked the Jerusalem residency permits of four senior Hamas officials living in East Jerusalem.

40. Secondly, those relegated to the West Bank as a result of the construction of the Wall, who number about a quarter of the city's Palestinian population will lose their Jerusalem identity documents and the attendant benefits. They will also require a permit to enter Jerusalem, and will be allowed to enter the city by only 4 of the 12 crossings in the Wall, which will considerably increase their commuting time and impede their access to schools, universities, hospitals, religious sites and places of employment. It is difficult to describe the humiliation of the crossings in the Wall to access Jerusalem. At the main crossing at Kalandiya, now designated a "terminal", punitive bureaucratic procedures are applied that make passage through at peak hours take from one to two hours.

41. The construction of the Wall in order to achieve the Judaization of Jerusalem is a cynical exercise in social engineering that imposes severe hardships on all aspects of Palestinian life. In the words of B'Tselem: "The Barrier's route [in Jerusalem], allegedly intended to prevent the deadly terror attacks, is in fact dictated by ... political considerations ... The result undermines the very rationale of the Barrier as a security measure, and severely violates basic rights"².

VI. Bethlehem and the Wall

42. The historic city of Bethlehem has suffered the same fate as Jerusalem. It is surrounded by a mix of concrete slabs, razor wire fences, trenches and sniper towers which completely undermine the historic character of the city. The Wall has ghettoized Bethlehem and decimated the Palestinian neighbourhood around Rachel's Tomb, which is encircled by a wall designed to protect Jewish worshippers. Most businesses in the area have closed or have been compelled to relocate. The Bethlehem "terminal" resembles that of Kalandiya and restricts movement between Bethlehem and Jerusalem.

VII. Settlements

43. Jewish settlements in the West Bank are illegal. They violate article 49, paragraph 6, of the Fourth Geneva Convention and their illegality has been confirmed by the International Court of Justice in the advisory opinion on the Wall. The Israeli High Court has consistently refused to pronounce on the legality of settlements, which indicates that even Israel's own High Court is unwilling to confer legitimacy on settlements.

44. Despite the illegality of settlements and the unanimous condemnation of settlements by the international community, the Government of Israel persists in allowing settlements to grow. Sometimes settlement expansion occurs openly and with the full approval of the Government. In 2006, the Government has so far

² B'Tselem, *A Wall in Jerusalem: Obstacles to Human Rights in the Holy City*, summer 2006.

invited tenders for the construction of 952 housing units in settlements on the West Bank.³ More frequently, expansion takes place stealthily under the guise of “natural growth”, which has resulted in Israeli settlements growing at an average rate of 5.5 per cent compared with the average growth rate in Israeli cities of 1.7 per cent. Sometimes settlements expand unlawfully in terms of Israeli law, but no attempt is made to enforce the law. Outposts are frequently established and threats to remove them are not carried out. In 2006 settlers had the audacity to move into apartments in the Upper Modi’in settlement built on land belonging to the neighbouring Palestinian village of Bil’in in flagrant disregard of a High Court injunction against such occupation.

45. As a result of expansion, the settler population in the West Bank numbers some 260,000 persons and that of East Jerusalem nearly 200,000. As indicated above, the Wall is presently being built in both the West Bank and East Jerusalem to ensure that most settlements will be enclosed within the Wall. Moreover, the three major settlement blocks of Gush Etzion, Ma’aleh Adumim and Ariel will effectively divide Palestinian territory into cantons, thereby destroying the territorial integrity of Palestine.

46. It is clear from statements of the Government of Israel that the major settlement blocks are destined to remain part of Israel. On 3 May 2006 Prime Minister Olmert told the Knesset that “[t]he achievements of the settlement movement in main concentrations will forever be an integral part of the sovereign state of Israel, along with Jerusalem our united capital”.⁴

47. The proposals of the Government of Israel for “unilateral disengagement”, “convergence” or “realignment”, now in abeyance as a result of the Lebanon war, clearly envisage the unlawful annexation of large portions of Palestinian territory. The euphemisms used to describe this policy should not be allowed to obscure the hard truth.

48. Settler violence continues to be a serious problem. In June 2006 the Palestinian Monitoring Group published a monthly account of settler violence which is illustrative of the problem:

“Israeli settlers attempted to abduct a female university student in the district of Salfit; beat civilians in the city of Hebron as well as other civilians near the settlement of Ma’on; closed a road in the district of Qalqiliya; threw stones at civilian houses in Tel Rumeida neighbourhood in the city of Hebron, and stole a water pump from a house in Tel Rumeida. They burned two civilian vehicles and one truck in the town of Huwara; set fire to wheat crops and olive trees in the villages of Salim near Nablus and Al Jab’a near Bethlehem; and grazed sheep on cultivated land in the district of Hebron.”

VIII. South Hebron and the “mini-wall”

49. Plans to build the Wall in south Hebron have been abandoned. Instead, the projected Wall will largely follow the Green Line. In its place Israel is constructing a road barrier, or “mini-wall”, running along the northern side of settler bypass

³ *Haaretz*, 21 September 2006.

⁴ *Haaretz*, 4 May 2006.

roads in the region. This wall is approximately 1 m high and is designed to prevent Palestinian vehicles from crossing onto the main road and to give settlers unrestricted use of bypass roads. These restrictions will allow Jewish settlers to move safely between settlements and farther on to Israel without crossing Palestinian land. Twenty-two Palestinian communities and over 1,900 Palestinians will be enclosed between the mini-wall and the Wall itself. The mini-wall will hinder the access of Palestinian shepherds and their 24,000 head of livestock to grazing areas on the other side. The mini-wall will add to the hardships already experienced by Palestinian communities living in south Hebron, which has inadequate clinics, schools and waste disposal facilities. Water must be trucked in when summer begins and rain-fed systems start emptying. The Government of Israel has refused to link Palestinian communities to its water system, which provides water to settlers alone. To aggravate the situation, the Government refuses permits to build houses.

50. The plight of Palestinian communities in south Hebron is illustrated by the experience of the village of Tuwani, which I have visited on several occasions. This village is denied electricity, water and sanitary units and is prohibited from building new houses. Moreover, the villagers are subjected to settler violence from nearby Ma'on. Schoolchildren have to be escorted by IDF soldiers to school in order to protect them from the settlers. The settlers are also responsible for poisoning the land.

IX. The Jordan Valley

51. Israel has abandoned earlier plans to build the Wall along the spine of OPT and to formally appropriate the Jordan Valley. It has nevertheless asserted its control over this region, which constitutes 25 per cent of the West Bank, in much the same way as it has done over the closed zone between the Wall and the Green Line on Palestine's western border. That Israel intends to remain permanently in the Jordan Valley is clear from government statements and is further manifested, first, by restrictions imposed on Palestinians and, second, by the exercise of Israeli control and the increase in the number of settlements in the Jordan Valley.

52. Palestinians living in the Jordan Valley must possess ID cards with a Jordan Valley address, and only those persons may travel within the Jordan Valley without Israeli permits. Other Palestinians, including non-resident landowners and workers, must obtain permits to enter the Jordan Valley and in practice such permits are not valid for overnight stays, necessitating daily commuting and delays at checkpoints connecting the Jordan Valley with the rest of the West Bank. This has led to the isolation of the Jordan Valley. Travel restrictions make it difficult for farmers in the Jordan Valley to access markets in the West Bank as their produce is frequently held up at checkpoints, notably at Al Hamra, and perishes in the process. Attempts to sell such produce along the roadside have failed as a result of the destruction of agricultural stalls along the road by IDF.

53. Housing in the Jordan Valley is also a serious problem as most of the Valley is designated as Area C, which means that the Israeli authorities must give permission for the construction of houses. I visited a Bedouin family near Jericho who were faced with a demolition order for their "illegal" house. The vindictive enthusiasm with which IDF carries out its duties in this respect is illustrated by the following

amusing, but revealing, incident. I visited a house in the village of Zbeidat on the border of Area C. The owner had planted a row of geraniums outside his house, some of which had extended over into Area C territory. The IDF informed him that he had to remove those geraniums as they had been grown without permission.

54. Most of the land in the Jordan Valley is controlled by Jewish settlements or used as military zones. Only 4 per cent of the Valley is accessible to the 47,000 Palestinians for agricultural and residential use. There are some 8,300 settlers living in the Jordan Valley and their number is growing as a result of the resettlement of settlers from Gaza. Whereas most Palestinian villages are without electricity and water settlers are linked to Israel's electricity and water systems. Moreover, the 8,300 settlers living in the Jordan Valley consume more water each year than the 47,000 Palestinians living in the region.

X. House demolitions

55. The demolition of houses is a regular feature of the occupation, and the bulldozer has become a hated symbol of it. Traditionally, the occupying Power has demolished houses for punitive reasons (where a resident of the house has committed a crime against Israel), military necessity, or for failure to obtain a permit to build. In recent times houses have been demolished for additional reasons: first, to make way for the Wall and second, to carry out arrests of wanted persons. It will be recalled that last year the Israeli High Court forbade the use of Palestinian civilians as human shields in arrest operations. Now, if a wanted person is suspected of being in a particular house and refuses to surrender, the house is bulldozed. I myself witnessed the manner in which houses had been destroyed in this way in the Balata refugee camp near Nablus.

56. For many years Israel has destroyed houses built without permission, arguing that in so doing it is simply applying municipal housing laws in the same way as other developed societies do. Such an argument fails to take account of two factors. First, an occupying Power is constrained from destroying the houses of persons protected by international humanitarian law (see art. 23 (g) of the Hague Regulation concerning the Laws and Customs of War on Land annexed to the Hague Convention IV of 1907 and article 53 of the Fourth Geneva Convention). This applies to Palestinian homes in the West Bank, Gaza and East Jerusalem. Second, permits are refused in such an arbitrary manner, and are refused with such great regularity, that it has become virtually impossible for Palestinians to obtain permits to build houses. The permit system for Palestinians in East Jerusalem is administered in a completely different way from the way it is administered in respect of Israelis. The discriminatory way in which the permit system is implemented in East Jerusalem has recently been highlighted by Meir Margalit in *Discrimination in the Heart of the Holy City* (2006). During my visit I spent time in the village Al Walaja, which was annexed to East Jerusalem following the 1967 war. The residents have not, however, been given Jerusalem ID documents and requests for building permits have consistently been refused. Recently an attempt has been made to construct the Wall through the village, but this seems to have been abandoned. The Israeli authorities, however, seem determined to bring pressure to bear on the residents of the Ein-Jweisa neighbourhood of Al Walaja to move by threatening them with house demolitions. Between 1985 and 2006, 29 houses have been demolished and at present some 24 homes face demolition orders.

XI. Checkpoints

57. The number of checkpoints, including roadblocks, earth mounds and trenches, has increased from 376 in August 2005 to over 500. These checkpoints divide the West Bank into four distinct areas: the north (Nablus, Jenin and Tulkarem), the centre (Ramallah), the south (Hebron) and East Jerusalem. Within these areas further enclaves have been created by a system of checkpoints and roadblocks. Cities are cut off from each other as a permit is required to travel from one area to another and, again, permits are difficult to obtain. The rules relating to the granting of permits constantly change, particularly with respect to the age of the persons to whom permits are denied. Moreover, bureaucratic procedures for obtaining permits are arbitrary and obstructive. This has worsened since Hamas came to power as those applying for permits must now apply directly to the Israeli Civil Administration because the Government of Israel refuses to cooperate with any Palestinian governmental authority. The permit system also explains the economic decline of OPT as goods and labour cannot move freely.

58. In June 2006 I visited the city of Nablus, which is now completely surrounded by checkpoints that make entrance into and exit from the city impossible for most residents. The Hawara checkpoint, in particular, has achieved notoriety for the harsh manner in which it is administered. In effect, Nablus has become an imprisoned city.

59. Israel justifies checkpoints on security grounds. It is difficult to accept this justification for most checkpoints. After all, the Wall provides an effective security barrier between Israel and OPT and there is a line of checkpoints along the finger of land in which the Ariel settlement block has been established, which should adequately ensure the protection of Israelis. Checkpoints in other areas, such as those surrounding Nablus, therefore seem to serve no security purpose. This suggests that the main purpose of many checkpoints is in fact to make Palestinians constantly aware of Israeli control of their lives and to humiliate them in the process.

XII. Separation of families

60. The right to family life is recognized by all human rights conventions. In OPT it is undermined by Israel in a number of ways. First, the Wall running between Jerusalem neighbourhoods separates Palestinians with Jerusalem identity documents from those with West Bank documents. When husband and wife have separate documents they often have no choice but to separate in order to allow the Jerusalem ID holder to retain his or her benefits. Eighteen per cent of Palestinian households in Jerusalem are separated from the father and 12 per cent of households are separated from the mother. Secondly, the authorities have recently embarked upon a policy of denying access to Palestinians with foreign passports. In previous years, Palestinians with foreign passports have been allowed to live in the West Bank provided that they renewed their visas every three months. This affects some 50,000 Palestinians living in the West Bank who now face a denial of visas.⁵ Thirdly, an Israeli law on citizenship prohibits Palestinians who marry Israeli Arabs from living with their spouses in Israel. This law was recently the subject of a controversial decision by the Israeli High Court of Justice which held that the law, which does not

⁵ *Haaretz*, 10 July 2006.

apply to Jewish Israelis who marry foreigners, was constitutional on the grounds of security. The Court reasoned that the State was entitled to prevent Palestinians from living with their Israeli spouses in Israel because that might allow Palestinians who threaten the security of Israel to enter the country.

XIII. Administration of justice

61. Israel clearly does not ascribe to the policy of winning hearts and minds in the process of administering justice; instead, it shows the iron fist, in the process of making arrests, the treatment of arrested persons and the treatment of prisoners. The situation seems to have worsened since Hamas was elected to office.

62. The making of arrests, as has been shown, is frequently accompanied by the destruction and trashing of property, beatings, the unleashing of dogs in civilian homes, humiliating strip searches and early morning raids. The interrogation of arrested persons continues to be accompanied by a mix of psychological pressure and physical violence. The number of prisoners continues to rise. There are now over 10,000 Palestinian prisoners in Israeli jails, including women and children. The position of child prisoners is particularly disturbing as they are often compelled to share cells with adult prisoners and denied education and access to family.

63. The arrest of high-profile figures serves to remind Palestinians that no one is beyond the reach of Israel's power. In March 2006 Israel stormed and largely destroyed the Jericho prison to arrest Ahmed Saadat and his accomplices, immediately after their British and American wardens had withdrawn in violation of a 2002 agreement in which they had undertaken to monitor the detention of Mr. Saadat and others. In June 2006 eight Hamas Cabinet ministers and 26 members of the Palestinian Legislative Council were arrested in Ramallah. In August 2006 Aziz Dweik, Speaker of the Palestinian Legislative Council, Nasser Al-Shaer, Deputy Prime Minister, and Mahmoud Al-Ramahi, Secretary-General of the Palestinian Legislative Council, were arrested in separate raids.

XIV. Israel, security and human rights

64. The litany of violations of human rights and international humanitarian law described in this report is difficult to reconcile with Israel's commitment to the rule of law. This is the paradoxical situation in which Israel finds itself. On the one hand, Israel has a Supreme Court and institutions designed to ensure respect for the rule of law. On the other hand, Israel stands accused of serious violations of human rights and international humanitarian law. Israel's response is to dispute the factual assessment of many violations and, where the facts are undisputed, to justify its action as necessary security measures.

65. In many parts of the world there is sympathy for Israel's actions. Israel is seen to be engaged in the war against terror, which justifies departure from accepted human rights norms. Moreover, because of its commitment to the rule of law, Israel is seen to be a benign occupier which reluctantly violates norms of human rights and humanitarian law in the interest of security. Unfortunately, this perception is false. Israel is not a benign occupier of the West Bank, Gaza and East Jerusalem. As has been shown, its actions are often grossly disproportionate to the security threat

involved. In addition, its forces execute their tasks in a harsh manner characterized by arbitrariness and vindictiveness. The permit system that regulates the movement of Palestinians is implemented in an arbitrary manner which leaves the applicant entirely at the mercy of the whims of the Israeli bureaucrat charged with the task of granting or refusing permits. Checkpoints are administered in a humiliating manner. Here it is important to stress that the nastiness of soldiers seems to have increased since the election of Hamas and the Lebanon war: soldiers now seem to regard every Palestinian as a potential terrorist to be treated without respect. Little compassion is shown for the sick and the elderly and there are numerous incidents of women giving birth at checkpoints while soldiers refuse them permission to travel to hospitals. Arrests are accompanied not only by the destruction of property but by the trashing of property. (The Special Rapporteur visited an UNRWA school in the Balata refugee camp which had been seized as a base for military activities in the camp in February 2006. School property was deliberately trashed and graffiti scrawled on the walls in a manner that could not possibly be justified on grounds of security.) Houses built without permits are unnecessarily destroyed and sometimes destroyed while court actions are pending. Settler violence and vandalism are openly tolerated by IDF. Communities are refused water and electricity when those services could easily be provided by linking up with the supply to neighbouring settlements. No regard is paid to family life. And so on. In short, the occupation is not administered in a humane manner. Israeli dissidents who have served in the system (for instance, soldiers, who formed a dissident group, "Breaking the Silence", in 2004) and those who monitor the occupation (such as Machsom Watch) have borne witness to the callous manner in which the occupation is implemented.

XV. The humanitarian crisis and funding of the Palestinian Authority

66. The humanitarian crisis in Gaza is dealt with separately in the section on Gaza above. The appalling humanitarian situation in that part of OPT should not be allowed to distract attention from the serious humanitarian crisis in OPT as a whole. Four out of 10 Palestinians live under the official poverty line of less than US\$ 2.10 a day. The level of unemployment is difficult to determine. The International Labour Organization has estimated the jobless rate to be over 40 per cent of the Palestinian labour force. This, however, does not take account of the fact that the public sector, which represents 23 per cent of total employment in OPT, is employed but unpaid.

67. In large measure the humanitarian crisis is the result of the termination of funding of the Palestinian Authority since Hamas was elected to office. In the first instance the Government of Israel is withholding from the Palestinian Authority VAT monies amounting to \$50-60 million per month which it collects on behalf of the Authority on goods imported into OPT. In law Israel has no right to refuse to transfer this money, which belongs to the Palestinian Authority under the 1994 Protocol on Economic Relations between the Government of Israel and the Palestine Liberation Organization (Paris Protocol). Predictably, Israel justifies its action on security grounds. The shortfall in funds for the Palestinian Authority has been accompanied by a drastic reduction in funding on the part of donor countries and agencies. This has had a serious impact on the work of NGOs which have had to suspend or cancel their projects related to the work of the Authority. As a result of the fact that Hamas is classified as a terrorist organization by both the United States

of America and the European Union, the United States Treasury has decided to prohibit transactions with the Palestinian Authority. This has had a profound effect on banks, which are not prepared to transfer funds to the Authority, its agencies and its projects and to NGOs engaged in projects with the Authority. Some projects involving the Authority continue to be funded (e.g. World Bank projects) and the European Union has set up a Temporary International Mechanism, endorsed by the Quartet, for the relief of Palestinians employed in the health sector, the uninterrupted supply of utilities, including fuel, and the provision of basic allowances to meet the needs of the poorest segment of the population.

68. Despite limited funding attempts of this kind, it is clear that the Palestinian economy, which has become heavily dependent on donor funding since 1994, has suffered dramatically as a result of the withholding of funds by Israel and the international community since the election of Hamas. This economic strangulation has had a severe impact on the social and economic rights of the Palestinian people. About 1 million of Palestine's 3.5 million people are directly affected by the non-payment of salaries to some 152,000 civil servants (and their families), but the whole population has suffered indirectly. Moreover, as the Palestinian Authority is responsible for over 70 per cent of schools and 60 per cent of health-care services in the Territory, both education and health care have suffered substantially. In August 2006 civil servants embarked on a strike against non-payment of their salaries which has further aggravated the socioeconomic crisis.

69. Health care is examined more fully in the section on Gaza. However, it is important to stress that cuts in funding have impacted seriously on health care throughout OPT. The failure to pay the salaries of health-care workers has led to absenteeism because workers are simply unable to pay for transportation to the workplace. Drugs and vaccines are in short supply. Hospitals are unable to provide adequately for cancer and kidney dialysis patients. The transfer of patients to hospitals in other parts of the West Bank, and particularly to Israel and Egypt, has become particularly difficult as a result of closures and the refusal of permits.

70. In effect, the Palestinian people have been subjected to economic sanctions — the first time an occupied people have been so treated. This is difficult to understand. Israel is in violation of major Security Council and General Assembly resolutions dealing with unlawful territorial change and the violation of human rights and has failed to implement the 2004 advisory opinion of the International Court of Justice, yet it escapes the imposition of sanctions. Instead, the Palestinian people, rather than the Palestinian Authority, have been subjected to possibly the most rigorous form of international sanctions imposed in modern times. It is interesting to recall that the Western States refused to impose meaningful economic sanctions on South Africa to compel it to abandon apartheid on the grounds that that would harm the black people of South Africa. No such sympathy is extended to the Palestinian people or to their human rights.

XVI. The advisory opinion of the International Court of Justice and the United Nations

71. In 2004 the International Court of Justice held that the Wall that Israel is presently building in Palestinian territory is illegal and should be dismantled. In its advisory opinion the Court also found a number of other Israeli practices (such as

the establishment of settlements) to be contrary to international law. Two years have passed, and nothing has been done to give effect to the findings of the Court. To aggravate matters, the Wall does not feature in any way whatsoever in the regular utterances of the Quartet. It is as if no opinion had been given.

72. In 2004 the General Assembly, in its resolution ES-10/15, instructed the Secretary-General to establish a register of damages arising from the construction of the Wall. Two years later, this register still does not exist, raising serious doubts about whether its structure, goals and methods of operation will comply with the advisory opinion.

73. The advisory opinion of the International Court of Justice is an authoritative pronouncement of the judicial organ of the United Nations, which has been endorsed by the General Assembly in resolution ES-10/15. As an advisory opinion, it is not binding upon States. It is, however, a definitive statement of the law as far as the United Nations is concerned, and it must guide the United Nations in the same way as the advisory opinion of 21 June 1971 on the *Legal Consequences for States of the Continuing Presence of South Africa in Namibia* guided the political organs of the United Nations in their handling of the Namibian question. As a member of the Quartet, the United Nations is duty bound to persuade that group to at least make reference to the advisory opinion of the Court in its regular statements. If it fails in this endeavour, it must at least express its dissatisfaction with the failure of the Quartet to be guided by the advisory opinion and to make reference to it.

XVII. Conclusion

74. This report does not make pleasant reading. Israel is in violation of important norms of human rights and international humanitarian law. While it is readily conceded that Israel faces a security threat and is entitled to defend itself, it must not be forgotten that the root cause of the security threat is the continued occupation of a people that wishes to exercise its right of self-determination in an independent State. The need to bring this situation to an end is recognized by the international community, which has delegated power to the Quartet, comprising the United Nations, the European Union, the United States of America and the Russian Federation, to facilitate a peaceful settlement in the form of the creation of a Palestinian State. Unfortunately, at present this goal seems to have been lost to view as the Quartet turns to punitive measures designed to compel Hamas to change its ideological stance, or to bring about regime change. This is clear from the Quartet's statement of 9 May 2006. Whether the United Nations is in law authorized to make itself a party to economic coercion through the Quartet without following its own procedures under the Charter is questionable. In any event, diplomacy has given way to coercion.

75. It is pointless for the Special Rapporteur to recommend to the Government of Israel that it show respect for human rights and international humanitarian law. More authoritative bodies, notably the International Court of Justice and the Security Council, have made similar appeals with as little success as have had previous reports of the Special Rapporteur. It also seems pointless for the Special Rapporteur to appeal to the Quartet to strive for the restoration of human rights, as neither respect for human rights nor respect for

the rule of law features prominently on the agenda of this group, as reflected in its public utterances. In these circumstances, the Special Rapporteur can only appeal to the wider international community to concern itself more actively with the plight of the Palestinian people.

76. The image and reputation of the United Nations has, sadly, suffered in the occupied Palestinian territories. While there is high regard for dedicated and committed United Nations workers on the ground, the same cannot be said for the United Nations in New York and Geneva. Palestinians are dismayed by the inability of the Security Council to take action to protect human rights, as evidenced by the veto of an even-handed draft Security Council resolution on Gaza on 12 July 2006. The political organs of the United Nations need to show more concern for the human rights of Palestinians. Reports such as the present one record the violations of human rights and humanitarian law, but real action on the part of the Organization is essential at this troubled time.



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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard, submitted in accordance with Human Rights Council resolution 5/1.

* A/62/150.



Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The right of the Palestinian people to self-determination, which has been recognized by the political organs of the United Nations, the International Court of Justice and Israel, is to be exercised in the West Bank, East Jerusalem and Gaza, which together form the Palestinian self-determination unit. The exercise of this right is threatened by the separation of the West Bank and Gaza resulting from the seizure of power by Hamas in Gaza in June 2007 and seizure of power by Fatah in the West Bank. Every effort must be made by the international community to ensure that Palestinian unity is restored. Without unity the right to self-determination cannot be fully realized.

This year witnessed the fortieth anniversary of the occupation of the Palestinian territory. Israel's obligations as occupying Power have not diminished as a result of the prolonged nature of the occupation. On the contrary, these obligations have increased as a result of Israel's illegal actions within the occupied territory. It is suggested that the International Court of Justice be asked to render an advisory opinion on the legal consequences of prolonged occupation for the occupied people, the occupying Power and third States.

Israel remains an occupying Power in respect of Gaza. Arguments that Israel ceased its occupation of Gaza in 2005 following the evacuation of its settlements and the withdrawal of its troops take no account of the fact that Israel retains effective control over Gaza by means of its control over Gaza's external borders, airspace, territorial waters, population registry, tax revenues and governmental functions. The effectiveness of this control is emphasized by regular military incursions and rocket attacks. Israel's conduct in respect of Gaza must therefore be measured against the standards of international humanitarian law and human rights law. In the past year Israel has violated important norms of international humanitarian law and human rights law by undertaking military action against civilian targets and by creating a humanitarian crisis by means of the closure of Gaza's external borders. In law Israel is obliged to cease these actions. Other States that are a party to the siege of Gaza are likewise in violation of international humanitarian law.

The human rights situation in the West Bank may improve as a result of the rapprochement between the emergency Government of President Abbas, under the prime ministership of Salam Fayyad, and Israel, the United States and the Quartet, following the takeover of Gaza by Hamas. Already 255 prisoners have been released, US\$ 119 million of Palestinian tax funds transferred to the Palestinian Authority and amnesty granted to 178 Fatah militants. Despite these moves, and promises of further measures to improve the lives of Palestinians from Israel, the United States and the Quartet, large-scale violations of human rights and international humanitarian law continue in the West Bank and East Jerusalem. The construction of the wall (or barrier) continues; settlements continue to expand; checkpoints remain in force; the Judaization of Jerusalem continues; and the de facto annexation of the Jordan Valley is unaffected. Military incursions, accompanied by arrests, continue unabated. House demolitions remain a feature of life in the West Bank and East Jerusalem.

The Secretary-General of the United Nations has established a Board to register Palestinian claims for damages arising from the construction of the wall. Serious questions are asked about how the Board will operate.

Violations of human rights and international humanitarian law, together with Israel's refusal to transfer tax moneys due to the Palestinian Authority and the imposition of banking restrictions by the United States, have had a serious impact on the humanitarian situation in the West Bank. Poverty and unemployment have reached their highest level; health and education are undermined by military incursions, the wall and checkpoints; and the entire social fabric of society is threatened.

There are some 10,000 Palestinian political prisoners in Israeli jails and prisoners are treated in an inhuman and degrading manner. The extrajudicial killing of suspected militants by means of rocket fire continues unabated.

While United Nations agencies and personnel advance development and protect human rights on the ground in the Occupied Palestinian Territory, serious questions are today asked about the role of the Secretary-General in the Quartet. The Quartet, comprising the United Nations, the European Union, the Russian Federation and the United States, is today largely responsible for furthering the peace process in the Occupied Palestinian Territory. This body, which is in practice led by the United States, has shown little regard for promoting human rights or international humanitarian law and is indirectly responsible for imposing economic sanctions on the Occupied Palestinian Territory. In May 2007 the former United Nations Special Coordinator for the Middle East Peace Process and Envoy to the Quartet, Alvaro de Soto, declared that the Quartet, under the influence of the United States, had failed the Palestinian people and called upon the Secretary-General to seriously reconsider membership of the United Nations in the Quartet.

The Special Rapporteur appeals to the Secretary-General to press the Quartet to be guided by human rights law, international humanitarian law, the advisory opinion of the International Court of Justice and considerations of fairness and even-handedness in its dealings with the Occupied Palestinian Territory. If this cannot be done the United Nations should withdraw from the Quartet.

Finally, the Special Rapporteur calls upon the General Assembly to request the International Court of Justice to give a further advisory opinion on the consequences of prolonged occupation for the occupied people, the occupying Power and third States.

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I. Introduction

1. The mandate of the Special Rapporteur on the situation of human rights in the Occupied Palestinian Territory (OPT) is to investigate, study and report on the extent to which human rights are observed in the Occupied Palestinian Territory. His mandate does not require him to report on the politics of OPT. Indeed he has been admonished by some States, following previous reports, for exceeding his mandate by trespassing on the political terrain. He is therefore fully aware of this limitation in respect of his mandate. On the other hand, there is a twilight zone between human rights and politics, one within which the two interact, and one which must fall within the concern of the present mandate. Unhappily, this area has grown in size and continues to grow. Today most of the subjects designated as “political” have a human rights dimension. The political rift between the West Bank and Gaza, the economic strangulation of Gaza, the ongoing seizure of Palestinian land by the construction of the wall and the expansion of settlements, incursions by the Israel Defense Forces (IDF) into Gaza and the West Bank, the creeping annexation of the Jordan Valley, the treatment of refugees, the roadblocks and checkpoints of the West Bank and the Judaization of Jerusalem are all political issues which at the same time raise important points of human rights law and international humanitarian law. The political actions of international organizations, such as the United Nations and the European Union, also have implications for human rights. Issues of this kind cannot be ignored if an honest account is to be given of the present human rights situation in the Occupied Palestinian Territory.

2. The present report will focus on four subjects: the right of self-determination of the Palestinian people; the Israeli occupation of the West Bank, Gaza and East Jerusalem; the violation of human rights and international humanitarian law by the occupying Power; and the action of international organizations in the furtherance and denial of human rights. The Special Rapporteur has visited the Occupied Palestinian Territory twice a year since assuming his mandate in 2001. He last visited the region in December 2006, but has unfortunately been unable to visit the Occupied Palestinian Territory since then. He plans, however, to visit the Occupied Palestinian Territory before presenting this report.

II. Self-determination

3. That the Palestinian people have the right of self-determination cannot be disputed. Such a right has been recognized by the Security Council, the General Assembly, the International Court of Justice and Israel itself. In the advisory opinion of 9 July 2004 of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* the International Court of Justice declared that “[A]s regards the principle of the right of peoples to self-determination, the Court observes that the existence of a ‘Palestinian people’ is no longer in issue.”¹ On 1 December 2006 the General Assembly adopted resolution 61/25 in which it stressed the need for “the realization of the inalienable rights of the Palestinian people, primarily the right to self-determination and the right to their independent State”. (See also resolution 61/152 of 19 December 2006.)

¹ *Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 118.

4. The territory of the self-determination unit within which this right is to be exercised clearly includes the West Bank, East Jerusalem and Gaza. This is implicit in much of the language of United Nations resolutions that proclaim the right of the Palestinian people to self-determination. It is placed beyond all doubt by the fact that the right to self-determination of the Palestinian people is asserted in the context of a “two State solution” that is, one “where two States, Israel and Palestine, live side by side within secure and recognized borders”.² In asserting such a solution the Security Council and the General Assembly contemplate one Palestinian State for the Palestinian people. This is emphasized by the calls for “the establishment of a permanent physical link between the Gaza Strip and the West Bank”.³

5. The right of the Palestinian people to self-determination has been denied and obstructed for nearly 60 years by Israel. Now it is threatened by the political separation of the West Bank and Gaza resulting from the seizure of power in Gaza by Hamas in June 2007 followed by the seizure of power in the West Bank by Fatah. The carefully brokered Government of Palestinian national unity has been destroyed by the internecine conflict in May and June in which some 200 Palestinians, mostly belonging to Fatah, were killed. At the time of writing (August), there is no immediate prospect of reconciliation between Hamas and Fatah. This is a matter of deep concern to the Special Rapporteur as the right to self-determination is a central and core human right. It must also be a matter of concern to the Quartet, the United Nations, the European Union and other international institutions committed to the realization of the right of the Palestinian people to self-determination. Such a concern should not take the form of support — political, economic or military — for one faction at the expense of the other but rather for reconciliation between the two factions so that the right to self-determination may be realized within the 1967 borders of the Palestinian self-determination unit, that is including the West Bank, East Jerusalem and Gaza. Suggestions that the West Bank be politically tied to Jordan or Gaza linked to Egypt would seriously undermine the right of the Palestinian people to self-determination as it has evolved over the past decades. Unhappily, the Quartet (which embraces the United Nations) is, at the time of writing, making little attempt to promote Palestinian national unity. On the contrary, it pursues a divisive policy of preferring one faction over the other; of speaking to one faction but not the other; of dealing with one faction while isolating the other.

III. Israel’s occupation of the Occupied Palestinian Territory, with special reference to Gaza

6. The Palestinian Territory has been occupied for so long — 40 years — that there is a tendency in certain quarters to overlook this reality and to treat the Occupied Palestinian Territory as an “unoccupied” entity. This leads to the perception of Israel and Palestine as two States poised against each other, with Israel as the victim and Palestine as a neighbouring aggressive, terrorist State. This, of course, is very far from the truth. The Palestinian Territory, including the West Bank, East Jerusalem and Gaza, remains occupied territory, occupied by Israel.

² Security Council resolutions 1397 (2002) and 1515 (2003); General Assembly resolution 61/25.

³ General Assembly resolution 61/25.

Insofar as there is a “victim” party, it is Palestine as inevitably an occupied party has such a status vis-à-vis the occupier.

7. That Israel is the occupier of the Palestinian Territory, subject to the obligations imposed by international law as an occupying Power, was reaffirmed by the International Court of Justice in the *Wall* opinion when it held that the Palestinian territories (including East Jerusalem) “remain occupied territories and Israel has continued to have the status of an occupying Power”.⁴ The consequence of this, said the International Court, was that the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) applies to the Occupied Palestinian Territory, as do the International Covenants on Human Rights of 1966.⁵

8. Israel’s obligations have not diminished as a result of the prolonged nature of the occupation.⁶ On the contrary, they have increased as a result of the nature of Israel’s occupation which has given rise to the argument that Israel’s occupation has over the years become tainted with illegality.⁷ In these circumstances, the Special Rapporteur proposed in his report to the Human Rights Council in March 2007 (A/HRC/41/17) that the International Court of Justice be asked to give a further advisory opinion, on the legal consequences of prolonged occupation. The Court might be asked to consider the legal consequences of a prolonged occupation that has acquired some of the characteristics of apartheid and colonialism and has violated many of the basic obligations imposed on an occupying Power. Has it ceased to be a lawful regime, particularly in respect of “measures aimed at the ‘occupant’s own interests’”.⁸ And, if this is the position, what are the legal consequences for the occupied people, the occupying Power and third States? Such an opinion might not only produce legal clarity on the consequences of Israel’s occupation of the Palestinian Territory but also put further pressure on the international community to compel Israel to comply with its obligations as occupying Power. It is true that the 2004 advisory opinion on the wall has to date had little effect. However, it must be remembered that the United Nations requested four advisory opinions from the International Court of Justice to guide it in its approach to South Africa’s occupation of South West Africa/Namibia.

9. The *Wall* advisory opinion was concerned with the construction of a wall in the West Bank and East Jerusalem. As the Court was not asked to pronounce on the legal status of Gaza it, possibly, confined its reaffirmation of the occupied status of the Occupied Palestinian Territory to the West Bank and East Jerusalem.⁹ This fact, together with the evacuation of Israeli settlements and the withdrawal of the permanent IDF presence from Gaza in 2005, has given rise to the argument that Gaza is no longer occupied territory. On 15 September 2005 Prime Minister Sharon told the General Assembly that Israel’s withdrawal from Gaza meant the end of its

⁴ *Advisory Opinion*, op. cit., para. 78.

⁵ *Ibid.*, paras. 101, 111 and 112.

⁶ See A. Roberts, “Prolonged military occupation: the Israeli occupied territories since 1967” *American Journal of International Law*, vol. 84 (1990), pp. 55-57 and 95.

⁷ O. Ben-Naftali, A. M. Gross and K. Michaeli, “Illegal occupation: framing the Occupied Palestinian Territory”, *Berkeley Journal of International Law*, vol. 23, No. 3 (2005), pp. 551-614.

⁸ E. Benvenisti, *The International Law of Occupation* (Princeton, Princeton University Press, 1993), p. 216.

⁹ *Advisory Opinion*, op. cit., para. 101.

responsibility for Gaza. Subsequently, in submissions before the Israeli High Court, the Government of Israel has taken the position that it no longer occupies Gaza and that it is no longer bound by international humanitarian law in its actions vis-à-vis Gaza residents. Recently, on 8 July, Israel's Ministerial Committee for Legislative Affairs approved a draft bill recognizing Gaza as "a foreign entity". Essentially, Israel's position is that responsibility for the civilian population of Gaza, including the functioning of Gaza's economy, is the sole responsibility of the Palestinian Authority.

10. The argument that Israel's occupation of Gaza has come to an end is not supported by law or fact. This is emphasized by a study entitled *Disengaged Occupiers: The Legal Status of Gaza*, written by Sari Bashi and Kenneth Mann of Gisha, The Legal Center for Freedom of Movement, an Israeli non-governmental organization (NGO), published in January 2007. This study shows, convincingly, that the test under international law for deciding whether a territory is occupied is not the permanent ground presence of the occupying Power's military in the occupied territory, but effective control.¹⁰ Technological developments have made it possible for Israel to assert control over significant aspects of civilian life in Gaza without a permanent troop presence. This is done by:

(a) **Substantial control of Gaza's six land crossings.** The Erez crossing is effectively closed to Palestinians wishing to cross to Israel or the West Bank. The Rafah crossing between Egypt and Gaza, which is regulated by the Agreement on Movement and Access entered into between Israel and the Palestinian Authority on 15 November 2005 (brokered by the United States), has been closed by Israel for lengthy periods since June 2006. The main crossing for goods at Karni is strictly controlled by Israel and since June 2006 this crossing too has been largely closed, with disastrous consequences for the Palestinian economy;

(b) **Control through military incursions, rocket attacks and sonic booms.** Sections of Gaza have been declared "no-go" zones in which residents will be shot if they enter;

(c) **Complete control of Gaza's airspace and territorial waters;**

(d) **Control of the Palestinian Population Registry.** The definition of who is "Palestinian" and who is a resident of Gaza and the West Bank is controlled by the Israeli military. Even when the Rafah crossing is open, only holders of Palestinian identity cards can enter Gaza through the crossing; therefore control over the Palestinian Population Registry is also control over who may enter and leave Gaza. Since 2000, with few exceptions, Israel has not permitted additions to the Palestinian Population Registry;

(e) **Control of the ability of the Palestinian Authority to exercise governmental functions.** Israel exercises control over the ability of the Palestinian Authority to provide services to Gaza and West Bank residents and the functioning of its governmental institutions, including control over the transfer of tax revenues which amount to 50 per cent of the Palestinian Authority's operating income. Moreover, Gaza and the West Bank constitute two parts of a single territorial unit, with a unified and undifferentiated system of civilian institutions spread throughout

¹⁰ See *United States of America v. Wilhelm List et al. (The Hostages Case)* United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, vol. III, 1949, p. 56; *Democratic Republic of the Congo v. Uganda, I.C.J. Reports 2005*, paras. 173 and 174.

Gaza and the West Bank, funded from the same central budget and run by the same central authority. Therefore, Israel's continued direct control over the West Bank is a form of indirect control over Gaza.

11. The fact that Gaza remains occupied territory means that Israel's actions towards Gaza must be measured against the standards of international humanitarian law and human rights law.

12. Since June 2006 Israel has engaged in both large-scale military operations and brief military incursions in Gaza.

13. In the course of Operations "Summer Rains" and "Autumn Clouds" between June and November 2006, IDF carried out 364 military incursions into different parts of Gaza, accompanied by persistent artillery shelling and air-to-surface missile attacks. Missiles, shells and bulldozers destroyed, or caused serious damage to, homes, schools, hospitals, mosques, public buildings, bridges, water pipelines and sewage networks. On 27 June the Israeli Air Force destroyed all six transformers of the only domestic power plant in the Gaza Strip, which supplied 43 per cent of Gaza's daily electricity, and this resulted in depriving half of the population of Gaza of electricity for several months. Citrus groves and agricultural lands were levelled by bulldozers. And in the first phase of "Operation Summer Rains" F-16s flew low over Gaza, breaking the sound barrier and causing widespread terror among the population. Thousands of Palestinians were displaced from their homes as a result of Israel's military action.

14. Beit Hanoun in northern Gaza, with a population of 40,000, was subjected to particularly vicious military action in November in the course of "Operation Autumn Clouds". During a six-day incursion 82 Palestinians, at least half of whom were civilians (including 21 children), were killed by IDF. More than 260, including 60 children, were injured and hundreds of males between the ages of 16 and 40 were arrested. Forty thousand residents were confined to their homes as a result of a curfew as Israeli tanks and bulldozers rampaged through the town, destroying 279 homes, an 850-year-old mosque, public buildings, electricity networks, schools and hospitals, levelling orchards and digging up roads, water mains and sewage networks. Israel's assault on Beit Hanoun culminated in the shelling of a home which resulted in the killing of 19 persons and the wounding of 55 persons on 8 November 2006. The house, situated in a densely populated neighbourhood, was the home of the Al-Athamnah family, which lost 16 members on that fateful day. Of the 19 killed, all civilians, seven were women and eight children. Unfortunately, Israel has refused to accept any international investigation into this matter. It refused to allow a Human Rights Council-mandated mission which was to have been led by Archbishop Desmond Tutu to enter Israel and the Occupied Palestinian Territory. The failure of Israel to allow an international investigation of the killing of 19 persons in Beit Hanoun, or to undertake an impartial investigation of its own, is regrettable as it seems clear that the indiscriminate firing of shells into a civilian neighbourhood with no apparent military objective constituted a war crime.

15. There have been sporadic military incursions into Gaza for the past months. In the period 20 to 27 June 2007 there were seven IDF incursions into Gaza resulting in at least 17 Palestinian deaths (including six civilians, among them two children) and 39 injuries. In the period 27 June to 3 July, 19 Palestinians were killed: eight by an IDF tank shell (including a 10-year-old boy), seven by Israeli air strikes, three during armed clashes with IDF soldiers and one of wounds sustained earlier. In

addition 43 Palestinians were injured during IDF operations. On 5 July 11 Palestinians were killed and 25 wounded as a result of an Israeli attack involving aircraft, tanks and bulldozers.

16. Israel has largely justified its attacks and incursions as defensive operations aimed at preventing the launching of Qassam rockets into Israel, the arrest or killing of suspected militants or the destruction of tunnels. Clearly the firing of rockets into Israel by Palestinian militants without any military target, which has resulted in the killing and injury of Israelis, cannot be condoned and constitutes a war crime.¹¹ Nevertheless, serious questions arise over the proportionality of Israel's military response and its failure to distinguish between military and civilian targets. It is highly arguable that Israel has violated the most fundamental rules of international humanitarian law, which constitute war crimes in terms of article 147 of the Fourth Geneva Convention and article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Protocol I). These crimes include direct attacks against civilians and civilian objects and attacks which fail to distinguish between military targets and civilians and civilian objects (articles 48, 51 (4) and 52 (1) of Protocol I); the excessive use of force arising from disproportionate attacks on civilians and civilian objects (articles 51 (4) and 51 (5) of Protocol I); the spreading of terror among the civilian population (article 33 of the Fourth Geneva Convention and article 51 (2) of Protocol I); and the destruction of property not justified by military necessity (article 53 of the Fourth Geneva Convention).

17. Gaza has become a besieged and imprisoned territory as a result of the economic sanctions imposed by Israel and the West, following the election success of Hamas in the January 2006 elections, the capture of Corporal Gilad Shalit in June 2006 and the seizure of power by Hamas in June 2007. External borders have been mainly closed and only opened to allow a minimum of imports and exports and foreign travel. This has produced a humanitarian crisis, one carefully managed by Israel, which punishes the people of Gaza without ringing alarm bells in the West. It is a controlled strangulation that seriously violates norms of human rights law and humanitarian law but which apparently falls within the generous limits of international toleration.

18. There are six crossings into Gaza, all of which are controlled by Israel. Rafah, the crossing point for Gazans to Egypt, and Karni, the commercial crossing for the import and export of goods, are the principal crossing points. They are the subject of the Agreement on Movement and Access, which provides for Gazans to travel freely to Egypt through Rafah and for a substantial increase in the number of export trucks through Karni. Since 25 June 2006, following the arrest of Corporal Shalit, and more particularly since mid-June 2007, following the Hamas seizure of power in Gaza, the Rafah crossing has been closed for lengthy periods of time as a result of Israel's refusal to allow members of the European Border Assistance Mission, responsible for operating Rafah, to carry out their task. From mid-June to early August some 6,000 Palestinians were stranded on the Egyptian side of the border, without adequate accommodation or facilities and denied the right to return home. Over 30 people died while waiting. No regard is had to the hardships suffered by ordinary Palestinians by Israel in its decision to close the Rafah crossing. The Karni

¹¹ See Human Rights Watch, *Indiscriminate Fire. Palestinian Rocket Attacks on Israel and Israeli Shelling in the Gaza Strip* (July 2007).

crossing has likewise been closed for long periods of time during the past 18 months, and more particularly since mid-June 2007.

19. The siege of Gaza has had a major impact on the economy of Gaza. Employment has suffered dramatically. On 9 July 2007 the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) announced that it had halted all its building projects in Gaza because it had run out of building materials, such as cement. This has affected 121,000 jobs of people building new schools, houses, waterworks, and health centres. Eighty per cent of the 3,900 factories operating in Gaza have likewise been compelled to close because of the failure to obtain building materials through the Karni crossing. This has affected the livelihoods of 30,000 people. The border closures have also prevented agricultural products from being exported, depriving farmers of their income. Fishing has virtually come to an end as a result of the ban on fishing along the Gaza coast, rigorously enforced by Israeli gunboats. The public service, while employed in theory, is largely unpaid as a result of Israel's withholding of funds due to the Palestinian Authority. According to the World Bank 3,200 businesses closed in June leaving 65,000 people unemployed.

20. The cancellation of the Gaza customs code by Israeli authorities has also meant that more than 1,300 containers of commercial materials destined for Gaza remain stranded at Israeli ports, and essential items such as milk powder, baby formula and vegetable oil are now in short supply. Military incursions have forced the closure of schools. Eighty-one items on the essential drugs list were out of stock, according to the Palestinian Ministry of Health, because of the financial crisis. Mental health is a serious problem as a result of the trauma inflicted by military incursions.

21. Poverty is rife. Over 90 per cent of the population live below the official poverty line. UNRWA and the World Food Programme provide food assistance to 1.1 million Gazans of a population of 1.4 million. Recipients of food aid receive flour, rice, sugar, sunflower oil, powdered milk and lentils. Few can afford meat, fish (virtually unobtainable anyway as a result of the ban on fishing), vegetables and fruit. Morale is low. The very fabric of Gazan society is threatened by the siege.

22. In a report of 11 July 2007 the World Bank declared that the prolonged closure of Gaza's border crossings could lead to the "irreversible" economic collapse of Gaza. On 19 July Karen AbuZayd, Commissioner-General of UNRWA, warned that without the Karni crossing the Gaza economy will "collapse".

23. Israel's siege of Gaza violates a whole range of obligations under both human rights law and humanitarian law. The International Covenant on Economic, Social and Cultural Rights provisions that everyone has the right to "an adequate standard of living for himself and his family, including adequate food, clothing and housing", freedom from hunger and the right to food (art. 11) and that everyone has the right to health have been seriously infringed. Above all, the Government of Israel has violated the prohibition on collective punishment of an occupied people contained in article 33 of the Fourth Geneva Convention. The indiscriminate and excessive use of force against civilians and civilian objects, the destruction of electricity and water supplies, the bombardment of public buildings, the restrictions on freedom of movement, the closure of crossings and the consequences that these actions have had upon public health, food, family life and the psychological well-being of the Palestinian people constitute a gross form of collective punishment. The capture of

Corporal Shalit and the continuing firing of Qassam rockets into Israel cannot be condoned. On the other hand, they cannot justify the drastic punishment of a whole people in the way that Israel has done.

24. Gaza is no ordinary State upon which other States may freely impose economic sanctions in order to create a humanitarian crisis or take disproportionate military action that endangers the civilian population in the name of self-defence. It is an occupied territory in whose well-being all States have an interest and whose welfare all States are required to promote. According to the advisory opinion of the International Court of Justice on the wall, all States parties to the Fourth Geneva Convention have the obligation “to ensure compliance by Israel with international humanitarian law as embodied in that Convention”.¹² Israel has violated obligations of an *erga omnes* character that are the concern of all States and that all States are required to bring to an end. In the first instance, Israel, the occupying Power, is obliged to cease its violations of international humanitarian law. But other States that are a party to the siege of Gaza are likewise in violation of international humanitarian law and obliged to cease their unlawful actions. It is no excuse that Gaza is governed by a “terrorist group”. Terrorism is a relative concept, particularly in the context of occupation, as opposition to the occupying Power will always be seen as terrorism by the occupying Power and its accomplices. French resistance fighters were viewed as terrorists by the German occupation, and members of the South West Africa Peoples’ Organization that opposed South Africa’s occupation of Namibia were seen as terrorists by the South African regime. Today such resistance fighters are seen as heroes and patriots. This is the inevitable consequence of resistance to occupation.

IV. Human rights in the West Bank and East Jerusalem

25. The human rights situation in the West Bank has possibly improved since mid-June. The takeover of Gaza by Hamas has resulted in a new rapprochement between the emergency Government of President Abbas, under the prime ministership of Salam Fayyad, and Israel, the United States and the Quartet. This has taken several forms:

- the release of 255 Palestinian prisoners, mainly belonging to Fatah;
- the release of \$119 million of Palestinian tax funds seized by Israel after the election success of Hamas in January 2006;
- the granting of amnesty to 178 Fatah militants wanted by Israel;
- promises, as yet unfulfilled, to cease military incursions into the West Bank, reduce checkpoints and remove settler outposts;
- the offer of \$190 million in aid by the United States;
- the blessing of the Quartet which in a statement on 19 July expressed support for the Palestinian Government headed by Mr. Fayyad and encouraging direct and rapid financial assistance to his Government “to help reform, preserve and strengthen vital Palestinian institutions and infrastructure, and to support the rule of law”.

¹² *Advisory Opinion*, op. cit., para. 159.

26. The new support for Mr. Fayyad's Government in the West Bank has not, however, succeeded in removing or even softening Israel's ideological infrastructure that most seriously violates human rights in the West Bank. The construction of the wall (or Barrier) continues; settlements continue to expand; checkpoints remain in force; the Judaization of Jerusalem continues; and the de facto annexation of the Jordan Valley is unaffected. Moreover, at the time of writing military incursions into the West Bank continue unabated, albeit directed principally at Hamas, as do home demolitions.

A. The wall

1. General

27. The wall that Israel is at present building largely in Palestinian territory is clearly illegal. The International Court of Justice in its advisory opinion of 9 July 2004 found that it is contrary to international law and that Israel is under obligation to discontinue construction of the wall and to dismantle those sections that have already been built forthwith. Israel has abandoned its claim that the wall is a security measure only and now concedes that one of the purposes of the wall is to include settlements within Israel. The fact that 76 per cent of the West Bank settler population is enclosed within the wall bears this out.

28. The wall is planned to extend for 721 km. At present 59 per cent of the wall has been completed. Two hundred kilometres of the wall have been constructed since the International Court of Justice handed down its advisory opinion declaring the wall to be illegal. When the wall is finished, an estimated 60,000 West Bank Palestinians living in 42 villages and towns will reside in the closed zone between the wall and the Green Line. This area will constitute 10.2 per cent of Palestinian land in the West Bank. More than 500,000 Palestinians living within 1 km of the wall live on the eastern side but need to cross it to get to their farms and jobs and to maintain family connections. Eighty per cent of the wall is built within the Palestinian territory itself and in order to incorporate the Ariel settlement bloc, it extends some 22 km into the West Bank. The closed zone includes many of the West Bank's most valuable water resources. Completion of the wall around the Ma'aleh Adumim bloc will separate East Jerusalem from the rest of the West Bank, restricting access to workplaces, health, education, and to places of worship. Further south, the route of the wall around the Gush Etzion settlement bloc will sever the last route between Bethlehem and Jerusalem and isolate the majority of Bethlehem's agricultural hinterland.

29. The wall has serious humanitarian consequences for Palestinians living within the closed zone (the area between the Green Line and the wall). They are cut off from places of employment, schools, universities and specialized medical care and community life is seriously fragmented. Moreover, they do not have 24-hour access to emergency health services. Palestinians who live on the eastern side of the wall but whose land lies in the closed zone face serious economic hardship as a result of the fact that they are not able to reach their land to harvest crops or to graze their animals without permits. Permits are not easily granted. A host of obstacles are placed in the way of obtaining a permit. Bureaucratic procedures for obtaining permits are humiliating and obstructive. The Office for the Coordination of Humanitarian Affairs has estimated that 60 per cent of the farming families with

land to the west of the wall could no longer access their land. To aggravate matters the opening and closing of the gates leading to the closed zone are regulated in a highly arbitrary manner: in November 2006 the Office carried out a survey in 57 communities located close to the wall which showed that only 26 of the 61 gates in the wall were open to Palestinians for use all the year round and that these gates were only open for 64 per cent of the officially stated time. Hardships experienced by Palestinians living within the closed zone and in the precincts of the wall have already resulted in the displacement of some 15,000 persons.

2. East Jerusalem

30. The 75-km wall being built in East Jerusalem is now almost complete, except for a 200-m section between Dahiyat and Beit Hanina. This wall, which is built through Palestinian neighbourhoods and separates Palestinians from Palestinians, is an exercise in social engineering, designed to achieve the Judaization of Jerusalem by reducing the number of Palestinians in the city. It cannot conceivably be justified on security grounds.

3. Compensation for damage caused by the construction of the wall

31. In its 2004 advisory opinion the International Court of Justice held that Israel has the obligation to make reparations for the damage caused to Palestinians by the construction of the wall. Where restitution of property is not possible, stated the Court, Israel “has an obligation to compensate, in accordance with the applicable rules of international law, all natural and legal persons having suffered any form of material damage as a result of the wall’s construction”.¹³ In 2004 the General Assembly directed the establishment of a United Nations Register of Damages Caused by the Construction of the Wall in the Occupied Palestinian Territory and the establishment of a board to administer this register. As this decision was not implemented for more than two years, on 15 December 2006 the General Assembly at its tenth emergency special session, in resolution ES-10/17, requested the Secretary-General to report within six months on the progress made in this respect. In compliance with this request the Secretary-General appointed, on 10 May 2007, Harumi Hori of Japan, Matti Paavo Pellonpää of Finland and Michael F. Raboin of the United States to membership of the Board. The Board met from 14 to 16 May 2007 and plans to meet again in August/September.

32. Compensation for violation of the human rights of Palestinians and the violation of rules of international humanitarian law arising from the construction of the wall is a human rights issue which clearly falls within the present Special Rapporteur’s mandate. The Special Rapporteur shares the concerns expressed by stakeholders and civil society about the Board and its functions. First, there is the opaque manner in which the Board was appointed. Many United Nations officers who hold similar positions are elected to office; others are appointed after wide consultation. The failure of the Secretary-General to employ a more transparent method of appointment, coupled with the fact that all the members of the Board, however well qualified they undoubtedly are, are nationals of States from the North with close relations with Israel, inevitably means that members of the Board will have to overcome the misgivings of stakeholders and civil society. Secondly, there are serious doubts about how the Board will perceive its role. What criteria will it

¹³ *Advisory Opinion*, op. cit., paras. 152-153.

adopt for eligibility and verification of claims? Will it consider non-material damages such as the effects on mental health and family life? Or will it confine itself to material damage? Will it insist on gaining access to the Occupied Palestinian Territory to fully assess the damages involved? Or will it defer to Israel when it is refused access? Will it ensure that Palestinians are informed about their right to claim? Will there be consultation with civil society?

B. Settlements and settlers

33. There are some 140 Israeli settlements and 100 settlement “outposts” (unauthorized but State-sponsored and funded by Government ministries) established in the West Bank, including East Jerusalem. These settlements are illegal as they violate article 49, paragraph 6, of the Fourth Geneva Convention. Their illegality has been unanimously confirmed by the International Court of Justice in the advisory opinion on the wall. Despite the illegality of settlements and the unanimous condemnation of settlements by the international community, the Government of Israel persists in allowing settlements to grow. Sometimes settlement expansion occurs openly and with the full approval of the Government. In 2007 the Jerusalem Municipality Planning Committee approved plans to build three new settlements in East Jerusalem, one south of Ramallah and two north-west of Bethlehem. More frequently, expansion takes place stealthily under the guise of “natural growth”, which has resulted in Israeli settlements growing at an average rate of 5.5 per cent compared with the average growth rate in Israeli cities of 1.7 per cent. Sometimes settlements expand unlawfully in terms of Israeli law, but no attempt is made to enforce the law. Outposts, a prelude to the establishment of settlements, are frequently established and threats to remove them are not carried out. Most outposts have been established in the past six years. As a result of expansion, the settler population in the West Bank numbers some 260,000 persons and that of East Jerusalem over 200,000. As indicated above, the wall is presently being built in both the West Bank and East Jerusalem to ensure that most settlements will be enclosed within the wall. Moreover, the three major settlement blocs of Gush Etzion, Ma’aleh Adumim and Ariel will effectively divide Palestinian territory into cantons, thereby destroying the territorial integrity of Palestine.

34. In October 2006, the Israeli NGO Peace Now published a study which showed, on the basis of official maps and figures, that nearly 40 per cent of the land held by Israeli settlements in the West Bank is privately owned by Palestinians. The data show, for example, that 86 per cent of the largest settlement of Ma’aleh Adumim is on Palestinian private property; that 35 per cent of Ariel is on private property; and that more than 3,400 buildings in settlements are constructed on land privately owned by Palestinians. On 6 July 2007 Peace Now published another study, based on official data released by the Government of Israel following a court order, which revealed that settlements use only 12 per cent of the land allocated to them, but one third of the territory they do use lies outside their official jurisdictions. Ninety per cent of the settlements extend beyond their official boundaries despite the amount of unused land already allocated to them. These findings attest to the Government’s ongoing cooperation with the settlements’ expansion. On the one hand, the State earmarks huge tracts for the settlements, out of all proportion to their size, in order to prevent Palestinian construction in those areas. Yet once an area is closed to

Palestinians, the settlers begin seizing adjacent Palestinian lands, often privately owned, that lie outside their jurisdiction.

C. The Jordan Valley

35. Israel has abandoned earlier plans to build the wall along the spine of the Occupied Palestinian Territory and to formally appropriate the Jordan Valley. It has nevertheless asserted its control over this region, which constitutes 25 per cent of the West Bank, in much the same way as it has done over the closed zone between the wall and the Green Line on Palestine's western border. That Israel intends to remain permanently in the Jordan Valley is clear from Government statements and is further manifested, first, by restrictions imposed on Palestinians and, second, by the exercise of Israeli control and the increase in the number of settlements in the Jordan Valley.

36. Palestinians living in the Jordan Valley must possess identity cards with a Jordan Valley address and only those persons may travel within the Jordan Valley without Israeli permits. Other Palestinians, including non-resident landowners and workers, must obtain permits to enter the Jordan Valley and in practice such permits are not valid for overnight stays, necessitating daily commuting and delays at checkpoints connecting the Jordan Valley with the rest of the West Bank. This has led to the isolation of the Jordan Valley.

D. Checkpoints and roadblocks as obstacles to freedom of movement

37. Checkpoints and roadblocks seriously obstruct the freedom of movement of Palestinians in the West Bank, with disastrous consequences for both personal life and the economy. There are some 550 such obstacles to freedom of movement, comprising over 80 manned checkpoints and some 470 unmanned locked gates, earth mounds, concrete blocks and ditches. In addition, thousands of temporary checkpoints, known as "flying checkpoints", are set up every year by Israeli army patrols on roads throughout the West Bank for limited periods, ranging from half an hour to several hours. In 2006 a total of some 7,000 such flying checkpoints was recorded.¹⁴ In June 2007 there were 488 flying checkpoints and in July 2007 there were 409 such checkpoints. Checkpoints divide the West Bank into four distinct areas: the north (Nablus, Jenin and Tulkarem), the centre (Ramallah), and the south (Hebron) and East Jerusalem. Within these areas further enclaves have been created by a system of checkpoints and roadblocks. Moreover highways for the use of Israelis only further fragment the Occupied Palestinian Territory into 10 small cantons or Bantustans. Cities are cut off from each other as a permit is required to travel from one area to another and permits are difficult to obtain. Checkpoints largely serve the interests of settlers in the sense that they are generally established near to settlements or near to settler bypass roads.

38. Checkpoints and the poor quality of secondary roads Palestinians are obliged to use, in order to leave the main roads free for settler use, result in journeys that previously took 10 to 20 minutes taking two to three hours. Israel justifies these

¹⁴ Amnesty International, *Enduring Occupation. Palestinians under Siege in the West Bank* (June 2007), p. 16.

measures, together with the behaviour of its soldiers at checkpoints, on security grounds and claims that they have succeeded in thwarting the passage of numerous would-be suicide bombers. There is, however, another security perspective. Palestinians perceive these measures to be designed, first, to serve the convenience of settlers and to facilitate their travel through the West Bank without having to make contact with Palestinians, and, secondly, to humiliate Palestinians by treating them as inferior human beings. The result is a suppressed anger that in the long term poses a greater threat to the security of Israel.

E. Military incursions

39. Since the election of the Hamas Government in January 2006, IDF has intensified its military incursions in the West Bank. These military raids, numbering several hundred each month (641 in July 2007), have resulted in the killing of some 200 Palestinians and injury to over a thousand, searches resulting in substantial damage to property, and several hundred arrests each month. The Government of Israel has announced, following the takeover of Gaza by Hamas, that as a gesture of goodwill to the Government of Mr. Fayyad, it would discontinue its military incursions into the West Bank. To date there is no evidence of such a discontinuation. IDF military incursions resulting in death, injury, arrests and damage to property remain a regular feature of life in the West Bank.

F. Humanitarian situation

40. The construction of the wall, the expansion of settlements, the restrictions on freedom of movement, house demolitions and military incursions have had a disastrous impact on the economy, health, education, family life and standard of living of Palestinians in the West Bank. Since 2006 the situation has deteriorated further as a result of two factors: first, Israel's withholding of taxes which it collects on behalf of the Palestinian Authority on all goods imported into the Occupied Palestinian Territory, amounting to \$50-60 million per month (about half of the budget of the Palestinian Authority); second, the sanctions regime imposed by the United States, the European Union and other Western States (implicitly approved by the Quartet) which has taken the form of the discontinuation of aid and banking restrictions on the transfer of money to the Palestinian Authority and other Palestinian institutions. According to Karen AbuZayd, the Commissioner-General of UNRWA:

There is a staggering irony in the contrast between the universal commitment to poverty eradication (expressed in the UN Millennium Development Declaration) and the decision to impose on Palestinians one of the most severe sanctions regimes in recent history, thereby virtually guaranteeing the widespread incidence of extreme poverty.¹⁵

41. In the past month Israel has transferred \$119 million of the tax money it has unlawfully seized to the Palestinian Authority and Western States and the Quartet have promised to recommence funding to the Palestinian Authority (insofar as it does not further the interests of Hamas in Gaza). At the time of writing no material

¹⁵ Speech delivered at the Woodrow Wilson Institute, Washington, D.C., on 22 May 2007.

change is discernible in the humanitarian situation in the West Bank as a result of the continuing occupation, the human rights violations described in this section of the report and Israel's refusal to transfer all the tax moneys in law due to the Palestinian Authority. Poverty and unemployment are at their highest levels yet; health and education are undermined by military incursions, the wall and checkpoints; and the social fabric of society is threatened.

Conclusion

42. The situation in the West Bank may not be as serious as that of Gaza. However, it is all a question of degree. Moreover, as in Gaza, the serious humanitarian situation in the West Bank is largely the result of Israel's violations of international law. The wall violates norms of international humanitarian law and human rights law, according to the International Court of Justice; settlements violate the Fourth Geneva Convention; checkpoints violate the freedom of movement proclaimed in human rights conventions; house demolitions violate the Fourth Geneva Convention; the humanitarian crisis in the West Bank, brought about by Israel's withholding of Palestinian tax money and other violations of international law, violates many of the rights contained in the International Covenant on Economic, Social and Cultural Rights. As in Gaza, Israel's actions constitute an unlawful collective punishment of the Palestinian people.

V. Violation of the prohibition on arbitrary detention, inhuman treatment and extrajudicial executions

Prisoners

43. There are over 10,000 Palestinian political prisoners in Israeli jails, including 116 women and 380 children. In July 2007, 255 prisoners, belonging mainly to Fatah, were released. As IDF continues to arrest substantial numbers of Palestinians in military incursions in the West Bank and Gaza every day, this prisoner release can only be seen as a very small step in the right direction. (In July 2007, 391 Palestinians were arrested: 354 in the West Bank and 37 in Gaza.)

Inhuman treatment

44. Serious complaints about the treatment of pre-trial detainees and imprisoned persons continue to be heard. In April 2007 two Israeli NGOs — Hamoked (Centre for the Defence of the Individual) and B'Tselem (The Israeli Information Centre for Human Rights in the Occupied Territories) — published a report on torture and ill-treatment of Palestinian detainees which showed that arrested persons were subjected to beatings, humiliated and deprived of basic needs and that persons suspected of having information that could prevent attacks (so-called "ticking bomb suspects") were deprived of sleep for more than 24 hours, beaten and subjected to physical ill-treatment.¹⁶ This treatment certainly amounts to inhuman and degrading treatment and possibly to torture.

¹⁶ *Utterly Forbidden. The Torture and Ill-Treatment of Palestinian Detainees* (April 2007).

Extrajudicial executions or targeted assassinations

45. The IDF continue to assassinate suspected militants by targeting them with rockets. Since 2000 some 500 Palestinians, including many innocent bystanders, have been killed in this way. This practice makes a mockery of Israel's claim to have abolished the death penalty.

VI. The role of the United Nations in the protection of human rights in the Occupied Palestinian Territory

46. The United Nations is the ultimate protector of human rights in the international community, with its agencies, personnel and political institutions committed to this end. In Occupied Palestinian Territory agencies such as UNRWA, OCHA, the United Nations Development Programme, the Office of the High Commissioner for Human Rights, the World Food Programme, the World Bank, the United Nations Children's Fund, the World Health Organization, the International Labour Organization and the Food and Agriculture Organization of the United Nations are committed to promoting development and protecting human rights. Dedicated personnel pursue the ideals of the Charter of the United Nations in providing help for a people under occupation. Indeed, it is difficult to imagine how Palestinians could survive without the assistance of bodies such as UNRWA. Unfortunately, the story at the high political level in New York is very different.

47. The Security Council has largely relinquished its powers in respect of the Occupied Palestinian Territory in favour of an amorphous body known as the Quartet, comprising the United Nations, the European Union, the Russian Federation and the United States. The Quartet was informally set up in 2003 without a founding resolution or mandate from either the Security Council or the General Assembly, with the task of promoting peace in accordance with a road map for peace, to which Israel has attached 14 reservations and which is now hopelessly out of date. In his May 2007 end of mission report, Alvaro de Soto, former United Nations Special Coordinator for the Middle East Peace Process and United Nations Envoy to the Quartet, stated that "as a practical matter, the Quartet is pretty much a group of friends of the US — and the US doesn't feel the need to consult closely with the Quartet except when it suits it." (para. 63). Despite its dubious constitutionality and the questionable legality of its actions, the Quartet remains unchallenged by the Security Council or the General Assembly.

48. The Quartet does not see it as its function to promote respect for human rights, international humanitarian law, the advisory opinion of the International Court of Justice, international law or countless United Nations resolutions on the subject of the Occupied Palestinian Territory. Regular statements by the Quartet make mildly critical reference to the expansion of settlements and the humanitarian situation in the Occupied Palestinian Territory but condemnation of Israel's continuing occupation, and its violations of international humanitarian law (primarily the Fourth Geneva Convention) and human rights is not forthcoming. Moreover, the Quartet has yet to even mention the Advisory Opinion of the International Court of Justice. Since January 2006 the Occupied Palestinian Territory has been subjected to economic sanctions in the form of the termination of donor aid, the imposition of banking restrictions and the seizure of tax moneys. The United States, the European Union and Israel must take direct responsibility for these actions but the Quartet

must accept indirect responsibility.¹⁷ Most recently, the Quartet has embarked on a course hostile to Palestinian self-determination by giving support to one Palestinian faction, Fatah, at the expense of the other, Hamas, and by making no attempt to restore the unity of the Palestinian people.¹⁸ In the process Gaza seems to have been simply abandoned by the Quartet.

49. The actions of the United States and the European Union within the Quartet can be explained in terms of their own domestic political constituencies and constraints. The Russian Federation seems to be uneasy about its membership of the Quartet and attempts to pursue, without success, an even-handed approach to the situation in the Occupied Palestinian Territory. What then is the position of the United Nations, the guardian of legitimacy enshrined in the Charter, and representative not only of the opinions of the five permanent members of the Security Council but of all 192 members of the Organization? Sadly, the United Nations, acting through the Secretary-General, has ignored the views of the majority of its members and abandoned its role as guardian of international legitimacy. Instead of promoting Palestinian self-determination, striving to end the occupation and opposing the ongoing violation of human rights, the United Nations has chosen to give legitimacy to the statements and actions of the Quartet. The situation is well described by Alvaro de Soto in his end of mission report:

[The Secretary-General] is being used to provide the appearance of an imprimatur on behalf of the international community for the Quartet's positions. This in itself is awkward since the Secretary-General participates in the Quartet not by delegation or mandate from any UN body, leave alone the Security Council, but in his semi-stand-alone capacity. There are large segments of the international community not represented in the self-appointed Quartet, including the Arab shareholders. Nevertheless, I could live with the arrangements until the point came when the Quartet started taking positions which are not likely to gather a majority in UN bodies, and which in any case are at odds with the UN Security Council resolutions and/or international law or, when they aren't expressly so, fall short of the minimum of even-handedness that must be the lifeblood of the diplomatic action of the Secretary-General. (para. 69)

50. For the past few years the Special Rapporteur has appealed in his reports to the Quartet to show more even-handedness and respect for human rights and the rule of law in both their actions and their utterances. These appeals have been ignored. Now, the former Under-Secretary-General, Special Coordinator for the Middle East

¹⁷ In his end of mission report of May 2007 Alvaro de Soto states:

“Strictly speaking it is not the Quartet as such which has reviewed assistance, circumvented the PA and shifted aid to the preponderantly humanitarian, imposed stifling banking restrictions or deprived the Palestinians of their main source of income. It is, respectively, the US and the EU and Israel who must take responsibility for these actions. Due to the amendments to which our Quartet partners agreed in January 2006, we are able to say that none of these measures emanate directly from Quartet decisions, and to dissociate ourselves from those measures or openly criticize them (Israeli non-transfer of Palestinian money to the PA). And we do so. But in the wide-angle lens of Palestinian and Arab public opinion this is verbal prestidigitation, and it doesn't wash. By our association with all that has been inflicted on the Palestinians since the beginning of 2006 we are guilty as charged in the court of Palestinian and Arab public opinion.” (para. 78).

¹⁸ This is clear from the Quartet's statement of 19 July 2007.

Peace Process and Envoy to the Quartet has spoken in stronger language, accusing the Quartet of being led (and coerced) by the United States into adopting positions at odds with the ideals of the Charter, and calling upon the Secretary-General to seriously reconsider continued United Nations membership in the Quartet. In effect, this message has been ignored and the messenger shot.¹⁹

VII. Recommendations

51. The recommendations or appeals set out below are made to Israel, Palestinian armed groups, States members of the United Nations and the United Nations itself.

To Israel

52. Israel's occupation of the West Bank, East Jerusalem and Gaza is now in its fortieth year. This occupation, which has resulted in numerous violations of international humanitarian law and human rights law, has seriously undermined the integrity and reputation of the State of Israel. Israel is urged to enter into serious negotiations with the Palestinian Authority to bring about the creation of a Palestinian State within the 1967 borders of the Palestinian entity, to end the occupation of the Palestinian Territory and to respect international humanitarian law and human rights law in its dealings with the Palestinian people.

To Palestinian militant groups

53. Palestinian militant groups are urged to end their attacks on civilian targets and comply with international humanitarian law, both within the Occupied Palestinian Territory and Israel.

To States Members of the United Nations

54. States Members of the United Nations are urged to bring pressure on the Quartet to act in an even-handed manner with due respect for human rights and international humanitarian law. They are also urged, as parties to the Fourth Geneva Convention, to ensure that Israel complies with international humanitarian law as embodied in that Convention. (This obligation is affirmed by the International Court of Justice in its advisory opinion on the wall.²⁰)

To the United Nations (particularly the Secretary-General)

55. The Secretary-General is urged, as representative of the United Nations in the Quartet, to ensure that the Quartet:

(a) Condemns Israel's violations of international humanitarian law and human rights law (described in the present report) and take measures to ensure that Israel complies with its obligations in this respect;

¹⁹ See the statement by Secretary-General Ban Ki-moon at a press conference on 13 June 2007.

²⁰ *Advisory Opinion*, op. cit., para. 159.

(b) **Accepts the 2004 advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* as a juridical basis for its dealings with Israel;**

(c) **Presses Israel to immediately transfer to the Palestinian Authority all the value added tax and customs duties that it has collected on behalf of the Palestinians in order to ameliorate the humanitarian crisis that prevails in the Occupied Palestinian Territory;**

(d) **Adopts a fair and even-handed approach to the respective positions of Israel and the Palestinians;**

(e) **Adopts a fair and even-handed approach to different factions within the Palestinian community, as the United Nations has done in other comparable conflict situations,²¹ so that Palestinian self-determination is achieved.**

56. If the Secretary-General is unsuccessful in persuading the Quartet to act as proposed above, the United Nations should cease to give its imprimatur to the actions of the Quartet and should withdraw from the Quartet.

To the United Nations (particularly the General Assembly)

57. The General Assembly is urged to request the International Court of Justice to give a further advisory opinion on the legal consequences for the occupied people, the occupying Power and third States of prolonged occupation (see also paragraph 8 above.)

²¹ On this subject it is necessary to quote a passage from the speech by Karen AbuZayd, UNRWA Commissioner-General, to the Woodrow Wilson Institute in Washington, D.C., on 22 May 2007):

“A further discrepancy can be identified in the area of the international community’s approach to the Israeli-Palestinian conflict. The presently moribund state of the peace process is the direct result of a policy to isolate a particular party, regardless of the fact that it happens to command a significant constituency. The policy of isolation is arguably at odds with the UN Charter’s vision of a system of collective security that is founded on the peaceful settlement of disputes, mutual restraint in the use of armed force and joint action to address threats to international peace and security. Our policy to exclude one side is also at variance with the approach that the international community has successfully pursued in resolving other armed conflicts. In some notable and rather well-known recent examples in western Europe and South Asia, neither the terrorist epithet, nor the fact of continuing and even escalating armed conflict deterred mediators from engaging the protagonists and continuing to press for a solution ... Many successful peace negotiations proceeded on the basis of the mediators’ neutrality, inclusiveness and abstention from passing moral or political judgment on either party’s eligibility to be present at the table.”



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**Promotion and protection of human rights:
human rights situations and reports of special
rapporteurs and representatives**

Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, submitted in accordance with Human Rights Council resolution 5/1.

* A/63/150 and Corr.1.

** The present report was submitted after the deadline so as to reflect the most recent developments.



Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967

Summary

The present report, the first submitted by Richard Falk, examines the observance of international humanitarian and international human rights standards in the Palestinian territories occupied by Israel since 1967 during the period from January to mid-2008. It pays particular attention to the consequences of a prolonged occupation that has consistently ignored the directives of the United Nations with respect to upholding the legal rights of an occupied people.

The report also takes note of the undertaking associated with the revival of the peace process at the Annapolis summit of December 2007, in particular the expectation that Israel would freeze settlement expansion and ease restrictions on movement in the West Bank. It is discouraging that the record shows settlement growth and further restrictions on West Bank movement.

In addition, the report notes the abuse of international humanitarian law associated with the separation wall, and Palestinian fatalities, including of children, owing to Israeli use of excessive force to quell non-violent demonstrations. Attention is also drawn to abuses by Israel at border crossings, with special concern expressed with regard to the harassment and assault of Palestinian journalists. The report further focuses on the crisis in health care, especially in Gaza.

The report laments the failure of Israel to implement the recommendations of the International Court of Justice, as endorsed by the General Assembly. It calls for a further clarification of the rights of the Palestinian people by recommending that the General Assembly seek legal guidance as to the extent to which the occupation is endangering the realization of the Palestinian right of self-determination.

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I. Introduction

1. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 was appointed in accordance with resolution 1993/2 A of the Commission on Human Rights, on 26 March 2008, and took up his position on 1 May 2008. The Special Rapporteur has not yet been able to visit Israel and the Occupied Palestinian Territory so as to fulfil his mandate and offer a first-hand account of the degree to which international human rights and international humanitarian law are being observed. It is the hope and intention of the Special Rapporteur to do his best to secure entry in the future. He will seek to enlist the cooperation of the Government of Israel in that effort.

2. The present report is the first to be issued since the Special Rapporteur took up his mandate on 1 May 2008. The report covers developments taking place primarily from 1 January to 31 July 2008. It is based upon reliable information gathered by human rights non-governmental organizations and international institutions, including the United Nations, which have a long record of objectivity and experience in relation to the conditions of the occupation. The Special Rapporteur takes note of positive and negative changes on the ground and in the wider regional and global setting. It is the intention of the Special Rapporteur, without political implications, to treat the Hamas administration of Gaza as “a de facto authority” for the purpose of the present report.

3. The Special Rapporteur takes particular note of the fact that the military occupation of the Palestinian territory has gone on for more than 40 years and that it possesses characteristics of colonialism and apartheid, as has been observed by the previous Special Rapporteur. Especially in the light of that background, the further prolongation of the occupation constitutes a deepening threat to and a cumulative encroachment upon the most fundamental human right of all, the right of self-determination of the Palestinian people. That consideration imparts a tone of urgency to an evaluation of Palestinian claims of a right of resistance in furtherance of self-determination and to recommendations for a greater expression of responsibility by the United Nations to resolve the Israel-Palestine conflict, taking full account of international law, and, in the interim, to take immediate steps to ensure Israeli compliance with its obligations under international humanitarian law pertaining to military occupation. In that regard, note should be taken of the refusal of Israel to comply with the advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (A/ES-10/273 and Corr.1), supported by 14 of the 15 judges, and overwhelmingly endorsed by the General Assembly in its resolution ES-10/15. That general observation relating to the continuing occupation has two implications for the United Nations. First, in the context of the Annapolis peace process, the United Nations, as a member of the Quartet, has a special responsibility to ensure that steps are taken to raise confidence among all the parties that international law will be relied upon to assess rival claims of both Israel and Palestine in the course of negotiations on outstanding issues of controversy. Second, that the disregard of such a clear and authoritative message as to international legal obligations pertaining to the duties of an occupying Power, together with other evidence of disregard detailed in this report, should serve to prompt the Secretary-General, the General Assembly and other bodies of the United Nations to recognize the need to implement urgently necessary initiatives to protect the rights, and indeed the survival, of the Palestinian

people, and to induce Israel to uphold its obligations under international law. One such initiative, consistent with the recommendation of the previous Special Rapporteur, would be for the Third Committee to propose to the General Assembly a request for a new advisory opinion by the International Court of Justice on the unlawful effects of the continuing denial of the Palestinian rights to self-determination, given the prolongation and character of the occupation, especially its encroachment on Palestinian ownership and occupation of land.

4. The pre-eminent legal instrument relevant to assessing the rights and duties of an occupying Power is the Fourth Geneva Convention Relative to the Protection of Civilians in Time of War (1949), but also relevant as expressive of the evolving customary international law, binding upon parties to the treaty, is the Geneva Protocol Additional I of 1977 Relating to the Protection of Victims to International Armed Conflict. The evidence of continuous and deliberate violation of that universally binding international treaty by Israel in its occupation of the Palestinian territory constitutes an ongoing grave situation that calls out for a unified response by the international community. It should be observed that article 1 of the Fourth Geneva Convention reads as follows: “The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances”. It is high time to heed the call of that provision.

5. The Government of Israel has contended, since its implemented disengagement plan in 2005, that the Gaza Strip is no longer under occupation, and that for that reason, international humanitarian law is not applicable. It is the official position of Israel, often repeated, that the “belligerent occupation of the Gaza Strip” by the Israeli Defense Forces ended as of 12 September 2005 “with all of the political, security and legal ramifications involved”. Israel explicitly draws the main conclusion that since “full governmental powers” were on that date “transferred to the Palestinian Authority”, it no longer has the legal and moral responsibilities of an occupying Power.¹ From that perspective, the Government of Israel relies on the decision of the Israeli Supreme Court in *Albassiouni v. the Prime Minister*, according to which the Government “does not have a general duty to take care of the welfare of Strip residents”. The Special Rapporteur disputes that assessment of the situation in the Gaza Strip, contending that a territory is occupied if it is under the “effective control” of a State other than that of the territorial sovereign. Israel has, since its disengagement, continued to exert strict and continuous control over the borders, entrance and exit, airspace and territorial waters of Gaza. In addition, it has mounted numerous military incursions and deadly attacks on targeted individuals, and subjected the entire civilian population of the territory to siege conditions ever since Hamas convincingly won the general legislative elections in January 2006, and it tightened the siege after Hamas took over Gaza in mid-June 2007. The establishment of a siege imposing great stress on the inhabitants of Gaza and attempts to gain international participation in that siege have made it impossible for the administering Palestinian authorities to provide for the minimum well-being of the 1.5 million inhabitants. On the basis of those considerations, it is clear beyond a reasonable doubt that from the perspective of international law, the Gaza Strip remains under Israeli occupation, with legal responsibilities attendant on being the occupying Power, and that the Geneva Conventions remain fully operative.

¹ See “Response of coordinator of activities in the territories to report of Physicians for Human Rights’ report on questioning of medical patients at the Erez crossing”, Ministry of Defence, State of Israel, 4 June 2008.

6. There are many aspects of the daily and continuing situation in the Occupied Palestinian Territory relevant to a legal assessment of the rights and duties of the parties. A main goal of the present report is to convey a well-evidenced understanding of the extent to which the situation in all parts of the Occupied Palestinian Territory has continued to deteriorate, reaching dangerous and non-sustainable levels of mental and physical suffering and trauma for the Palestinian people living under occupation. That counters the view that because of several developments, including the Gaza Ceasefire, the positive relations between Israel, the United States of America and the Palestinian Authority, the revival of the peace process at Annapolis and the overall decline in violent Israeli civilian or military deaths and in the incidence of terrorism, the burdens of the occupation have been eased. It does seem true that the situation for Israel has improved economically and politically during that period, but the situation of the Palestinian people has worsened. More land has been taken for settlements, which have been expanded, the crisis conditions persist in Gaza as a whole, the restrictions on movement throughout the West Bank have been maintained or tightened, and additional legal moves to expel Palestinians living in Jerusalem have been taking place. In response to the very recent approval by the Government of Israel for construction of an additional 447 housing units in the Jerusalem area, the Palestinian peace negotiator, Saeb Erekat, was quoted as saying in a Reuters dispatch, "I don't know how many times the Israelis have to do this for the international community to open its eyes. Can't the world see this is destroying the peace process?" The main theme of the present report is that the Palestinian reality is worse than ever before, with no indication of any substantial improvement.

7. The present report attempts to strike a balance between highlighting incidents that illustrate deeper general problems associated with the occupation and discussing patterns of conduct that appear to violate the human rights of the occupied people, taking due account of the rights of the occupying Power to uphold security under conditions of occupation. In this report, the Special Rapporteur devotes a chapter to the right to health, with special reference to Gaza.

II. Political developments: major changes in the setting of occupation

8. The setting of the occupation is important for a meaningful evaluation of particular events and occupation policies, resistance activities and an assessment of the overall human rights situation, to the extent that the security of the occupier permits. The overall attention to these particular dimensions of the occupation helps keep attention on the centrality of the Palestinian right to and struggle for self-determination under conditions of prolonged occupation. All changes in the wider context of Israeli-Palestinian relations provide insight into the nature of the occupation, both in terms of its oppressive character and the difficulty of improving the conditions of the Palestinian people so long as they live under occupation.

9. Following the breaching of the wall separating Egypt from the Gaza Strip as a result of explosives set by Hamas near the Rafah crossing on 23 January 2008, tens of thousands of Gazans, with some estimates running as high as 500,000, crossed the border into the Egyptian city of Rafah, seeking particularly to buy food, medicines and a variety of consumer goods unavailable in Gaza. When asked by

border guards for guidance, the Egyptian President, Hosni Mubarak, was quoted as saying, "I told them, 'Let them come to eat and buy food, then they go back, as long as they are not carrying weapons'".² A spokesperson for Hamas is reported to have said, "We are creating facts. We have to try to change the situation, and now we await results. We warned the Egyptian people we are hungry and dying." Many Gazans without political affiliation said in various ways, "This is the best thing Hamas has done." The situation was well summarized by an independent journalist, Allan Nairn, who wrote, "... the Gaza wall-breaking was an easy call: no people were killed, some may have been saved, and the spectacle of exodus into Egypt effectively dramatized a gross injustice".³ Nairn's language captures the main realities illuminated in relation to the occupation, that is to say, exodus and spectacle. It was not possible to witness the events without appreciating the desperation of people long confined by a stultifying occupation that threatens human well-being, even survival, and should not be allowed to endure. In a few days, the Gazans were required to return to Gaza, the wall was repaired and the conditions of siege and confinement were re-established. It is possible that subtle changes for the better resulted from the exodus and spectacle of the departing mass from Gaza, with the events leading to a wider international understanding of the desperate state of affairs produced by the enforced isolation and confinement of the 1.5 million Gazans.

10. No causal connection has been established or acknowledged between the events associated with breaching the Rafah wall and the initiation of secret negotiations under Egyptian auspices in Cairo between representatives of the Government of Israel and Hamas, with the objective of establishing a ceasefire agreement that would end the firing of rockets into Israel from Gaza and military incursions and targeted assassinations by Israel in the Gaza Strip. At the same time, it seems difficult to resist the view that the coverage, especially the pictures broadcast worldwide, of the wall being breached, encouraged Israel to be more receptive to long-standing Hamas offers to establish a mutual ceasefire. The negotiations were rather prolonged, but in the end they were successful. On 20 June 2008, a ceasefire was declared, and despite some infractions on both sides, it has generally held.⁴ The terms of the ceasefire have not been made public, but it has been assumed by informed observers that a demonstration by Hamas of its will and capacity to enforce the ceasefire on its own militant groups would be matched by an easing of the siege by Israel.

11. Hamas' efforts to enforce the ceasefire have been recognized and reciprocated by Israel in the form of easing the hardships experienced by Gazans. Israel contends that it has increased the supply of food and medicine by as much as 50 per cent, and is considering further steps designed to ease tensions and hardships. Nevertheless, because the duration and intensity of the siege, imposed on pre-existing conditions of widespread poverty and hardship, have been so severe, humanitarian conditions inside the Gaza Strip remain dire, and pose great risks of future calamities.

12. An additional aspect of those developments is the implicit recognition by Israel of the de facto governance of Gaza by Hamas. According to Meir Javedanfar,

² See *The New York Times*, 24 January 2008.

³ See Allan Nairn, "Justified Violence: Breaking the Gaza Wall", *The Nation*, 29 January 2008.

⁴ For an assessment of the ceasefire, see Uri Avnery, "The Ceasefire", *London Review of Books*, 31 July 2008.

a respected Tel Aviv Middle East specialist, “[Hamas] is the power that Israel has to deal with. It’s not full diplomatic recognition, but Israel has recognized Hamas as an important party. On some issues it can’t be avoided. Israel is showing that its past policy of refusing to talk to militant organizations ... is not always functional ... [and has] realized that talking to its enemies is the shortest and most cost-effective path militarily, economically and strategically”.⁵ Officially, Israel has not altered its formal position to the effect that Hamas is a terrorist organization, and that the ceasefire agreement should be viewed as a compromise proposal put forward by Egypt and accepted by both sides. Israel continues to insist that Hamas must unilaterally meet three conditions before it will change its formal diplomatic stance. Those conditions are recognition of Israel’s right to exist as a Jewish State, affirmation of past agreements between the Palestinian Authority and Israel and renunciation of violence.

13. To a certain extent, those recent facts speak for themselves: Hamas has emerged from that process producing a ceasefire and as a partner with Israel in the administration of joint arrangements. From the Israeli side, it is also plausible to view the arrangement as an implicit recognition by Hamas of the State of Israel. It is to be hoped that that development creates some prospect that the siege of Gaza will be lifted, international economic assistance restored and a regime of occupation established that complies with international humanitarian law and upholds human rights to the extent possible, given the security situation. Future assessments of that process will likely focus upon whether Egyptian negotiations with the Palestinian Authority for a reopening of the Rafah crossing are successful and whether a prisoner exchange agreement can be worked out that includes the release of the Israeli soldier Corporal Gilad Shalit, who has been held captive for more than two years. Encouragement of those negotiations is definitely correlated with the practical prospect of improving the protection of the economic and social rights of the 1.5 million Palestinians living in Gaza, although, from a strictly legal point of view, the obligations of Israel as occupying Power are unconditional, and not contingent, especially where the fundamental rights of the general Gazan population is concerned.

14. Although the volatile relations of Hamas and Fatah within the Occupied Palestinian Territory are not part of the current mandate, the recent call by President Mahmoud Abbas for talks leading to the establishment of a unity Government for all of Palestine moves also in the direction of reducing violence and allowing the civilian population living under Israeli occupation to have somewhat improved prospects that their human rights will be protected. A viable peace process depends, among other conditions, on achieving unified representation for all Palestinians living under occupation.

15. There have also been some encouraging developments in the region that might indirectly lead to improvements in the occupation regime, although, to date, the developments on the ground have not borne out those hopes. The negotiation of an agreement between Hizbullah and the Government of Lebanon offers some basis for greater stability. The ongoing negotiations between Israel and the Syrian Arab Republic, as mediated by Turkey, also suggest a renewed reliance on a diplomatic approach to unresolved conflicts, and some willingness by the State of Israel to

⁵ For an early assessment of the ceasefire, see an article by Joshua Mitnick, “As Gaza ceasefire holds, Israel eases economic blockade”, *Christian Science Monitor*, 23 June 2008.

consider withdrawing from territory occupied in the 1967 war. Egyptian initiatives with respect to the situation in Gaza are also part of that more constructive atmosphere in the neighbourhood of the Occupied Palestinian Territory, but so far, the occupied Palestinians have not experienced any benefits, and in many respects, the situation has continued to deteriorate.

16. The end to occupation is the only path to full restoration of the human rights of the Palestinian people. According to doctrine, international law requires an Israeli withdrawal from substantially all occupied Palestinian territory, including East Jerusalem, in accordance with the iconic call of Security Council resolution 242 (1967), which was adopted in the aftermath of the 1967 Arab-Israeli war. But withdrawal has been deemed extremely unlikely without bilateral negotiations that address all issues in dispute between Israel and the Palestinian Authority. From that perspective, it had seemed somewhat optimistic to view the Annapolis conference of 27 November 2007 that brought together some 40 concerned Governments as a revival of the peace process along the lines set forth by the Quartet in its road map of 2003. At Annapolis, there was a joint understanding of the participating Governments that Israel and the Palestinian Authority would seek to resolve all outstanding issues, and there was an apparent shift by the Government of the United States towards an encouragement of bilateral negotiations. There have ensued frequent meetings between the Israeli Prime Minister, Ehud Olmert, and the President of the Palestinian Authority, Mahmoud Abbas, but no sign of notable breakthroughs on final status issues and little prospect that that negotiating track will produce meaningful results. That is a reflection of the weakness of Prime Minister Olmert in view of internal Israeli opposition, his embattled position and his announced plans to resign after the Kadima Party meetings in September 2008. More fundamentally, Israel has without doubt failed the litmus tests set up at Annapolis for a peace process that involved a complete freeze on Israeli settlement expansion (along with the dismantling of so-called outposts, that is, settler land occupations throughout the West Bank regarded as unlawful under Israeli law) and a reduction of checkpoint constraints on freedom of movement. The pattern since Annapolis is, instead, one of continuous Israeli settlement expansion at an accelerated pace, with no reports of outposts being dismantled, and an increase in the number of cumbersome restraints associated with Israel's network of military checkpoints.

17. The second litmus test set was the reduction of Palestinian violence. Here, the Gaza ceasefire, if it holds, seems extremely relevant, as does the resolve of the Palestinian Authority to implement to the best of its ability a policy of abandoning armed struggle against the Israeli occupation. But without comparable Israeli moves on settlements, the process is likely to be indefinitely stalled or abandoned. At present, there is no basis for optimism that the Annapolis initiative will lead to a timely end to the occupation, to peace or to respect by Israel for the rights of the Palestinian people according to the requirements of international humanitarian law and the legal standards of international human rights.

III. Significant human rights challenges: some case studies

A. Freedom of expression and harassment of media personnel: the case of Mohammed Omer

18. Mohammed Omer is a journalist who obtained an exit visa from Gaza, where he lives, to receive the Martha Gellhorn Prize for Journalism and to accept invitations to speak in Europe. His visa was issued after a considerable lobbying effort by a Dutch parliamentarian to persuade the Government of Israel to allow Mr. Omer to leave Gaza. The Gellhorn Prize for Journalism is given to a journalist who displays courage and ability in covering war zones, and Mr. Omer is the youngest recipient to be so honoured. On the basis of direct contact with Mr. Omer and a variety of distinguished persons to whom he is known, it is clear that Omer, a young man of 24, is widely admired for his personal qualities and his journalistic abilities, displayed in recent years in his reporting on the situation in Gaza. Mr. Omer's difficulties occurred on his return to Gaza, when he tried to pass through Israel from the Allenby Bridge crossing so as to enter Gaza. He reached the Jordanian border without the benefit of Dutch diplomatic escort, which arrived at the border late. According to Mr. Omer, the lack of a Dutch diplomatic escort left unfulfilled a commitment made to him when he was encouraged to leave Gaza to accept the award. The events in question took place on 26 June 2008, and have been reported in newspapers around the world. By private communication, the Special Rapporteur has been assured by the Dutch ambassador in Geneva that the incident is being taken "extremely seriously" and that an explanation is being sought from the Government of Israel. I have reinforced that request with an urgent appeal to the ambassador of Israel in Geneva. To date, no response has been received to either request for an account and explanation. Mohammed Omer has published his own version of the events, from which the following passage is taken:

"Upon my return from London I was stripped naked at gunpoint, interrogated, kicked and beaten for more than four hours. At one point I fainted and then awakened to fingernails gouging at the flesh beneath my eyes. An officer crushed my neck beneath his boot and pressed my chest into the floor. Others took turns kicking and pinching me, laughing all the while. They dragged me by my feet, sweeping my head through my own vomit. I was told later they transferred me to a hospital ... Today I have difficulty breathing. I have abrasions and scratches on my chest and neck. My doctor informed me that due to nerve damage from one kick, I may be unable to father children and will need to have an operation."⁶

Mr. Omer is convinced that the brutal assault on his person was carried out by Shin Bet personnel who were fully aware that he had received the Gellhorn Prize while abroad, and were attempting to confiscate the award money, but were frustrated because it had been deposited in a bank account and was unavailable. After the experience at Allenby, Mr. Omer reportedly lost consciousness, was transferred to a Palestinian hospital in Jericho on the West Bank, and was then moved to the Erez crossing, from where he was again transferred for treatment to the European Hospital at Khan Younis refugee camp.

⁶ Mohammed Omer, "Truth and Consequences Under the Israeli Occupation", *The Nation*, 31 July 2008.

19. The unfortunate incident described above cannot be discounted as an accident or an anomaly involving undisciplined Israeli security personnel. The treatment of Mr. Omer seems to have been motivated by Israeli anger over international recognition of his journalism describing the occupation of Gaza, his willingness to repeat his descriptions abroad and his dedication and intention to continue in the professional role of bearing witness to the excesses of the occupation. It should be noted that all Palestinians are subject to arbitrary harassment and abuse at borders and checkpoints, although the hostility towards journalists seems particularly severe. During his time in Europe, Mr. Omer spoke before European parliamentary audiences, describing the suffering in Gaza caused by the siege, closures and fuel and food shortages. It should be noted that Mr. Omer was not charged with any offence, nor was he carrying any prohibited materials. His treatment as described appears to constitute a flagrant violation of article 3(1)(a)(c) of the Fourth Geneva Convention, which reads, in part, "... The following acts are and shall remain prohibited at any time and in any place whatsoever ... (a) violence to life and person ... (c) outrages upon personal dignity, in particular humiliating and degrading treatment". Article 5 of the Universal Declaration of Human Rights is also relevant, as it proscribes "... cruel, inhumane or degrading treatment or punishment". More directly responsive to Mr. Omer's situation are article 19 of the Universal Declaration of Human Rights and article 19 of the International Covenant on Civil and Political Rights (1966). Article 19 (2) of the Covenant has been interpreted to apply in particular to journalists who strive to uphold rights "to receive and impart information of all kinds ... in writing or in print ... or through any media of his choice". Additionally, article 13 (2) of the Universal Declaration of Human Rights confirms the right of a person to return unimpeded to his or her country of residence. "Everyone has the right to leave any country, including his own, and to return to his country." That right was grossly violated in the case of Mr. Omer.

20. Although the incident affected only one individual, it inevitably has a chilling effect, and appears to be part of a broader pattern of Israeli punitive interference with independent journalistic reporting on the occupation. Amnesty International responded to the lethal shooting of a Reuters cameraman in April 2008 by an Israeli tank, saying, "Fadel Shana appears to have been killed deliberately although he was a civilian taking no part in attacks on Israel's forces". In August, the tank crew responsible for Mr. Shana's death was officially cleared of wrongdoing in a letter written by the Israeli Advocate-General, Brigadier General Avihai Mendelblit, prompting the Editor-in-Chief of Reuters, David Schlesinger, to respond, "I'm extremely disappointed that this report [by the Israeli military] condones a disproportionate use of deadly force in a situation that the army itself admitted has not been clearly analysed". There are other criticisms of abusive Israeli behaviour towards Palestinian and foreign journalists in Gaza and the West Bank issued by such respected organizations as Reporters Without Borders and the Committee to Protect Journalists. In sum, the experience of Mohammed Omer appears to be only the most recent example of a pattern of official Israeli conduct interfering with press freedoms under conditions of occupation, thereby depriving the Palestinian population of whatever protection might result from exposing abuses of authority by the occupying Power. The United Nations has a clear responsibility and definite obligation to protect independent journalism, especially in war zones and areas under occupation, as part of its commitment to human rights and international law.

B. Closures and Israeli Defense Forces military operations in the West Bank: abuses against the civilian population in Nablus

21. The continuing encirclement of the main West Bank cities through the extension of the separation wall and the maintenance of checkpoints mean that exit and entrance remain difficult and humiliating. Even the ongoing peace talks between Prime Minister Olmert and President Abbas, the stated commitment by the Government of Israel to reciprocate for the renunciation of armed resistance by the Palestinian Authority by easing restrictions on movement on the West Bank and the marked decline of Palestinian acts of violence in the West Bank and Gaza have not eased the ordeal facing Palestinians under occupation. Cities and towns where Hamas influence is believed to be strong, as evidenced by success at the municipal level in the 2006 elections, have been placed under particular pressure as a result of frequent military incursion. Nablus is a case in point. The Special Rapporteur has received reports under oath from non-Palestinian observers of the situation in Nablus. The reports prove that Israel has used force continuously against the civilian population of Nablus without even claiming justification on the basis of prior resistance activities. From 26 June until late July of 2008, the Israeli Defense Forces carried out a series of nightly military operations in Nablus that led to the killing of at least two young Palestinians, the arrest of dozens of men, women and children and the confiscation and destruction of property, and generated an atmosphere of fear. Those military actions have taken place without any explicit charges brought against the residents of Nablus. The damage included the destruction of property belonging to several charitable organizations, including schools, clinics and an orphanage that had been providing necessary services to the population in Nablus. Those institutions were arbitrarily closed, as was the Nablus Mall, which contained some of the city's oldest, most respected and prosperous commercial establishments. The property of important business entities was requisitioned by Israeli military authorities without due process or any credible security justification. The overall impact of those Israeli activities has been to reduce by some 50 per cent the economic activity of the city, which previously had been regarded as the commercial centre of Palestine. Beyond those material losses inflicted by recent occupation policies and the psychological harm caused by the terrifying experience of daily late-night military incursions by heavily armed Israeli forces, there is the growing sense of physical isolation produced by the numerous checkpoints and roadblocks that surround the city.

22. Closures of charitable and other civil institutions by the Israeli military have taken place in other cities throughout the West Bank in the last several months. They are illustrative of the deterioration of the conditions of occupation in that part of the Palestinian territory and of the occupying Power's two-tier violation of Palestinian human rights and of Israeli obligations under the Fourth Geneva Convention. That is, Israel is not only failing to fulfil its legal obligations as the occupying Power under international humanitarian law, but is also obstructing Palestinian efforts to mitigate the impact of those violations on the well-being of Palestinians enduring occupation. Because the situation in Gaza has been so extreme in the last year, with real fears of societal collapse, massive famine and widespread disease, there has been a comparative lack of attention to the hardships and suffering endured in the West Bank.

23. The United Nations has an independent obligation to protect the human rights of an occupied population, including ensuring that the rights of all sectors of the population are upheld, and not focusing only on those who face imminent humanitarian catastrophe. The occupation policies pursued by Israel are in violation of the spirit and the letter of international humanitarian law as set forth in articles 47 to 78 of the Fourth Geneva Convention. Article 53 is particularly relevant, requiring an occupying Power to refrain from destroying property of the occupied population unless “such destruction is rendered absolutely necessary by military operation”. The effect of the military closure operations was to destroy property belonging to the residents of Nablus. Articles 64 to 69 provide a legal framework for holding persons in the occupied territory criminally responsible for their alleged wrongdoing, if any, but the Convention unconditionally prohibits extrajudicial killing, reprisals and all forms of collective and punitive violence. Noted Israeli journalist Gideon Levy, writing in *Ha’aretz* on 20 July 2008, observed that West Bank Palestinian civilians “cannot be simultaneously imprisoned, prohibited from earning a living and offered no social welfare assistance while we strike at those who are trying to do so, whatever their motives. If Israel wants to fight the charitable associations, it must at least offer alternate services. On whose back are we fighting terror? Widows? Orphans? It’s shameful.” The moving report prepared by Mairead Maguire, Nobel Peace Prize laureate from Northern Ireland, addressing the closing of the Hebron orphanages, expresses similar views.⁷

C. Right to peaceful assembly: demonstrations against the wall in the West Bank

24. Ni’lin is a village situated in the Ramallah district of the West Bank near the wall that Israel has been unlawfully constructing on Occupied Palestinian Territory in defiance of the July 2004 advisory opinion of the International Court of Justice. It has been the scene of numerous non-violent demonstrations against the construction of the wall that was built in such a way as to confiscate significant portions of the land belonging to the village. That is part of a longer story of land dispossession that has afflicted the Palestinians.

25. It is estimated that as much as 80 per cent of the land belonging to Ni’lin has been incrementally confiscated by Israel, starting in 1948. After the 1967 war, the location of Ni’lin near the Green Line led to further land confiscations on behalf of West Bank settlements (74 dunams for the settlement of Shalit, then 661 dunams for Mattiyahu, 934 dunams for Hashmonaim, 274 dunams for Mod’in Illit, 20 dunams for Menora), which took about 13 per cent of the village land. When a further 20 per cent of Ni’lin land, belonging to its residents, was officially slated for confiscation by Israel for the construction of the wall, strong demonstrations took place. Ni’lin became the inspirational centre of opposition to the wall and, during 2003-2004, it was the scene of numerous anti-wall demonstrations. In recent months, there have been protests by people living in the village and supporters from neighbouring cities such as Ramallah and Tulkarem, and also by Israeli peace activists who have come to Ni’lin to join in the non-violent demonstrations seeking to prevent the resumption of construction of the wall.

⁷ Report on destruction of Muslim charitable institutions in Hebron by Israel, 5 June 2008.

26. Israeli military forces, including border police, have used a variety of violent means to disperse the demonstrators, including rubber-coated steel bullets and live ammunition. Two young Palestinians have died from gunshot wounds. Ahmed Mousa, a 10-year-old boy photographed at the demonstration, was killed, according to witnesses, as he was leaving the demonstration. A widely respected Israeli participant in the demonstrations, Uri Avnery, a former member of the Knesset, wrote in an article for the Ma'an News Agency, dated 3 August 2008, "A soldier aimed and shot the child with live ammunition at close range". Those who saw the boy described his face as "shot off". Mustafa Barghouti, a prominent Palestinian parliamentarian, was quoted as saying "Israel is trying to provoke peaceful demonstrators into using violence". A few days later, a second Palestinian, 19-year-old Yousef Akmada Omaira, also died from head wounds received while taking part in the funeral of Ahmed Mousa.

27. From the perspective of international human rights law, the residents of Ni'lin were entitled to demonstrate peacefully against a clearly unlawful extension of the occupation associated with the construction of the wall on occupied Palestinian land that was proceeding in defiance of the advisory opinion of the International Court of Justice and its overwhelming endorsement by the General Assembly.⁸ In addition, the Israeli use of excessive force, especially when it appears to deliberately seek to kill or maim demonstrators, including children, nullifies any claim that the police and military actions taken were necessary for purposes of security and public order. It is a basic right of people to defend their land against its unlawful seizure, and that right pertains in circumstances of occupation where there exists a legal regime in the form of the Fourth Geneva Convention deliberately designed to preserve the character of the occupied territory and uphold the interests of its citizens. In response to Palestinian legal initiatives, Israeli authorities have relocated segments of the wall to limit interference with Palestinian agricultural activity in Nil'in and Qalqilia.

IV. Settlements in the Palestinian territories and their impact on the enjoyment of human rights

28. The continued expansion of unlawful Israeli settlements on the West Bank and in Jerusalem constitutes a serious pattern of unlawful conduct on the part of the occupying Power and a disregard of Israel's own international undertakings to freeze settlement growth and remove "outposts" on the West Bank established without proper Israeli authorization. Additionally, the extent and scope of the Israeli settlement programme, including the creation of security arrangements and bypass roads, tunnels and bridges, is a decisive impediment to the establishment of peace between Israel and Palestine, as well as a source of daily friction under conditions of occupation. The unlawfulness of settlements anywhere in the Occupied Palestinian Territory, including East Jerusalem, has long been established by a consensus of international law specialists, and confirmed by resolutions of the

⁸ *Legal Consequences of a Wall in the Occupied Palestinian Territory*, International Court of Justice advisory opinion, 9 July 2004; General Assembly resolution ES-10/15 called upon the parties to comply with the obligations as set forth in the advisory opinion. Israel has rejected the authority of the advisory opinion, and has proceeded with the construction of further segments of the wall.

General Assembly and the Security Council. That conclusion is most clearly supported by article 49 of the Fourth Geneva Convention, which prohibits the occupying Power from transferring “parts of its own civilian population into the territory it occupies”.

29. Unfortunately, the diplomatic situation bearing on the settlements was clouded by an exchange of official letters between Ariel Sharon, then Prime Minister of Israel, and George W. Bush, President of the United States of America, on 14 April 2004. The letters were widely interpreted as signalling an American acceptance of the permanent annexation by Israel of the large Israeli settlements near the 1967 borders, 80 per cent of the total settler population, as well as in the occupied portions of Jerusalem. It should be noted that while such letters may have political weight for the two Governments, they carry no legal weight, and can certainly not compromise Palestinian rights under international humanitarian law. In that basic sense, the letters are irrelevant to any legitimate peace process, and United Nations participation should reflect an understanding of the inability of the letters to impinge upon Palestinian rights.

30. It is significant that even discounting the legal importance or moral weight of these letters, an Israeli undertaking on the settlements was set forth in Prime Minister Sharon’s letter, but it had no discernible effects on behaviour. Sharon indicated an awareness of “the responsibilities facing the State of Israel”. Among them are “limitations on the growth of settlements; removal of unauthorized outposts”. Those responsibilities were reaffirmed by the current Israeli Government at Annapolis, but, again, have not been implemented to the slightest degree. To the contrary, settlement growth as measured by population, but even more so, by land acquisition, mainly by expropriation and seizure, and development has continued at an accelerated pace.

31. That pattern, and the resulting cantonization of Palestinian daily life, is increasingly seen as sending a message to the Palestinians that the two-State solution to the conflict is no longer viable, despite the fact that it remains the stated policy of the Quartet, the Annapolis Understanding and most commentary on the goals of the peace process. Among the disquieting aspects of the letter of President Bush is its support for shaping Israel’s eventual withdrawal obligations “In light of new realities on the ground, including major Israeli population centres.” There is no mention of the constant reminders to the Government of Israel that its settlement policy is incompatible with its obligations under international humanitarian law and with specific United Nations resolutions.

32. The extent of the settlement encroachment on West Bank and East Jerusalem territory is difficult to calculate with precision owing to the continuous process of expansion. The prevailing best estimate is that settlement land claims (together with Palestinian land seized for the construction of the separation wall) have led to the confiscation of 14 per cent of the territory of the West Bank, which itself represents only 22 per cent of the original British Mandate of Palestine. According to recent figures, there are currently some 200 settlements, 100 outposts and 29 Israeli military bases. The cost of sustaining the settlement network is about \$556 million per year, and the number of settlers is estimated to be between 480,000 and 550,000. The rate of settlement expansion is placed at approximately 4 per cent per year, both with respect to land and population. There are a variety of special problems raised by the settlements that contribute to violence, both the violence of settlers towards

Palestinians, and the violence of Palestinian resistance. The city of Hebron has been a persistent flashpoint and the scene of repeated violent incidents and tragic deaths, where 700 settlers are protected by 300 Israeli soldiers in a city of 150,000 Palestinian inhabitants. Perhaps, the most telling statistic (compiled by the United Nations Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory) is that Palestinian land taken by Israel for settlements, for closed military zones (including almost the entire Jordan Valley), and for Israeli-declared nature preserves now renders 40 per cent of the West Bank inaccessible and unusable for residential, agricultural, commercial or municipal development.

33. The expansion of settlements has been particularly notable in East Jerusalem. The Jerusalem District Planning and Construction Committee recently approved 1,800 new housing units (920 in Har Homa/Jabal Abu Ghneim, 880 in Pisgat Ze'ev). The expansion also furthers the Israeli policy of making East Jerusalem into a place of majority Jewish residence, and is accompanied by expulsions of Palestinians. In addition, the presence of 250,000 Jews living "illegally" in East Jerusalem is being overlooked.

V. Health crisis in the Palestinian territories

34. There is a consensus among specialized observers that a persistent health crisis exists in both Gaza and the West Bank. It is multidimensional, and there is a serious risk of a complete collapse of the basic health system, with disastrous consequences for the Palestinian population.

35. The basic economic and social situation in the Occupied Palestinian Territory is characterized by extremely high unemployment and poverty rates, especially in Gaza. According to both United Nations and World Bank sources, the poverty rate for the West Bank and Gaza combined is currently 59 per cent, and food insecurity affects at least 38 per cent of the overall population of the Occupied Palestinian Territory. The unemployment level in Gaza is officially listed at 45 per cent, the highest in the world, but even that figure understates the true level for a variety of reasons. It is reported that 95 per cent of the factories in Gaza are now closed owing to the siege. The World Bank has suggested that that set of conditions could produce an "irreversible" economic collapse.

36. Israel has classified Gaza as an "enemy entity" since Hamas took over in mid-June 2007, and has justified restricting food and fuel provision to levels sufficient to sustain bare survival. According to available statistics, Gaza is receiving only 30 per cent of its fuel needs per week, and, in particular, receives insufficient quantities of cooking oil and diesel fuel. The designation of "enemy state" has also led Israel to block payment of customs revenue that belongs to the Palestinians, and both Europe and the United States of America suspended their economic assistance to Gaza.

37. Medical supplies and essential equipment are often not available owing to an inability to import spare parts or obtain replacements. Ill Gazans in need of specialized medical attention not available in Gaza have great difficulty acquiring exit permits to obtain treatment in Israel, and many have died because they did not receive timely medical attention. The obstacles confronting ill Palestinians in Gaza needing treatment in Israel are discussed in paragraph 46. According to the Gaza Community Mental Health Programme, the cumulative effect of those conditions has had "serious mental consequences [for] the Palestinian people, [with the]

majority of civilians ... suffering from feelings of anger, anxiety, panic, depression, frustration and hopelessness as a result of Israeli occupation practices, [the] siege and poverty”.

38. The situation in the West Bank is less dramatically bad as far as conditions of health are concerned, but is still far below minimum international standards. Unemployment is at 25 per cent, even with economic assistance flowing to the Palestinian Authority, but closures and cantonization make it difficult and often impossible to sustain gainful economic activity. A basic difficulty is associated with the combination of checkpoints, roadblocks and permit requirements that impede movement to and from medical facilities even within the West Bank, especially from villages and refugee camps surrounding the larger towns and cities where hospitals and other medical facilities are located. The restrictions also make access to Israel very difficult, and often impossible, for most Palestinians living in the West Bank. It is widely reported that those conditions are causing a variety of ailments, especially in children suffering from malnutrition and trauma.

39. The Government of Israel denies any responsibility as the occupying Power for the severe substandard health conditions. With respect to Gaza, it claims that as of 12 September 2005 it is no longer the occupying Power as discussed in paragraph 5, and thus is no longer legally accountable for any adverse consequences experienced by the inhabitants of Gaza. Israel also argues that since the Hamas takeover, it has pursued a counter-terrorist policy towards Gaza that bears a resemblance to war, as in “the war on terror”. From the perspective of international law, Israel remains the occupying Power, and hence is subject to the Fourth Geneva Convention, which in articles 13 to 25 emphasizes in detail the legal duty of the occupying Power to ensure the health of the population subject to occupation.

40. That set of obligations has particular relevance to the Occupied Palestinian Territory in view of the prolonged nature of the occupation, and, with respect to Gaza, the additional acute impact of Israeli policies that adversely affect the health and well-being of the entire Gazan population. Article 16, for instance, reads as follows: “The wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect”. That obligation is reinforced by article 25 (1) of the Universal Declaration of Human Rights, which declares: “Everyone has the right to a standard of living adequate for the health and well-being of himself and his family, including food, clothing, housing, and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control”.

41. Perhaps the clearest articulation in international law of the right to health is to be found in article 12 (1) of the International Covenant on Economic, Social and Cultural Rights, which reads, in part, “The States parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health”. Article 12 (2) (b) and (d) are also relevant, reading, in part, “The steps to be taken by the States parties to the present Covenant to achieve full realization of this right shall include those necessary for: (b) The improvement of all aspects of environmental and industrial hygiene; ... (d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness”.

42. Israel is a party to that treaty instrument, and is bound by the basic standards it affirms, which are in any event expressive of legal obligations embodied in customary international law. Overall, the obligations of international humanitarian law and of human rights standards are especially applicable in conditions of a fiduciary role as it is exercised by an occupying Power towards a captive population.

43. The whole approach taken towards Gaza by Israel and by the United States of America and the European Union, since the Hamas electoral victory in January 2006, involves a massive and unlawful systematic violation of article 33 of the Fourth Geneva Convention, which unconditionally prohibits collective punishment: “No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited”. More practically, medical specialists continually warn that the health system in Gaza is precarious, often described as being on “the verge of collapse” or “unsustainable”.

44. The experience of the West Bank, despite the absence of a systematic siege or the denial of funds needed to sustain health care, bears many resemblances to the situation in Gaza, although Israel makes no claim that it is not still the occupying Power in the West Bank. In the West Bank, the policies of the Government of Israel which punish the Palestinian population as a whole are routinely justified as necessary for the security of the occupation, including the settlements, and for Israel itself. Those security claims themselves, whatever their validity when independently asserted, have to be weighed in context against the harm caused to the occupied people. That was done by the International Court of Justice in relation to the wall (see para. 3), and the Israeli claim was rejected, especially as Israel had constructed the wall in Occupied Palestinian Territory and used the land confiscated for expansion of settlements, itself an unlawful purpose completely unrelated to legitimate security claims. Mental health treatment and access to medical facilities, especially in the face of health emergencies, have been particularly impeded by the ubiquitous restrictions on movement throughout the West Bank as a result of checkpoints, roadblocks and closures. Such restrictions seem excessive, and have been frequently observed, combined with a variety of intimidating and humiliating practices which discourage Palestinian movement in the West Bank. Over time, the situation is causing serious damage to the health of inhabitants. The regime of confinement amounts to collective punishment, and violates article 13 (1) of the Universal Declaration of Human Rights, which states, “Everyone has the right to freedom of movement and residence within the borders of each State”.

45. In sum, the forms that the occupation has taken in Gaza and the West Bank have put severe strains on the maintenance of the physical and mental health of Palestinians living under occupation. The harmful effects have been particularly severe for children. It is notable that, given the length of the occupation, the overwhelming majority of Palestinians in Gaza and the West Bank have spent their entire lives under occupation. At a conference held in East Jerusalem, the Special Rapporteur was particularly struck by the comment of a West Bank professor who teaches at Bir Zeit University who said, “I am 43 years old, and I have not had a happy day in my entire life”. In that respect, beyond statistics, the oppressiveness of a sustained and relentless military occupation is not consistent with maintaining basic mental and physical health.

**A. Further infringements affecting medical patients from Gaza:
Shin Bet interrogation of Palestinian medical patients at the
Erez crossing**

46. Physicians for Human Rights-Israel issued a report on 4 August 2008 that contains the testimony of 32 Gazan medical patients who were interrogated at the Erez crossing. The report is based on information received since July 2007. The individuals were seeking entry to Israel to receive urgent medical treatment unavailable in Gaza for serious, often life-threatening conditions, and claimed to have been subject to harsh and improper questioning in intimidating circumstances by members of the Israeli General Security Service (Shin Bet). The testimonies exhibit a consistent Israeli insistence that the individual seeking an exit permit would have to wait indefinitely unless he or she agreed to supply the General Security Service with requested information and/or collaborate in the future with the Security Service. The report also states that a number of Gazans decided to forego medical treatment rather than endure interrogation, despite the likely disastrous health consequences of such a decision. One person said, "Afterwards, the interrogator told me, 'you are sick with cancer and soon it will spread to your brain. As long as you do not help us — [you will] wait for [the opening of] Rafah crossing'". The remark was typical of the testimony gathered for the report.

47. The Government of Israel has responded to the allegations contained in the report of Physicians for Human Rights-Israel, contending that its behaviour is within its sovereign rights, and is reasonable given the dangerous security conditions, such as Hamas attacks directed at the Erez crossing, where the interrogations take place. The main Israeli claims are that it no longer has any responsibility for what takes place in Gaza, as it ceased being the occupying Power on 12 September 2005, that it has complete discretion to deny Gazans access to Israel on any ground whatsoever and that that conclusion has been supported by Israeli judicial authorities.

48. For purposes of international humanitarian law, the Gaza Strip continues to be under Israeli occupation (see para. 5). Accordingly, although not explicitly responsive to the situation under review, articles 55 and 56 of the Fourth Geneva Convention impose on an occupying Power a general legal duty to take all necessary measures to safeguard the health of persons being protected.

49. Depending on how the attempted extortion of information and collaboration in exchange for exit permits to receive medical treatment is viewed, it would appear to be in violation at least of article 3 (1) (c), which prohibits "cruel treatment and torture", as does article 5 of the Universal Declaration of Human Rights. Perhaps the most relevant legal text is the United Nations Convention against Torture, which lays out a broad set of requirements to avoid an inference of "torture or other cruel, inhuman or degrading treatment". Article 1 connects torture and related treatment to behaviour by a public official that can be either "physical or mental" in the course of interrogation that seeks information by a variety of forms of intimidation; other provisions of the Convention against Torture impose a variety of legal duties on the State, and confer rights on aggrieved individuals.

50. The Special Rapporteur concludes that Israeli interrogation practices as reported by Physicians for Human Rights-Israel on the basis of Gazan testimonies strongly suggest violations of Israel's legal responsibilities as occupying Power. The Israeli responses are not satisfactory because they rest on the premise that Gaza is

no longer occupied. Additional disturbing news indicates that six seriously ill Gazans died in one 24-hour period while they were awaiting permission to travel. According to the Free Gaza Movement, 233 severely ill Gazan patients have died while delayed in their attempts to leave Gaza for necessary medical treatment during the period of the siege.

VI. Recommendations

51. The following recommendations drawn from the body of the report are emphasized as matters of urgency:

(a) **The General Assembly should ask the International Court of Justice for a legal assessment of the Israeli occupation of Palestine territory from the perspective of the Palestinian right of self-determination;**

(b) **The assistance of the Security Council should be sought in the implementation of the 2004 advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*;**

(c) **In the light of persisting gross violations of the Geneva Conventions over a long period of time, serious consideration should be given to the legal obligations of the parties to these treaties “to ensure respect” for the substantive undertakings as called for in common article 1. An initial step might be to urge the Government of Switzerland, as repository for the Geneva Conventions, to convene a meeting of States parties with the purpose of exploring how to carry out their legal duties, given the persistent and severe violation of the legal regime of occupation by Israel;**

(d) **Serious note should be taken by all relevant agencies of the United Nations of the failure of Israel to fulfil its pledges at the Annapolis summit to halt settlement expansion, to ease freedom of movement on the West Bank and to attend to the humanitarian needs of the Palestinians under occupation;**

(e) **The United Nations should explore its own responsibility with respect to the well-being of the Palestinians living under unlawful conditions of occupation, particularly bearing on abuses of border control, freedom and independence of journalists, and the general crisis in health care, especially in Gaza;**

(f) **In view of the health crisis in Gaza, members of the international community, including the United Nations, should resume economic assistance as a matter of the highest priority. In the face of an impending humanitarian catastrophe, the responsibility to do what is possible to mitigate human suffering is serious. It is a responsibility towards the civilian population of Gaza, and is not dependent on whether Hamas satisfies the political conditions set by Israel, nor is it dependent on whether the ceasefire holds.**



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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, submitted in accordance with Human Rights Council resolution 5/1.

* A/64/150.

** This report was submitted after the deadline so as to include the most recent developments.



Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967

Summary

The present report examines the observance of international humanitarian and international human rights standards in the Palestinian territories occupied by Israel since 1967 during the period from December 2008 to July 2009. The report takes note of the continuing unlawful non-cooperation of the Government of Israel with the mandate holder. It pays particular attention to the Gaza Strip after the Israeli military operation “Operation Cast Lead”, noting the continuation of the blockade that jeopardizes fundamental human rights, hinders reconstruction and repair of vital civilian infrastructure.

The report reviews alleged war crimes committed during Operation Cast Lead and the issue of accountability. It considers available information regarding attacks on United Nations facilities and the civilian population and provides an analysis of their legal merit. The report comments on the testimony of combat soldiers who took part in Operation Cast Lead, which gives evidence of consistent reliance on loose rules of engagement and widespread destruction of targets that could not be justified from a military or security perspective.

The report discusses the issue of Israeli settlements, noting that recent discussions of a freeze on settlements have been made as political steps and not with reference to Palestinian rights under international humanitarian law. Finally, the report discusses the issue of the continued construction of a wall in the occupied Palestinian territories and Israeli non-compliance with the 2004 advisory opinion of the International Court of Justice, which it considers to be damaging to international law, to the International Court of Justice and to the United Nations generally.

The report ends with recommendations that the General Assembly should request an advisory opinion from the International Court of Justice on the obligations and duties of Member States to cooperate with the Organization and its representatives; that Members of the United Nations should be encouraged to use national means, including courts, with respect to implementing international criminal law as pertains to the occupied Palestinian Territory; that Israeli respect for international law and Palestinian rights should henceforth be an integral element in future peace negotiations; and that consideration should be given to imposing limits on the supply of arms to the parties to the Israel-Palestine conflict.

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I. Introduction

1. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 was appointed in accordance with resolution 1993/2 A of the Commission on Human Rights, on 26 March 2008, and took up his position on 1 May 2008. Richard Falk as Special Rapporteur holder of the mandate was expelled from Israel on 14 December 2008, and despite repeated formal efforts to discuss future visits to the occupied Palestinian Territory (oPt), Israel has ignored all such approaches without providing any explanation.

2. His report takes particular note of the continuing unlawful non-cooperation of Israel with the work of the mandate holder. Along similar lines it has denied entry and cooperation with the Human Rights Council fact-finding mission on the Gaza conflict headed by Judge Richard Goldstone. As suggested in earlier reports this non-cooperative behaviour is setting an unfortunate precedent for Human Rights Council/United Nations relations with Member States, as well as interfering with the work of the mandate. As earlier, it is recommended that the General Assembly or the Human Rights Council request clarification of the legal consequences of this non-cooperative behaviour by referring the issue to the International Court of Justice for an advisory opinion. As a result of the inability of the Special Rapporteur to carry out site visits, this report relies heavily on the work of others, especially a variety of independent and reliable human rights non-governmental organizations and the work of various actors within the United Nations System.

3. The report covers developments taking place primarily from December 2008 to July 2009 and several issues will be addressed in detail, mainly the Gaza crisis, the accountability gap, the advisory opinion rendered by the International Court of Justice on 9 July 2004 on construction of a security wall by Israel,¹ settlement expansion, Palestinian self-determination and gaps in international humanitarian law. The following sections provide a brief overview of each of these issues.

4. On the Gaza crisis, although the ceasefire established by the parties on 18 January 2009 has generally held, the overall situation is that Gaza has continued to deteriorate in a manner that discloses patterns of grave breaches of the Fourth Geneva Convention and violations of international human rights law which have implications under international criminal law. Due to the persistence of the blockade of the Gaza Strip, insufficient basic necessities are reaching the population; health conditions have further worsened putting all Gazans at risk; building materials needed for the repair and reconstruction of homes and buildings destroyed by the Israeli Defense Forces during the 22-day Gaza War have been disallowed entry. The United Nations System is challenged on an emergency basis to take some tangible action to render protection to the civilian population of Gaza.

5. On accountability, there have by now been several authoritative reports with convergent and mutually reinforcing confirmation of war crimes allegations.² It will be important to add to this available information the report of the fact-finding mission headed by Judge Goldstone, due 12 September 2009, but it is not too early to wonder about the follow-up, which means seeking mechanisms to impose

¹ See A/ES-10/273 and Corr.1; see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, ICJ Report 2004*, p. 136, and General Assembly resolution ES-10/15.

² See para. 24 below.

accountability and avoid impunity. A recent decision by the British Government to cancel contracts for the delivery of spare parts to the Israeli navy was based on objections to the manner in which Israel has conducted recent military operations. It is notable that Amnesty International called for a complete arms embargo on both Israel and Hamas in light of its conclusions discussed above about the Israeli military operation in Gaza named Operation Cast Lead.

6. The fifth anniversary of the advisory opinion on the construction of a security wall by Israel¹ calls attention to several factors: (a) despite the near unanimity of the International Court of Justice (14 judges against one) that the wall as located on occupied Palestinian territory was unlawful and should be immediately dismantled, Israel has continued construction of the wall, now about two-thirds complete; (b) the defiance of a definitive ruling of the Court on international law is a serious violation by Israel of its obligations as a Member of the United Nations and as a sovereign State; even though embodied in an “advisory opinion”, the decision of the Court represents an authoritative assessment of international law and was also accepted as authoritative by the General Assembly in its resolution ES-10/15 adopted on 20 July 2004; (c) the failure of the United Nations System to make more of an effort to implement such a clear and widely supported conclusion of international law is a further indication that Palestinian rights are not respected and that Israel enjoys a situation of *de facto* impunity; and (d) continued Palestinian non-violent demonstrations at wall construction sites have been met with excessive force by Israeli security forces resulting in several deaths and numerous casualties.³

7. On settlement expansion, despite many calls for a settlement freeze, including by United States President Obama, reports indicate that settlement expansion continues in both East Jerusalem and the West Bank. It has been made clear by the Palestinian Authority and the United States Government that any further progress on the “road map” depends on an unconditional Israeli freeze on settlement growth. It should be noted that such a freeze, even if agreed upon, does not deal with the underlying illegality of the settlements as set forth in article 49(6) of the Fourth Geneva Convention.

8. On Palestinian self-determination, the most fundamental international human right whose realization has been thwarted by Israeli occupation of Palestinian territories is the inalienable right of self-determination as enshrined in article 1 of both international human rights covenants. It has been widely assumed that the exercise of this Palestinian right would be brought about through bilateral negotiations, reinforced by the role of the United States, more recently by the Quartet (that has involved direct United Nations participation) and encouraged by the international community as a whole. Because the exercise of this right has been so long deferred and because the Palestinian situation under occupation endures multiple forms of unlawfulness, it is of utmost urgency to work towards a peaceful solution and an end to Israeli occupation.

9. It is relevant to this report, then, to take note of two sets of contradictory developments, some negative, others seemingly positive, bearing on the right of

³ A number of 1,804 Palestinians were injured in anti-Barrier demonstrations between January 2005 and June 2009, which represents 31 per cent of all direct conflict injuries in the West Bank. See Office for the Coordination of Humanitarian Affairs, “Five Years after the International Court of Justice Advisory Opinion: A Summary of the Humanitarian Impact of the Barrier”, July 2009. Available from www.ochaopt.org.

self-determination. The main negative development is the seeming unwillingness of the recently elected Israeli Government to endorse in clear terms the international consensus on a sovereign Palestinian State comprising the West Bank, Gaza, and East Jerusalem as its capital; the inability on the Palestinian side to achieve unified and legitimated representation that would seem to be a precondition for meaningful peace negotiations is another negative development.

10. This set of conditions has led in recent months to the advocacy of an imposed solution by external parties, often known as “the Solana Plan” because of the prominence accorded to proposals made along these lines by Javier Solana. At present, neither public opinion nor leaders in Israel or Palestine are favourable to an imposed solution, and its advocacy must be considered a negative development, inconsistent with the right of self-determination, and an expression of frustration arising from the seeming futility of direct negotiations.

11. The positive developments involve clear formulations of the importance of forward progress with respect to self-determination on the basis of an end to Israeli occupation and the establishment of Palestinian statehood. To this effect, President Obama stated on 4 June 2009 in Cairo: “the situation for the Palestinian people is intolerable, and America will not turn its back on the legitimate Palestinian aspiration for dignity, opportunity and a State of their own”. Such positions were reiterated by the Security Council in its statement of 11 May 2009, and by the Quartet in its statement of 26 June 2009 in Trieste: It agreed “that Arab-Israeli peace and the establishment of a State of Palestine in the West Bank and Gaza in which the Palestinian people can determine their own destiny is in the fundamental interests of the international community”.

12. As far as gaps in international humanitarian law are concerned, the prolonged occupation of Palestinian territories, as well as recent military operations by Israel, have revealed three gaps in the law that deserve to be noticed and closed as soon as possible: (a) the denial of a right by civilians to depart from a combat zone. This right was denied to all civilian inhabitants of Gaza during Operation Cast Lead with the exception of a few hundred Gazan residents with foreign passports and members of a small Christian community in Gaza.⁴ There seems to be a variety of issues posed here about the occupiers’ duty to protect the civilian population as most fully described in Additional Protocol I to the Geneva Conventions, which is binding because its norms are incorporated into customary international law despite Israel not being a party to this treaty;⁵ (b) the denial of internationally donated reconstruction aid to repair war damage in Gaza due to maintenance of blockade in violation of article 33 of the Fourth Geneva Convention. This blockage of reconstruction aid could be treated as an instance of prohibited collective punishment, but because it raises a distinct set of post-combat issues that are not explicitly addressed by international humanitarian law it might be best handled by the adoption of a further protocol to the Geneva Conventions; and (c) as a specific result of prolonged occupation of the occupied Palestinian Territory, now in its forty-second year, coupled with restrictions on mobility imposed by the occupying power, anguishing family fragmentations have added to Palestinian suffering and seem unacceptable from the perspective of international human rights.

⁴ See Amnesty International “Israel and Gaza: Operation ‘Cast Lead’: 22 days of death and destruction”, 2 July 2009. Available from www.amnesty.org/en/library/info/MDE15/015/2009/en.

⁵ Ibid.; see also articles 51, 52 and 57 of Protocol I to the Geneva Conventions.

13. The Nobel Peace laureate, Mairead Maguire, a frequent visitor to Gaza and the West Bank, has recently written that there is rightly much talk about people and aid getting into Gaza but for her the greatest crime the Israeli Government commits is to cut the people of Gaza off from family and friends in the West Bank, and also from other Palestinians around the world. She noted that denying people the right to meet with their families and friends is surely one of the greatest forms of torture and collective punishment of civilians.⁶ Of course, these statements are not declarative of existing legal rights but they call attention to a gap in the international humanitarian law protection of a civilian population subjected to prolonged occupation. In the Palestinian situation, with rights of entry and exit so strictly monitored, these restrictions impose particularly anguishing burdens. An additional dimension of prolonged occupation is the inability of Palestinian refugees living in foreign countries to maintain contact with their families over the course of more than four decades. This tragic gap in civilian protection associated with prolonged occupation seems completely unaddressed in the existing international humanitarian law framework.

II. Gaza after the ceasefire

14. The continuing crisis that confronts the entire civilian population of the Gaza Strip with unalleviated desperate circumstances arising from various unlawful features of the Israeli occupation is a challenge to the United Nations System and to the international community. To ignore this challenge is to send a powerful message that violations of international humanitarian law and international human rights standards do not matter, and that a state backed up by strong geopolitical support enjoys virtually unrestricted impunity.

A. The blockade

15. The International Committee of the Red Cross (ICRC) issued an important report entitled “Gaza: 1.5 Million People Trapped in Despair” on 1 July 2009. Taking note of the massive human and material devastation caused by the 22 days of Operation Cast Lead, the report writes: “Six months later [after the Cast Lead ceasefire], restrictions on imports are making it impossible for Gazans to rebuild their lives. The quantities of goods now entering Gaza fall well short of what is required to meet the population’s need. In May 2009, only 2,662 truckloads of goods entered Gaza from Israel, a decrease of almost 80 per cent compared to the 11,392 truckloads allowed in during April 2007, before Hamas took over the territory”.⁷ According to estimates of Amnesty International, this is about one twentieth of the daily average of supplies entering Gaza before the blockade, although some estimates put the disparity at the one-fifth level.

16. ICRC report goes on to note that Gaza neighbourhoods destroyed by the military operation “will continue to look like the epicentre of a massive earthquake” unless “vast quantities”⁷ of construction materials are allowed to enter both for rebuilding and to repair damage to the infrastructure. It is also claimed that as many

⁶ See letter to Miguel d’Escoto-Brockmann, President of the General Assembly, 17 July 2009.

⁷ See International Committee of the Red Cross, “Gaza: 1.5 Million People Trapped in Despair”, July 2009.

as 340,000 Palestinians were displaced by Operation Cast Lead, and due to the blockade many of these remain homeless. The open letter to Carl Bildt⁸ sent by the Palestinian Council of Human Rights Organizations also makes the following allegation: “patients, some of whom were injured as a direct result of ‘Operation Cast Lead’, are regularly denied permission to leave the Gaza Strip in order to seek critical medical treatment abroad, which has ultimately resulted in several deaths”.

17. In the language of the ICRC report, “the only way to address this crisis is to lift restrictions on spare parts, water pipes, and building materials such as cement and steel [and glass] so that homes can be rebuilt and vital infrastructure maintained and upgraded”.⁷ As matters now stand, the maintenance of the blockade prevents reconstruction, keeps the vital water and sewage disposal system in unsafe condition, and extends the health crisis described in the prior report of the Special Rapporteur (A/63/326). The nearly \$4.5 billion pledged in Egypt in March 2009, at the donor conference for reconstruction of Gaza has had virtually no impact on the life circumstances of Gaza and its population. Israel takes the position that only humanitarian goods will be allowed to enter Gaza, and that is strictly interpreted to mean subsistence needs, disallowing such foods as tomato paste, biscuits, and canned tuna, as well as a blanket prohibition on building materials.

18. The blockade in recent months has also meant a further deepening of Gazan impoverishment, which has increasingly been regarded by specialists, as virtually irreversible without a massive effort. As the ICRC report puts it, “the crisis has become so severe and entrenched that even if all crossings were to open tomorrow it would take years for the economy to recover”.⁷ Most recent figures place unemployment at over 44 per cent, dependence on food aid for subsistence at 80 per cent, decline of industrial output at 96 per cent, and poverty at over 70 per cent. Most emphasis in discussions of the blockade have been on import restrictions, but the prohibition placed upon exports also has had an undeniable crippling effect on the economy and well-being of the Gazan population, leading to the complete collapse of industrial and agricultural exports that had provided some material security for significant portions of the population and some hope for the future development of the Gaza Strip. It would be inadequate to return to the status quo prior to Operation Cast Lead. Only a complete termination of the blockade that allows imports and exports at May 2007 levels would be acceptable.

19. One perverse side-effect of the continuing blockade is to encourage Gazan reliance on tunnels into Egypt to obtain essential supplies, giving rise to black market activities and to severe safety hazards. It has been reported that in 2009 alone, 39 persons have died as a result of tunnel accidents, either from tunnel collapse or suffocation due to fuel leakages. As has been noted, “the tight siege imposed by the Israeli Occupation Forces (IOF) on the Gaza Strip [...] has driven the tunnel industry in Gaza, which has prospered in response to the sharp lack of essential goods”.⁹ If the crossings were open, the tunnels would likely disappear, or their role limited to efforts to smuggle arms and other illegal commodities. According to weapons specialists, Qassam rockets, predominantly used by Hamas in the attacks on Israel are locally made in Gaza, and thus there are no genuine security reasons for keeping the crossings closed. It would then become more feasible for

⁸ See letter dated 23 July 2009 from the Palestinian Council of Human Rights, addressed to Mr. Carl Bildt, Foreign Minister of Sweden. Available from www.alhaq.org.

⁹ See Al Mezan Center for Human Rights, press release No. 67/2009 of 28 July 2009.

Israel to monitor the tunnel traffic, to the extent it continued, for weapons smuggling.

20. The harmful impact of strict controls of mobility on family and social relations has been noted as part of the overall Gazan reality that ICRC graphically summarizes by the phrase applicable to the entire population of the Strip as “trapped in despair”. A further dimension of this entrapment is the disallowance of hundreds of young people to seek education abroad,¹⁰ including some cruel and dispiriting incidents involving Palestinians who have gained fellowship assistance from leading universities only to be refused exit permits by Israel in its role as occupying power.¹¹

21. It needs to be noted once again, and repeated frequently, that the blockade as such is flagrantly and vindictively unlawful given the clear obligation of article 33 of the Fourth Geneva Convention to avoid collective punishment without exception. As such it constitutes a war crime of great magnitude. This denial of access to reconstruction materials appears to be an aggravated violation of article 33, especially severe given the physical and psychological vulnerability of the population in the aftermath of Operation Cast Lead.

22. Once again, the Free Gaza Movement sought to send a ship, *Spirit of Humanity*, containing humanitarian supplies to Gaza as a symbolic expression of the unwillingness on the part of peace activists to respect the unlawful blockade. Six prior ships had succeeded in landing in Gaza, although a prior boat, *Dignity*, had been rammed by an Israeli naval vessel in December 2008, and prevented from reaching Gaza. The announced purpose of this mission was to deliver needed supplies to Gaza, but also to expose the failures of the United Nations and of the intergovernmental community of States to implement international humanitarian law as obligated by articles 1 and 147 of the Fourth Geneva Convention, as well as article 86(1) of Protocol I.

23. As before, the ship was stopped and boarded in international waters, which constitutes an unlawful operation; the passengers were arrested for various periods up to several days, including former American congresswoman and Green Party presidential candidate, Cynthia McKinney. Despite the international site of the incident, 20 passengers were initially charged with “illegally entering Israeli waters” but were eventually released. The Free Gaza Movement vividly reinforces the impression that civil society takes international humanitarian law and international criminal law more seriously in this setting than do governments.

B. War crimes and accountability

24. There have been several important studies under respected auspices that confirm the earlier suspicions based on journalistic presentations and eye witness accounts of war crimes associated with Operation Cast Lead. These include (a) a comprehensive study prepared by a team of specialists in international humanitarian

¹⁰ See Office for the Coordination of Humanitarian Affairs, *The Humanitarian Monitor*, June and July 2009.

¹¹ For confirmation of this role from the perspective of international law, see report of Amnesty International (note 3 above), rejecting Israel’s claim that implementation of its 2005 “disengagement” plan ended its legal responsibilities as occupying power in Gaza.

law led by John Dugard, the former Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, as an undertaking of the Arab League, under the title *Report of the Independent Fact-Finding Committee on Gaza: No Safe Place*, presented to the League on 30 April 2009; (b) the major report on war crimes by Amnesty International, published in July 2009, entitled *Israel/Gaza: Operation "Cast Lead": 22 Days of Death and Destruction*, several reports by Human Rights Watch;¹² and (c) the ICRC report entitled *Gaza: 1.5 Million People Trapped in Despair*, which is mainly confirmatory of the scale of devastation, and the aggravating impact of the Israeli refusal to lift the blockade. There is also a major report conducted by the United Nations Board of Inquiry relating to damage done to United Nations facilities and personnel as a result of Operation Cast Lead. A series of conclusions relating to Israeli responsibility and obligations were revealed in the executive summary of the full report; regrettably by order of the Secretary-General the full report has not been released, but its main conclusion is that Israel without sufficient military justification and with deliberate intention did serious harm to several United Nations facilities and caused major casualties on the part of those taking shelter in United Nations buildings and schools.

25. The reports of John Dugard, Amnesty International and Human Rights Watch achieve a high degree of reliability because their work product is convergent in two important respects: first, they adopt a balanced look at allegations of war crimes associated with the tactics relied on by Hamas, especially the firing of rockets into southern Israel and the accusations involving use of "human shields" by Hamas fighters, as well as a detailed consideration of allegations concerning Israeli tactics during Operation Cast Lead; and, secondly, they show an essential agreement on assessments of fact and law, leading to the overarching indictment of Israeli combat tactics as violative of international humanitarian law and thus engaging international criminal law. Such conclusions were further bolstered by the extraordinary testimony of 30 Israeli Defense Forces soldiers who took part in Operation Cast Lead, and received only perfunctory denials by the Government of Israel.¹³ In addition, the reports also reached a subsidiary conclusion that Hamas tactics, although on a far more restricted basis, also constituted violations of the laws of war.

26. As indicated above, despite the overwhelming consensus associated with available materials relating to war crimes allegations directed at Israel and Hamas (as de facto governing authority in Gaza), the report of the fact-finding mission led by Judge Goldstone is awaited with great anticipation, and will likely address the same range of issues, but will include the evaluation of testimony received at a series of hearings with victims and other participants; members of this Human Rights Council mandated investigation were also denied entry to Gaza by way of Israel, and were forced to depend on the cooperation of the Egyptian Government to obtain access to Gaza; they received no requested cooperation from Israel. Its report is due in September 2009.

¹² "Rain of Fire: Israel's Unlawful Use of White Phosphorus in Gaza", 25 March 2009; "Precisely Wrong: Gaza Civilians Killed by Israeli Drone-Launched Missiles", 30 June 2009; "Rockets from Gaza: Harm to Civilians from Palestinian Armed Groups' Rocket Attacks", 6 August 2009; "White Flag Deaths: Killings of Palestinian Civilians during Operation Cast Lead", 13 August 2009 (available at www.hrw.org/en/publications/reports).

¹³ See para. 29 below and note 14.

27. Whether in response to the incriminating testimony of Israeli soldiers or in anticipation of the report of Judge Goldstone, the Israeli Foreign Ministry announced on 30 July 2009 that it was going to investigate 100 complaints about Operation Cast Lead, including allegations concerning the use of phosphorus artillery shells. This is a welcome recognition by the Israeli Government that war crimes allegations are better acknowledged and investigated by Israel than dismissed out of hand. Although one continues to hope for an objective inquiry, Israel's formal announcement of the investigation was coupled with a detailed reassertion and comprehensive explanation of why Operation Cast Lead was a necessary and proportionate response to rocket attacks and suicide bombings over an eight year period, and that it was carried out with scrupulous regard for international humanitarian law.¹⁴

28. All of the above developments suggest that once the facts are established and recommendations received, attention will shift to the more difficult question of devising an appropriate mechanism for assessing accountability for war crimes. For political reasons, it is unlikely that such a mechanism will be established under United Nations auspices although the legal capacity to do so is definitely present, as it was illustrated by the establishment of ad hoc criminal tribunals for former Yugoslavia and Rwanda in the 1990s. The General Assembly also possesses the constitutional authority under Article 22 of the Charter of the United Nations to establish subsidiary organs as it deems necessary for the performance of its functions, and although it has never established a criminal tribunal, there is every reason to suppose that it possesses the authority to do so. Further, for jurisdictional, as well as political reasons, it is almost certain that the International Criminal Court is not available: Israel is not a party and would undoubtedly refuse all forms of cooperation. Palestine did not attempt to become party until after Operation Cast Lead and is not widely thought to have at present the legal credentials to qualify and be accepted as a "State". It is likely that the only available form of accountability will result from civil society initiatives associated with the imposition of sporting and cultural boycotts and divestment moves involving trade and investment. Once again it is anticipated that governments and the United Nations will not follow through at the implementation stage with respect to international legal obligations.

C. Breaking the silence

29. *Breaking the Silence: Operation Cast Lead*¹⁵ is a publication containing the responses of combat soldiers who took part in the military operation. It has received considerable media attention because it confirms from within the Israeli Defense Forces several disturbing allegations: consistent Forces reliance on unacceptably loose rules of engagement that meant that international humanitarian law guidelines as to limits on military force in relation to civilians and civilian targets became virtually inoperative and were not part of briefings given prior to or during combat; widespread destruction of target that could not be justified from a military or

¹⁴ See Reuters, "Israel says investigating 100 Gaza war complaints", 30 July 2009; for the full text of the report, see *The Operation in Gaza: Factual and Legal Aspects*, Israel Ministry of Foreign Affairs, 29 July 2009.

¹⁵ Breaking the Silence is an organization of veteran Israeli soldiers that collects testimonies of soldiers who served in the occupied territories during the Second Intifadah. *Breaking the Silence: Operation Cast Lead* is available from www.breakingthesilence.org.il.

security perspective; use of phosphorus in densely populated zones; interference with Gazan civilian movement to places of relative safety in Gaza by the fragmentation of the Strip trapping many within the worst combat sectors; racist pressures brought to bear on soldiers by what was described as the “military rabbinate”, dehumanizing Arabs and Palestinians, and treating the conflict as a holy war against a demonic enemy.

30. It should be noted that the testimonies of these Israeli Defense Forces soldiers assumed greater credibility because they were not at all anti-Israeli or anti-Zionist in tone, and many of the soldiers accepted the underlying rationale of Operation Cast Lead as a necessary defensive reaction to Hamas rockets. Also there were some qualifications placed on the condemnation of disregard of the Forces for civilians: there was acknowledgement that Forces warnings were issued, that warning shots were sometimes fired to identify whether individuals were suspicious or to deter Gazans from coming closer to where soldiers were deployed, and that sporadic efforts were made by some Forces commanders to avoid doing as much civilian damage as could have been inflicted. Overall, an impression emerges from the testimonies that many of the tactics relied upon were less designed to kill and injure Palestinian civilians than to protect Israeli soldiers from injury, death, or capture. However, much of this increased the risks of harm inflicted to innocent Palestinians. A typical sentiment in the testimony was the following order given by a field commander to Defense Forces troops: “Not a hair will fall off a soldier of mine, and I am not willing to allow a soldier of mine to risk himself by hesitating. If you are not sure — shoot”.¹⁵ Or more generally: “There was a clear feeling, and this was repeated whenever others spoke to us, that no humanitarian consideration played any role in the army at present. The goal was to carry out an operation with the least possible casualties for the army, without its even asking itself what the price would be for the other side”.¹⁵

31. The testimonies were anonymous, and it has been impossible up to this point to contact any of the soldiers for further clarification. At the same time, there is no indication that such testimonies lacked authenticity. Most commentary on *Breaking the Silence* stressed the Forces breakdown of respect for the Geneva Conventions and limits on war fighting embedded in the laws of war. Some observers also placed value on the report as a more trustworthy narrative than the official Israeli Defense Forces and Israeli response to war crimes allegations, which have consisted of blanket denials coupled with some acknowledgement that a few individual soldiers may have strayed from professional military standards of conduct under battlefield stress. The main Israeli response claimed that the Israeli Defense Forces as a whole took exceptional risks to accord moral and legal protection to the civilian population of Gaza over the course of Operation Cast Lead and acted in a proper professional manner under difficult combat conditions.

32. Even more important than this alternative picture of Israeli Defense Forces behaviour in relation to Operation Cast Lead and international humanitarian law was the whole question as to whether the use of modern military technology in the densely populated setting of the Gaza Strip could ever have conformed to the requirements of that law. One of the soldiers expresses this concern in the following language: “In urban warfare, anyone is your enemy. No innocents. It was simply urban warfare in every way”.¹⁵ Or “No accountability in such a zone whatever we do is fine ... ‘sons of light’ against ‘sons of darkness’” and “... the assumption is that everyone is a terrorist, and then it’s legitimate to do anything we please”.¹⁵ In

this spirit, for instance, it was practice to treat any Gazan seen at a great distance with a cell phone as a terrorist. What comes across is that the context of combat in Operation Cast Lead on the ground was such that war crimes were indistinguishable from the logic of the military operation.

33. It is true that Hamas militants were capable of disguising themselves as civilians, that anyone could be a threat, and that it is normal for a military undertaking to minimize casualties to itself. The soldiers' testimonies indicate that the process of doing this produces grossly disproportionate harm by way of casualties to innocent civilians and devastation of the urban environment. In other words, the argument is less about the departure from international humanitarian law guidelines in the military operation than questions about the inherent disconnect between that law and urban warfare on such a scale, especially under conditions where the civilian population is denied the option of exit or shelter. Although, to be sure, there were specific departures, as in the case of using white phosphorus shells and bombs and tank flachette shells in areas with dense civilian populations. Such practices amount to indiscriminate attacks and would seem flagrant violations of article 35(2) of Protocol I additional to the Geneva Conventions of 12 August 1949 relating to the protection of victims of international conflicts: "It is prohibited to employ weapons, projectiles and materials and methods of warfare of a nature to cause superfluous injury or unnecessary suffering."¹⁶

34. At the very least, there is a burden of persuasion on those who have recourse to such a use of military power. According to Israel, such an operation was necessary to remove a major security threat. Here, one is struck by the relative absence on the part of Israeli commanders of any effort directed at removing the threat of future rocket attacks. As has been argued in a previous report, and mentioned above, diplomacy offered Israel a promising path to address the important security interest associated with diminishing or even eliminating rocket fired into southern Israel from across the Gaza border. The most that was told to the soldiers by their commanders was that Operation Cast Lead was somehow a response to the rockets or, more specifically, that "we're going in to create appropriate conditions for the negotiation to bring Gilad Shalit home".¹⁵

35. It is the judgment of the Special Rapporteur that Operation Cast Lead discloses that urban warfare, fought on the ground, from air or sea, cannot maintain the legal standards of constraints associated with international humanitarian law, more specifically with the special requirements of the Fourth Geneva Convention and Protocol I associated with the protection of civilian, particularly in circumstances of prolonged occupation. In this respect, the Israeli claim of adherence to the restraints of international law is unconvincing, as demonstrated by the evidence of combat practices and de facto rules of engagement; equally unconvincing are contentions that Israeli soldiers in the field should be the main concern of investigation and potential accountability. Instead, the focus should be upon high military commanders and political leaders who devised such an operation, as well as on the limits on military power in the first place.

36. One of the most celebrated legal guidelines on war fighting is contained in article 22 of the annex to the 1899 Hague Convention II on the Laws and Customs of War on Land: "The right of belligerents to adopt means of injuring the enemy is

¹⁶ United Nations, *Treaty Series*, vol. 1125, No. 17512.

not unlimited.” Article 35(1) of Protocol I expresses the same general sentiment: “In any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited”.¹⁶ Urban warfare of the sort carried out in Gaza during Operation Cast Lead seems to exceed those limits; however vague they may seem to be as formulated in 1899, the time may have come in 2009 to give them concrete application to the circumstances of modern urban warfare. In other words, it is of great importance to focus on the war itself rather than to limit inquiry to the alleged unlawful practices and tactics.

III. Settlements in the Palestinian territories and their impact on the enjoyment of human rights

37. The Israeli settlements in occupied Palestine have recently received great attention as a result of President Barack Obama’s widely publicized call for a “freeze” on settlement expansion as an essential step to revive negotiations looking towards a solution of the underlying conflict. President Obama has also asked Arab governments to reward Israel if it agrees to impose a freeze, implying that Israel would be taking a constructive political step for which it deserves to receive encouragement by way of reciprocity. So far the Israeli leader, Prime Minister Benjamin Netanyahu has agreed only to disallow the establishment of new settlements or an expansion of the land area under the control of existing settlements. However, he has insisted that the “natural growth” of West Bank settlements must be allowed, and further, that settlements in East Jerusalem will not be treated as part of any partial freeze. It should be observed that this controversy has been carried on without reference to Palestinian rights under international humanitarian law as if law is irrelevant, and the matter of the settlements is a purely political issue between the parties.

38. For this reason, it is important to recall what has been argued in several previous reports of the Special Rapporteur, that the settlements as such are unlawful under article 49(6) of the Fourth Geneva Convention that clearly states that “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory its occupies”.¹⁷ This widely shared legal assessment was authoritatively confirmed by the International Court of Justice in the course of its advisory opinion of 9 July 2004 on the construction of a security wall: “Israeli settlements in Occupied Palestinian Territory, including East Jerusalem, are illegal and an obstacle to peace and to economic and social development ... [and] have been established in breach of international law.”¹ At present, there are reported to be 121 settlements on the West Bank, 12 situated on land annexed after 1967 by the city of Jerusalem, and about 100 “outposts”, which are physical presences established by the settler movement without receiving legal authorization from the Israeli Government.

39. From a legal perspective, acknowledging the relevance of Palestinian rights under law, any bilateral understandings between the United States and Israel, such as the Bush/Sharon exchange of official letters on 14 April 2004, assuring Israel that the large settlement blocs will be incorporated into the future borders of the Israeli State, are completely without legal value. The most important language in the letter

¹⁷ United Nations, *Treaty Series*, vol. 75, No. 973.

of President Bush is the following: “In light of the new realities on the ground, including the existing major Israeli population centres, it is unrealistic to expect that the outcome of final status negotiations will be a full and complete return to the armistice lines of 1949 ...”. This is even more the case with respect to the effect of supposed informal understandings between the United States and Israel on natural growth of settlements despite the freeze commitments made formally in the Annapolis Declaration of December 2007. According to monitoring groups in actual fact, “tenders for new settlement building increased by 550 per cent from 2007. Actual settlement construction has increased by 30 per cent since the launching of the new round of peace talks. Settlement building around Jerusalem has increased by a factor of 38”.¹⁸

40. It is an elementary principle of law and equity that any understanding between two parties cannot alter the legal rights of a third party. At most, such an understanding, even in the form of a contract, has only a bearing on the political expectations that exist between the two parties, in this case Israel and the United States. It is also true that within Israel itself the American call for a settlement freeze has aroused passionate forms of opposition, including the renewed efforts by the settler movement to establish in the West Bank settler “outposts” that are illegal even under Israeli law.¹⁹ Rabbi Ovadia Yosef, spiritual leader of the ultra-orthodox Shas Party in Israel, a partner in the ruling coalition, has angrily repudiated the idea of a settlement freeze: “American insidiousness tells us to build here and not to build there as though we were slaves working for them.”

41. In point of fact, Israel has throughout the entire period of the occupation expanded the population and territorial domain of the settlements: “In the two decades from 1972 to 1993, Israel increased the number of settlers in the West Bank, not including Jerusalem, from 800 to 110,600. In the following ten years — which roughly coincided with the Oslo peace process — the number increased at twice the rate, exceeding 234,000 in 2004. In East Jerusalem, the settler population jumped from 124,400 in 1992 to almost 176,000 in 2002.”²⁰ The most recent estimates of settler population put the number in the West Bank at about 300,000, with an additional 200,000 in East Jerusalem.

42. Further settlement growth, quite apart from the freeze issue as it relates to a resumption of “peace” negotiations, is a continual encroachment on Palestinian rights of self-determination, as well as an overall violation of the basic obligation of the occupier under the Fourth Geneva Convention to protect the property and societal prospects of an occupied population. Therefore, during a period when the road map was supposed to curtail settlement growth, actual Israeli behaviour went in a quite opposite direction.

43. As summarized in the letter of Palestinian human rights organizations to the Swedish Foreign Minister, Carl Bildt: “The population growth rate of Israeli settlers in the occupied West Bank, including East Jerusalem, is 4.7 per cent, compared to an annual growth of the Jewish population in the State of Israel, which is 1.7 per cent.

¹⁸ *Palestine Monitor*, “Israeli Settlements”, updated 17 December 2008. Available from <http://www.palestinemonitor.org/spip/spip.php?article 7>.

¹⁹ See Ethan Bronner, “West Bank Settlers Send Defiant Message to Obama” (*The New York Times*, 30 July 2009).

²⁰ See Ali Abunimah, *One Country: A Bold Proposal to End the Israeli-Palestinian Impasse* (Metropolitan Books, November 2006).

Thus, the smokescreen of ‘natural growth’ is used to mask continuing emigration of Jewish-Israeli settlers to the West Bank, as well as the creation of essentially new settlements appended to existing ones.”⁸ Some observers argue that these figures exaggerate the threat posed by this settlement growth, insisting that most of the growth is in haredin non-Zionist settlements, such as Modi’in Illit and Beitar Illit, currently with 45,000 residents who seem ready to move if given alternative housing within pre-1967 Israel as part of a solution to the underlying conflict.

44. Others question this flexibility, and the militant wing of the settler movement is adamantly opposed to any retreat from the present contours of the settlement phenomenon, and regard openly and deliberately the expansion of the settlements as the best insurance against the Palestinians ever establishing a sovereign State of their own, or at least a viable sovereign and independent State.

45. House demolitions unrelated to any security pretensions have been a major device in extending Israeli control over the West Bank in a manner that impairs Palestinian rights. As many as 277 homes were demolished in 2008 within the occupied Palestinian Territory, with East Jerusalem being most affected. Between January and July 2009, the Office for the Coordination of Humanitarian Affairs (OCHA) recorded the demolition of 221 Palestinian-owned houses, which displaced over 500 people.²¹ These demolitions, besides being extraordinarily inhumane, impair Palestinian prospects for self-determination. A complementary technique relied upon in Jerusalem is the denial of building permits even to long-term Palestinian residents as part of a continuing effort to change the demographics of the city in Israel’s favour.

46. The settlements also pose an additional problem for the maintenance of human rights and compliance with the Fourth Geneva Convention. The location of Israel’s unlawful security wall has the effect of placing an estimated 385,000 settlers between the wall and the Green Line, while entrapping approximately 93,000 Palestinians on the Israeli side of the wall, sometimes cut off from their agricultural lands and parts of their villages, as well as from the West Bank generally.

47. There are several intertwined issues relevant to the mandate: (a) the settlements, and any further expansion, are a major unlawful impediment to the realization of the Palestinian right of self-determination; (b) if Israel accepts a freeze on unlawful settlement expansion it seems unreasonable for it to receive some kind of reciprocal gesture from the Arab governments, that is, should Israel be rewarded for doing what it was legally required to do in the first place; (c) agreements between Israel and the United States are legally irrelevant with respect to the settlements as only the Governments of Israel and the Palestinian Authority have the authority to determine their status in the context of peace negotiations; (d) Israel as occupying power has an underlying legal obligation to dismantle existing settlements, including those in East Jerusalem, and not interfere with Palestinian growth and development. This conclusion has also been reached by B’Tselem, the respected Israeli human rights organization, recommending a “humane” dismantling that respects settlers’ human rights, including compensation for any loss.²²

²¹ See OCHA, “The Humanitarian Monitor”, July 2009. Available from www.ochaopt.org.

²² See “Land Expropriation and Settlements”. Available from www.btselem.org/English/settlements.

IV. The wall and its legal implications

48. The date of 9 July 2009 marked the fifth anniversary of the Advisory Opinion of the International Court of Justice on the security wall, still being constructed mainly on the territory of the occupied West Bank, so designed as to be 86 per cent on West Bank territory. The wall was supposed to extend for 723 kilometres when finished, which is twice the length of building the wall along the Green Line and which would have saved Israel an estimated \$1.7 billion of United States dollars. At present it is reported to be only about 60 per cent complete after a construction effort that has gone on for seven years, with latest reports indicating that construction has been suspended for budgetary reasons despite the claimed necessities of security. The Ministry of Defense and public opinion of Israel credit the wall with improved security within Israel; the significant reduction in terrorist incidents in recent years is invoked to confirm this claim. Critics, including the leadership of the Palestinian Authority, call for the dismantling of the wall, contending that it is a land grab unrelated to security that has caused great hardship to the Palestinians living near to or on the Western side of the wall, as well as being unlawful as located.

Israel's unlawful occupation: crisis of authority in international law

49. Despite the diversity among the 15 judges of the International Court of Justice, they voted 14 against 1 on the main issues of international law concluding: "... the construction of the wall being built by Israel, the occupying Power, in the Occupied Palestinian Territory ... [is] contrary to international law ... Israel is under an obligation to cease forthwith the works of construction ... to dismantle forthwith the structure therein situated ... to make reparation for all damage caused by the construction of the wall".¹ On 20 July 2004, the General Assembly at its tenth emergency special session voted overwhelmingly²³ to insist that Israel comply with the rulings of the International Court of Justice, and also called upon the General Assembly and the Security Council to consider what further action was required to end the illegal situation resulting from the construction of the wall. The Assembly in its resolution ES-10/15 also called upon all States Member of the United Nations to comply with their obligations as mentioned in the advisory opinion of the International Court of Justice, the United Nations highest legal body. Attention was particularly called to the obligation of States not to render aid or assistance in maintaining the situation created by such construction. Many subsequent resolutions adopted overwhelmingly by the General Assembly as well as the Human Rights Council have renewed the call on Israel to comply with its legal obligations, as mentioned in the advisory opinion.²⁴

50. As is undisputed, Israel has rejected the findings of the International Court of Justice, indicating that it will only adhere to the rulings of its own national judicial system. It has done so, upholding a series of decisions by the Israeli Supreme Court that order the relocation of the wall so as to lessen the harmful impact on Palestinian

²³ A number of 150 Member States voted in favour, and six against (Australia, Micronesia, Israel, Marshall Islands, Palau, United States).

²⁴ See General Assembly resolution 63/97 (adopted on 5 December 2008 by a vote of 171 to 6, with 2 abstentions), para. 6; see also Human Rights Council resolution 10/18 (adopted on 26 March 2009 by 46 to 1, with no abstentions), para. 8.

communities. It is true that an advisory opinion of the Court is “non-binding” as a direct decision, but it represents an authoritative assessment of the relevant international law. Even though the findings are not directly binding, they present a definitive set of conclusions as to the requirements of international law under the circumstances. When the conclusions reached are so overwhelmingly supported, then there is no basis for “the law” to be inconclusive or contested. Such an assessment is strengthened here because the lone dissenting judge, from the United States, indicated in his Declaration that he accepted most of the legal analysis made by the majority. However, he felt that no firm conclusions could be reached without a better appreciation of the Israeli security arguments for locating the wall on the occupied territory.

51. As with the confirmed reports of war crimes, the non-implementation of the legal conclusions of the Court is extremely damaging to the authority of international law, of the Court, and of the United Nations generally. An unfortunate message has been delivered: the authority of the international community has been defied by a Member State of the United Nations, harm has been inflicted on a civilian population that is supposed to be under the protection of international law, and neither States nor the organs of the United Nations do anything about it. As with other aspects of the conflict, the failure to uphold Palestinian legal rights and the treatment of the Court both constitute a crisis of authority and reinforce for the Palestinians the idea that it is no help to have international law on its side.

52. Israel can defy with impunity its international legal obligations. The combination of an insistence that Palestinians renounce all forms of armed resistance and the failure to respect legal rights coupled with United Nations inaction in relation to this failure constitutes the current Palestinian dilemma. What is to be done by the Palestinians under such circumstances? Israeli columnist Gideon Levy explains the currently cynical Israeli approach to peace negotiations as an outgrowth of this situation: Israelis are not paying any price for the injustice of occupation. Life in Israel is just peachy. Cafes are bustling. Restaurants are packed. People are vacationing. Who wants to think about peace, negotiations, withdrawals — the “price” that might have to be paid. The summer of 2009 is wonderful. Why change anything?²⁵

53. It should be noted that the issue of unlawfulness arises almost exclusively as a result of building the wall on the occupied Palestinian Territory. If the wall had been built along the Green Line or inside pre-1967 Israel, it might have generated moral and political criticisms associated with such a coercive and hostile form of separation, but not legal objections. The Berlin Wall was not challenged legally, but it was symbolic of what was wrong about East Germany and the Soviet approach to world order. If the Soviet Union had dared to build the wall even a few feet on the West Berlin side of the dividing boundary it could have well provided the trigger of World War III. It is notable that current American fence-building along the Mexican border, while controversial, is scrupulously respectful of Mexican territorial sovereignty. If a State or political community is not as powerless as Palestine, law and respect for territorial rights are generally respected.

²⁵ See Jerrold Kessel and Pierre Klochendler, “Mideast: Building Peace on an Incomplete Wall” (Inter Press Service, 27 July 2009).

54. Palestinian protests against the wall continue in several sites in the West Bank, most notably weekly demonstrations near the towns of Bil'in and Nii'iln. Israel has responded with rubber bullets, tear gas, and arrests, with several deaths and many injuries resulting. It would appear that Israeli security forces have been using excessive force in violation of their basic duties under international humanitarian law as the occupying Power.

V. Recommendations

55. The following recommendations drawn from the body of the report are emphasized as matters of urgency:

(a) The General Assembly should request an advisory opinion from the International Court of Justice on the obligations and duties of Members States of the United Nations to cooperate with the Organization and its representatives;

(b) Members States should be encouraged to use national means, including courts, to fulfil their obligations under the Fourth Geneva Convention, articles 146 to 149, with respect to implementing international criminal law as pertains to the occupied Palestinian Territory;

(c) Israeli respect for international law and Palestinian rights should henceforth be an integral element in future peace negotiations;

(d) Consideration should be given to imposing limits on the supply of arms to the parties to the Israel/Palestine conflict;

(e) The unlawfulness of Israeli settlements should be confirmed, and steps taken to move beyond the freeze, and in the direction of dismantling, with due respect for the human rights of all affected;

(f) Consideration should be given to requesting the International Committee of the Red Cross or some other designated body to study and make recommendations as to the special problems arising from prolonged occupation.



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**Promotion and protection of human rights: human rights
situations and reports of special rapporteurs and representatives**

Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General**

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, submitted in accordance with Human Rights Council resolution 5/1.

* A/65/150.

** The present report was submitted late in order to include the most up-to-date information.



Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The present report considers developments relevant to the obligations of Israel under international law, as well as the situation of people living in the Occupied Palestinian Territories. Emphasis is given to the cumulative impact of Israeli policies in the West Bank and East Jerusalem arising from prolonged occupation, which exhibits features of colonialism and apartheid, as well as transforming a de jure condition of occupation into a circumstance of de facto annexation.

These developments encroach on the inalienable Palestinian right of self-determination in fundamentally detrimental ways. Attention is also devoted to habitual concerns involving settlement growth in the West Bank and East Jerusalem, the problems posed by the continued construction of the separation wall, issues of collective punishment, and a variety of other human rights concerns, including concern over the health-related and other adverse impacts of the continuing blockade of the 1.5 million residents of Gaza, consideration of the “Freedom Flotilla” incident of 31 May 2010 and the continuing effort to assess whether Israel and the responsible Palestinian authorities have carried out adequate investigations of war crimes allegations arising from the Gaza conflict of 2008-2009.

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I. Introduction and overview

1. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 has again prepared the present report without the benefit of cooperation from the Government of Israel. This has meant an inability to gain access to the Occupied Palestinian Territories or to have contact with Palestinians living under occupation. Future reports will compensate for this deficiency by seeking access to the Gaza Strip on the basis of cooperation by the Government of Egypt and meetings with relevant personalities in countries bordering the Occupied Palestinian Territories. It should be noted once again that Israel, as a Member of the United Nations, is in violation of its legal obligation to cooperate with the Organization in carrying out its official duties. This failure is especially serious as the International Court of Justice noted in its advisory opinion,¹ rendered on 9 July 2004 that the United Nations has “a special responsibility” for the peaceful resolution of the Israel-Palestine conflict. The Special Rapporteur will continue to seek cooperation from the Government of Israel, but it would be helpful as well if the Human Rights Council, the General Assembly and the Secretariat of the United Nations implemented their obligation to take action to seek Israeli cooperation to the extent mandated by international law.

2. There have been many adverse developments in recent months that have intensified the ordeal of the Palestinians living under occupation in the West Bank, East Jerusalem and Gaza. Several of those developments will be discussed in greater detail below in the substantive sections of the present report. It continues to be important to call attention to the cumulative process of Israeli encroachment on fundamental and inalienable international human rights standards — that dimension of the Palestinian right of self-determination relating to territorial integrity. The right of self-determination is the underpinning of all other human rights, as is recognized by its inclusion in article 1 common to both international covenants on human rights, and also by its status as a peremptory norm of customary international law. This inalienable right belongs to all peoples, including non-self-governing peoples, and is being denied whenever a people is living under the harsh, oppressive and alien conditions of externally imposed rule that have characterized the belligerent occupation of the West Bank, East Jerusalem and Gaza since 1967. The oppressiveness of Israel’s occupation over more than 43 years is evident in the range of Israeli violations of the Fourth Geneva Convention and of applicable international human rights law, as well as of defiance of the International Court of Justice and of numerous resolutions and decisions of the General Assembly and the Security Council.

3. Beyond these general characteristics of unlawfulness pertaining to the occupation lie the additional severe conditions depicted by my predecessor, John Dugard, in his January 2007 report to the Human Rights Council.² Professor Dugard pointed to “features of colonialism and apartheid” that characterize Israel’s occupation, aggravating the charges of unlawfulness, and creating additional obligations and responsibilities for Israel as the occupying Power, for third States,

¹ See A/ES-10/273 and Corr.1; see also *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, and General Assembly resolution ES-10/15.

² See A/HRC/4/17.

and for the United Nations.³ Colonialism constitutes a repudiation of the essential legal rights of territorial integrity and self-determination, and apartheid has come to be formally treated as a crime against humanity.⁴ The gravity of these contentions underscores the claim that the occupation constitutes a severe and unprecedented denial of the right of self-determination that has long been in urgent need of rectification and reparations.⁵ The unlawfulness of colonial governance and the criminality of apartheid also have the special status in international law of being “peremptory norms”.⁶ It is the opinion of the current Special Rapporteur that the nature of the occupation as of 2010 substantiates earlier allegations of colonialism and apartheid in evidence and law to a greater extent than was the case even three years ago. The entrenching of colonialist and apartheid features of the Israeli occupation has been a cumulative process. The longer it continues, the more difficult it is to overcome and the more serious is the abridgement of fundamental Palestinian rights.

4. The allegation of colonialism as a feature of Israel’s occupation is best understood in relation to the extensive and continuing settlement process, which encompasses the official 121 settlements (and 102 “outposts” illegal under Israeli law) and the extensive network of Jewish-only roads connecting the settlements to one another and to Israel behind the green line.⁷ The totality of this encroachment on the territory of the West Bank has been estimated to be 38 per cent if all restrictions on Palestinian control and development are taken into account. This de facto annexation of Palestinian territory is reinforced by the construction of 85 per cent of the separation wall on occupied Palestinian territory in a manner declared unlawful in the almost unanimous (14-1) 2004 advisory opinion of the International Court of Justice. It is widely believed that the settlement blocs and the land to the West of the wall (comprising 9.4 per cent of the West Bank) have been permanently integrated into Israel in a manner that international negotiations are incapable of reversing. The Government of the United States of America, the main sponsor of negotiations between the parties, reportedly holds the position that Israel can retain some of the settlements in the West Bank as part of any resolution of the conflict.⁸ This position discloses a continuing insistence that negotiations must incorporate “facts on the ground” although many of those facts manifestly violate international humanitarian law. In effect, “peace” would be based not on an unconditional withdrawal from territory occupied in 1967, as mandated by Security Council

³ Ibid., para. 62.

⁴ See article 7, Rome Statute of the International Criminal Court, United Nations, *Treaty Series*, vol. 2187, No. 38544; and General Assembly resolution 1514 (XV), “Declaration on the Granting of Independence to Colonial Countries and Peoples”, 14 December 1960.

⁵ These legal conclusions follow from the following authoritative texts of international law doctrine: the Declaration on the Granting of Independence to Colonial Countries and Peoples (1960) and the International Convention on the Suppression and Punishment of the Crime of Apartheid (1973). Apartheid is listed as one type of crime against humanity in article 7 of the Rome Statute of the International Criminal Court.

⁶ Article 53 of the Vienna Convention on the Law of Treaties (1969) defines a peremptory norm as “a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character”.

⁷ See Canadians for Justice and Peace in the Middle East, “Factsheet: Illegal Israeli Colonies in the Occupied Palestinian Territories”, April 2010, available at <http://www.cjpmc.org/DisplayDocument.aspx?DocumentID=760&SaveMode=0>.

⁸ See Matthew Lee, “US Readies New Mideast Peace Push”, Associated Press, 7 January 2010.

resolution 242 (1967), but on a set of subsequently created unlawful conditions that encroach on Palestinian rights under international law and curtail territorial prospects for an eventual Palestinian State. Israel's colonialist ambitions and policies are also expressed through appropriation of the resources of occupied Palestinian territory, especially water, and disproportionately and in a discriminatory manner making a far greater amount of water resources available to the unlawful settlements compared with lawful Palestinian inhabitants and refugees (4 to 5 times the per capita amount supplied to settlers, at an estimated one fifth of the price charged to Palestinians).⁹ This means that the occupation has become a form of colonialist annexation that severely compromises the territorial integrity of any future independent Palestinian entity. Israel has declared and acted upon its annexationist intentions in East Jerusalem ever since the conclusion of the war of June 1967 and has taken steps to consolidate its administrative control over a unified and enlarged Jerusalem. These steps have included efforts to reduce the number of Palestinians living in East Jerusalem, as well as to encourage and subsidize the establishment and expansion of large, unlawful settlements within the parts of the city occupied in 1967, which were historically overwhelmingly Palestinian and have been internationally regarded as the capital of a future Palestinian state.¹⁰ This settlement process violates article 49 (6) of Fourth Geneva Convention, which prohibits the transfer of the population of an occupying power to the territory temporarily occupied, and involves a determined political effort by Israel to transform a set of conditions that are legally and politically temporary into a permanent reality. After more than four decades, it is appropriate to conclude that Israel's occupation of Palestinian territories has ceased to be temporary, and acknowledge that it has become tantamount to permanent.

5. Apartheid, although associated with the specific circumstances of racism that prevailed in South Africa until 1994, by virtue of the International Convention on the Suppression and Punishment of the Crime of Apartheid and of being defined in the Rome Statute as a crime against humanity, is applicable to other situations in which discriminatory racial practices entailing a dual structure of rights and duties are imposed by prevailing law on a subordinated people. The Convention relating to apartheid criminalizes "inhuman acts committed for the purpose of establishing and maintaining domination by one racial group of persons over any other racial group of persons and systematically oppressing them".¹¹ The Rome Statute criminalizes "inhumane acts" committed in the context of, and aimed at maintaining, "an institutionalized regime of systematic oppression and domination by one racial group over any other racial group".¹² It is this general structure of apartheid that exists in the Occupied Palestinian Territories that makes the allegation increasingly credible despite the differences between the specific characteristics of South African apartheid and that of the Occupied Palestinian Territories regime. There is a question of definition as to whether Jews and Palestinians are "racial groups" within

⁹ See Badil Resource Center for Palestinian Residency and Refugee Rights, *Al Madal*, No. 39/40 (autumn 2008/winter 2009), and Amnesty International, *Troubled Waters — Palestinians Denied Fair Access to Water*, 2009.

¹⁰ See Security Council resolutions 242 (1967), 338 (1973), 1397 (2002), 1515 (2003) and 1850 (2008): East Jerusalem is considered by the international community to be an occupied Palestinian territory.

¹¹ See the International Convention on the Suppression and Punishment of the Crime of Apartheid, article II (resolution 3068 (XXVIII), 30 November 1973).

¹² The Rome Statute of the International Criminal Court, article 7.2 (h).

the meaning of these legal instruments. Some salient apartheid characteristics will be listed, although owing to limitations of space it is not possible to provide detailed accounts of these features of the occupation. For details on the apartheid character of the Israeli occupation, there exists an expert study that is both reliable and convincing.¹³ Among the salient apartheid features of the Israeli occupation are the following: preferential citizenship, visitation and residence laws and practices that prevent Palestinians who reside in the West Bank or Gaza from reclaiming their property or from acquiring Israeli citizenship, as contrasted to a Jewish right of return that entitles Jews anywhere in the world with no prior tie to Israel to visit, reside and become Israeli citizens; differential laws in the West Bank and East Jerusalem favouring Jewish settlers who are subject to Israeli civilian law and constitutional protection, as opposed to Palestinian residents, who are governed by military administration; dual and discriminatory arrangements for movement in the West Bank and to and from Jerusalem; discriminatory policies on land ownership, tenure and use; extensive burdening of Palestinian movement, including checkpoints applying differential limitations on Palestinians and on Israeli settlers, and onerous permit and identification requirements imposed only on Palestinians; punitive house demolitions, expulsions and restrictions on entry and exit from all three parts of the Occupied Palestinian Territories.

6. It should also be noted that the conditions of the continuing Israeli occupation of Gaza rest on the operational reality of effective control, despite the Israeli “disengagement” in 2005, which involved the withdrawal of ground forces and the dismantling of settlements. In this regard, the situation in Gaza, although legally and morally deplorable, is not characterized by either colonial ambitions as to territory and permanence or an apartheid structure. Such an assertion is not meant to minimize the unlawfulness, and seeming criminality, of the blockade of Gaza that has been maintained since mid-2007, in violation of the prohibition against collective punishment contained in article 33 of the Fourth Geneva Convention, but only to distinguish it. Gaza has been recently described by the Prime Minister of the United Kingdom of Great Britain and Northern Ireland, David Cameron as “a prison camp”.¹⁴ Such a persistent situation of pervasive abuse seems to raise the level of responsibility for the United Nations and Member States, as underscored by the former Secretary-General, Kofi Annan. He observed that the primary *raison d’être* of every State is to protect its population, but that “if national authorities are unable or unwilling to protect their citizens, then the responsibility shifts to the international community” to use all necessary means, “including enforcement action” if lesser methods prove insufficient.¹⁵ It would seem that the Gazans, although not citizens of the occupying State, enjoy the status of “protected persons” under international humanitarian law. They have been left unprotected with respect to their basic rights for many years, in violation of the spirit and the letter of what then Secretary-General Annan agreed was an emerging norm imparting “a collective responsibility to protect”, a responsibility that he declared “we must embrace ... and, when necessary, ... act on it”.¹⁶ Gaza has long presented such a challenge in a

¹³ Human Sciences Research Council of South Africa, “Occupation, Colonialism, Apartheid? A reassessment of Israel’s practices in the occupied Palestinian territories under international law”, Cape Town, 2009.

¹⁴ BBC News, “David Cameron describes blockaded Gaza as a ‘prison’”, 27 July 2010; available at www.bbc.co.uk/news/world-middle-east-10778110.

¹⁵ See A/59/2005, para. 135.

¹⁶ *Ibid.*

situation of acute and massive humanitarian suffering resulting from the policies of the occupying Power.

7. It is important to take note of the relevance of the Advisory Opinion of the International Court of Justice on the accordance with international law of the unilateral declaration of independence in respect of Kosovo.¹⁷ The legal conclusion reached by a 10-4 majority was that Kosovo's unilateral declaration of independence on 17 February 2008 did not violate international law. Although such a legal proceeding is formally classified as an advisory opinion, it is considered by most jurists to represent the most authoritative assessment of contested international legal issues available within the international community. Such an authoritative finding by the highest judicial body in the United Nations is potentially relevant to the implementation of the right of self-determination for Palestinians. The International Court of Justice observed that there had been a prolonged failure by governmental representatives in Pristina and Belgrade to resolve by negotiation the issue of the legal status of Kosovo, making the issuance of a unilateral declaration by Kosovo a reasonable course of action.¹⁸ This issue has a bearing on the situation pertaining to the human rights of Palestinians, who have lived so long under occupation. As is generally accepted, the right of self-determination is the most fundamental right of a people, and it applies especially to those subject to any form of external domination interfering with self-governance, economic development, human rights and control over collective destiny. The existence of a Palestinian right of self-determination, by way of establishing an independent State, has been accepted by a consensus of Governments and by the United Nations, and it is an operating premise of "the road map" guiding the Quartet.¹⁹ The failure of bilateral international negotiations over the course of decades to establish a final status for Palestine or to insist upon Israeli withdrawal from Palestinian territories occupied in 1967 (as unconditionally and unanimously prescribed in 1967 by the Security Council in its resolution 242 (1967)) creates a background that resembles, and in some dimensions exceeds, in important respects the situation confronting the Government of Kosovo. There has existed overwhelming evidence for many years that Israeli control over the Occupied Palestinian Territories has been oppressive from the perspective of international law, as referenced by unlawful occupation policies given the requirements of international humanitarian law and international human rights law. Lengthy negotiations have not resolved the issue of the status of Palestine, nor do they offer any reasonable prospect that any resolution by negotiation or unilateral withdrawal will soon occur. Under these circumstances, it would seem that one option available to the Palestine Liberation Organization (PLO) acting on its own or by way of the Palestinian Authority under international law would be to issue a unilateral declaration of status, seeking independence, diplomatic recognition and membership in the United Nations. The Kosovo advisory opinion provides a well-reasoned legal precedent for such an initiative, although the Statute of the International Court of Justice, states clearly, in article 59, that even in its more obligatory "decisions" the outcome has "no binding force except between the parties and in respect of that particular case". At the same time, the similarities between the

¹⁷ See A/64/881.

¹⁸ *Ibid.*, para. 105.

¹⁹ See S/2003/529, containing the full text of the road map to realize the vision of two States, Israel and Palestine, living side by side in peace and security, as affirmed in Security Council resolution 1397 (2002).

situation confronting the Palestinian Authority/PLO and that confronting the Government of Kosovo suggest the likelihood of a similar outcome in the event that the International Court of Justice were to be consulted. Also, the reasonableness of claiming the legality of a Palestinian unilateral declaration is fortified by this Kosovo precedent, if such a course of action is adopted. This possible development is relevant to appraising Israeli violations of human rights in the Occupied Palestinian Territories because of its bearing on the deferred exercise of the Palestinian right of self-determination under extremely strained circumstances. The Palestinian Authority Prime Minister, Salam Fayyad, stated that as Palestinians “see things happening on the ground, the state of Palestine moves from being just a concept that people talk about into the realm of the possible — and then into reality”.²⁰ The Kosovo advisory opinion gives this Palestinian aspiration a push towards political reality, as well as legal reality.

II. Occupation policies in the West Bank and East Jerusalem

A. General observations

8. The United Nations has in recent years been understandably preoccupied with the humanitarian crisis caused by the Israeli attacks on Gaza at the end of 2008 (Operation Cast Lead) and by the blockade, as well as by civil society initiatives aimed at challenging the blockade on the basis of international law and morality. These issues, and their aftermath, rightly remain high on the United Nations agenda, but it is important to realize that the developments in the West Bank and East Jerusalem may have longer-lasting impacts on the future of the Palestinian people as a whole than the situation, however extreme and dire, that confronts the 1.5 million Palestinians in Gaza. The concerns about annexation, colonialism and apartheid referred to above are absent from Gaza, where Israeli responsibility for violations of human rights seems to have different objectives. For instance, as stated by the former Commissioner of the European Union, Lord Chris Patten: “The aim [of Israel] is to choke the economy and push the Gazans into the unwilling embrace of Egypt”.²¹ From the perspective of self-determination, this involves an alternative encroachment on the integrity and unity of Palestinians as an occupied people, separating Gaza from the West Bank in defiance of Palestinian wishes either in the West Bank/East Jerusalem or Gaza, and in violation of numerous United Nations resolutions affirming the integrity of the Occupied Palestinian Territories as a single entity.²² From the perspective of the Palestinian Authority, this may eventually result in the exclusion of a major segment of the Occupied Palestinian Territories from any future integrated Palestinian polity, the presupposition of the two-State consensus and Security Council resolution 242 (1967). A parallel set of Israeli policies has made it progressively more difficult for Palestinians to move between Jerusalem and the West Bank and almost impossible for them to go either to or from Gaza.²³ This fragments the Palestinian people in such a way as to make it almost impossible to envision the emergence of a viable Palestinian State. These

²⁰ *Financial Times*, interview with Salam Fayyad, 30 July 2010.

²¹ *Financial Times*, “To avert disaster, stop isolating Hamas”, 28 July 2010.

²² See Security Council resolutions 242 (1967), 338 (1973), 1397 (2002) and 1402 (2002).

²³ See A/HRC/13/54, report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1.

developments give an aura of implausibility to the invocation of a two-State solution as the path to Palestinian self-determination, leading informed commentators to believe that the future of Palestine will be one State together with Israel, leaving open the question as to whether it would be a democratic and secular State (an alternate formula for Palestinian self-determination), or whether Israeli “occupation” would continue to be a distinctive mixture of colonialist and apartheid elements (thereby indefinitely obstructing the exercise of the Palestinian right of self-determination).

9. This push can take contradictory turns in the face of a newly shared Israeli realization that a new legal regime must be established to govern Israeli/Palestinian relations. An implied recognition of the untenability of the facade of occupation and the pretension to a two-State consensus has recently surfaced in Israel in the form of calls for the unilateral establishment of a single, unified State that incorporates the West Bank and East Jerusalem, while renouncing all claims with regard to Gaza. Prominent Israeli political figures, including Moshe Arens, the former Defence Minister and Minister for Foreign Affairs; member and current Speaker of the Knesset, Reuven Rivlin; Knesset member Tzipi Hotovely; and Uri Elitzur, former chair of the Yesha Council of Settlements, have each separately called for such a solution. In most respects, the Israeli one-State solution involves a legalization of de facto annexation without altering the nature of the claim to be a Jewish State, and with deferred and distinctly second-class Israeli citizenship made available to Palestinians now living under occupation. This type of “solution” tries to sweeten the appearance of the present apartheid and colonialist realities of the occupation without altering the substance of these oppressive conditions. Its implementation would be a total repudiation of Palestinian rights under international law, especially the right of self-determination. Fully consistent with such Israeli discussions is the proposal floated in July 2010 by the Minister for Foreign Affairs of Israel, Avigdor Lieberman, advocating an end of the Gaza blockade, coupled with Israeli encouragement of the immediate establishment of a Gazan state. Lieberman offers several justifications for such a proposal, including the benefits of alleviating outside pressure on Israeli settlement expansion in the West Bank and East Jerusalem. Apparently, part of his idea is to keep the Quartet and George Mitchell busy working out a regime for an independent Gaza that operates in a way that does not threaten Israeli security concerns.²⁴ On the Palestinian side, an analogous shift in favour of a one-State solution is also evident, especially among leading exile voices, but their proposals envision the establishment of a single secular and democratic State of Palestine/Israel, with equal rights for both peoples and no Jewish identity for the State. There are some other signs of dissatisfaction with reliance on a revived “peace process” to achieve conflict resolution and end the occupation, including some calls for the United States to impose a solution on the parties. Although the impulse is understandable as a result of the failure of negotiations, an imposed solution remains unacceptable to both parties and is unlikely to take adequate account of infringed Palestinian rights. There is also an issue of credibility, given that the United States is the proclaimed unconditional ally of Israel, the party generally viewed as having unlawfully abused its role as occupying Power.

²⁴ For useful commentary see Henry Siegman, “An immodest — and dangerous — proposal”, The Middle East Channel, *Foreign Policy*, 9 August 2010.

B. Poverty and children in the West Bank

10. There is an impression that the Palestinians living in the West Bank have been flourishing in terms of material well-being in recent years. It is true that employment and investment in certain geographic and economic sectors of the West Bank have recently flourished, as evidenced by the fact that overall economic growth was reported to have been 8.5 per cent in 2009.²⁵ The State-building efforts of Prime Minister Fayyad have also been viewed favourably as a practical means of moving towards the realization of self-determination. Mr. Fayyad stated that “[T]he essence of what we are doing is getting ready for statehood, in every possible way possible — in terms of having the capacity to govern ourselves, improving institutions and having adequate infrastructure”.²⁶ At the same time all is not well with respect to the material conditions of the people, especially those living in “Area C”, the 60 per cent of the West Bank that exists under complete Israeli military administration, in which approximately 40,000 Palestinians live and which is also the scene of a greatly increased number of demolitions and even the destruction of Palestinian villages.²⁶ A recently updated 2009 report, “Life on the Edge”, published by Save the Children UK, paints a grim picture of life in Area C.²⁷ The main conclusion reached in the report is that Israeli policies of land confiscation, expanding settlements, lack of such basic services as food, water, shelter, and medical clinics is at “a crisis point”, with food security problems even worse than in Gaza.²⁸ According to the report, 79 per cent of the communities surveyed recently do not have enough nutritious food; this is a rate higher than in blockaded Gaza, where it is 61 per cent.²⁹ Israel is accused in the report of creating a situation in which Palestinian children growing up in Area C experience malnutrition and stunted growth at double the level of children in Gaza. Forty-four per cent of those children were found to suffer from diarrhoea, which often proved lethal. Save the Children UK writes that Israel’s restrictions on Palestinian access to and the development of agricultural land — in an area where almost all families are herders — mean that thousands of children are going hungry and are vulnerable to deadly illnesses such as diarrhoea and pneumonia. Jihad al-Shommali of Defense for Children International was recently quoted as saying, with reference to the problems facing children in Area C, “Children are being forced to cross settlement areas and risk beatings and harassment by settlers, or walk for hours, just to get to school ... many children are losing hope in the future”.³⁰ This overall pattern suggests systematic violations by Israel of article 55 of Fourth Geneva Convention and article 69 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 1977, which delimits Israel’s obligations to ensure adequate provision of the basic

²⁵ International Monetary Fund, “Macroeconomic and Fiscal Framework for the West Bank and Gaza: Fifth Review of Progress”, staff report for the meeting of the Ad Hoc Liaison Committee, 13 April 2010; available at www.imf.org/wbg.

²⁶ Office for the Coordination of Humanitarian Affairs, *Special Focus: “Lack of Permit” Demolitions and Resultant Displacement in Area C*, May 2008.

²⁷ Save the Children UK, “Life on the Edge: The Struggle to Survive and the Impact of Forced Displacement in High-Risk Areas of the Occupied Palestinian Territory”, October 2009.

²⁸ *Ibid.*, p. 65.

²⁹ *Ibid.*, p. 24.

³⁰ Jihad al-Shommali of Defense for Children International-Palestine Section, *The Electronic Intifada*, “Israeli colonization means life of poverty for West Bank children”, 12 July 2010; available at <http://electronicintifada.net/v2/article11386.shtml>.

needs of people living under its occupation, especially in Area C, where it exercises undivided control. Article 55 states: “To the fullest extent of the means available to it, the Occupying Power has the duty of ensuring the food and medical supplies of the population; it should, in particular, bring in the necessary foodstuffs, articles or medical stores and other articles if the resources of the occupied territory are inadequate.” This duty is more fully specified in article 69 of Protocol I under the title “Basic needs in occupied territories”.³¹ Particular concern for the protection of children living under occupation is expressed in article 50 of the Fourth Geneva Convention and articles 77 and 78 of Protocol I. In conclusion, Israel is not meeting its obligations as occupying Power to Palestinian children living in Area C.

C. Settlements

11. According to the most recent figures available, there are 121 Israeli settlements, sometimes called “colonies”, plus approximately 102 “outposts” that have been established in violation of Israeli law.³² The current settler population is more than 462,000, with 271,400 people living in the West Bank and 191,000 living in East Jerusalem.³³ Revealingly, the settler population has grown at the rate of 4.9 per cent per year since 1990, while Israeli society as a whole has grown at the lower rate of 1.5 per cent.³⁴ Some of the larger settlements have grown even faster.³⁵ According to an updated study by B’Tselem, the three largest West Bank settlements had rapid growth between 2001 and 2009: Modi’in Illit increased by 78 per cent, Betar Illit by 55 per cent, Ma’ale Adummim by 34 per cent.³⁶ As stated in previous reports, all Israeli settlements in the West Bank and East Jerusalem are violations of international humanitarian law. This has been repeatedly recognized by the United Nations and by expert legal opinion. It was well expressed in the International Court of Justice advisory opinion of 2004 on the separation wall: “Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, are illegal and an obstacle to peace and to economic and social development [and] have been established in breach of international law”.³⁷ This legal consensus was recently reiterated by Secretary-General Ban Ki-Moon: “Let us be clear, all settlement activity is illegal anywhere in occupied territory, and this must stop.”³⁸ The illegality is usually anchored in an interpretation of article 49(6) of the Fourth Geneva Convention, which prohibits an occupying Power from transferring its population to the territory under temporary occupation. Israel contests the status of

³¹ Article 69 (1), Protocol I reads: “In addition to the duties specified in Article 55 of the Fourth Convention concerning food and medical supplies, the Occupying Power shall, to the fullest extent of the means available to it and without any adverse distinction, also ensure the provision of clothing, bedding, means of shelter, other supplies essential to the survival of the civilian population of the occupied territory and objects necessary for religious worship”.

³² See B’Tselem, “By Hook and by Crook: Israeli Settlement Policy in the West Bank”, July 2010, p. 9.

³³ See Palestine Monitor factsheet on Israeli settlements, last updated 15 March 2010; available at www.palestinemonitor.org/spip/spip.php?article7.

³⁴ Jerusalem Post, “Settler population rose 4.9% in 2009”, 10 March 2010.

³⁵ Ibid.

³⁶ See B’Tselem, “By Hook and by Crook: Israeli Settlement Policy in the West Bank”, p. 11.

³⁷ International Court of Justice, *The Wall* (see footnote 1).

³⁸ *The Times*, “Israel to ask US for bombs in the fight against Iran’s nuclear sites”, 21 March 2010; available at www.timesonline.co.uk/tol/news/world/middle_east/article7069724.ece.

the West Bank as occupied territory, declaring it to be subject to competing claims of sovereignty and thus outside the obligatory scope of the law governing belligerent occupation.³⁹ To the detriment of the authority of international law, there exists some ambiguity about the position of these settlements in an Israel/Palestine peace process that casts doubt on whether, despite their unlawfulness, most settlements are likely to be incorporated into Israel if the parties agree to resolve their conflict. This prospect was affirmed in a 2004 letter written by then President George W. Bush to then Prime Minister Ariel Sharon containing the following operative language: “In light of the new realities on the ground, including already existing major Israeli population centers, it is unrealistic to expect that the outcome of final status negotiations will be a full and complete return to the armistice lines of 1949, and all previous efforts to negotiate a two-state solution have reached the same conclusion. It is realistic to expect that any final status agreement will only be achieved on the basis of mutually agreed changes that reflect these realities”.⁴⁰ It should be understood that this letter possesses considerable political weight in shaping the expectations of the parties, but has no legal weight, as the Government of the United States is not in a position to diminish Palestinian legal rights. The formulation in the letter has been widely interpreted to mean that Israel would keep the settlement blocs where most West Bank settlers live, and in exchange would give an emergent Palestinian entity an equivalent amount of land as a way of compensating for the loss of territory. In fact, it has been an implicit article of faith in the road map and on the Palestinian side as well, although the latter formally still demands withdrawal from all territory occupied in 1967, that Israel would retain the settlement blocs in any peace plan, which would incorporate and legitimize approximately 385,000 illegal settlers in 80 settlements. These are the settlements located in the territory between the separation wall and the Green Line, indicating to many observers that the wall was located with territorial incorporation into Israel proper as an explicit objective. This ambiguity associated with the settlements as being unlawful and yet at the same time creating “legitimate” expectations, i.e., as being proper to weigh in an eventual negotiating balance, is reinforced by reports of extensive American tax-free donations in support of illegal settlement building over the past decade amounting to \$200 million.⁴¹ This infusion of funds has been especially relevant to efforts in East Jerusalem to increase the Jewish presence by way of financing the displacement of Palestinians, often in cruel ways. For instance, the Jewish Reclamation Project of Ateret Cohanim works to transfer ownership of Arab homes to Jewish families in occupied East Jerusalem and receives about 60 per cent of its funding from a tax-exempt organization situated in the United States.⁴² The underlying question remains, especially for the United Nations: how should unlawful facts on the ground be addressed diplomatically? If given defining political weight, as has been the expectation so far, then a perverse incentive is created to continue to violate international humanitarian law, which directly challenges the whole undertaking of regulating the actions of an occupying Power so as to protect

³⁹ Israel’s position is summarized in a text released by the Ministry of Foreign Affairs, “Israeli Settlements and International Law”, 20 May 2001; available at www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process/Israeli+Settlements+and+International+Law.htm.

⁴⁰ Letter from President Bush to Prime Minister Sharon, dated 14 April 2004; available at <http://georgewbush-whitehouse.archives.gov/news/releases/2004/04/20040414-3.html>.

⁴¹ *The New York Times*, “Tax-exempt Funds Aid Settlements in West Bank”, 5 July 2010.

⁴² See *Haaretz*, “US group invests tax-free millions in East-Jerusalem land”, 17 August 2009, and *IPS News*, “Anger Rises Over U.S. Tax Dollars for Settlements”, 24 July 2010.

the present and future of an occupied people. Israel has acted to reconstitute expectations in its favour throughout decades of occupation, leading to a continuous diminution of reasonable expectations on the Palestinian side as to the scale and scope of any peace arrangement, as well as to a steady weakening of the authority of international law. Whenever unlawful “facts” can be converted into lawful outcomes, law is weakened and rights are denied, and a process occurs that is the opposite of “enforcement”, or even implementation.

D. Settlement freeze

12. The idea of a freeze on settlement expansion highlights the ambiguous nature of the settlement process. Treating a freeze as a contribution to a peace process suspends concern about the underlying unlawfulness of the settlements, and is treated by sponsors of the peace process, particularly the Government of the United States, as a helpful concession made by Israel for which a matching Palestinian concession should be forthcoming. Israel had agreed in Annapolis at the end of 2007 to a “settlement freeze”, but it was never implemented. Settlement construction, especially in East Jerusalem, accelerated, and Israel did not even fulfil its pledge to dismantle outposts. President Obama pushed in his early months as President for a total freeze on settlement expansion and construction. It was hoped that such a freeze would last at least for the duration of a peace process. Again, this posture avoided challenging the illegality of the Israeli settler movement, seeking only a pause to encourage negotiations. It should not be forgotten that Israel has never been held accountable for the consistent violation of international humanitarian law inherent in the building and expansion of each and every settlement. When Israel refused to accept a comprehensive freeze, the Obama administration settled for a 10-month freeze that excluded East Jerusalem and allowed for the construction of housing units and other buildings that had started before the freeze went into effect.⁴³ Several initiatives subsequent to the freeze authorized the building of specified units: 3,000 were grandfathered in on the basis of prior authorization, and some were hastily authorized to beat the deadline, as was the case for settlements in the northern West Bank, where the Shomron Regional Council authorized 1,600 units, or more than 10 times the number approved in 2008. Reports from reliable sources indicate that construction continued in many West Bank settlements during the 10-month period. Ethan Bronner reports that “[i]n many West Bank settlements, building is proceeding apace. Dozens of construction sites with scores of Palestinian workers are active”.⁴⁴ The freeze is scheduled to end on 26 September 2010, and there are indications that Israel will not extend it.⁴⁵ Prime Minister Binyamin Netanyahu has always conveyed his support as agreed to with the greatest reluctance, declaring that the freeze was “exceptional” and “extraordinary” and should be understood as only a temporary suspension (which, as shown above, it never was) of normal settlement activity.⁴⁴ There have been

⁴³ See “Remarks with Israeli Prime Minister Binyamin Netanyahu”, Hillary Rodham Clinton, 31 October 2009; available at <http://www.state.gov/secretary/rm/2009a/10/131145.htm>.

⁴⁴ *The New York Times*, “Despite Settlement Freeze, Buildings Rise”, 14 July 2010.

⁴⁵ During a meeting of the Council of Foreign Relations, Netanyahu stated, “I think we’ve done enough. Let’s get on with the talks.”; see www.reuters.com/article/idUSTRE66709920100708; the full text of his address is available at www.pmo.gov.il/PMOEng/Communication/PMSpeaks/speechCFR080710.htm.

numerous calls for a surge of construction to start immediately after the sun sets on 26 September.⁴⁶ A member of the Netanyahu cabinet and a settler, Yuli Edelstein, Minister of Public Affairs and the Diaspora, stated publicly, “[I]et’s get rid of the freeze and get back to building...It’s our land anyway”.⁴⁷ As suggested earlier, settlement expansion makes realization of the two-State consensus solution to the conflict virtually impossible by expropriating the land needed for a viable Palestinian State. This withdrawal of land via confiscations from Palestinians is aggravated by the fact that settlements are often built on the best agricultural land and so as to take advantage of access to water (using 85 per cent of West Bank water either for the settlements or to pump it into Israel, violating the Fourth Geneva Convention prohibition on appropriating the resources of an occupied territory). It needs to be understood that the settlements take up an estimated 3 to 4 per cent of the West Bank, but if the roads (794 kilometres), wall, security buffer zones, and Israeli security zones are included, the impact on the territorial expanse increases to 38 to 40 per cent, and it should be recalled that total Israeli withdrawal from the entire West Bank would still allot the Palestinians only 22 per cent of historical Palestine as it existed during the British Mandate.⁴⁸

E. Settler violence

13. There have been numerous reported incidents of settler violence directed at Palestinians in the last several months, some associated with the anger generated by the implementation of the temporary and partial freeze by the Israeli Government. Some of the worst incidents, called “price tag”, have involved vigilante collective punishment of Palestinians and their property by settlers as a reprisal for occasional acts of Government interference with the establishment of an outpost, although by and large settler outposts are tolerated and often provided with infrastructure services such as electricity, water and sanitation. In late July 2010, in a price tag retaliation for the removal of mobile homes at a new outpost in Yithar village in the south Hebron hills, settlers destroyed the agricultural fields of the nearby Bedouin village of Um Al-Kher.⁴⁹ The effect was devastating for the 85 persons living in the community, who were dependent for their food on produce from those fields. In other settings, Palestinians are attacked while farming their lands or when passing by a settlement on their way to school or work. Near Ramallah, in Saffa village, there were reports in July 2010 that settlers burned olive trees on privately owned Palestinian land while under the visible protection of Israeli soldiers, who blocked residents and firefighters from reaching the scene to put out the fires. Reports from independent organizations routinely confirm that Israeli soldiers offer the Palestinians no protection against settler violence even when present during such

⁴⁶ For example, member of the Knesset Danny Danon, as quoted by *The Jerusalem Post*, “Danon: Settlers will start building the moment freeze ends”, 21 July 2010; available at www.jpost.com/Israel/Article.aspx?id=182062.

⁴⁷ Yuli Edelstein on Israel National Radio, 6 May 2010, as quoted at Max Blumenthal, “The Settlement Freeze that never was and never will be”, at <http://maxblumenthal.com/2010/07/the-settlement-freeze-that-never-was-and-never-will-be/>.

⁴⁸ The Israeli Committee against House Demolitions, “The Key to Peace: Dismantling the Matrix of Control”; available at www.icahd.org/?page_id=79, and B’Tselem annual report, “Human Rights in the Occupied Territories”, 1 January 2009 to 30 April 2010, pp. 22-25.

⁴⁹ Ma’an News Agency, “Report: Settler violence continues in south Hebron hills”, 30 July 2010; available at www.maannews.net/eng/ViewDetails.aspx?ID=303761.

incidents, and fail to protect Palestinians even when informed in advance of an impending attack.⁵⁰ Israeli military authorities are also faulted for their unwillingness to investigate Palestinian claims of damage to persons or property.⁵¹ Such passive complicity with settler violence violates the obligation of the Occupying Power to protect the person and property of a civilian population living under belligerent occupation. Article 53 of the Fourth Geneva Convention specifically prohibits the destruction of real or personal property belonging to civilians and their institutional arrangements. This acquiescence to settler violence is particularly objectionable from the perspective of international humanitarian law because the settlers are already unlawfully present in occupied territory, making it perverse to victimize those who should be protected (the Palestinians) while offering protection to those who are law-breakers (the settlers).

F. Ethnic cleansing in occupied East Jerusalem

14. Uri Avnery, Israeli peace activist and former member of the Knesset, made this observation: “Ethnic cleansing can be carried out dramatically (as in this country in 1948 and in Kosovo in 1998) or in a quiet and systematic way, by dozens of sophisticated methods, as is happening now in East Jerusalem.”⁵² Prominent among these methods, aside from expanding settlements, are a variety of ways of terminating Palestinian residence, expulsions based on alleged political affiliations, manipulations of property title, and most dramatically, demolitions (there are 15,000 demolition orders outstanding in East Jerusalem, and another 3,000 in the West Bank, all unrelated to security).⁵³ Ever since 1967, Israel has rejected the United Nations insistence that East Jerusalem is part of occupied Palestine and claimed that the entire city belongs to Israel. This claim is further magnified by Israeli projects to add significant acreage to Jerusalem by incorporating land into the city, including the settlements established on neighbouring hills. The perception of ethnic cleansing arises from the deliberate steps taken to increase the Jewish presence in East Jerusalem while diminishing the Palestinian presence, thereby altering the demographic balance in such a way as to support the contention that Jerusalem as a whole is a Jewish city. The linchpin of this policy by the occupying Power is the unlawful establishment and growth of settlements. Its importance was underscored by the refusal of Israel, despite explicit pressure from the United States, to extend the freeze to East Jerusalem, even on a temporary basis.⁵⁴ This refusal was highlighted by the provocative approval by the Jerusalem municipal authority of an additional 1,600 housing units in the Ramat Shlomo settlement (to make room for 20,000 more Jews).⁵⁵ The story of The Ramat Shlomo settlement is emblematic

⁵⁰ See B’Tselem, “Settler violence”; available at www.btselem.org/english/Settler_violence/Index.asp.

⁵¹ B’Tselem, “Human Rights in the Occupied Territories”, 1 January 2009 to 30 April 2010, pp. 26-29.

⁵² Uri Avnery, “Rosemary’s Baby”, 24 July 2010.

⁵³ “Israel must avoid further violations of international law in East Jerusalem”, media statement, 29 June 2010, available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10189&LangID=E.

⁵⁴ See the reaction of United States special envoy George Mitchell to the Israeli freeze announcement, “Israeli Settlement Moratorium Helps Move Talks Forward, U.S. Says”, 25 November 2009; available at www.america.gov/st/peacesec-english/2009/November/20091125151758esnampfuak0.7892725.html.

⁵⁵ See *Jerusalem Post*, “We’ll prevent future embarrassments”, 14 March 2010.

of the broader pattern. As has been noted with reference to Ramat Shlomo, “We are talking about an area that at the outset of the peace process [in 1993] was empty land (an uninhabited hill belonging to the Palestinian village of Shuafat) — devoid of Israelis, belonging mainly to Palestinians, and contiguous entirely with Palestinian areas — that anybody drawing a logical border would have placed on the Palestinian side”.⁵⁶ The Ramat Shlomo area became Jewish and Israeli only as a result of expropriation in 1973, with the land being zoned for construction and a new settlement only in 1993, ironically coinciding with the start of the Oslo peace process. Settlement supporters argue that “everybody knows” that Ramat Shlomo will become part of Israel in a peace agreement, so why make a fuss about growth at this time?⁵⁷ Such is the logic of “facts on the ground” eating away at Palestinian rights under international law. These authors show the fallacy underlying this one-sided approach by pointing out that the implication of the “everybody knows” approach is that there must be other parts of the city that everybody knows will be Palestinian, but, in fact, no such areas exist. Instead, Israel is increasingly targeting predominantly Palestinian neighbourhoods, especially surrounding the Old City, such as Ras al Amud and Jebel Mukabber, for Jewish construction and Palestinian demolitions and evictions.⁵⁸ The approval of permits to construct 20 units of housing for Jews in the ancient Palestinian Sheikh Jarrah neighbourhood, at the site of the formerly Palestinian-owned Shepherd Hotel, was particularly provocative. The situation was rendered worse from the perspective of human rights as two large Palestinian families totalling 54 persons were evicted by Israeli court order despite having resided there since the 1950s. Their eviction was judicially upheld on the ground that the property had been legally purchased from its former owners to enable the establishment of Jewish housing. Several Palestinian families were forced to live on the street for extended periods of time, having neither alternate living arrangements nor the resources to obtain them. There are reports of Palestinian families targeted for eviction by Ateret Cohanim, an ultra-orthodox Jewish private organization that collects funds from abroad to purchase Palestinian properties and pursue legal strategies to evict families that have long resided in East Jerusalem, as an aspect of their efforts to increase the Jewish character of the areas near the Old City.⁵⁹ Israel’s judicial system and police facilitate such activities. The experiences of the large Palestinian Karresh and Al-Kurd families are illustrative of this process of pushing Palestinians living in a Muslim neighbourhood into the street, with the support of Israeli police, to make way for settler families.⁵⁸ The United Nations Special Coordinator for the Middle East Peace Process, Robert Serry, declared as “unacceptable” and “provocative acts” the latest displacement of long-term Palestinian residents by armed Israeli settlers, acts encouraged by Ateret Cohanim. Mr. Serry called upon Israel “to remove the settlers from the property”, nine buildings near the Old City, and “restore the status quo ante”.⁶⁰ In related developments, the Israeli Committee against House Demolitions (ICAHN) called attention to a wave of demolitions, dispossessions and revocation

⁵⁶ Lara Friedman and David Seidemann, “Jerusalem, settlements, and the ‘everybody knows’ fallacy”, The Middle East Channel, *Foreign Policy*, 19 March 2010.

⁵⁷ Ibid.

⁵⁸ Association for Civil Rights in Israel, “Human Rights in East Jerusalem: Facts and Figures”, May 2010; available at www.acri.org.il/pdf/eastjer2010.pdf.

⁵⁹ See Palestinian Centre for Human Rights, *Weekly Report on Israeli Human Rights Violations in the Occupied Palestinian Territory* (29 July-4 August 2010).

⁶⁰ Ma’an News Agency, news release, 30 July 2010.

of residency rights in the Jordan Valley. In late July 2010, ICADH objected to the massive demolition activity in the village of Al Farisye, displacing 107 persons, including 53 children.⁶¹ Twenty-six residential tents, 22 animal shelters, seven clay ovens, eight kitchens, 10 bathrooms, four water tanks, an agricultural shed, homes, belongings and large amounts of food, and a total of 74 structures were destroyed by Israeli bulldozers.⁶²

G. The wall

15. As previous reports emphasized, the separation wall, of which 85 per cent is being constructed on Palestinian territory, is both a violation of the basic Israeli duty to respect the territorial integrity of the land occupied since 1967 and a serious infringement on the Palestinian right of self-determination.⁶³ This assessment was affirmed by the International Court of Justice in its 2004 advisory opinion, later accepted in a resolution adopted by a strong majority in the General Assembly and is supported by the independent judgment of most international law specialists.⁶⁴ The route of the wall is obviously aimed at setting the stage for a future annexation of occupied territory between the wall and the Green Line, and at the same time incorporate into Israel the most important settlements, containing as much as 98 per cent of the West Bank settler population along with key water aquifers. In 2010, on the sixth anniversary of the International Court of Justice ruling, Saeb Erakat, chief negotiator for the Palestinian Authority, stated, “Simply put, the wall is an integral part of a regime intent on heading in the direction of apartheid”.⁶⁵ Israel’s defiance of international law with respect to the wall is flagrant and continuing, with the failure by the United Nations to take appropriate steps to secure implementation of the main International Court of Justice finding undermining the authority of the Court, of the United Nations and of international law generally. In many places, the wall cuts Palestinians off from their own land, which they can access only by passing through Israeli-controlled gates, which requires permits issued by the military administration in the West Bank that have proved exceedingly difficult to obtain. The construction of the wall remains incomplete; 434 kilometres of a planned 707 kilometres has been completed (61.4 per cent).⁶⁶ Construction has slowed in recent years, apparently because of its expense. Weekly non-violent demonstrations at various points of the construction, especially in the villages of Bil’in, Nil’in and Nabi Saleh, have been dispersed through the use of excessive force by the Israel military and police forces using tear gas, sound and gas bombs

⁶¹ ICAHD, “Mass demolitions in the Jordan Valley”, 22 July 2010; available at www.icahd.org/?p=5179.

⁶² Stephen Lendman, “In Palestine, Demolitions and Dispossessions”, *Palestine Chronicle*, 31 July 2010.

⁶³ Office for the Coordination of Humanitarian Affairs, West Bank Movement and Access, June 2010, p. 2

⁶⁴ See General Assembly resolution ES-10/14 and “UN assembly votes overwhelmingly to demand Israel comply with ICJ ruling”, 20 July 2004; available at www.un.org/apps/news/story.asp?NewsID=11418&Cr=middle&Cr1=east.

⁶⁵ See PLO, Negotiations Department, press release, 8 July 2010, at www.nad-plo.org/view_area_page.php?view=news-updates_080710&css=1.

⁶⁶ Office for the Coordination of Humanitarian Affairs, “West Bank Barrier Route Projections”, July 2010; available at www.ochaopt.org/documents/ocha_opt_route_projection_july_2010.pdf.

and rubber bullets, which have caused many injuries as well as several deaths.⁶⁷ Also, in recent months, leaders of the demonstrations, journalists and international observers have been arrested and detained, often in ways designed to terrify not only the person apprehended but his or her family members as well, involving night-time entry into homes and the humiliation of individuals. Widely respected leaders of the Campaign against the Wall, including Jamal Juma', Mohammed Othman and Abdallah Abu Rahmah, have been arrested in this manner, either uncharged or charged with contrived offences.⁶⁸ Rahmah, for instance, was indicted for "arms possession", with the arms turning out to be a collection of used tear-gas canisters shot at the protesters. Juma' was charged with incitement. These infractions of the civil rights of Palestinians under occupation violate the basic Israeli obligation to uphold the rights of an occupied people. Security cannot be reasonably claimed in this context of non-violent Palestinian demonstrations against the manifestly unlawful and intrusive wall.

III. Gaza

A. General comment

16. Although the blockade has eased somewhat, the civilian population of Gaza continues to be victimized in numerous unlawful ways by an occupation regime that systematically imposes collective punishment, in violation of article 33 of the Fourth Geneva Convention. Tzipi Livni, the Minister for Foreign Affairs of Israel at the time of the 2008-2009 Gaza war, recently denied that the blockade was designed to punish the Palestinian people. In her words, "[t]he reason for the blockade on Gaza was not to punish the Palestinian people but to delegitimize Hamas".⁶⁹ Regardless of intentions, using a blockade to delegitimize a political opponent inevitably punishes the people, and such a delegitimizing project provides no legal excuse for denying food, medical supplies, fuel, building materials, and normal peacetime activities to an impoverished population living under belligerent occupation. Additionally, in the name of security Israel relies on excessive force to quell signs of unrest and resistance, and subjects the whole population of the Gaza Strip to conditions that cause acute fear and foreboding. The confinement of 1.5 million Gazans without granting exit permits except in rare instances denies the people of Gaza basic rights of health and education, and interferes with normal social patterns based on family and friendship. The blockade has caused the collapse of the Gaza economy, increasing levels of dependence on United Nations humanitarian relief, intensifying poverty and unemployment. An appeal in the form of a letter signed by 10 winners of the Israel Prize and other Israeli university faculty members was sent to the Minister of Defence of Israel asking for the lifting of the travel ban, in effect since 2000, on Palestinian students from Gaza studying in the West Bank.⁷⁰ The appeal letter, prepared under the auspices of the Gisha Legal Centre for Freedom of Movement, called attention to the failure by the occupation authorities to adhere to the 2007 ruling of the Israeli High Court that students from

⁶⁷ Violent incidents following demonstrations against the wall are reported weekly by local non-governmental organizations such as the Palestinian Centre for Human Rights.

⁶⁸ See Jonathan Cook, "Israel's war on protest", Ma'an News Agency, 13 February 2010.

⁶⁹ Deborah Solomon, "Questions for Tzipi Livni", *The New York Times*, 24 June 2010; available at www.nytimes.com/2010/06/27/magazine/27FOB-Q4-t.html.

⁷⁰ *Jerusalem Post*, "Israel Prize winners to Barak: Let Gazans study in West Bank", 29 April 2010.

Gaza who wished to study in the West Bank should be allowed to do so, subject only to legitimate Israeli security concerns.⁷¹ The signed letter pointed out that “academic and professional training is critical to the well-being and growth of Palestinian society and the individual development of each one of its young men and women who wish to better himself or herself”.⁷² In a prominent case, the High Court decided in June 2010 that a 29-year-old Gazan lawyer, Fatma Sharif, could be denied the right to attend Bir Zeit University for the purpose of obtaining a master’s degree in human rights.⁷³ She was denied a travel permit because under the strict regulations delimiting the blockade, only special humanitarian or urgent medical needs are accepted as valid reasons for authorizing departure from Gaza. The unanimous judicial decision of the High Court expressed its legal assessment as follows: “We are not convinced that under the present political and security situation, the personal circumstances [of the petitioner] justify intervention in the decision of the respondent [Minister of Defence].” Thus, even in the aftermath of a supposed post-flotilla rollback of the blockade of Gaza, this request for educational travel was administratively denied and judicially confirmed. The refusal to allow travel to and from Gaza to sustain social relations is a cruel obstacle to healthy personal development and a normal life, even taking account of the rigours of occupation. There are no security justifications for such denials of basic human rights associated with travel and education. In fact, Israel seems uninterested in improving the security situation. It has displayed no willingness during the past several years to explore opportunities to negotiate a long-term ceasefire with the de facto authorities in Gaza. This is disappointing, considering that a prior temporary ceasefire during the last half of 2008 reduced transborder violence almost to zero and was terminated only after a lethal attack on Gaza launched by Israel on 4 November 2008 that resulted in the death of six Palestinians.⁷⁴ Repeated proposals from the Palestinian side to link long-term extensions of the ceasefire with a lifting of the blockade and opening of the crossings have been ignored by Israel. The terminology of blockade should also be questioned. Israel has always monitored the inflow of weaponry to Gaza since the original occupation in 1967, and in this respect what was imposed in mid-2007 was a comprehensive effort to keep goods, services, and persons from entering or leaving Gaza. As such, it was more in the nature of a prison lockdown than a traditional blockade, what in medieval times was described as a state of siege.

⁷¹ Gisha Centre, “Held Back: Students Trapped in Gaza”, June 2008; available at <http://www.gisha.org/UserFiles/File/Students%20report%20Eng%20-%20Online%20Version.pdf>.

⁷² Gisha Centre, “10 Israel Prize laureates and dozens of academics urge the Defense Minister”, 28 April 2010; available at www.gisha.org/index.php?intLanguage=2&intItemId=1745&intSiteSN=113.

⁷³ Gisha Centre, “Israel refuses to allow a lawyer to leave Gaza to reach her studies in democracy and human rights in the West Bank”, 1 July 2010; available at www.gisha.org/index.php?intLanguage=2&intItemId=1832&intSiteSN=113.

⁷⁴ *The Guardian*, “Gaza truce broken as Israeli raid kills six Hamas gunmen”, 5 November 2008; available at www.guardian.co.uk/world/2008/nov/05/israelandthepalestinians.

B. Freedom flotilla incident

17. On 31 May 2010, the Israeli Defense Forces attacked six ships comprising the Gaza Freedom Flotilla.⁷⁵ The undertaking constituted an initiative of global civil society. The ships proceeding under the auspices of the Free Gaza Movement and the Turkish Foundation for Human Rights and Freedom and Humanitarian Relief (IHH) were carrying 10,000 tons of humanitarian supplies to the people of Gaza. On board were 718 persons from 37 countries.⁷⁶ The ships were violently intercepted in international waters in the middle of the night, including by 13 commandos belonging to the special force units of the Israeli Defense Forces, who landed from helicopters on the lead Turkish ship. Fighting ensued, leading to the death of nine peace activists; dozens of others were injured and hundreds detained.⁷⁷ International maritime law clearly disallows a military disruption of a humanitarian undertaking in international waters, especially in such a violent manner, but more authoritative assessments will have to await the results of several investigations currently under way. The facts are contested as to how the violence started and are being investigated by various panels, including one appointed by the President of the Human Rights Council⁷⁸ and another by the Secretary-General.⁷⁹ Israel is participating in the latter and has appointed an Israeli to participate. As those who organized this humanitarian relief effort to bring help to the blockaded people of Gaza have repeatedly stressed, their purpose was symbolically to provide needed items of food, medical supplies, construction materials and educational supplies. Their major substantive goal was to bring the blockade itself to an end through an appeal to world public opinion. In this regard, although the ships were not allowed to reach their destinations and the citizen activists on board the vessels paid a heavy price, the venture was spectacularly successful from a political perspective. For the first time since its establishment three years ago, the blockade came under sustained global scrutiny for having inflicted severe and unlawful humanitarian harm on the civilian population of Gaza. The leadership of Israel in response agreed to limit the blockade.⁸⁰ It is too early to tell whether this adjustment of the blockade will alleviate the humanitarian crisis in Gaza. To date, there are no indications that Israel will allow humane conditions to emerge in Gaza, which would require allowing unimpeded entry and exit both for Gazans wishing to study or travel outside Gaza and for journalists, family members and friends to visit Gaza without acquiring permits and enduring long waits and cumbersome security procedures. There are

⁷⁵ “Gaza aid convoy killings: ‘Those responsible must be held accountable’”, press release, 31 May 2010; available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10080&LangID=E.

⁷⁶ See www.freegaza.org/ and www.ihh.org.tr/ for an account from the participants.

⁷⁷ For an Israeli perspective, see Prime Minister Netanyahu’s statement of 1 June 2010; available at www.pmo.gov.il/PMOEng/Communication/Spokesman/2010/06/spokehatshara010610.htm; for a sample of international reporting, see *The New York Times*, “Israel intercepts Gaza Flotilla; Violence reported”, 30 May 2010.

⁷⁸ See Human Rights Council resolution 14/1, 2 June 2010.

⁷⁹ UN News Centre, “Ban announces Israeli, Turkish members of inquiry panel into flotilla incident”, 7 August 2010; available at www.un.org/apps/news/story.asp?NewsID=35561&Cr=gaza&Cr1=.

⁸⁰ See Israeli Security Cabinet decision, 17 June 2010; available from www.mfa.gov.il.

reports that a second flotilla of humanitarian aid is planned.⁸¹ It would consist of ships on a humanitarian mission organized and funded by citizens in various countries, and seek to make delivery directly in Gaza. Israel has warned that it will prevent any vessels from breaking its blockade, and the United Nations Secretariat has also issued an official statement discouraging civil society efforts to circumvent Israeli regulations pertaining to the occupation of Gaza. At the same time, there are many indications of a worldwide surge of support for Palestinian solidarity efforts, including a rapidly expanding boycott, divestment, and sanctions campaign.⁸² Comparisons have been made with increasing frequency to the anti-apartheid campaign of the 1980s and early 1990s, which seemed to influence decisively the balance of thinking within South Africa as to how to resolve the conflict over constitutionalism and racism in the country.

C. Report of the United Nations Fact-Finding Mission on the Gaza Conflict (“Goldstone report”)

18. As my previous report emphasized, the Goldstone report has provided strong reinforcement for allegations of war crimes arising from the Gaza war of 2008-2009, and its findings deserve the greatest respect. The report recommended that, as a first step on the road to accountability, Israel and the responsible Palestinian authorities be given the opportunity to investigate these allegations for themselves, and take appropriate action in a manner that accords with international standards.⁸³ There are many reasons to question the capacity of any State to investigate the alleged wrongdoing of its own military. To reinforce the seriousness with which the accountability issue is taken by the Human Rights Council, a Committee of Experts was established, its members appointed by the High Commissioner for Human Rights, pursuant to Council resolution 13/9.⁸⁴ High Commissioner Navi Pillay indicated that the Committee “will focus on the need to ensure accountability for all violations of international humanitarian and international human rights laws during the Gaza conflict, in order to prevent impunity, assure justice, deter further violations and promote peace”.⁸⁵ It is important that the findings of the Committee, expected to be presented at the fifteenth session of the Council, be taken seriously as part of the effort to ensure accountability. If the Committee concludes that the investigations by both parties were satisfactory, that would provide grounds to move on and encourage Israel and the responsible Palestinian authorities to follow the recommendations of their own

⁸¹ See Press TV, “Activists planning new Gaza flotilla”, 4 August 2010, available at www.presstv.com/detail.aspx?id=137483§ionid=351020202; and *The New York Times*, “American activists plan Gaza Flotilla ship named for Obama book”, 20 July 2010, available at <http://thelede.blogs.nytimes.com/2010/07/20/american-activists-plan-gaza-flotilla-ship-named-for-obama-book/>.

⁸² See U.S. Campaign for the Academic and Cultural Boycott of Israel, “Global boycotts of Israel intensify after bloody Flotilla attack”, 5 June 2010, at <http://usacbi.wordpress.com/2010/06/05/global-boycotts-of-israel-intensify-after-bloody-flotilla-attack/>.

⁸³ See A/HRC/12/48.

⁸⁴ See “Progress report of the High Commissioner on the follow-up to the report of the United Nations Independent International Fact-Finding Mission on the Gaza Conflict” (A/HRC/14/CRP.4).

⁸⁵ UN News Centre, “UN rights chief unveils members of independent probe into Gaza conflict”, 14 June 2010.

national inquiries. However, if the Committee concludes that one or another party has not carried out satisfactory investigations, then the responsibility shifts back to the international community to implement steps in accordance with the recommendations of the Goldstone report. It is notable that a second report by the Ministry of Foreign Affairs of Israel acknowledges several of the most serious findings of the Goldstone report, including the use of phosphorus in areas where it was known that civilians were present, the use of Palestinian civilians as human shields and the targeting of civilians and prohibited targets.⁸⁶ There have been announcements that the Israeli Defense Forces plan to initiate disciplinary action in relation to four incidents given prominence.⁸⁷ These developments do suggest some follow-up on the part of Israel to the allegations of the Goldstone report, but there is no indication that the most serious crimes alleged, involving reliance on an overall battle plan of excessive and indiscriminate force, have been examined by Israel, and failing this, imposing accountability only on soldiers in the field carrying out broad war plans confers impunity on the most serious perpetrators of war crimes and of breaches of international humanitarian law.

IV. Recommendations

19. A study of the legal, political, social, cultural and psychological impact of prolonged occupation should be undertaken by the Human Rights Council, perhaps in conjunction with the Government of Switzerland, which is reportedly considering a similar inquiry.

20. Palestinian legal rights, including the right of self-determination, must be fully respected and implemented in all attempts at a peaceful resolution of the conflict between the two peoples.

21. The recommendations of the Goldstone report should be implemented without further delay, in accordance with the conclusions reached by the Committee of Experts established by Human Rights Council resolution 13/9.

22. The United Nations should lend its support to the worldwide boycott, divestment and sanctions campaign, so long as Israel unlawfully occupies Palestinian territories, and the United Nations should endorse a non-violent “legitimacy war” as an alternative to both failed peace negotiations and armed struggle, as the best available means of promoting the rights of the civilian population of the occupied Palestinian territory, as specified by international humanitarian law.

⁸⁶ Ministry of Foreign Affairs of Israel, “Gaza Operation Investigations: Second Update”, July 2010.

⁸⁷ See Yaniv Reich, “New Israeli report on Operation Cast Lead confirms Goldstone report’s main findings”, 22 July 2010; available at www.hybridstates.com/2010/07/new-israeli-report-on-operation-cast-lead-confirm-goldstone-reports-main-findings/.



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**Promotion and protection of human rights:
human rights situations and reports of special
rapporteurs and representatives**

Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, submitted in accordance with Human Rights Council resolution 5/1.

* A/66/150.

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The present report, submitted pursuant to Human Rights Council resolution 5/1, gives particular attention to the right of Palestinians to self-determination, the situation of Palestinian prisoners detained by Israel, Israeli settlements in the occupied Palestinian territories, violence by Israeli settlers against Palestinians and their properties, the especially vulnerable situation of children in the occupied Palestinian territories, and the impact of the blockade by Israel on Gaza.

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I. Introduction

1. The Special Rapporteur has continued to be unable to obtain cooperation from Israel in the discharge of his obligations under the mandate. He continues to believe that Israel is not fulfilling its duties as a United Nations Member State in this regard. The Special Rapporteur recalls that when he made an attempt to enter Israel on 14 December 2008, in pursuance of his mandate, he was detained in a prison facility near the airport, denied entry and expelled. Because there is no regularized access to the West Bank, including East Jerusalem, except by way of Ben Gurion Airport in Tel Aviv and Israeli-controlled crossings from Jordan, there exist no means to visit these areas of the occupied Palestinian territories in the manner that was possible for his predecessors.

2. The changed circumstances in Egypt have created a prospect of access to Gaza by way of the Rafah Crossing, which Egyptian officials have indicated will be kept open for both the entry and exit of persons. In an encouraging related development, the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of Occupied Territories was able to gain entry to Gaza for the first time in its 43 years of existence.

3. On this basis, a mission under the mandate of the Special Rapporteur was planned to take place between 25 April and 3 May 2011. Unfortunately, the Special Rapporteur was forced to cancel the visit to Gaza owing to a determination by the United Nations on the prevailing security situation during the period. He plans to make another attempt to visit Gaza. Despite this inability to visit the occupied Palestinian territories during the trip, the Special Rapporteur proceeded with the mission to Egypt and Jordan, where he met with Government officials, academics, representatives of civil society organizations and United Nations agencies, human rights defenders and journalists familiar with conditions in the occupied Palestinian territories. Although the visit covered the full range of human rights issues raised by the continuing occupation by Israel, the Special Rapporteur's particular focus was on how prolonged occupation, the blockade of Gaza and long-term refugee status encroach upon the human rights of children. Those concerns will be given special emphasis in the present report. The mission did provide valuable information that informs all sections of the report, although it remains an inadequate substitute for first-hand visits to the occupied Palestinian territories.

II. Issues of non-implementation

4. As usual, there are many more serious human rights concerns associated with the occupation by Israel than can be addressed in this report, which is subject to United Nations guidelines as to a maximum number of words. In order to avoid the impression that earlier concerns no longer persist, the Special Rapporteur stresses that there are continuing violations of international humanitarian law and human rights law arising, inter alia, from the issues discussed below.

5. The recommendations of the report of the United Nations Fact-Finding Mission on the Gaza Conflict¹ (the "Goldstone Report") have not been implemented, despite

¹ A/HRC/12/48.

follow-up reports by the Committee of Independent Experts.² The reports of the Committee of Independent Experts took particular note of the failure by Israel to conduct investigations of alleged war crimes in a manner that accords with international standards.

6. The findings and recommendations of the Human Rights Council-mandated fact-finding mission on the incident of the humanitarian flotilla of 31 May 2010,³ involving naval attacks by Israel in international waters, which resulted in the death of nine peace activists on the Turkish vessel *Mavi Marmara*, have not yet led to appropriate action.⁴ It is observed that the failure to follow through on initiatives recommended by competent international experts under the auspices of the United Nations contributes to a lack of accountability for serious allegations of war crimes and human rights violations. The failure is particularly unfortunate given its impact on those living for many years under a regime of belligerent occupation, which has systematically deprived them of the normal rights and remedies associated with a law-abiding society. Without committed and capable international protection, those living under prolonged occupation are exposed to excesses and abuses perpetrated by the occupier, as the realities of the occupied Palestinian territories confirm in numerous ways.

7. Concern about non-implementation was underscored by the repudiation by Israel of the near-unanimous advisory opinion of the International Court of Justice in 2004 relating to the construction of the separation Wall in the occupied Palestinian territories.⁵ This authoritative judicial interpretation of the international obligations of Israel, which was endorsed by the General Assembly in its resolution ES-10/15, has been repudiated by Israel without generating any result-oriented international reaction. Although advisory opinions are non-binding in a formal sense, they have important legal effects because they provide an authoritative interpretation of the issues at stake, which is based on legal reasoning by the world's highest judicial body concerned with international law.⁶ The advisory opinion is particularly notable in the present instance, since the vote in the Court was 14 to 1— a rare display of consensus among judges drawn from the world's major legal systems and cultural backgrounds. It is worth noting that even the dissenting judge was in substantial agreement with much of the legal reasoning in the advisory opinion, making the conclusions virtually unanimous. While rejecting the authority of international assessments of illegality, the Government of Israel has agreed to comply with Israeli law to the extent applicable to the construction of the Wall. Yet in practice Israel has been slow to comply with relevant Israeli judicial decisions ordering the removal and relocation of segments of the Wall. In some instances these judicial directives have been ignored for several years, imposing acute suffering on Palestinian communities that are isolated or cut off

² A/HRC/15/50 and A/HRC/16/24.

³ See A/HRC/15/21; see also A/HRC/16/73 and A/HRC/17/47.

⁴ It is noted that the panel appointed by the Secretary-General to investigate these same events postponed the release of its report until late-August 2011.

⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004 (see also A/ES-10/273 and Corr.1). The International Court of Justice concluded in its advisory opinion that the Fourth Geneva Convention was applicable in the Palestinian territories, which before the 1967 conflict lay to the east of the Green Line and which, during that conflict, were occupied by Israel.

⁶ See Bekkar, "The United Nations General Assembly Requests a World Court Advisory Opinion on Israel's Separation Barrier", *Insights*, December 2003.

from agricultural land.⁷ Weekly demonstrations against the Wall have continued, especially in Palestinian villages near Nablus, most prominently in the villages of Ni'lin and Bil'in. As with other issues of violations of international law by Israel, there continues to be a lack of will within the United Nations, and especially among its Member States, to challenge the existence and continuing construction of the Wall, which intrudes so negatively on the lives of many Palestinians living under occupation in the West Bank, especially East Jerusalem.

8. There are two conjoined issues present: the refusal of Israel to adhere to its obligations under international law in administering the occupied Palestinian territories, and the failure of the United Nations to take effective steps in response to such persistent, flagrant and systematic violations of the basic human rights of the Palestinians living under occupation. Yet such steps would seem to be given increased prominence in the light of the adoption of the responsibility to protect doctrine by the Security Council (resolution 1674 (2006)), and its recent application by way of Security Council resolution 1973 (2011) mandating the protection of civilians in Libya.

9. It is worth recalling the language of mutuality and rights emphasized in the Balfour Declaration of 2 November 1917, which underpins the founding of Israel, even now, almost a century after it was issued: "... it being clearly understood that nothing shall be done which may prejudice the civil and religious rights of existing non-Jewish communities in Palestine". This explicit acknowledgement of support in the contested declaration for the establishment of what was then called "a national home for the Jewish people" is the foundation of the claim of right relied upon in the establishment of the State of Israel, and its recognition and admission to membership by the United Nations in 1948. Although the Balfour Declaration was a colonialist overriding of the right of self-determination that was later recognized in international law, its insistence on showing respect for the reciprocal rights of the non-Jewish communities affected, particularly the Palestinians, should continue to provide political and moral guidance in the search for a peaceful and just solution to the conflict.

III. Palestinian self-determination

10. As has been stressed in prior reports, of all the human rights at stake due to the prolonged occupation by Israel of Palestinian territory, the most fundamental is the right of self-determination. This right inheres in the Palestinian people, as much as any other people in the world. However, the fulfilment of this right has been denied by Israel in the occupied Palestinian territories since 1967. Further, various developments in the course of the occupation have entailed encroachments that diminish the scope of self-determination even further than what was envisioned by the historic Palestinian acceptance of the territorial dimension of a two-State solution to the conflict, by way of the 1988 decision of the Palestine National Council, which accepted the parameters of Security Council resolutions 267 (1969) and 338 (1973). It should be appreciated that such a territorial compromise represented a major

⁷ In June 2011 Israel began dismantling a section of the barrier near the West Bank village of Bil'in, in compliance with a decision of the High Court of Justice of Israel four years earlier. See Office for the Coordination of Humanitarian Affairs, "Protection of Civilians Weekly Report, 8-21 June 2011", 24 June 2011. Available from <http://unispal.un.org>.

concession by the Palestinian leadership, as it reduced to 22 per cent the approximately 45 per cent of historic Palestine apportioned by the United Nations as belonging to the Palestinians in General Assembly resolution 181 (II). This partition arrangement was rejected in 1947 by leaders of both the resident Palestinian population and the neighbouring Arab Governments at the time, because they deemed it unfair and unacceptable. Palestinian self-determination continues to be widely understood in the international community to be based on the establishment of a viable and contiguous State within the totality of the 1967 borders, subject to agreed small-scale adjustments and equivalent land swaps. This position was reaffirmed by President Obama of the United States of America in May 2011.⁸ Innumerable efforts, by way of direct negotiations between the parties, to transform this consensus into a solution have failed, contributing to intense disillusionment among the Palestinians and their leadership. It should be further observed that delay in finding a solution has continuously diminished Palestinian prospects for a viable State, especially because of Israeli settlement expansion, the construction of the Wall and the relating network of Israeli settler-only roads.

11. It is against this backdrop that several recent developments bearing on the intergovernmental pursuit of a peaceful and negotiated solution need to be considered, as they relate to the struggle for the protection and attainment of Palestinian rights under international law. A reconciliation or unity agreement between the Palestinian Authority and the de facto authorities in Gaza, signed at the end of April 2011, pledged the establishment of an interim Government tasked with arranging general elections at some future time throughout the Palestinian territory. This intra-Palestinian agreement has been criticized by the Governments of Israel and the United States as undermining prospects for direct negotiations because of objections to including representation of those belonging to a designated “terrorist organization”. At a meeting of the Middle East Quartet held in Washington, D.C. on 11 July 2011, there was a general call for resumed direct negotiations between Israel and the Palestinian side, but no agreement could be reached on preconditions for such negotiations.⁹ On several occasions, President Mahmoud Abbas has restated his position that negotiations would not be resumed without a complete stoppage of Israeli settlement expansion, including within East Jerusalem. It appears that there is no likelihood of this condition being met by the Government of Israel. On the contrary, accelerated expansions of settlements in the West Bank, including East Jerusalem, have been regularly announced during the past several months;¹⁰ and the announcement by President Abbas that the Palestinian Authority intends to approach the General Assembly with the purpose of achieving recognition of Palestinian statehood, based on the 1967 borders, and possibly also seek membership in the United Nations by way of the Security Council. Such a proposed diplomatic initiative is being presented as an alternative to direct negotiations and, for this reason, among

⁸ Barack Obama, President of the United States, “Remarks by the President on the Middle East and North Africa”, White House press conference, Washington, D.C., 19 May 2011. Available from www.whitehouse.gov/the-press-office/2011/05/19/remarks-president-middle-east-and-north-africa.

⁹ See Office of the Quartet Representative, “Quartet principals meet with Tony Blair in Washington, D.C., to promote direct negotiations”, 11 July 2011. Available from www.tonyblairoffice.org/quartet/news-entry/quartet-meet-in-washington-dc-to-promote-direct-negotiations/.

¹⁰ See A/66/364.

others, it is being condemned as “unilateral” and vigorously opposed by the Governments of Israel and the United States.

IV. Protection of the civilian population living under occupation

12. It is unfortunately necessary to restate the basic obligations of Israel under international humanitarian law as the occupying Power of the West Bank, including East Jerusalem, and the Gaza Strip. These obligations are mainly set forth in the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), to which Israel is party. Most pertinent is section III (arts. 47-78), which addresses issues associated with occupied territories. Of greater detail and more recent origin is the protocol additional to the Geneva Conventions of 12 August 1949, and relating to the protection of victims of international armed conflicts (Protocol I), which entered into force in 1978, particularly part IV, which establishes the legal framework applicable to the civilian population. There are 171 States parties to Protocol I. While Israel is not a party to Protocol I, it is bound by the provisions of the Protocol because they have become embedded in international customary law, which does not require the explicit consent of a State to be binding. Other highly relevant international legal instruments pertaining to circumstances in the occupied Palestinian territories are the Convention on the Rights of the Child, with 197 States parties (including Israel) and the International Convention on the Suppression and Punishment of the Crime of Apartheid, with 107 States parties. It is not possible to consider in detail the applicability of these various legal instruments, so only a few salient features will be described.

13. One of the overarching objectives of international humanitarian law, whether in treaty or customary form, is to ensure that the civilian population is not made to suffer unduly from a belligerent occupation — which is assumed to be a temporary condition — and that the occupying Power does not take advantage of the occupation to secure benefits for its Government and society. The legal framework has been negotiated by States, in particular experienced diplomats and military advisers, and balances security considerations against those humanitarian objectives. With those considerations in mind, it can be observed that systematic abuse of civilians as individuals or in their community identity are particularly grave assaults on the international legal regime of occupation, which makes the Israeli settlement project in the West Bank, including East Jerusalem, of continuing concern, especially when coupled with ongoing efforts by Israel and the United States to alter the 1967 borders to incorporate Israeli settlement blocs, notwithstanding their almost universally acknowledged illegality.

14. There are many other issues that illustrate the violation of the legal framework by the occupation policy of Israel. Examples include the annexation — and what even Israeli sources refer to as the “Judaization” — of East Jerusalem;¹¹ the purported geographic expansion of the boundaries of the city of Jerusalem;¹² the inability of more than 10,000 Palestinian children to be legally registered in East Jerusalem, thereby forcing Palestinian families to choose between staying together, at the risk of

¹¹ See, for example, Nir Hasson, “The Orthodox Jews fighting the Judaization of East Jerusalem”, *Haaretz* (Tel Aviv), 24 June 2010. Available from www.haaretz.com/weekend/magazine/the-orthodox-jews-fighting-the-judaization-of-east-jerusalem-1.298113.

¹² See Security Council resolutions 252 (1968), 446 (1979) and 478 (1980).

losing their Jerusalem residency permits, or accepting an enforced separation from their family members;¹³ the appropriation of increasingly scarce water resources from aquifers in Gaza for use in Israel and by Israeli settlers; the imposition and enforcement of a blockade on the entire population of Gaza for a period of more than four years, which dramatically curtails basic rights to education, housing and health; the maintenance of a dual system of law and administration in the West Bank, which privileges Israeli settlers and openly discriminates against Palestinians; and the systematic abuse of Palestinians arrested and detained by Israeli security forces, including children of a young age.¹⁴

15. As well as the patterns of violations of international humanitarian law highlighted in the preceding paragraph, it is important from a moral perspective to take into account the dimension of time on the underlying psychological and physical health of the occupied people. As noted, belligerent occupation is assumed to be short-lived and conducted so as to leave a light footprint, modelled in modern times by the occupations of Germany and Japan after the Second World War, with the restoration of sovereign rights at the earliest practicable time and, above all, the diligent protection of civilians for as long as the occupation lasts. Here, without providing an explanation for the prolonged nature of the occupation, which has increasingly taken on annexationist dimensions, the duration of more than 44 years is a cause for independent and urgent concern and action. This concern is aggravated by the absence of any near-term foreseeable end to the occupation.

16. Israel has contended that its “disengagement” from Gaza in 2005 ended occupation of the Gaza Strip, and thus Israeli responsibilities there as the occupying Power. Such a contention is generally rejected in international law circles, given continuing Israeli control over Gaza’s border, airspace and territorial waters which, along with the blockade (severely curtailing the Gaza fishing industry), has generated a persistent human rights crisis. Even without threats of cross-border violence from Israel, the ordeal of living under confined, crowded, impoverished and utterly disempowered conditions for a period of many years is incompatible with the fundamental purpose of international law to protect the dignity and well-being of an occupied civilian population. Living under siege has a proven deleterious effect on children and young people.¹⁵ Among other privations, students are prevented from exercising their right to education outside the confines and limited opportunities available in the Gaza Strip. As stressed in previous reports, international humanitarian law needs to be re-examined to take into account the particular hardships for the civilian population arising from prolonged occupations, which call for special arrangements to allow civilians to have a decent life based on education, travel, employment and social normalcy. For three generations, to varying degrees the Palestinian people have been denied these components of human dignity. It is time for

¹³ Information received from the United Nations Relief and Works Agency for Palestinian Refugees in the Near East and the Office for the Coordination of Humanitarian Affairs during mission. See also Office for the Coordination of Humanitarian Affairs, *Special Focus: East Jerusalem: Key Humanitarian Concerns*, March 2011.

¹⁴ See, for example, Defence for Children International — Palestine Section, “In their own words: a report on the situation facing Palestinian children detained in the Israeli military court system”, February 2011. Available from www.dci-pal.org/English/Doc/Press/EASTJerusalem_JANUARY2011.pdf.

¹⁵ See, for example, United Nations Children’s Fund, “UNICEF oPt monthly update, July-August 2011”. Available from www.unicef.org/oPt/UNICEF_MonthlyUpdate_July_and_August2011.pdf.

the United Nations, the International Committee of the Red Cross and key Member States to meet this challenge.

V. Detention and imprisonment

17. An issue of grave consequence from the perspective of human rights is the failure by Israel to uphold the basic rights — enumerated under international law — of persons it detains in the occupied Palestinian territories, many of whom are subsequently imprisoned in Israel. According to reports dated March 2009, there were 8,171 Palestinians being held in detention. Of these, 1,052 were held at the Ofer military base in the West Bank, south of Ramallah. The remaining 7,119 Palestinian prisoners and detainees are being held in confinement within the territory of Israel at the present time. The numbers of prisoners vary, but although the current total is slightly reduced, there are still thousands of Palestinians being held by Israel under conditions that violate international law. According to the non-governmental organization Addameer Prisoner Support and Human Rights Association, as at June 2011 Israel was holding 5,554 Palestinian political prisoners, of whom 229 were being held in administrative detention without having been convicted of any crime. Of the prisoners, 211 were children, of whom 39 were not even 16 years old.

18. The Israeli policy of transferring Palestinian prisoners to Israeli territory violates the obligations of Israel as the occupying Power. Article 76 of the Fourth Geneva Convention is unequivocal: “Protected persons accused of offenses shall be detained in the occupied country, and if convicted they shall serve their sentences therein.” That is not only a technical requirement; it also relates to the hardship experienced by someone imprisoned for a long time. Family members have almost no visitation rights, and those who are formally available are made essentially irrelevant due to the onerous permit and permission system imposed by Israel. Young Palestinian males are almost always denied access to Israel, and thus have almost no opportunity to visit their imprisoned relatives. A Palestinian prisoner often loses all contact with family members for years as a consequence.¹⁶

19. Article 74 of Protocol I, which is devoted to the special circumstances of “dispersed families”, imposes an obligation on Israel to “facilitate in every possible way the reunion of families dispersed as a result of armed conflicts”, and urges cooperation with humanitarian organizations seeking to arrange for more family connections under the difficult conditions of the occupation. Israel continues to violate this obligation.

20. There also exists the important unexplored issue of whether Palestinians who are members of armed resistance organizations should be entitled to prisoner of war status. The Geneva Convention relative to the Treatment of Prisoners of War seems applicable only if the occupied Palestinian territories can be considered to be a State, which could be one result of the conferral of statehood upon Palestine by the General Assembly, although given the extensive diplomatic recognition accorded to the

¹⁶ For useful exposition of the separation of prisoners from their families for long periods of time, producing great suffering, see discussion by Israeli lawyer Michael Sfard, “Devil’s Island: the transfer of Palestinian detainees into prisons within Israel”, in *Threat: Palestinian Political Prisoners in Israel*, Abeer Barker and Anat Matar, eds. (London: Pluto Press, 2011). This book contains a valuable overview of these problems, and results from a conference held in Israel, a tribute to Israeli democratic freedoms for its own citizens.

Palestine Liberation Organization it can be argued that Palestine already enjoys the status of statehood.¹⁷

21. Additionally, it has been contended that, under Protocol I, members of Palestinian armed resistance groups could, in principle, be entitled to POW status without having to prove that they belong to a State, so long as the struggle is being carried on by an organized group fighting alien occupation in the exercise of their right of self-determination.¹⁸ If prisoner of war status should be accorded to those detained for security reasons, and found to belong to armed resistance militias, a whole range of protections that Israel has denied would come into play for Palestinians engaged in resistance since the start of the occupation.

VI. Israeli settlements

22. As has been stated many times in prior reports, but must not be forgotten, all Israeli settlement activity is unlawful. This assessment is based on the accepted interpretation of article 49(6) of the Fourth Geneva Convention: “The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.” This obligation applies whether or not Palestine enjoys the status of a State. The language of the text here is far from perfect, as it lends itself to a claim by Israel that it is not deporting or transferring Israelis to the settlements, but at most facilitating voluntary decisions based on a range of religious and economic motivations. But the long-standing reality of subsidies from the Government of Israel that encourage settlers and settlements (for construction, water, electricity, schools and other purposes) makes clear the significance of State involvement. Israel continues to insist that the West Bank is “disputed” rather than “occupied” territory, and thus international humanitarian law is not de jure applicable, while Israel purported to annex East Jerusalem in 1967, and has since that time refused to treat it as “occupied”. The Government of Israel has recently sought a reaffirmation from President Obama of the United States of the April 2004 letter from then President George W. Bush to then Prime Minister Ariel Sharon conveying the expectation of the Government of the United States that the Israeli settlement blocs (“major Israeli populations centers” to the east of 1967 borders) would be incorporated into Israel, in whatever agreement resolving the conflict was negotiated in the future.¹⁹ Without exploring these issues in detail, there exists a strong international consensus, reinforced by innumerable Security Council and General Assembly resolutions as well as the 2004 International Court of Justice advisory opinion regarding the Wall, that the West Bank and East Jerusalem are “occupied”, and that international humanitarian law applies. Further, it seems clear that the letter on settlements by President Bush may have political weight, but from the perspective of Palestinian rights under international law the letter is irrelevant. The letter also violates basic

¹⁷ John Quigley, *The Statehood of Palestine: International Law in the Middle East Conflict* (Cambridge University Press, 2010).

¹⁸ The legal questions are usefully explored in Smadar Ben-Natan, “Are there prisoners in this war?” in Barker and Matar, *Threat*.

¹⁹ Letter from President Bush to Prime Minister Sharon, dated 14 April 2004. Available from <http://georgewbush-whitehousearchives.gov/news/releases/2004/04/20040414-3.html>. See also Ethan Bronner, “Netanyahu responds icily to Obama remarks”, *New York Times*, 19 May 2011. Available from www.nytimes.com/2011/05/20/world/middleeast/20mideast.html?_r=1.

principles of equity in international customary law, which do not allow third parties to diminish the claims in law of parties without their participation and consent.²⁰

23. In the context of the overall objectives of international humanitarian law to protect the rights of an occupied population, it is painfully evident that the establishment of more than 100 Israeli settlements with over 500,000 Israeli settlers, expropriating some of the best land and water resources, and moreover on the site of their proposed capital, flagrantly violates Palestinian rights and has a negative impact on Palestinian prospects for a viable, sovereign State. Yet political leaders from Europe and the United States consistently view settlement expansions by Israel as setbacks from the perspective of achieving a peaceful resolution to the underlying conflict. Foreign Secretary William Hague, of the United Kingdom of Great Britain and Northern Ireland, issued a press release on 5 April 2011 in response to an announcement by Israel of its intention to expand a major settlement in East Jerusalem, stating: "I condemn Israel's decision to approve more than 900 settlement units in the East Jerusalem suburb of Gilo and the retrospective approval which has been given for construction in five West Bank settlements."²¹ The leadership of the Palestinian Authority has repeatedly warned that without a total settlement freeze, it will not return to direct negotiations, and has explicitly linked its decision to seek recognition of Palestinian statehood at the United Nations to the Israeli policy on settlements.

24. It is also relevant to observe that strong demonstrations by Israeli civil society to protest skyrocketing housing costs inside Israel have produced new pressures on the Government of Israel to add to the supply of affordable housing, and one way to do this, it has been widely suggested in the Israeli media, is by expanding settlements.²² Whether this path will be taken by Israel is not yet evident, but the issue suggests that Israeli public opinion and some leaders view the settlements as a vital safety valve for explosive social and political pressures building up within Israel.

25. The United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) has noted that zoning restrictions in occupied East Jerusalem seriously undermine Palestinian development. Thirty-five per cent of the occupied Arab part of the city has been approved by Israeli authorities for Jewish Israeli settlements, while only 13 per cent of the Arab area is even potentially available for Palestinian construction.²³

26. All in all, it is widely agreed that the prospects for ending the occupation of the West Bank, including East Jerusalem, are blocked by the continuing expansion of Israeli settlements. The longer this dynamic persists, the more tenuous becomes the possibility of actualizing the two-State option.

²⁰ It is noted that even treaties, which are a stronger form of agreement than this exchange of letters by the respective leaders of Israel and the United States, cannot affect Palestinian rights under international law. Article 34 of the Vienna Convention on the Law of Treaties clearly affirms this principle: "A treaty does not create either obligations or rights for a third State without its consent." Even should Palestine not be a State, it is certainly a party, and has been so regarded by all concerned Governments.

²¹ Statement available from www.fco.gov.uk/en/news/latest-news/?view=News&id=579904682.

²² See, for example, Martin Sherman, "Into the fray: come to the carnival, comrade!", *Jerusalem Post*, 8 May 2011. Available from www.jpost.com/Opinion/Columnists/Article.aspx?id=232543.

²³ Information received from UNRWA and the Office for the Coordination of Humanitarian Affairs during mission. See also Office for the Coordination of Humanitarian Affairs, *Special Focus: East Jerusalem*.

A. Settler violence

27. There has been a serious increase in settler violence in 2011. The Office for the Coordination of Humanitarian Affairs reports a more than 50 per cent increase in incidents in the West Bank involving violence against Palestinians, documenting injuries to 178 Palestinians during the first half of 2011 as compared to 176 for the entire year of 2010.²⁴ According to UNRWA, those injured in settler violence in just the first half of 2011 included 12 children. These specific injuries resulted from stone-throwing, assaults and shootings by Israeli settlers. Yet these incidents only tell part of the story. There are almost daily accounts of settler vandalism against Palestinian agricultural land and villages, with several incidents videotaped by individuals working with B'Tselem, the highly regarded Israeli human rights organization.²⁵ There have been numerous reports of agricultural land and olive groves being burned, especially in the villages around Nablus.²⁶ Also part of this disturbing set of developments is a pattern of passive support for settler activities exhibited by Israeli security forces and border police. It often takes the form of shooting tear gas and stun grenades at Palestinians while doing nothing to stop settler violence and vandalism, and has also been documented by B'Tselem video cameras.²⁷ A further dimension to these activities is the frequent settler harassment of Palestinian children on their way to school — also not prevented by Israeli forces — which has reportedly discouraged many children and their families from attending school, thereby violating their right to education. In some areas, most consistently in Hebron where settler violence is frequent and severe, international civil society organizations such as Christian Peacemaker Teams and the Ecumenical Accompaniment Programme in Palestine and Israel have attempted to step into the breach, providing direct protection of young schoolchildren when Israeli forces do not meet their obligation to prevent settler violence.²⁸ Overall, the failure by Israel to prevent and punish settler violence remains a serious and ongoing violation of its most fundamental obligation under international humanitarian law to protect a civilian population living under occupation, and to accord particular protection to children as specified in Protocol I, article 77.

B. The future of Israeli settlements

28. There have been several explanations given for this intensifying violence and harassment of Palestinian civilians: a reaction to a bloody incident in Itamar settlement in which five Israeli settlers were killed, including three children, while asleep at night;²⁹ an effort by the religiously motivated settlers to encourage support

²⁴ Information received from the Office for the Coordination of Humanitarian Affairs during mission.

²⁵ Available from www.btselem.org/video/search/22. See also Muadi Nadder, ed., *An Unjust Settlement: A Tale of Illegal Settlements in the West Bank* (Geneva, Ecumenical Accompaniment Programme in Palestine and Israel, 2010).

²⁶ Information received from UNRWA and the Office for the Coordination of Humanitarian Affairs during mission.

²⁷ See, for example, www.btselem.org/video-channel/east-jerusalem-six-voices.

²⁸ See Muadi Nadder, ed., *An Unjust Settlement: A Tale of Illegal Settlements in the West Bank* (Geneva, Ecumenical Accompaniment Programme in Palestine and Israel, 2010).

²⁹ See “Terror attack in Itamar: 5 family members murdered”, *Jerusalem Post*, 12 March 2011. Available from www.jpost.com/NationalNews/Article.aspx?id=211780.

by the Government of Israel for a policy of ethnic cleansing, especially in East Jerusalem, and their claim of biblical birthright to the entire West Bank;³⁰ and a signal to the Government that any future anti-settler moves by Tel Aviv, such as closing settler outposts established without official permission, would be met with what settlers themselves call “price tag” reprisals against Palestinians and their properties.³¹ Maher Ghoneim, the Palestinian Authority Minister charged with monitoring settlement activity, declared: “This is a government of settlers and its program is one of settlement. This naturally encourages this arrogance and these attacks.”³² Israeli political leaders refer to the West Bank as “Judea and Samaria”, indirectly reinforcing the insistence by religious Israeli settlers that this territory should as a whole be incorporated into or annexed by Israel, and that it is the Palestinians who are the usurpers of the historic and religious entitlements of Jewish settlers.

29. It may be that the increased violence by Israeli settlers reflects the fact that the clash between settler and Palestinian visions of the future is reaching a climax. Nabil Abu Rudaineh, a spokesperson for the Palestinian Authority, was quoted as saying on 8 July 2011 “that all the settlements are illegitimate and must be removed”.³³ Yet in this same period, settler leaders insist that not one settler will leave the West Bank regardless of what the Government of Israel agrees to do.

30. In recent months such polarizing views of future relationships have been articulated, ranging from the extremes of unconditional settlement expulsion as a component of withdrawal by Israel and the end of occupation to the complete incorporation of the West Bank into Israel proper, as a “Greater Israel” one-State alternative to the two-State proposal. Obviously, the outcome of such a debate has a direct bearing on whether the Palestinian right of self-determination will be recognized as integral to the dynamics of conflict resolution.

VII. Palestinian children, human rights and international humanitarian law

31. During the planned mission of the Special Rapporteur to Gaza that was redirected to Cairo and Amman, in a series of meetings with representatives of the Palestinian Authority, United Nations agencies with responsibilities in the occupied Palestinian territory and a range of human rights non-governmental organizations, particular attention was paid to the impact of prolonged occupation on the rights and well-being of Palestinian children. The results of these inquiries, reinforced by a variety of secondary sources, were disturbing for three principal reasons:

(a) The very fact of prolonged occupation exerts a constraining burden on civilians. Yet this impact is heavier on children, whose development is deformed by

³⁰ See, generally, B’Tselem, “By hook and by crook: Israeli settlement policy in the West Bank”, July 2010; and B’Tselem, “Dispossession and exploitation: Israel’s policy in the Jordan Valley and northern Dead Sea”, May 2011. Available from www.btselem.org/publications.

³¹ See, for example, YNet, “Settlers: We’re launching ‘price tag’ policy across the West Bank”, 4 December 2008. Available from www.ynetnews.com/articles/0,7340,L-3633599,00.html.

³² Tom Perry, “In West Bank, settler violence seen on the rise”, *Reuters*, 14 July 2011. Available from <http://uk.mobile.reuters.com/article/worldNews/idUKTRE76D30220110714>.

³³ “EU: New settlement building units are obstacle to peace”, *Jerusalem Post*, 19 July 2011. Available from www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=230096.

pervasive deprivations affecting health, education and overall security. The insecurity of Palestinian children is aggravated in the West Bank, including East Jerusalem, by settler violence and night-time raids by Israeli occupation forces, house demolitions, threatened expulsions and a host of other practices, and in Gaza by the blockade and by traumatizing periodic violent incursions and sonic booms resulting from airplane overflights, as well as the still unrepaired destruction of refugee camps, residential communities and public buildings by Israeli forces during Operation “Cast Lead”;

(b) The available evidence suggests a pattern of increasing abuse, not just by the continued hardships of occupation, but by specific policies that entail more serious and systematic violations of the rights of children guaranteed by the norms of international humanitarian law;

(c) The testimony of experts on child development agrees that children suffer more from violations than adults, and the protection of their rights should be of particular concern to the international community. Writing on the impact of home demolitions, an UNRWA report of 12 June 2011 notes: “The impact of home demolitions on children can be particularly devastating. Many children affected by demolitions show signs of post-traumatic stress disorder, depression and anxiety.”³⁴

32. The treatment of Palestinian children is ultimately related to the quest for a solution to the conflict that brings peace to both peoples and recognizes fundamental rights. As Gandhi famously said: “If we are to teach real peace in this world ... we shall have to begin with the children.” From the evidence available and what was learned on the mission, an intention to achieve a sustainable peace in the conflict would give immediate priority to respect for the rights of Palestinian children, including enabling their normal and positive development despite the constraints of occupation.

33. To illustrate patterns of deprivation, this report discusses arrest and detention procedures relating to children in the West Bank and East Jerusalem and the damaging impact on children’s health arising from unsafe water in Gaza.

A. Arrest and detention procedures for Palestinian children

34. In the Convention on the Rights of the Child, the most widely ratified of all international legal treaties, a detailed framework is set forth of the special protection that parties are legally obligated to provide for children. This encompasses children living under belligerent occupation. Article 3 (1) of the Convention expresses the general approach taken in the Convention, and hence is now embodied in international human rights law: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.” Article 38 (1) declares: “States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.” Article 40 specifies the obligatory steps regarding criminal charges brought against children in keeping with the mandate of article 40 (1) that the child be “treated in a manner consistent with the promotion of the child’s sense of dignity and worth, which reinforces the child’s respect for the human rights and fundamental freedoms of others and which takes into account the

³⁴ UNRWA, “Demolition watch”, 12 June 2011. Available from http://reliefweb.int/sites/reliefweb.int/files/resources/Full_Report_1154.pdf.

child's age and the desirability of promoting a child's reintegration and the child's assuming a constructive role in society". This approach reflects the general directive of article 77 (1) of Protocol I: "Children shall be the object of special respect." It is against this background that the pattern of deleterious treatment of Palestinian children living under occupation, as confirmed by many testimonies received during the Special Rapporteur's mission and published reports of respected NGOs, confirms continuing violations by Israel of international law, in particular international humanitarian law.

35. Many of the arrests of Palestinian children arise out of allegations of stone-throwing aimed at settlers or Israeli security personnel in the West Bank.³⁵ Those accused, unlike Israeli children in the West Bank, are subject to Israeli military law, which offers far fewer protections for minors than are present in Israeli criminal law. Most relevantly, in military law there is an absence of protective provisions regarding the presence of a parent during interrogation, the hours that the interrogation must be conducted or respect for the dignity of the child during the arrest process. The arrest procedures documented by United Nations agencies and reliable human rights organizations include arrests in the middle of the night without prior notification, removal of the child from parents for questioning, abusive treatment in detention and conviction procedures that appear to preclude findings of not guilty. During our mission we were frequently told that these arrest procedures seemed systematically intended to frighten and humiliate those arrested, and to turn them towards collaborating by identifying protest leaders in demonstrations and refraining from anti-occupation activities in the future.

36. In the period between 2005 and 2010, 835 children were prosecuted for stone-throwing, of which 34 were 12 or 13 years old, 255 were 14 or 15, and 546 were 16 or 17.³⁶ Since 2007 the number prosecuted has risen each year. The length of the sentences did take into account the age of the accused, varying from more than a year for older children to a few weeks for younger ones. Israel did establish a youth military court in 2010, and so far its sentences for children in the 12 or 13 year-old category have been lighter, with the longest sentence imposed being nine days, which is far less than in earlier years. The very existence of a military court for children is inconsistent with international humanitarian law's fundamental commitment to uphold, pursuant to article 40 (1) of the Convention on the Rights of the Child, "a child's sense of dignity and worth". B'Tselem has expressed its main finding on this topic as follows: "The present report indicates that the rights of minors are severely violated, that the military law almost completely fails to protect their rights, and that the few rights granted by law are not implemented."³⁶ Among the serious results of this way of handling Palestinian youth accused of transgressions is the denial of their educational possibilities while in custody or prison, and the disallowance of their ties with families, which go against international legal standards. This abuse also inflicts fear and suffering on parents and other family members who witness the arrest procedures and are not even informed about where their child is being held in custody.

³⁵ See, generally, B'Tselem, "No minor matter: violation of the rights of Palestinian minors arrested by Israel on suspicion of stone-throwing", July 2011; and B'Tselem, "Caution: children ahead: the illegal behavior of the police towards minors in Silwan suspected of stone-throwing", December 2010. Available from www.btselem.org/publications.

³⁶ B'Tselem, "No minor matter: violation of the rights of Palestinian minors arrested by Israel on suspicion of stone-throwing", July 2011.

37. There is abundant anecdotal evidence of child abuse associated with interrogations and arrests of children.³⁷ The United Nations Children’s Fund occupied Palestinian territory child protection programme contains a summary that overlaps and confirms other reputable descriptions, saying that reports of interrogations are widespread and include fingerprinting, blood tests, humiliation, using dogs to frighten the children, forcing parents into the streets on their knees, arresting boys and girls and bringing elderly women and invalids for interrogation. The same source tells of extreme instances in the village of Awarta. One three-year-old girl was reportedly taken outside her home at 3 a.m. and threatened at gunpoint. She was told she would be shot and her family home destroyed unless she reported on the whereabouts of her brother. Now, her mother explained, she can’t sleep through the night and is bedwetting. One nine-year-old girl reportedly tried to follow her father when he was arrested and she was grabbed by the neck and is still having pain and is afraid to go outside.³⁸

38. A report of the Association for Civil Rights in Israel details how the Israeli Youth Law is often violated in the arrest and interrogation of Palestinian children in East Jerusalem. The report is specific in its allegations:

Children have been detained for hours on end, handcuffed, they have been threatened during interrogations, screamed at, and coerced by any means into revealing information about the incidents taking place in their neighbourhood. In this context it is important to emphasize that the younger the child is, the greater the chance that he will experience trauma and psychological damage from such treatment.³⁹

Expansion of Israeli settlements in East Jerusalem is coordinated with private security guards, who operate with even less constraint towards Palestinian children than Israeli police. This reliance on security guards is especially prevalent in the Silwan neighbourhood, where settler ambitions have collided sharply with the security of long-term Palestinian residents. According to Sahar Francis, General-Director of Addameer Prisoner Support and Human Rights Association, the arrests of children are intended to intimidate and scare youth so as to discourage “political activism more generally”,⁴⁰ raising questions as to a specific denial by Israel of the affirmation by the General Assembly of a right of resistance to unlawful occupation policies.

39. It is little wonder in view of such incidents that both Médecins Sans Frontières and UNICEF have recently said that the number of children suffering from stress disorder has greatly increased.⁴¹ Colonel Desmond Travers, a member of the United Nations Fact-Finding Mission on the Gaza Conflict (whose report is generally known as the “Goldstone Report”) said in a recent interview: “If the British had behaved toward children who threw stones at them in the manner that is the norm on the West Bank for Israeli security forces — whereby children are rounded up in the evening

³⁷ See, for example, Defence for Children International — Palestine Section, “In their own words”.

³⁸ Ibid., “Awarta update”, 18 April 2011.

³⁹ Association for Civil Rights in Israel, “Violations of the ‘Youth Law (Adjudication, Punishment Methods of Treatment) — 1971’ by the Israeli police in East Jerusalem”, March 2011. Available from www.acri.org.il/en/?p=2428.

⁴⁰ J. Kestler-D’Amours, “The tactic of arresting Palestinian children”, *Al Jazeera*, 8 July 2011.

⁴¹ See “Trauma of Palestinian children increasing, say health groups”, *Electronic Intifada*, 27 July 2011. Available from <http://electronicintifada.net/content/trauma-palestinian-children-increasing-say-health-groups/10212>.

and taken to places of detention, hooded, beaten, and in some cases tortured — the Northern Ireland problem would not be resolved today. It would be still a place of conflagration.”⁴²

40. In response to this pattern of abuse the above-referenced B’Tselem report recommends the following guidelines:

1. Set the age of minority in the military legislation to conform with the age of minority in Israel and the rest of the world immediately;
2. Prohibit night arrests of minors;
3. Restrict interrogations to daytime hours, with parents present, and give minors the opportunity to consult with an attorney in an orderly manner that respects the minors’ rights;
4. Prohibit the imprisonment of minors under the age of 14;
5. Promote alternatives to detention and find solutions offering alternatives to imprisonment;
6. Establish educational programmes in all prisons and offer study opportunities in all subjects to minimize the harm to the minors’ studies while they are detained and imprisoned;
7. Facilitate the issuing of permits to visit minors who are detained and imprisoned.³⁶

B. Gaza blockade, collective punishment and Palestinian children

41. As emphasized throughout the report, children are the most vulnerable and most acute victims of Israeli violations of the provisions of international humanitarian law that are designed to protect an occupied civilian population. With the blockade of Gaza now extended beyond 4 years, and the overall occupation more than 44 years, the impact of those violations is exponentially increased. UNRWA, which normally avoids drawing conclusions as to the character of the occupation, issued a press release on 14 July 2011 expressing its heightened concern and calling attention to the plight of Gaza’s children, stating: “Today, there is a crisis in every aspect of life in Gaza. In education we need to build 100 new schools in three years for these children.”⁴³ UNRWA spokesman Chris Gunness has noted that “the abject poor living on just over 1 dollar a day has tripled to 300,000 since the blockade was imposed and with many reconstruction projects still awaiting approval, the future looks bleak”.⁴⁴ With more than half the population of Gaza under the age of 18, those facing that bleak future are overwhelmingly children. UNRWA recalls the condemnation by the International Committee of the Red Cross of the blockade as “collective punishment in clear violation of international humanitarian law” and calls on the international

⁴² Philip Weiss, “Col. Travers: Israel’s treatment of Palestinian children shows that it does not seek peace”, 11 July 2011. Available from <http://mondoweiss.net/2011/07/col-travers-israels-treatment-of-palestinian-children-shows-that-it-does-not-see-peace.html>.

⁴³ UNRWA, “A goal for Gaza: at 2011 Summer Games, 2,011 children set football world record”, 14 July 2011. Available from <http://unispal.un.org/UNISPAL.NSF/0/E014A7DE55B9E6B0852578CD0065C530>.

⁴⁴ UNRWA, “Gaza blockade anniversary report”, 13 June 2011. Available from www.unrwa.org/etemplate.php?id=1007.

community “to ensure that repeated appeals by States and international organizations to lift the closure are finally heeded”. It ends with this appeal: “We endorse these calls for accountability, because we need to lift the blockade and give the kids of Gaza a chance to fulfil their true potential.”⁴³ As an aspect of the multidimensional crisis facing Gaza, UNRWA itself is experiencing a funding crisis that already is impinging on its capacity to continue even at present levels to provide for the 80 per cent of the Gazan population that is currently dependent on international assistance for subsistence, and lacks the resources to meet the additional needs of Gaza’s families, which of course encompasses the children.

42. What is said about Gaza is only a shade less true for the West Bank, including East Jerusalem, where the ordeal of prolonged occupation weighs heavily on the future prospects of children living in an atmosphere of fear and intimidation from birth onwards. Recent developments in Area C, which is 60 per cent of the West Bank, are in their own way as severe in their deprivation of rights as the situation in Gaza, especially in relation to the displacement and dispossession of Bedouin villages that have created a general atmosphere of fear and foreboding, especially among Bedouin children.⁴⁵ According to UNRWA field staff with whom the Special Rapporteur met during the mission, the 155 herding communities left in Area C, which is fully controlled by Israel, include many Bedouin refugees now facing forcible displacement. Those communities, including many children now largely without regular access to schools, have dramatically deteriorated since 2000, with half the population having been forced out of the West Bank grazing areas, losing their herds and involuntarily ending up in small towns and villages. Part of this forced displacement and forced urbanization has been the result of an Israeli policy of systematic demolition of the traditional cistern-based water infrastructure essential for maintaining the Bedouin people’s nomadic and agricultural way of life, which the occupying Power contends is unlicensed, and thus subject to removal. Bedouin children, most of whose families have already been made refugees in the past, face the particularly difficult challenge of losing their homes and entire way of life as a result of this forced abandonment of their herding traditions, as well as being denied the protection of citizenship associated with upholding the dignity and rights of individuals.

C. Palestinian children’s health and polluted water in Gaza

43. Children are particularly vulnerable to the unsafe water conditions that exist in Gaza. It is estimated that 54 per cent of Gaza’s 1.6 million civilians are children under the age of 18, with 20 per cent of the total under 5 years of age. Within this youngest age group, nearly 300,000 children are at acute risk; this age group is most vulnerable to the effects of water-associated disease, accounting for 90 per cent of annual deaths due to diarrhoeal diseases, including cholera.⁴⁶ Studies demonstrate that it is Gaza’s unsafe waters that account mainly for the differences in health and survival (child mortality) between children in Gaza and those in the West Bank. The study mentioned above clarifies this conclusion: Gaza’s sole water source is an

⁴⁵ See Harriet Sherwood, “Bedouin children hope their West Bank school will be spared Israel’s bulldozers”, *Guardian*, 12 June 2011.

⁴⁶ See UNICEF, “Protecting children from unsafe water in Gaza: strategy, action plan and project resources”, March 2011. Available from www.unicef.org/oPt/FINAL_Summary_Protecting_Children_from_unsafe_Water_in_Gaza_4_March_2011.pdf.

aquifer that is chemically contaminated with dangerous levels of chlorides, nitrates and other pollutants, some in excess of World Health Organization guidelines. Water scarcity aggravates the problem. Almost two thirds of Gazans surveyed indicated that their water is of bad quality due to its high salinity and water pollution, which is especially caused by wastewater contamination. The World Bank and Coastal Municipal Water Utility in Gaza stated that “only 5 to 10% of the aquifer is suitable for human consumption and ... this supply could run out over the next five to 10 years without improved controls”.⁴⁶

44. What is at stake with respect to water quality in Gaza is the right of the child to life and health. Exacerbating the crisis is the continuing impact of the unlawful blockade by Israel, which prevents the importation of tools and materials necessary to repair and restore the water purification system partially destroyed during Operation “Cast Lead”.

VIII. Recommendations

45. **In the light of the above, the Special Rapporteur recommends that the Government of Israel take the following measures:**

(a) **Immediately adopt in policy and practice the guidelines of B’Tselem for the protection of Palestinian children living under occupation who are arrested or detained as a minimum basis for compliance with international humanitarian law and human rights standards under international law;**

(b) **Allow on an urgent basis entry to Gaza of materials needed for repair of water and electricity infrastructure so as to avoid further deterioration in the health of the civilian population, especially children, which is currently in critical condition;**

(c) **Develop and implement appropriate detention and imprisonment policies and practices for Palestinians, including fully observing the prohibition on transferring prisoners from occupied Palestinian territory to Israeli territory;**

(d) **Immediately lift the unlawful blockade of Gaza in view of its violative impact on all aspects of civilian life, its undermining of the basic rights of an occupied population and its grave impact on children.**

46. **The Special Rapporteur recommends that the General Assembly request that the International Court of Justice issue an advisory opinion on the legal status of prolonged occupation, as aggravated by prohibited transfers of large numbers of persons from the occupying Power and the imposition of a dual and discriminatory administrative and legal system in the West Bank, including East Jerusalem.**



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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, submitted in accordance with Human Rights Council resolution 5/1.

* A/67/150.

** This report is being submitted late in order to take account of significant information received from interlocutors in Israel and the occupied Palestinian territory. In this regard, the Special Rapporteur notes the Government of Israel's continuing practice of non-cooperation with his mandate, which impedes him from engaging directly with such interlocutors in the occupied Palestinian territory.



Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The present report addresses Israel's compliance with its obligations under international law in relation to its occupation of Palestinian territory. The Special Rapporteur focuses particular attention on the legal responsibility of business enterprises, corporations and non-State actors involved in activities relating to Israel's settlements in the occupied Palestinian territory.

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I. Introduction

1. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 reiterates his request to the Government of Israel to cooperate with his efforts to implement his mandate from the United Nations. Such cooperation is a fundamental legal obligation incident to membership in the Organization and ensures that the Special Rapporteur can constructively engage with the Government of Israel, victims, witnesses and civil society actors relevant to his mandate.

2. Article 104 of the Charter of the United Nations states that the Organization shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes. Article 105, paragraph 2, specifies that those who represent the United Nations shall enjoy in the territory of States Members such privileges and immunities as are necessary for the independent exercise of their functions in connection with the Organization. These provisions were elaborated in the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946. Article VI, section 22, thereof, entitled “Experts on missions for the United Nations”, is particularly relevant, setting forth the duties of Members to cooperate with such representatives as Special Rapporteurs and to avoid interfering with their independence.

3. It should be noted that the Government of Israel has not cooperated with many other important initiatives of the General Assembly and the Human Rights Council relating to the occupied Palestinian territory. This includes the United Nations Fact-Finding Mission on the Gaza Conflict, the Committee of Independent Experts to follow up on the fact-finding mission on the Gaza conflict, the Independent International Fact-Finding Mission on the Incident of the Humanitarian Flotilla, the Beit Hanoun fact-finding mission, the Commission of Inquiry on Lebanon, and the Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territories. This pattern of non-cooperation with official undertakings of the General Assembly and the Human Rights Council should produce a concerted effort by Member States, the General Assembly, the Security Council and the Secretary-General to obtain the cooperation of the Government of Israel.

4. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 conducted research for this report on the basis of the foundational principle that business enterprises must respect international humanitarian law and should respect human rights. They should avoid infringing on the human rights of those living under occupation and address adverse human rights impacts with which they are involved.¹ The Special Rapporteur would welcome engagement with the Government of Israel, and companies and corporations operating within or in relation to Israeli settlements in the occupied Palestinian territory, regarding the issues raised in this report.

5. The Special Rapporteur calls attention to the grave circumstances of the Palestinian people, living under prolonged occupation and with no realistic prospect of its termination in the near future, and under these conditions the United Nations

¹ Guiding Principles on Business and Human Rights (A/HRC/17/31, annex).

has a great responsibility to do all that can be done to avoid the economic, political and cultural exploitation of the Palestinian people, as well as their endowment of natural resources.

II. Working methodology for the present report

6. Taking account of the Special Rapporteur's repeated unsuccessful requests to the Government of Israel to be allowed access to the occupied Palestinian territory, the present report is based on information requested and received from civil society actors, United Nations agencies, companies and corporations, non-State entities, and other stakeholders, in particular those with expertise concerning the involvement of business enterprises in the construction and maintenance of Israeli settlements. The Special Rapporteur highlights selected individual companies that operate, conduct business or otherwise profit from Israeli settlements located in the occupied Palestinian territory. The Special Rapporteur makes recommendations to seek to ensure that businesses operating in relation to Israeli settlements take prompt action to bring their activities into line with relevant international law and related rules and standards, including international human rights law. The Special Rapporteur notes that, since the preparation of the present report, he has brought its content to the attention of the businesses discussed herein. The Special Rapporteur is requesting clarification and further information regarding the allegations contained in this report, especially with a view to pursuing the prompt implementation of his recommendations.

III. General situation of settlements

7. From 1967 to 2010 Israel established an estimated 150 settlements in the West Bank. In addition, there are an estimated 100 "outposts", settlements built without official Israeli authorization but with the protection, infrastructural support and financial help of the Government of Israel. Such "outposts" are recently the subject of Government of Israel processes and discussions regarding their potential legalization under Israeli law. This is a serious escalation of the settlement agenda that is inconsistent with Israeli political rhetoric supporting negotiations to establish a viable, independent, contiguous and sovereign Palestinian State.

8. There are also 12 settlements in Jerusalem that were established, with Government funding and assistance, on land unlawfully annexed by Israel and made part of the city. Settlements control over 40 per cent of the West Bank, including critical agricultural and water resources. Many settlements are extensively developed, comprising large gated communities or small cities. Israel does not allow Palestinians to enter or use these lands, except those with permits to work.

9. The population of Israeli settlers in the occupied Palestinian territory is between 500,000 and 650,000. Approximately 200,000 of these settlers live in East Jerusalem. Statistics indicate that the settler population (excluding that of East Jerusalem) has, over the past decade, grown at an average yearly rate of 5.3 per cent, compared to 1.8 per cent in the Israeli population as whole. In the past 12 months this population increased by 15,579 persons. The Israeli Government offers settlers benefits and incentives relating to construction, housing, education, industry, agriculture and tourism, exclusive roads, and privileged access to Israel.

The effort Israel has expended in the settlement enterprise — financially, legally and bureaucratically — has turned many settlements into affluent enclaves for Israeli citizens within an area where Palestinians live under military rule and in conditions of widespread poverty.

10. This financial, legal and bureaucratic help in settlement areas is providing settlers with privileges they would not be afforded as Israeli citizens living in Israeli territory. Such privileges provide a telling juxtaposition to the large protests that occurred in Tel Aviv, Jerusalem and Haifa in 2011, involving hundreds of thousands of Israelis who freely assembled to demand social justice, lower living costs and a Government response to the economic distress that Israeli middle classes are experiencing.

11. The establishment of the settlements is a flagrant violation of international humanitarian law as set forth in the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and the Regulations annexed to the Hague Convention IV of 1907. Article 49 of the Fourth Geneva Convention prohibits an Occupying Power from transferring citizens from its own territory to the occupied territory. The Hague Regulations prohibit an Occupying Power from undertaking permanent changes in the occupied area unless justified by military needs in the narrow sense of the term, or unless they are undertaken for the benefit of the local population.

12. In building settlements and associated infrastructure, Israel further violates international law through the appropriation of Palestinian property not justified by military necessity, and by imposing severe movement restrictions on Palestinians. Such restrictions violate those human rights dependent on freedom of movement, including rights to health, education, family life, work and worship. In addition, the scale of Israel's settlement project and the massive financial investment in it appear to confirm Israel's intention to retain control over these areas, thus violating a core principle of the Charter of the United Nations, namely Article 2 (4), which prohibits the acquisition of territory by the use or threat of force. Moreover, the settlements fragment the West Bank, including East Jerusalem, into isolated geographical units, severely limiting the possibility of a contiguous territory and the ability to dispose freely of natural resources, both of which are required for the meaningful exercise of the fundamental and inalienable right of the Palestinian people to self-determination.

13. Israel has created a regime of separation and discrimination, with two separate systems of law in Palestinian territory: one system applies to the settlers, and treats the settlements as *de facto* extensions of Israel and grants settlers the rights of citizens with the protections of a quasi-democratic State. In contrast, the Palestinians are subject to a system of military administration that deprives them of legal protection and the right to participate in shaping policies regarding the land in which they live. These separate systems reinforce a regime in which rights depend on national identity and citizenship. A dual system of roads, one for settlers and one for Palestinians, further entrenches the discriminatory separation between the two communities.

14. The wall in the West Bank is one of the most prominent aspects of the settlement enterprise. Much of the route of the wall is placed inside the West Bank, and takes into account the further expansionist designs of settler communities. Access restrictions to Palestinian farmland in the vicinity of Israeli settlements

located on the eastern side of the wall are widespread. While in some cases the restricted areas are unilaterally established and enforced by the settlers, in other cases the Israeli military erects fences around settlements and declares the area a “Special Security Area”. In its near unanimous (14 to 1) advisory opinion of 2004, the International Court of Justice unequivocally declared that the separation wall violated international law, should be dismantled and Palestinians compensated for harm experienced.

15. In Area C, comprising 60 per cent of the West Bank, the zoning regime applied by Israel further benefits the establishment and growth of settlements, while denying the development of Palestinian communities. The zoning regime effectively prohibits Palestinian construction in some 70 per cent of Area C, or approximately 44 per cent of the West Bank. In the remaining 30 per cent a range of restrictions makes it virtually impossible for Palestinians to obtain a building permit. In practice, Israeli authorities allow Palestinian construction only within the boundaries of an Israeli-approved plan, which covers less than 1 per cent of Area C. As a result, Palestinians are left with no choice but to build “illegally”, which leads to inhumane Israeli responses involving demolition and displacement.

16. Since East Jerusalem was purportedly annexed by Israel, the Government of Israel has created demographic and geographic conditions designed to thwart peace proposals designating Jerusalem as the capital of Palestine. Israel has sought to increase the Israeli population and reduce the number of Palestinians in the city. Israel has employed the following methods: physically isolating East Jerusalem from the rest of the West Bank in part by building the wall; discriminating in land expropriation, planning and building, and demolition of houses; revoking residency and social benefits of Palestinians; and inequitably disbursing the municipal budget between the two parts of the city. The forced eviction of Palestinians from their homes by settlers backed by the Government has contributed to changing the demography of the city. Palestinians have lost their homes and many more remain at constant risk of forced eviction, dispossession and displacement. The Government supports the settlers’ actions by, inter alia, allocating private security guards; sending security forces to accompany the takeover of Palestinian homes; and funding Israeli development projects in the Jerusalem settlements.

IV. Legal framework

A. General: human rights law and international humanitarian law

17. Israel is a State party to most core international human rights conventions, and reports regularly to the relevant human rights treaty bodies.² A situation of armed conflict or occupation does not release a State from its human rights obligations. The International Court of Justice, human rights treaty bodies, successive United Nations High Commissioners for Human Rights and special procedures of the Commission on Human Rights and its successor, the Human Rights Council, have consistently confirmed that international human rights law and international humanitarian law apply concurrently throughout the occupied Palestinian territory.

² <http://tb.ohchr.org/default.aspx?country=il>.

18. Israel is bound by international humanitarian law found in the treaties it has ratified, as well as in customary international law. Notably, in the occupied Palestinian territory Israel is bound by the provisions of international law specific to occupied territories. The rules of international humanitarian law regarding military occupation, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)³ and the Regulations annexed to the Hague Convention respecting the Laws and Customs of War on Land of 1907,⁴ must be applied by Israel, as the Occupying Power, in the West Bank, including East Jerusalem, and the Gaza Strip. Although Israel has argued against the formal application of the Geneva Convention, and agreed only to apply the “humanitarian” provisions as determined by itself, the situation remains one of belligerent military occupation, as recognized by the Security Council, the General Assembly and the Human Rights Council and most conclusively by the International Court of Justice in its 2004 advisory opinion on the wall. In addition to the applicability of the Fourth Geneva Convention, the Hague Regulations, which are accepted as customary international law, apply.⁵

19. The Government of Israel, as the Occupying Power, is duty-bound to respect and implement human rights and international humanitarian law obligations in the occupied Palestinian territory. Israel also has an obligation to ensure that private businesses operating in the occupied Palestinian territory are held accountable for any activities that have an adverse impact on the human rights of the Palestinian people.

B. Human rights and international humanitarian law obligations and principles relevant to private corporations in the occupied Palestinian territory

1. Guiding Principles on Business and Human Rights

20. On 16 June 2011 the Human Rights Council in its resolution 17/4 unanimously endorsed the Guiding Principles on Business and Human Rights⁶ for implementing the United Nations “Protect, Respect and Remedy” Framework, providing — for the first time — a global standard for upholding human rights in relation to business activity. The Guiding Principles were prepared by the former Special Representative of the Secretary-General on human rights and transnational corporations and other business enterprises, Professor John Ruggie. They provide authoritative normative guidance, clarifying the roles and responsibilities of business enterprises with regard to human rights, and the necessary legal and policy measures to be taken by States arising from their existing human rights obligations to ensure respect for human rights. It is the first normative document on business and human rights to be endorsed by an intergovernmental human rights body.

³ United Nations, *Treaty Series*, vol. 75· No. 973.

⁴ Regulations concerning the Laws and Customs of War on Land, adopted on 18 October 1907; entered into force on 26 January 1910. See Carnegie Endowment for International Peace, *The Hague Conventions and Declarations of 1899 and 1907* (New York, Oxford University Press, 1915).

⁵ See A/HRC/12/37.

⁶ A/HRC/17/31, annex.

21. The Guiding Principles highlight the steps States should take to foster respect for human rights by businesses. They provide a framework in which companies should demonstrate that they respect human rights and reduce the risk of abuses. They also constitute a set of benchmarks by which to assess business respect for human rights. The Guiding Principles are organized under the Framework's three pillars:

(a) The State duty to protect against human rights abuses by third parties, including business enterprises, through policies, regulation and adjudication;

(b) The corporate responsibility to respect human rights, which means that business enterprises should act with due diligence to avoid infringing on the rights of others and to address the adverse impacts with which they are involved;

(c) The need for greater access to remedy for victims of business-related abuse, both judicial and non-judicial.

22. The Guiding Principles provide concrete and practical recommendations to implement the Framework. The Guiding Principles do not create new international law obligations, but constitute a clarification and elaboration of the implications of existing standards, including under international human rights law, and practices, for both States and business enterprises, integrating them within a coherent framework.⁷ In addition to forming part of States' existing international human rights obligations, important elements of the Guiding Principles are also increasingly reflected in national laws, and in global, regional and industry-specific soft law standards and initiatives as well as contractual obligations.

23. Companies can have an impact on all human rights depending on the situation and context of their activities; therefore it is essential that they put in place an effective ongoing human rights due diligence process to assess risks and the potential and actual impact of their activities on human rights, integrate and act on the findings of such assessments, track the effectiveness of their response and communicate on both the assessments and the response. This is in addition to business enterprises expressing a clear public commitment to meeting their responsibility to respect human rights, and to providing for or cooperating with the remediation of any adverse effects that they have caused or contributed to.

24. Human rights may be at heightened risk and should therefore receive greater attention in particular industries and contexts, including humanitarian situations, but businesses should in all cases be encouraged to have a periodic review to assess all human rights affected by their activity. International human rights standards, including the International Bill of Human Rights⁸ and the eight core conventions of the International Labour Organization (ILO), as set out in the ILO Declaration on Fundamental Principles and Rights at Work all act as an authoritative list against which to assess the human rights impacts of business enterprises. Impact assessments should also consider, depending on circumstances, additional standards, for instance, relating to the rights of indigenous peoples; women; national or ethnic, religious and linguistic minorities; children; persons with disabilities; and migrant workers and their families, wherever appropriate. Business enterprises should respect the standards of international humanitarian law whenever they operate in a situation of armed conflict. States should exercise even greater oversight with regard to businesses enterprises that they own or control.

⁷ A/HRC/17/31, para. 14.

⁸ The Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

25. The Guiding Principles are leading to a convergence of global standards and initiatives on business and human rights, as evidenced in reports of the Working Group on the issue of human rights and transnational corporations and other business enterprises and the former Special Representative of the Secretary-General.⁹ Examples of regional initiatives include: (a) the International Organization for Standardization (ISO) has included a chapter on human rights in its guidance on corporate responsibility, which is aligned with the United Nations “Protect, Respect and Remedy” Framework on which the Guiding Principles are based; (b) the European Commission has issued a communication on corporate social responsibility expressing its expectation that all enterprises should meet human rights responsibility as defined in the Guiding Principles.¹⁰ It has also stated its intention to publish periodic progress reports on the implementation of the Guiding Principles within the European Union and invited European Union member States to develop national plans for the implementation of the Guiding Principles by the end of 2012;¹¹ (c) the Association of Southeast Asian Nations (ASEAN) has announced that the first thematic study by the new Intergovernmental Commission on Human Rights would focus on business and human rights in a manner that is fully compliant with the Guiding Principles;¹² and (d) the Guidelines for Multinational Enterprises of the Organization for Economic Development and Cooperation (OECD), as updated in 2011, are now fully aligned with the corporate responsibility to respect human rights as set out in the Guiding Principles.

2. The Global Compact

26. The Global Compact¹³ is the leading global voluntary initiative for corporate social responsibility that also addresses the issue of business and human rights. It was launched at the initiative of the Secretary-General in 2000, aimed at persuading business leaders to voluntarily promote and apply within their corporate domains 10 principles relating to human rights, labour standards, the environment and anti-corruption. Seven United Nations bodies work in a continuing partnership with the Secretary-General’s Global Compact Office, namely, the Office of the United Nations High Commissioner for Human Rights, the United Nations Office on Drugs and Crime, the United Nations Development Programme, the United Nations Environment Programme, UN-Women, the International Labour Organization and the United Nations Industrial Development Organization. The Global Compact has stated that the Guiding Principles on Business and Human Rights provide the content of the first principle of the Global Compact and thus form part of the

⁹ Uptake of the United Nations framework and the Guiding Principles has been documented by the Working Group in its first reports to the Human Rights Council (A/HRC/20/29) and the General Assembly (A/67/285), by the Secretary-General in his report to the Human Rights Council (A/HRC/21/21 and Corr.1) and by the former Special Representative of the Secretary-General; see www.business-humanrights.org/media/documents/applications-of-framework-jun-2011.pdf.

¹⁰ Available from http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/index_en.htm.

¹¹ http://ec.europa.eu/enterprise/newsroom/cf/_getdocument.cfm?doc_id=7010.

¹² Remarks by Rafendi Djamin, representative of Indonesia to the Intergovernmental Commission on Human Rights of the Association of Southeast Asian Nations, at the Asia Pacific Forum of National Human Rights Institutions Regional Conference on Business and Human Rights, Seoul, 11 to 13 October 2011.

¹³ See www.unglobalcompact.org/.

commitment undertaken by some 8,700 corporate participants in the Global Compact¹⁴ from over 130 countries.

27. Overall, the Global Compact pursues two complementary objectives:

(a) To mainstream the 10 principles in business activities around the world;

(b) To catalyse actions in support of broader United Nations goals, including the Millennium Development Goals. The 10 universally accepted principles address issues related to human rights, labour, the environment and anti-corruption. Two of the principles concerning the observance of human rights are particularly relevant:

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights; and

Principle 2: make sure that they are not complicit in human rights abuses.

28. The Global Compact incorporates a transparency and accountability policy known as the Communication on Progress. The annual posting of a communication on progress is an important disclosure of a participant's commitment to the Global Compact and its principles. Participating companies are required to follow this policy, as a commitment to transparency and disclosure is critical to the success of the initiative. Failure to follow this guideline can result in a downgrade of participant status and even to possible expulsion.

29. Following the endorsement of the Guiding Principles by the Human Rights Council the Global Compact has communicated to its members that the commitment participating companies undertake with regard to Principle 1 corresponds to the requirements contained under the corporate responsibility to respect in the Guiding Principles. The Global Compact is committed to ensuring that all tools and guidance materials for participating companies on human rights are aligned with the Guiding Principles.

3. Businesses operating in situations of armed conflict and occupation

30. In armed conflict, the standards of international humanitarian law apply to business enterprises as well as to others.¹⁵ International humanitarian law grants protection to business personnel — provided they do not take part directly in armed hostilities — as well as to the assets and capital investments of enterprises. It also imposes obligations on staff not to breach international humanitarian law and exposes them — and the enterprises themselves — to criminal or civil liability in the event that they do so. The International Committee of the Red Cross (ICRC) has developed guidance on the rights and obligations of business enterprises under international humanitarian law.¹⁶

¹⁴ Global Compact and Office of the United Nations High Commissioner for Human Rights, "The UN Guiding Principles on Business and Human Rights: Relationship to UN Global Compact Commitments", July 2011; available from www.unglobalcompact.org/docs/issues_doc/human_rights/Resources/GPs_GC%20note.pdf.

¹⁵ See www.ohchr.org/Documents/Issues/Business/RtRInterpretativeGuide.pdf, p. 12.

¹⁶ *Business and International Humanitarian Law: An Introduction to the Rights and Obligations of Business Enterprises under International Humanitarian Law* (International Committee of the Red Cross, 2006). See also Eric Mongelard, "Corporate civil liability for violations of international humanitarian law", *International Review of the Red Cross*, vol. 88. No. 863, September 2006.

31. Gross human rights abuses involving businesses often occur amid conflict over the control of territory, resources or a Government, where the mechanisms for human rights fulfilment and enforcement are not functioning as intended. Businesses that seek to avoid being complicit in human rights violations are increasingly seeking guidance from the States in which they operate.

32. The risks of operating a business in a conflict-affected area can be high and therefore States should warn organizations of the potential for violating human rights as a result of business activities. States should review whether their policies, legislation, regulations and enforcement measures effectively address these heightened risks, including encouraging businesses to use due diligence to assess their own situation. Appropriate steps should furthermore be taken to address gaps identified. This may include exploring civil, administrative or criminal liability for enterprises domiciled or operating in their territory and/or jurisdiction that commit or contribute to abuses or violations of international law.

33. The costs to companies and businesses of failing to respect international humanitarian law are considerable, including damage to a company's public image and impact on shareholder decisions and share price, and could result in employees being criminally responsible for rights abuses. According to ICRC, "International humanitarian law states that not only perpetrators, but also their superiors and accomplices may be held criminally responsible for the commission of war crimes. Of these forms of commission, complicity is likely to be the most relevant to business enterprises."¹⁷

34. Immunity from international crimes cannot be sought by employees of businesses simply because they are operating in the name of a business. Employees of companies can face investigation and prosecution for human rights violations committed irrespective of where the violation was committed and thus States have an obligation to take the appropriate action. ICRC warns that: "Business enterprises should therefore not discount the possibility of legal proceedings simply because the country where they are operating is unlikely to conduct criminal investigations or incapable of doing so. The risk of corporate and individual responsibility for crimes perpetrated in the context of an armed conflict is thus an element of growing importance in a business enterprise's assessment of the range of risks associated with its activities during an armed conflict."¹⁸

35. Civil liability is also increasingly being used as a means to bring human rights and international humanitarian law abuses committed by corporations to light, and as a way to provide an effective remedy for victims. At times, companies work with State actors, including military forces, to secure and/or extract natural resources, resulting in what has been termed "joint action".

36. *Doe v. Unocal Corporation* is one example where civil action was taken in relation to serious human rights abuses, such as torture, rape, forced labour and displacement.¹⁹ In the United States, the Court of Appeals for the Ninth Circuit²⁰ applied a complicity theory from criminal law, namely that of aiding and abetting,

¹⁷ www.icrc.org/eng/assets/files/other/icrc_002_0882.pdf, p. 26.

¹⁸ *Ibid.*

¹⁹ www.icrc.org/eng/assets/files/other/irrc_863_mongelard.pdf, p. 15.

²⁰ United States Court of Appeals for the Ninth Circuit, *Doe v. Unocal Corp.*, judgement of 18 September 2002.

and thus ruled that, when combined with the fact that Unocal Corporation had knowledge of the human rights violations before becoming party to the relevant venture, there was sufficient evidence to hold Unocal liable. The case of Bil'in Village Council²¹ against the Canadian company Green Park International is a civil liability case brought to the Canadian court system. The plaintiffs argued that Green Park International was involved in building and promoting a settlement built on the land of the people of Bil'in. The Canadian courts accepted the fact that corporations have obligations to avoid participating, even indirectly, in a breach by Israel of its obligations under the Fourth Geneva Convention, and that the obligations contained in the Convention do not bind only States parties. However, the superior court declined to consider the case further, on the basis that Israeli courts provided a more appropriate forum (*forum non conveniens* doctrine).²² In regard to this particular case, the Special Rapporteur would note the long track record of the Israeli court system deciding against Palestinian plaintiffs, which results in near total impunity for the actions of Israel and Israeli settlers in the West Bank, including East Jerusalem. In this context the Special Rapporteur would question the validity of this particular decision.

V. Case studies

37. The Special Rapporteur notes that the businesses highlighted in this report constitute a small portion of a wide range of companies that have linked their business operations to Israel's settlements in the occupied Palestinian territory. The Special Rapporteur received a large amount of information from stakeholders concerning business practices of companies in relation to Israel's settlements; further investigations will be made to determine whether those allegations are well founded and may lead to additional attention in future reports. The businesses include, inter alia, retailers and supermarket chains, fast food suppliers, wine producers and products that are often labelled "products of Israel", but are in reality produced or extracted from the occupied Palestinian territory. They include small, medium and large Israeli-owned companies and multinational corporations. The Special Rapporteur limits coverage to selected illustrative cases; it proved necessary to exclude a significant amount of reliable information at this stage, owing in particular to the word limit imposed by the United Nations on this report.

1. Caterpillar Incorporated

38. Caterpillar²³ is one of the leading global manufacturers of construction and mining equipment. It is the world's largest maker of construction and mining equipment, diesel and natural gas engines, and industrial gas turbines, and has stated that it "drives positive and sustainable change on every continent".²⁴ Caterpillar's worldwide employment was 132,825 at the end of the second quarter of 2012. On 25 July 2012 Caterpillar announced an all-time quarterly record profit per share of \$2.54. Sales and revenues were \$17.37 billion, also an all-time record. Profit was \$1.699 billion in the quarter.²⁵ The Chairman and Chief Executive Officer of

²¹ Bil'in Village Council is the municipal authority over the Palestinian village of Bil'in.

²² www.eilfe.com/online-courses/doc.../282-yassin-v-greenpark.html.

²³ www.caterpillar.com/home.

²⁴ www.caterpillar.com/cda/layout?x=7&m=390122.

²⁵ www.caterpillar.com/cda/files/3801914/7/Final%20%20Q2%202012%20Cat%20Inc%

Caterpillar, Doug Oberhelman, noted: “I am very pleased with Caterpillar’s record-breaking performance in the second quarter. Our employees, dealers and suppliers across the globe are doing a superb job of executing our strategy.”

39. Caterpillar has been publically criticized by various actors, including religious organizations, non-governmental organizations (NGOs) and United Nations mechanisms, for supplying to the Government of Israel equipment, such as bulldozers and construction apparatus, which is used in the demolition of Palestinian homes, schools, orchards, olive groves and crops. Amnesty International reported in 2004 on these violations²⁶ and noted that Caterpillar products are used in the construction of the wall, which was ruled contrary to international law by the International Court of Justice.²⁷ Human Rights Watch has reported periodically on Caterpillar products being used in human rights abuses, while the NGO War on Want produced a report that focused solely on Caterpillar’s dealings with the Government of Israel.²⁸ Morgan Stanley Capital International’s (MSCI) World Socially Responsible Index recently removed Caterpillar from its indexes,²⁹ stating, “Caterpillar was removed from several MSCI ESG Indices due to an Environmental, Social and Governance (ESG) rating downgrade. The company was removed from the MSCI World ESG Index, the MSCI USA ESG Index and the MSCI USA IMI ESG Index on March 1, 2012, following the February Index Review”.³⁰ MSCI noted: “Caterpillar is involved in a long running controversy regarding the use of its bulldozers by the Israeli Defense Forces in the occupied Palestinian territories” and “MSCI ESG Research has assessed this human rights controversy since 2004. This controversy has been incorporated in the rating since then and, as such, did not trigger the ratings downgrade in February 2012.” MSCI further stated that the controversy is accounted for in the community and society rating, which includes an assessment of company performance on human rights issues and accounts for 10 per cent of a company’s ESG rating.

40. On 28 May 2004 the then Special Rapporteur on the right to food wrote to Caterpillar, highlighting his observations from a recent mission he had undertaken to the occupied Palestinian territory.³¹ The Special Rapporteur on the right to food noted his concern in regard to the use of armoured bulldozers supplied by Caterpillar to destroy agricultural farms, greenhouses, ancient olive groves and agricultural fields planted with crops, as well as numerous Palestinian homes and sometimes human lives. The Special Rapporteur further noted that the increase in homelessness and loss of livelihood among the Palestinian people would limit their access to food, which was enshrined under article 11 of the International Covenant on Economic, Social and Cultural Rights. The widely publicized death of Rachel Corrie, a 23-year-old peace activist from the United States of America, on 16 March 2003, highlighted the use of Caterpillar products and brought world attention to the

20Release%20V2.pdf, p. 1.

²⁶ www.amnesty.org/en/library/asset/MDE15/033/2004/en/24cc1bb1-d5f6-11dd-bb24-1fb85fe8fa05/mde150332004en.html.

²⁷ www.icj-cij.org/docket/index.php?pr=71&code=mwp&p1=3&p2=4&p3=6&ca.

²⁸ www.waronwant.org/campaigns/justice-for-palestine/hidden/inform/17109-caterpillar-the-alternative-report.

²⁹ www.aljazeera.com/news/middleeast/2012/06/201262711732387905.html.

³⁰ www.msci.com/resources/pdfs/ESG_Indices_General_QA_July_2012.pdf.

³¹ <http://unispal.un.org/unispal.nsf/e4f689b77065914485256c530073aa6b/bcfff2cc84ae9bc85256e2b00685371?OpenDocument>.

demolition of Palestinian property. Ms. Corrie was protesting to prevent the demolition of a Palestinian home in Gaza and, despite being dressed in highly visible bright orange clothing, was killed when the Caterpillar bulldozer ran over her, fracturing her arms, legs and skull.³²

41. Despite numerous reports, statements and advocacy regarding Caterpillar, the company continues to ignore the human rights implications of its activities in the occupied Palestinian territory. In recent years the Mission Responsibility through Investment Committee of the Presbyterian Church attempted to engage with Caterpillar³³ and noted: “Company officials made it clear that the company took no responsibility for the use of its products even by its dealers (the only party considered to be a customer), had no procedure in place for monitoring or ensuring compliance with Caterpillar’s stated expectations even in a situation with a documented historic pattern of the equipment being used in human rights violations, and no desire to develop such a procedure. Further, they indicated that Caterpillar, although a global company doing business in virtually every country except where prohibited by U.S. law, had no capacity to evaluate whether particular actions are in accord with human rights conventions or international humanitarian law.”³⁴

42. Caterpillar has an extensive code of conduct.³⁵ The company states that: “The world is continually changing, and so is our business. But one thing that will never change is our commitment to maintaining the highest ethical standards. Our reputation is one of our greatest assets. Each of us has a responsibility to protect it — everyday.”³⁶ Caterpillar’s mission statement further claims that: “When faced with challenges, how we respond defines us. Our decisions, and ultimately our actions, tell the world who we are at Caterpillar.”

2. Veolia Environnement

43. Veolia Environnement is a French multinational company operating in the water, waste management, and energy and transport sectors. The company was founded as Compagnie Générale des Eaux on 14 December 1853.³⁷ In its 2011 Annual and Sustainability Report Veolia reported a 3.1 per cent growth in revenue, raising its revenue to €29.6 billion. The company employs 331,266 employees worldwide and operates in 77 countries.³⁸

44. Veolia has a 5 per cent share in the CityPass consortium, through its subsidiary Connex Israel, which was contracted by Israel to operate the light rail project in Jerusalem. The light rail is designed to connect the city of Jerusalem with Israel’s illegal settlements. Veolia owns approximately 80 per cent of Connex Jerusalem, the company which operates the trains.³⁹ Furthermore, through its subsidiary company the Israeli Veolia group,⁴⁰ Veolia owns and operates the Tovlan landfill in the

³² www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=12470&LangID=E.

³³ www.pcusa.org/media/uploads/mrti/pdfs/2012-mrti-report-9-9-11.pdf.

³⁴ www.pcusa.org/media/uploads/mrti/pdfs/2012-mrti-report-9-9-11.pdf, pp. 5-6.

³⁵ www.caterpillar.com/company/strategy/code-of-conduct

³⁶ www.uk.cat.com/cda/files/89709/7/English_OVIA_v05.pdf, p. 2.

³⁷ www.veolia.com/en/group/history/.

³⁸ www.veolia.com/veolia/ressources/documents/2/11886,RA_VEOLIA_2011_UK_72dpi.pdf, p. 5.

³⁹ Who Profits: Exposing the Israeli Occupation Industry (www.whoprofits.org/company/veolia-environnement).

⁴⁰ www.veolia-es.co.il/he/.

Jordan Valley of the occupied Palestinian territory. The Tovlan landfill is used to dump Israeli waste from both within Israel and Israeli settlements. Veolia furthermore operates buses linking Modi'in and Jerusalem via road 443 and thereby servicing the Israeli settlements of Giva'at Ze'ev and Mevo Horon.

45. In 2011 Veolia released its CSR (Corporate Social Responsibility) Performance Digest, a document in which the company makes clear that: "Whatever the geographical context, Veolia Environnement's activities must be carried out in compliance with both national standards and the recommendations of international organizations like the ILO and OECD, in particular as concerns respect for basic rights, accounting for cultural diversity and protecting the environment."⁴¹

46. Veolia is a member of the Global Compact and highlights the above-mentioned 10 principles in its CSR Performance Digest, including the two human rights related principles.

3. Group4Security

47. Group4Security (G4S) is a British multinational corporation that provides security services. G4S specializes in business processes and facilitation where security and safety risks are considered high. G4S boasts expertise in the assessment and management of security and safety risks for buildings, infrastructure, materials, valuables and people. G4S is the largest employer on the London Stock Exchange, with operations in more than 125 countries and over 657,000 employees. In 2011 the company reported turnover of £7.5 billion, of which 30 per cent came from developing markets.

48. G4S Israel (Hashmira) is the Israel subsidiary of G4S. The company provides resources and equipment for Israeli checkpoints. The company also provides security services to businesses in settlements, including security equipment and personnel to shops and supermarkets in the West Bank settlements of Modi'in Illit, Ma'ale Adumim and Har Adar and settlement neighbourhoods of East Jerusalem. In addition, after the company purchased Aminut Moked Artzi, an Israeli private security company, it took over its entire business operations, which include security services to businesses in the Barkan industrial zone located near the settlement of Ariel.⁴²

49. In 2002, Lars Nørby Johansen, the then Chief Executive Officer,⁴³ stated that the company would withdraw from the West Bank: "In some situations there are other criteria that we must consider. And to avoid any doubt that Group 4 Falck [G4S]⁴⁴ respects international conventions and human rights, we have decided to leave the West Bank." However, security activities have still continued through Hashmira's creation of another company, Shalhevet. "The partnership between Hashmira and Group 4 Falck will not accept new security contracts in the West Bank. As equal partners in Hashmira however, we must recognize that the Israeli

⁴¹ www.veolia.com/veolia/ressources/documents/2/11983,2011-CSR-Performance-Digest.pdf, p. 7.

⁴² www.whoprofits.org/company/g4s-israel-hashmira.

⁴³ 2005 Lars Nørby Johansen was succeeded as Chief Executive by Nick Buckles.

⁴⁴ In 2004 Securicor merged with Group 4 Falck's security businesses to form Group 4 Securicor and began trading on the London and Copenhagen Stock Exchanges.

shareholders strongly feel that they have a responsibility to the Israeli citizens, which the company has a contract to protect.”⁴⁵

50. In March 2011 G4S issued a public statement, regarding its operations in Israeli settlements.⁴⁶ The statement included the following: “we have also concluded that to ensure that our business practices remain in line with our own Business Ethics Policy, we will aim to exit a number of contracts which involve the servicing of security equipment at the barrier checkpoints, prisons and police stations in the West Bank.”⁴⁷ The company further concluded: “a number of our contracts with private enterprises in the area for traditional security and alarm monitoring services are not discriminatory or controversial and in fact help to provide safety and security for the general public no matter what their background”⁴⁸ and thus it would not end all operations in Israeli settlements.

51. G4S has joined the Global Compact Group and when doing so its Chief Executive Officer, Nick Buckles, stated: “The principles set out in the Compact are already pretty well embedded in our existing policies, so we thought the time was right to make a public commitment to this excellent initiative.” He further stated: “Doing so will give us extra impetus to ensure respect for human rights, the environment and ethical behaviour are part of everything we do worldwide.”⁴⁹

4. Dexia Group

52. The Dexia Group is a European banking group which, in 2011, carried out activities in the fields of retail and commercial banking, public and wholesale banking, asset management and investor services. Its parent company, Dexia SA, is a limited company under Belgian law with its shares listed on Euronext Brussels and Paris as well as the Luxembourg Stock Exchange.⁵⁰

53. Dexia Israel Bank Limited is a public company and is traded on the Tel Aviv Stock Exchange. The Dexia Group is the majority shareholder, with 65 per cent of its shares. Dexia Israel Bank Limited is based in Tel Aviv and has consistently provided loans to Israelis living in illegal settlements.⁵¹ Dexia Israel Bank Limited’s Chief Executive Officer, David Kapah, highlighted which settlements in the occupied Palestinian territory have received loans: Alfei Menasheh, Elkana, Beit-El, Beit Aryeh, Giva’at Ze’ev and Kedumim, located in the region of the Jordan Valley, the Hebron region and Samaria.⁵² The company has supplied mortgages to a number of settlements. Through its dealings with the Israeli National Lottery, Dexia Israel has provided funds for the construction and development of settlements.⁵³

54. The Dexia Group has been a member of the Global Compact Group since February 2003. According to the Global Compact Group website the Dexia Group was required to communicate, early in 2012, on progress made by the company in

⁴⁵ <http://politiken.dk/erhverv/ECE54474/falck-forlader-vestbredden/> (in Danish).

⁴⁶ <http://corporateoccupation.files.wordpress.com/2011/03/g4s-israel-statement-march-11-1-1.pdf>.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ www.g4s.com/en/Media%20Centre/News/2011/02/23/G4S%20joins%20the%20UN%20Global%20Compact%20for%20responsible%20business/.

⁵⁰ www.dexia.com/EN/the_group/profile/Pages/default.aspx.

⁵¹ www.knesset.gov.il/mmm/data/pdf/m01630.pdf (in Hebrew).

⁵² [/www.knesset.gov.il/protocols/data/rtf/ksafim/2007-06-19-02.rtf](http://www.knesset.gov.il/protocols/data/rtf/ksafim/2007-06-19-02.rtf) (in Hebrew).

⁵³ www.whoprofits.org/sites/default/files/WhoProfits-IsraeliBanks2010.pdf.

implementing the standards set by the Group; that communication on progress is now several months overdue.⁵⁴

5. Ahava

55. Ahava⁵⁵ is an Israeli cosmetics company that manufactures high-end skin care products from natural resources extracted from the Dead Sea. The company was created in 1988 and is said to have annual revenue of \$142 million. The company is 37 per cent owned by the settlement of Kibbutz Mitzpe Shalem, 37 per cent owned by Hamashbir Holdings,⁵⁶ 18.5 per cent by Shamrock Holdings⁵⁷ and 7.5 per cent by the settlement of Kibbutz Kalia. Ahava's manufacturing factory and visitor centre is located at Kibbutz Mitzpe Shalem, a settlement in the Jordan Valley. Ahava exports products to 32 countries and one special administrative region.⁵⁸

56. Criticism of Ahava has come from Governments and non-governmental and civil society organizations alleging that by having ownership of the company the settler communities are exploiting Palestinian natural resources and that the profits from these business activities fund and sustain the settlements. Ahava has also been accused of false advertising and misleading its customers, as it labels its products "products of Israel". They are in fact products of the occupied Palestinian territory. Several European countries have started to take action against Ahava. The Governments of the Netherlands⁵⁹ and the United Kingdom⁶⁰ have investigated Ahava's misleading labelling of its products. Human rights activists have taken legal action against the French company Sephora⁶¹ for distributing Ahava products.

57. The report of April 2012 by the Coalition of Women for Peace, entitled "Ahava, tracking the trade trail of settlement products",⁶² highlights the supply chain of Ahava's products and analyses how Palestinian natural resources are being exploited to the profit of Israeli settlers.

6. Volvo Group

58. The Volvo Group⁶³ is one of the world's leading manufacturers of trucks, buses, construction equipment, drive systems for marine and industrial applications and aerospace components. Volvo also provides financing and other services. Volvo has about 100,000 employees, production facilities in 20 countries and sales in more than 190 markets. In 2011, Volvo's sales increased by 17 per cent, to SKr 310,367 million, compared with SKr 264,749 million in 2010.

⁵⁴ www.unglobalcompact.org/participant/2887-Dexia-Group.

⁵⁵ www.ahava.co.il/ and <http://www.ahava.com/>.

⁵⁶ www.whoprofits.org/company/hamashbir-holdings.

⁵⁷ A multi-million dollar United States-based investment company; www.shamrock.com/.

⁵⁸ Albania, Australia, Austria, Azerbaijan, Belgium, Canada, Croatia, Cyprus, Czech Republic, Estonia, Finland, France, Germany, Georgia, Greece, Hungary, Italy, Japan, Kyrgyzstan, Lithuania, Mauritius, Netherlands, Norway, Philippines, Russian Federation, Singapore, Slovenia, South Africa, Switzerland, Ukraine, United Kingdom, United States and Hong Kong, China.

⁵⁹ www.ynetnews.com/articles/0,7340,L-3806790,00.html.

⁶⁰ www.westendextra.com/news/2010/aug/pro-palestinian-protesters-claim-covent-garden-storeahava-are-mislabelling-products.

⁶¹ www.sephora.com/.

⁶² www.whoprofits.org/sites/default/files/ahava_report_final.pdf.

⁶³ www.volvogroup.com/group/global/en-gb/Pages/group_home.aspx.

59. Volvo equipment and products are used in the demolition of Palestinian homes, the construction of the wall and the construction of Israeli settlements. Further, Volvo holds a 27 per cent share in the Israeli company Merkavim,⁶⁴ which is a business that manufactures buses that are used to transport Palestinian political prisoners from the occupied Palestinian territory to prisons in Israel. The other 73 per cent of Merkavim shares are owned by Mayer's Cars and Trucks, an Israeli company that exclusively represents Volvo in Israel.

60. In July 2007, the Volvo Vice President for Media Relations and Corporate News, Mårten Wikforss, responded⁶⁵ to criticism relating to the demolition of a Palestinian home in Beit Hanina, East Jerusalem.⁶⁶ Mr. Wikforss stated: "It is, of course, regrettable and sad if our products are used for destructive purposes. We do not condone such actions, but we do not have any control over the use of our products, other than to affirm in our business activities a Code of Conduct that decries unethical behaviour. However, just as a wheel loader can be used to clear the ground for a new house, it can be used to tear it down."⁶⁷ He further stated: "There is no way Volvo ultimately can control the use of its products ... The only restrictions that apply are when the buyer is a country affected by applicable trade sanctions decided on by international governmental organizations and implemented under mandatory law ... Like other multinational enterprises, we rely on governments and certain international governmental organizations to make such determinations."

61. Volvo produces responsibility reports that assess the economic, environmental and social responsibility of its business activities. Volvo also has a code of conduct that identifies three areas where Volvo is committed, including respect for human rights and social issues, environmental care and business ethics. Volvo has been a member of the Global Compact Group since 2001 and has noted: "Volvo pledges to realize and integrate 10 principles regarding human rights, work conditions and environment into its operations. Volvo will also be involved in disseminating the principles in a bid to encourage other companies to support the Global Compact."⁶⁸

7. Riwal Holding Group

62. The Riwal Holding Group, established in 1968 and headquartered in the Netherlands, is an international aerial work platform rental specialist. Riwal employs 800 people and has operations in 16 countries. It is one of Europe's leading companies specialized in the rental and sales of telescopic booms, scissor lifts, telehandlers, aerial work platforms and other access equipment. Riwal has operations and joint ventures in Europe, South America, the Middle East and central Asia.

63. In March 2010 the Palestinian human rights NGO Al-Haq⁶⁹ submitted a criminal complaint to the Netherlands authorities that alleges that Riwal was complicit in war crimes and crimes against humanity, because of the use of its

⁶⁴ www.whoprofits.org/company/merkavim-transportation-technologies.

⁶⁵ www.business-humanrights.org/Links/Repository/553890.

⁶⁶ <http://electronicintifada.net/content/volvo-symbol-safety-or-human-rights-abuses/7040>.

⁶⁷ www.reports-and-materials.org/Volvo-response-to-Israel-OT-article-6-Jul-2007.doc (full statement).

⁶⁸ www.volvogroup.com/group/global/en-gb/responsibility/Pages/responsibility.aspx.

⁶⁹ www.alhaq.org/.

construction equipment and operations in the building of the wall and Israeli settlements.⁷⁰ The NGO United Civilians for Peace⁷¹ also investigated the activities of Riwal and urged the company to stop its activities in the occupied Palestinian territory. In October 2010 Riwal's offices were raided by the Netherlands National Crime Squad following such criminal complaints.⁷² Riwal has been criticized by members of the Netherlands Parliament, most notably by the then Minister for Foreign Affairs, who noted the undesirability of a Netherlands company being involved in the construction of the wall.⁷³

8. Elbit Systems

64. Elbit Systems⁷⁴ is an Israeli defence electronics company. It works on aerospace, land and naval systems, command, control, communications, computers, intelligence surveillance and reconnaissance, unmanned aircraft systems, advanced electro-optics, electro-optic space systems, airborne warning systems, electronic signals intelligence, data links and military communications systems and radios. In 2010, the total number of employees worldwide was 12,317 and the annual revenue was \$2,670 million.⁷⁵

65. In addition to supplying drones and other arms to the Government of Israel,⁷⁶ Elbit has been criticized for its electronic surveillance developed for use on the wall⁷⁷ and its surveillance equipment used in Israeli settlements.⁷⁸ In 2009 the Norwegian Ministry of Defence⁷⁹ excluded the company from Norway's Pension Fund on the recommendation of the Norwegian Government's Council of Ethics.⁸⁰ That recommendation was based on the advisory opinion of the International Court of Justice regarding the wall. The Norwegian Minister of Finance, Kristin Halvorsen, stated: "We do not wish to fund companies that so directly contribute to violations of international humanitarian law." In 2010 the Deutsche Bank and the Swedish AP funds⁸¹ also sold all their shares in Elbit Systems⁸² following the example of the Norwegian Ministry of Defence.⁸³

66. Elbit's Social Responsibility Full Report states that Elbit Systems is "committed to being a good corporate citizen and an advocate for social and environmental responsibility".⁸⁴

⁷⁰ www.alhaq.org/images/stories/PDF/accoutability-files/Complaint%20-%20English.pdf.

⁷¹ www.unitedcivilians.nl/.

⁷² <http://electronicintifada.net/content/dutch-company-raided-over-involvement-occupation/9076>.

⁷³ www.haaretz.com/news/dutch-gov-t-warns-company-to-stop-work-on-w-bank-fence-1.225134.

⁷⁴ www.elbitsystems.com/elbitmain/default.asp.

⁷⁵ http://media.corporate-ir.net/media_files/IROL/61/61849/20_F.pdf, p. 11.

⁷⁶ www.grassrootsonline.org/; www.bdsmovement.net/; www.amnesty.org.uk/news_details.asp?NewsID=18004.

⁷⁷ www.bdsmovement.net/files/2011/08/STW-research-green-paper-consultation.pdf.

⁷⁸ www.globalexchange.org/economicactivism/elbit/why; <http://wedivest.org/learn-more/elbit/>; www.bdsmovement.net/files/2011/08/STW-research-green-paper-consultation.pdf; <http://stopthewall.org/divest-elbit>.

⁷⁹ www.regjeringen.no/en/dep/fin/press-center/Press-releases/2009/supplier-of-surveillance-equipment-for-t.html?id=575444.

⁸⁰ www.regjeringen.no/pages/2236685/Elbit_engelsk.pdf.

⁸¹ <http://stopthewall.org/divest-elbit>.

⁸² www.reuters.com/article/2010/05/30/us-deutsche-elbit-idUSTRE64T10W20100530.

⁸³ www.israelnationalnews.com/News/News.aspx/137762#.UCOBVlaTspo.

⁸⁴ www.elbitsystems.com/elbitmain/pages/FullReport.asp.

9. Hewlett Packard

67. Hewlett Packard (HP)⁸⁵ is the world's largest provider of information technology infrastructure, software and related services.⁸⁶ HP is a United States information technology corporation headquartered in California.⁸⁷ In 2011, the company's total net revenue was \$127,245 million and it employed approximately 349,600 persons worldwide.⁸⁸ HP has more than 1 billion customers in 170 different countries and in 2012 its Fortune 500 ranking was 10.⁸⁹

68. HP has contracts with the Israeli Ministry of Defence and the Ministry of the Interior to provide a system of surveillance and identification,⁹⁰ the "Basel biometric system", the Israeli identity card system (biometric identity cards, implemented by the biometric database law) in settlements and checkpoints,⁹¹ and to provide services and technologies to the Israeli army. The Basel system is an automated biometric access control system.⁹²

69. It has been alleged that the technological systems provided by HP have resulted in human rights violations, such as restricting freedom of movement of Palestinians. The products provided by HP to the Israeli Government and their use in violations have been well documented by NGOs such as Who Profits,⁹³ as has the humanitarian impact of the wall by the Office for the Coordination of Humanitarian Affairs.⁹⁴ HP has also been criticized for providing security and technological services to the settlements of Modi'in Illit and Ariel.

70. Nonetheless, in 2010, HP was named one of the world's most ethical companies in computer hardware by the Ethisphere Institute.⁹⁵ That same year, HP was number 2 on Newsweek's 2010 "green rankings" on both the United States 500 and the global 100 greenest companies lists.⁹⁶ Since 2002, HP is an active participant in the Global Compact.⁹⁷

71. HP states in its corporate responsibility policy "Global Citizenship"⁹⁸ that "everyone is entitled to certain fundamental rights, freedoms, and standards of treatment. Respecting these human rights is core to HP's shared values and is part of the way we do business."⁹⁹ Through the "Global Human Rights Policy"¹⁰⁰ the company is committed to integrating respect for human rights in its business as well as "complying with laws and regulations or international standards".

⁸⁵ www8.hp.com/us/en/home.html.

⁸⁶ Annual report 2011, p. 2: <http://h30261.www3.hp.com/phoenix.zhtml?c=71087&p=irol-reportsAnnual>.

⁸⁷ www8.hp.com/us/en/hp-information/about-hp/headquarters.html.

⁸⁸ Annual report 2011, p. 23.

⁸⁹ www8.hp.com/us/en/hp-information/facts.html.

⁹⁰ www.whoprofits.org/sites/default/files/hp_report-_final_for_web.pdf.

⁹¹ <http://abna.ir/data.asp?lang=3&Id=331748>.

⁹² www.whoprofits.org/company/hewlett-packard-hp.

⁹³ www.whoprofits.org/sites/default/files/hp_report-_final_for_web.pdf.

⁹⁴ www.ochaopt.org/documents/Pages1-23_Jerusalem_30July2007.pdf.

⁹⁵ <http://ethisphere.com/past-wme-honorees/wme2010/>.

⁹⁶ www.hp.com/hpinfo/newsroom/hp360_ww.pdf.

⁹⁷ www.unglobalcompact.org/participant/4833-Hewlett-Packard-Company.

⁹⁸ www.hp.com/hpinfo/globalcitizenship/.

⁹⁹ www.hp.com/hpinfo/globalcitizenship/society/ethics.html.

¹⁰⁰ www.hp.com/hpinfo/globalcitizenship/humanrights.html.

10. Mehadrin

72. Mehadrin is one of Israel's largest agricultural companies. It grows and exports citrus, fruits and vegetables worldwide. Mehadrin holds 10,341 acres of orchards and uses 29,452 hectares of orchards owned by external customers.¹⁰¹ Mehadrin owns 50 per cent of STM Agricultural Export Limited, which exports vegetables, and 50 per cent of Mirian Shoham, which exports mangoes. Agrexco, one of the main agricultural exporters to Europe, was also bought by Mehadrin. The Mehadrin group also holds subsidiaries in France, the Netherlands, Sweden and the United Kingdom.

73. The majority of Mehadrin's products originate from settlements in the occupied Palestinian territory but they are labelled as products from Israel. Furthermore, Mehadrin participates in implementing Israel's discriminatory water policies, supplying Israeli farmers with millions of cubic metres of water while Palestinians are denied sufficient water.¹⁰²

74. Mehadrin states that its concept of quality comprises "environmentally friendly practices, stringent quality assurance measures, social awareness and continuous improvement through research and innovation"¹⁰³ and that "transparency is a basic value in Mehadrin and our knowledge and data is openly shared with our clients".¹⁰⁴

11. Motorola Solutions Inc.

75. Motorola Solutions Inc. is a United States multinational information technology corporation. It has over 23,000 employees in 65 countries, sales in 100 countries and a total income of \$2.1 billion in the second quarter of 2012.¹⁰⁵

76. Motorola Solutions Israel was the first branch of Motorola outside the United States and had, in 2010, total revenue of \$505 million. The company specializes in "marketing and selling communication solutions and systems for military and security forces, emergency and public safety forces, government and public institutions, and commercial and private entities".¹⁰⁶

77. Motorola Israel provides surveillance systems to Israeli settlements and checkpoints on the wall. In 2005,¹⁰⁷ it was reported that Motorola Solutions Inc. provided radar detectors to Israeli settlements in Hebron, Karmeit Zzur and Bracha. The company has allegedly provided a radar detector system named "MotoEagle Surveillance" and a mobile communication system, the "Mountain Rose", to Israeli settlements. Beyond sustaining the settlements, these security systems further limit the Palestinians' freedom of movement within their territory.

78. Motorola Solutions Inc. has an extensive corporate responsibility policy¹⁰⁸ and has a section of its 2011 annual corporate responsibility report dedicated to human rights, noting: "Motorola Solutions' human rights policy is based on our

¹⁰¹ www.whoprofits.org/content/mehadrin-group-update.

¹⁰² www.blueplanetproject.net/documents/RTW/RTW-Palestine-1.pdf.

¹⁰³ www.mehadrin.co.il/docs/P124/.

¹⁰⁴ www.mehadrin.co.il/docs/P200/.

¹⁰⁵ <http://investing.businessweek.com/research/stocks/earnings/earnings.asp?ticker=99186>.

¹⁰⁶ http://duns100.dunb.co.il/ts.cgi?tsscript=comp_eng&duns=600020978.

¹⁰⁷ www.whoprofits.org/company/motorola-solutions-israel,

¹⁰⁸ <http://responsibility.motorolasolutions.com/>.

long-standing key beliefs of uncompromising integrity and constant respect for people, and is consistent with the core tenets of the International Labour Organization's fundamental conventions and the United Nations Universal Declaration of Human Rights".¹⁰⁹ The company furthermore highlights its willingness to work with the NGO community as a "key stakeholder" and has a policy for the implementation of due diligence.

12. Mul-T-Lock/Assa Abloy

79. Founded in 1973,¹¹⁰ Mul-T-Lock is an Israeli company. In 2000, Mul-T-Lock was bought by Assa Abloy, a Swedish company and member of the Global Compact. Mul-T-Lock describes itself as a "worldwide leader in developing, manufacturing, marketing and distributing High Security solutions for institutional, commercial, industrial, residential and automotive applications".

80. Mul-T-Lock manufactures locks and security products. It has a manufacturing plant located in the Barkan industrial zone, which is in the Israeli settlement of Ariel.¹¹¹

81. In a joint report the Church of Sweden and the NGOs Diakonia and SwedWatch highlighted some of Assa Abloy activities and alleged that the company was complicit in impeding the peace process, since it has invested heavily in its manufacturing plant, which is built on confiscated Palestinian land.

82. Assa Abloy reviewed its code of conduct policy in January 2007 to cover issues such as freedom of association, discrimination, environmental practices and health and safety aspects. It is based on the Universal Declaration of Human Rights and relevant United Nations conventions, the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the OECD Guidelines for Multinational Enterprises, the Global Compact and ISO 14001. Assa Abloy has had a code of conduct policy in place since 2004 and became a member of the Global Compact in May 2008.

83. Assa Abloy notes that circumstances may arise that require human rights perspectives other than those mentioned in the code: "Even if such circumstances are not common, Assa Abloy is aware of the potential impact on human rights and acts according to relevant international or local law. If no official guidelines are available, Assa Abloy will seek other sources so as to choose the best approach under the specific circumstances."¹¹²

13. Cemex

84. Cemex¹¹³ is a Mexican company and world leader in the building materials industry. It produces, distributes and sells cement, ready-mix concrete, aggregates

¹⁰⁹ Ibid., p. 11.

¹¹⁰ www.mul-t-lock.com/87.html.

¹¹¹ www.diakonia.se/documents/public/IN_FOCUS/Israel_Palestine/Report_Illegal_Ground/Report_Mul-T-lock_081021.pdf.

¹¹² Assa Abloy Code of Conduct, section 3.9; www.diakonia.se/documents/public/IN_FOCUS/Israel_Palestine/Report_Illegal_Ground/Report_Mul-T-lock_081021.pdf.

¹¹³ Ibid.

and related building materials. The total amount of annual sales is US\$15.1 billion. The company employs 44,104 worldwide.¹¹⁴

85. Cemex owns Readymix Industries, an Israeli company that owns plants in the West Bank (Mevo Horon and the Atarot and Mishor Edomim industrial zones)¹¹⁵ and has provided elements for the construction of settlements.¹¹⁶ This company also provides concrete for the construction of Israel's wall and military checkpoints in the West Bank.

86. Through ReadyMix Industries, Cemex also owns 50 per cent of Yatir quarry, an Israeli settlement where Palestinian natural resources are mined to be exploited by the Israeli construction industry. In 2009, the NGO Yesh-din filed a petition with the Israeli High Court describing these activities as "colonial exploitation of land" and "pillage" and asking Israel's High Court of Justice to intervene. The High Court decided in December 2011 not to halt these activities, since they employ Palestinians. However, the court recommended that Israel not open any new quarries in the West Bank.¹¹⁷

87. Cemex states in its code of ethics¹¹⁸ that it "must endeavour to enhance our reputation as a responsible and sustainable company, which helps to attract and retain employees, customers, suppliers and investors, as well as maintain good relationships in the communities we operate".

VI. Conclusion

88. The failure to bring the occupation to an end after 45 years creates an augmented international responsibility to uphold the human rights of the Palestinian people, who in practice live without the protection of the rule of law. In this context, the Special Rapporteur recalls that the General Assembly, as early as 1982,¹¹⁹ called on Member States to apply economic sanctions against the State of Israel for its unlawful settlement activities.

89. The Guiding Principles on Business and Human Rights require all business enterprises to respect human rights, which means, in the first instance, avoiding infringing on the human rights of others and addressing adverse impacts on human rights. The Special Rapporteur calls on both States and business enterprises to ensure the full and effective implementation of the Guiding Principles in the context of business operations relating to Israeli settlements in the occupied Palestinian territory.

90. The Special Rapporteur reiterates that the businesses highlighted in this report constitute a small portion of the many companies that engage in profit-making operations in relation to Israeli settlements in the occupied Palestinian territory. The Special Rapporteur is committed to seeking clarification from and otherwise following up with the corporations highlighted in this report. At the same time, the

¹¹⁴ www.cemex.com/AboutUs/CompanyProfile.aspx.

¹¹⁵ www.whoprofits.org/sites/default/files/cemex_corporate_watch_may_2011.pdf.

¹¹⁶ www.whoprofits.org/company/cemex.

¹¹⁷ www.whoprofits.org/content/israeli-high-court-justice-legalizes-exploitation-natural-resources-opt.

¹¹⁸ www.cemex.com/AboutUs/files/HighlightsCoE.pdf.

¹¹⁹ Resolution ES-9/1 (5 February 1982); see also resolution 38/180 A (19 December 1983).

Special Rapporteur may continue to gather information and report on the involvement of corporations in Israel's settlement activities.

91. The Special Rapporteur further concludes that all companies that operate in or otherwise have dealings with Israeli settlements should be boycotted, until such time as they bring their operations fully into line with international human rights standards and practice. In this regard, civil society efforts to pursue the implementation of the Guiding Principles establish a distinctive space between voluntary and obligatory action in the struggle to protect persons vulnerable to human rights abuse.

VII. Recommendations

92. **The Special Rapporteur calls on the Government of Israel to desist from settling its population in the occupied Palestinian territory and begin the process of dismantling its settlements and returning its citizens to its own territory, namely on the Israeli side of the Green Line, in accordance with international law, numerous Security Council and General Assembly resolutions and the advisory opinion of the International Court of Justice on the wall.**

93. **The Special Rapporteur calls on the Government of Israel to publicly inform all businesses with operations in or related to its settlements of the international legal ramifications of such operations, including in relation to civil liability in third countries.**

94. **The Special Rapporteur calls on the Government of Israel to immediately move forward with reparations to the Palestinian people — whether through land and monetary compensation or otherwise — in full and transparent consultation with affected Palestinians, for all activities related to its settlement enterprise since 1967, also ensuring that land used by businesses is restored to its condition status quo ante unless improved.**

95. **The Special Rapporteur calls on the businesses highlighted in this report, as a matter of urgency, to take transparent action to comply with the Guiding Principles on Business and Human Rights, the Global Compact and relevant international laws and standards, with respect to their activities connected with the Government of Israel and its settlements and wall in the occupied Palestinian territory, including East Jerusalem. This should include, as a first step, immediately suspending all operations, including the supply of products and services, which aid in the establishment or maintenance of Israeli settlements.**

96. **The Special Rapporteur calls on the businesses highlighted in this report, with respect to companies that are already signed up to the Global Compact, to be fully aware of the relevant integrity measures, particularly in the case of allegations of systematic or egregious abuses.¹²⁰ Company plans to exit the occupied Palestinian territory should identify and address any adverse human rights consequences arising from their exit and from past business activities.**

¹²⁰ www.unglobalcompact.org/AboutTheGC/IntegrityMeasures/index.html.

97. The Special Rapporteur calls on the businesses highlighted in this report, with respect to any company maintaining its operations in the occupied Palestinian territory, to conduct heightened due diligence in accordance with the Guiding Principles and international humanitarian law. Such companies should be able to demonstrate their own efforts to mitigate any adverse impact and be prepared to accept any consequences — reputation, financial or legal — of continuing their operations.

98. The Special Rapporteur calls on civil society to actively pursue legal and political redress against non-complying businesses, where necessary in their own national legal and political frameworks, especially where allegations of war crimes and crimes against humanity can be substantiated in relation to settlement activities.

99. The Special Rapporteur calls on civil society to vigorously pursue initiatives to boycott, divest and sanction the businesses highlighted in this report, within their own national contexts, until such time as they bring their policies and practices into line with international laws and standards, as well as the Global Compact.

100. The Special Rapporteur calls on civil society to share resources and information, including through establishing transnational collaborative networks and other initiatives, as a way of promoting transparency and accountability in relation to businesses involved in the Israeli settlement agenda.

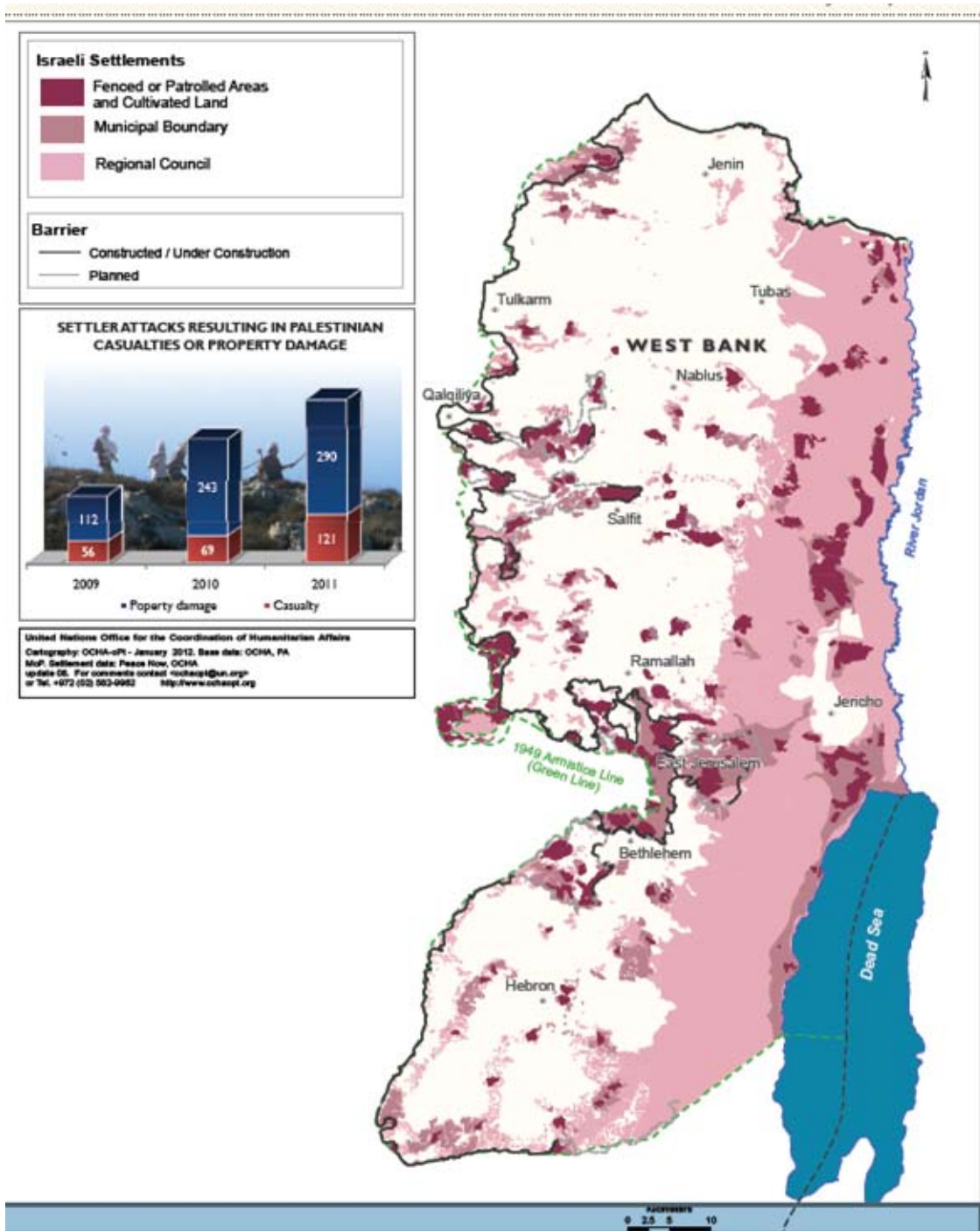
101. The Special Rapporteur calls on the international community to transparently investigate the business activities of companies registered in their own respective countries, especially those highlighted in this report, that profit from Israel's settlements, and take appropriate action to end such practices and ensure appropriate reparation for affected Palestinians.

102. The Special Rapporteur calls on the international community to consider requesting an advisory opinion from the International Court of Justice regarding the responsibility of businesses in relation to economic activities of settlements that are established in violation of article 49 of the Fourth Geneva Convention.

103. The Special Rapporteur calls on the international community to urge the General Assembly to prepare a document linking compliance with Global Compact guidelines with international human rights law in situations of belligerent occupation, with attention to moral, political and legal obligations associated with business operations in the occupied Palestinian territory.

Annex I

Land allocated to Israeli settlements, January 2012



Source: Office for the Coordination of Humanitarian Affairs.

Annex II

The humanitarian impact of Israeli settlement policies, January 2012

FAST FACTS

- Since 1967, Israel has established about 150 settlements (residential and others) in the West Bank, including East Jerusalem, in addition to some 100 "outposts" erected by settlers without official authorization.
- The settler population is estimated at approximately 500,000; its rate of growth during the past decade stood at a yearly average of 5.3% (excluding East Jerusalem), compared to 1.8% by the Israeli population as-a-whole (ICBS).
- While fenced or patrolled areas of settlements cover three percent of the West Bank, 43% of the West Bank is off-limits for Palestinian use because of its allocation to the settlement's local and regional councils.
- Virtually all of the land viewed by Israel as public or "state land" (27% of the West Bank) has been allocated to settlements, rather than for the benefit of the local population (B'Tselem).
- About one third of the land within the settlements' outer limits is privately owned by Palestinians, according to official Israeli land records (Peace Now).
- Over 60 percent of the Palestinian-owned structures demolished in 2011, due to the lack of permit, were located in areas allocated to settlements.
- In 2011, five Palestinians (inc. two children) were killed and over 1,000 injured (of whom nearly a fifth were children) by Israeli settlers or security forces in incidents directly or indirectly related to settlements, including demonstrations.
- Over 90% of Israeli police investigations into incidents of settler violence during the past six years (2005-2010) were closed without indictment (Yesh Din).
- More than 500 internal checkpoints, roadblocks and other physical obstacles impede Palestinian movement inside the West Bank, including access of children to schools; they exist primarily to protect settlers and facilitate their movement, including to and from Israel.
- The location of settlements was the major consideration behind the deviation of the Barrier's route away from the Green Line; once complete, about 80% of the settler population will live in settlements located on the western ("Israeli") side of the Barrier.

Source: Office for the Coordination of Humanitarian Affairs.



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**Promotion and protection of human rights: human rights
situations and reports of special rapporteurs
and representatives**

Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Richard Falk, submitted in accordance with Human Rights Council resolution 5/1.

* A/68/150.



Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The present report develops arguments presented in the previous report of the Special Rapporteur to the sixty-seventh session of the General Assembly, which focused on businesses profiting from Israeli settlements and described the involvement of 13 businesses in the activities of Israel in the Occupied Palestinian Territory with reference to the United Nations Guiding Principles on Business and Human Rights. The present report delineates a model for legal analysis by focusing on two illustrative companies chosen for the specific ways in which their activities potentially implicate them in international crimes. The report also takes note of other issues, including the urgent matter of water and sanitation rights.

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I. Introduction

1. As in all earlier reports during his period as Special Rapporteur, the Special Rapporteur has been denied the benefits of cooperation with the Government of Israel, including permission to enter the territory of the State of Palestine. The Special Rapporteur did benefit from a mission to Gaza in December 2012, facilitated by the then-Government of Egypt via entry at the Rafah crossing. The visit was extremely valuable in providing direct access to those living under occupation. There is no substitute for this kind of direct experience on the ground in assessing allegations of violations of human rights by Israel as the Occupying Power. As the present report to the General Assembly is the final one of his tenure, the Special Rapporteur would like to stress the importance of not allowing this pattern of non-cooperation to become a precedent that will hamper the efforts of future Special Rapporteurs to be as effective as possible in investigating contentions relating to the human rights situation that prevails. It has been disappointing that more has not been done by the United Nations to induce compliance by Member States with their obligation under international law to cooperate with the Organization.

2. This mandate was established in 1993 when it was still appropriate to refer to the West Bank, East Jerusalem, and Gaza as “occupied territories”. To continue such usage at this time seems misleading. On 29 November 2012 the Palestinian presence within the United Nations system was upgraded by General Assembly resolution [67/19](#), conferring the status of non-member observer State. It thus seems more appropriate to refer to the territories administered by Israel as “Palestine” — but at the same time confirm the continuing responsibilities of Israel under international humanitarian law, in particular the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), as the Occupying Power. Beyond the matter of status are issues of substance. The cumulative process of unlawful settlement building and expansion has reached a point where a partially irreversible process of creeping annexation has taken place, which needs to be recognized as such, that undermines the core assumption of “belligerent occupation” as a temporary reality. This alteration of the occupied territories over time has been perversely acknowledged, even provisionally validated, by the widely held assumption that Israeli “settlement blocs” will not be dismantled even in the event that a peace agreement is reached between the Palestinian Authority and Israel.

3. It is more crucial than ever to insist upon the responsibilities of Israel as the Occupying Power under international law. The Geneva Conventions and Additional Protocols I and II, as well as a large number of obligatory international human rights agreements, are indispensable in identifying and evaluating various allegations of practices relating to the administration by Israel of daily life in the West Bank, East Jerusalem and Gaza. This legal framework is important in evaluating such policies and practices as are associated with the construction of the wall on Palestinian land, the wrongful appropriation of Palestinian water resources, the confiscation of land, arrest and detention procedures, the violations of children’s rights, settler violence with the complicity of Israeli security forces, house demolitions and collective punishment via blockades, curfews and restricted movements. While all those policies and practices deserve international attention, the Special Rapporteur focuses some attention in the present report on the wrongful appropriation of water resources, which has been a somewhat neglected aspect of the Israeli occupation.

4. The resumption of direct negotiations designed to resolve the conflict between Israel and Palestine calls particular attention at this time to an emphasis on protecting the rights of the Palestinian people during the course of a diplomatic process that, in the past 20 years, has excluded the relevance of international law. This is true, in particular, of the inalienable Palestinian right of self-determination that is not even mentioned in the Declaration of Principles on Interim Self-Government Arrangements of 1993. This mandate will have failed if the solution reached through diplomatic channels does not uphold the collective right of self-determination and the individual rights of those who have lived without rights under Israel military administration since 1967. There are also additional concerns associated with the population of Gaza, whose de facto governing authority since 2007 is not participating in the revived negotiations, raising questions as to whether the rights and interests of Palestinians in Gaza are being adequately represented.

5. The situation of the Gaza Strip is particularly troublesome, as its 1.7 million people have been compelled to live under a blockade since 2007. Gaza seems to be threatened with even greater hardships for its population as a result of recent developments in Egypt. While Israel is the Occupying Power and thus maintains legal obligations to Palestinians in Gaza, the population — for the time being — needs consistent access to and from Egypt by way of the Rafah crossing and also, in order to ensure its survival, needs access to the tunnel network that has been supplying Gaza with basic necessities. It should be recalled that a United Nations report issued a year ago, before the recent complicating developments, concluded that the habitability of the Gaza Strip was in doubt after 2020.¹ During the mission of the Special Rapporteur, several experts on the threatened infrastructure of Gaza observed that even such a dire prediction was too optimistic, and that 2016 was a more realistic date. What is at stake in such a situation of extreme deprivation is a comprehensive assault on the social and economic rights of the people of Gaza, as embedded in the International Covenant on Economic, Social and Cultural Rights, to which Israel is a party. The maintenance of the blockade is a continuing violation of article 33 of the Fourth Geneva Convention, which unconditionally prohibits collective punishment.

6. The emphasis in the present report, as well as in the report submitted to the sixty-seventh session of the General Assembly, in 2012 (A/67/379), on issues of corporate responsibility and potential accountability in relation to Israeli settlements follows the recommendation of the fact-finding inquiry into settlements under the auspices of the Human Rights Council.² It is also a reaction to the refusal of Israel to respect the obligation set forth in article 49 (6) of the Fourth Geneva Convention, which prohibits an Occupying Power from transferring citizens from its own territory to the occupied territory. This provision has been widely interpreted as extending explicitly to Israeli settlements that have been continuously established and expanded since 1967 in defiance of this consensus as to the bearing of international law. When compliance with international law cannot be achieved by either self-regulation or persuasion, then it is appropriate to rely on non-violent, coercive means to achieve compliance and thereby contribute to the protection of the rights of those being victimized, that is, Palestinians.

¹ United Nations country team, “Gaza in 2020: a liveable place?” (Jerusalem, Office of the United Nations Special Coordinator for the Middle East Peace Process, August 2012).

² See A/HRC/22/63.

7. Ever since the adoption of Security Council resolutions 242 (1967) and 338 (1973), there has been a widely shared agreement in the international community that the Israel/Palestine conflict can only be solved by the creation of a viable and independent Palestinian State that corresponds to the 1967 de facto borders, altered to a small degree by mutual agreement. There is no doubt that the territorial scope of self-determination for the Palestinian people according to this “two-State” scenario has been continually diminished owing to unlawful settlement activity. It has long been the responsibility of the international community, and especially the United Nations, to take steps to safeguard Palestinian territorial rights. The extent of the Israeli settlement archipelago is putting the very idea of creating a Palestinian sovereign State that is independent and viable in increasing jeopardy.

8. There are many forms of abuse that deserve urgent attention and censure. The Special Rapporteur would like to highlight three for priority attention: abuses by security personnel in the form of arrest and detention procedures involving excessive force and humiliation, including of children; settler violence directed at Palestinians, and extending to their property and communities; and complicity by Israel Defense Forces in relation to settler violence, taking the form of protecting settlers engaged in violent activities rather than apprehending them, while taking punitive measures against Palestinians being victimized by such activities and failing thereby to discharge their primary responsibility under the Fourth Geneva Convention. The Special Rapporteur, in collaboration with five other Special Rapporteurs, issued a press release in connection with the mistreatment and harassment of Issa Amro, a human rights defender in Hebron who participated in the Human Rights Council interactive session devoted to occupied Palestine in June 2013 and was then detained and beaten upon his return, apparently in retaliation.³

II. Methodology

9. It is almost universally accepted that the establishment and expansion of settlements in the West Bank and East Jerusalem violate international humanitarian law and international human rights law. In addition, the ongoing expansion of settlements has proven to be a key obstacle to peace talks and a negotiated settlement between the Israelis and the Palestinians.

10. To date, Israel has refused to comply with international law in relation to its settlement project, and United Nations efforts to induce compliance by censuring such activities have had no discernible effect. In the meantime, the settlements by their nature and expansion act as a quasi-permanent encroachment on fundamental Palestinian rights. It is against this background that the international legal responsibilities and potential implications for non-Israeli companies that profit from the settlement enterprise is approached.

11. The report of the Special Rapporteur to the sixty-seventh session of the General Assembly raised human rights issues arising from undertakings profiting from doing business with the settlements. It took note of the relevance of the United

³ “Israel must stop harassment, intimidation and abusive treatment of rights defender Issa Amro”, 13 August 2013. Available from ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=13626&LangID=E.

Nations Guiding Principles on Business and Human Rights⁴ and, for the sake of concreteness and illustration, described the involvement of 13 businesses in the activities of Israel in Palestine. The present report develops arguments presented in the previous report and sets forth a possible model for legal analysis by focusing on selected companies chosen for the specific ways in which their activities potentially implicate them in international law violations that appear to be in some instances international crimes. The report is presented with the hope that its legal analysis will encourage companies that currently profit from the settlements to change their policies. The Special Rapporteur has consistently conveyed readiness to work with officials of companies to ensure their compliance with principles of corporate responsibility. The primary wish of the Special Rapporteur is to induce voluntary action, and it is only in the event of the failure of this approach that recourse to more coercive initiatives such as boycotts, divestments and sanctions is recommended.

12. The present report is based on information requested and received from civil society actors, United Nations agencies, companies and corporations, non-State entities and other stakeholders. The Special Rapporteur offers a series of recommendations to encourage businesses profiting from the settlements of Israel to take prompt action to bring their activities into line with relevant international law and related rules and standards. The Special Rapporteur notes that, since finalizing the present report, he has brought its content to the attention of the businesses mentioned. The Special Rapporteur will request clarification and further information regarding the relevant contentions in the present report with the goal of achieving prompt and effective responses to his recommendations.

III. Normative frameworks

13. The present report seeks to bring the issue of corporate responsibility to the attention of that portion of the business community that has or might in the future have commercial relationships with the settlements. It has been firmly established that international law recognizes the legal personality of corporations.⁵ The analysis of corporate accountability will focus on relevant normative frameworks, including international humanitarian law, international human rights law and international criminal law. The establishment of settlements violates the duties of an Occupying Power according to international humanitarian law and infringes on the basic human rights of Palestinians. International criminal law creates individual criminal responsibility for the principal perpetrator as well as those who are accomplices in the commission of international crimes. The Special Rapporteur hopes that consideration of international criminal law can advance the debate on businesses and human rights, in particular because of the tangible judicial mechanisms that exist, for example the International Criminal Court and universal jurisdiction exercised by domestic courts, and in this way help guide business leaders in their decision-making. By explicating a model of legal analysis, the Special Rapporteur hopes that it will be used by and useful to other companies faced with these issues.

⁴ A/HRC/17/31, annex.

⁵ See, for example, *Barcelona Traction, Light and Power Company, Limited (Belgium v. Spain)*, Judgement of 5 February 1970, *I.C.J. Reports, 1970*, p. 246, and *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Preliminary Objections, *I.C.J. Reports, 2007*, para. 40.

A. International humanitarian law

14. International humanitarian law applies to situations of armed conflict and occupation, as set out in common article 2 of the Geneva Conventions of 12 August 1949. The rules that govern belligerent occupation, in particular the Regulations concerning the Laws and Customs of War on Land of 1907 (Hague Regulations) and the Fourth Geneva Convention, are universally accepted as reflecting customary international law and therefore apply to Israel as an Occupying Power. This has been recognized and confirmed by the Security Council, the General Assembly and the Human Rights Council, as well as by the International Court of Justice in its advisory opinion of 2004 on the wall.⁶

15. The Fourth Geneva Convention prohibits an Occupying Power from transferring citizens from its own territory to the occupied territory. The prohibition has been widely accepted to include the voluntary settlement of citizens of the Occupying Power in occupied territory.⁷ The Hague Regulations prohibit an Occupying Power from undertaking permanent changes in the occupied area unless necessitated by military needs, or unless undertaken for the benefit of the local population. The prolonged nature of the 46-year occupation by Israel appears to be inconsistent with the accepted legal understanding that an occupation is temporary in nature. The Special Rapporteur has previously emphasized the limits of international humanitarian law in a context of prolonged occupation, especially for failing to capture the extent to which the permanent interests and well-being of the civilian population are infringed.⁸ The International Committee of the Red Cross (ICRC) Expert Meeting on occupation and other forms of administration of foreign territory discussed the absence in both the Hague Regulations and the Fourth Geneva Convention of limits on the duration of effective control over foreign territory and noted that many have argued that “prolonged occupation necessitates specific regulations for guiding responses to practical problems arising from long-term occupation”.⁹ The Special Rapporteur is of the view that such regulations are required, including steps to establish regimes of law and rights when an occupation lasts for more than five years.

16. Notwithstanding shortcomings in existing law to address prolonged occupation, the temporal focus and underlying conservationist aim of the law on occupation clearly establishes that the applicable legal framework renders the establishment and expansion of Israeli settlements as unconditionally illegal. The permanent changes deliberately made in the West Bank and East Jerusalem contradict the basic aim of international humanitarian law to preserve the rights of an occupied people.

⁶ See Commission on Human Rights resolutions 6 (XXIV), 6 (XXV) and 2001/7; Human Rights Council resolutions 7/18, 10/18 and 19/17; Security Council resolutions 271 (1969), 446 (1979), 641 (1989), 681 (1990) and 799 (1992); and General Assembly resolutions 2546 (XXIV), ES-10/2, 36/147 C, 54/78, 58/97, ES-10/18 and 66/225; advisory opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 9 July 2004 (see A/ES-10/273 and Corr.1), paras. 109-113.

⁷ See Security Council resolution 446 (1979) and the advisory opinion of the International Court of Justice of 9 July 2004, para. 120.

⁸ See A/HRC/23/21.

⁹ See ICRC, “Occupation and other forms of administration of foreign territory: expert meeting” (Geneva, 2012). Available from icrc.org/eng/assets/files/publications/icrc-002-4094.pdf.

17. The obligations that derive from international humanitarian law bind not only States, but also non-State entities, as set out in the Geneva Conventions of 12 August 1949 and in Protocol II (relating to the protection of victims of non-international conflicts) and reaffirmed at the international military tribunals held at Nuremberg, Germany, and at Tokyo. Therefore, business corporations directly or indirectly involved in armed conflicts can be held responsible for violating international humanitarian law. According to the ICRC:

International humanitarian law does not just bind States, organized armed groups and soldiers — it binds all actors whose activities are closely linked to an armed conflict. Consequently, although States and organized armed groups bear the greatest responsibility for implementing international humanitarian law, a business enterprise carrying out activities that are closely linked to an armed conflict must also respect applicable rules of international humanitarian law.¹⁰

Accountability for international humanitarian law violations is illuminated by reference to international criminal law, a body of law that includes serious violations of international humanitarian law.

B. International human rights law

18. International human rights law imposes obligations on States to protect the rights of individuals and groups. The extraterritorial application of human rights has been endorsed by various forums.¹¹ The establishment of Israeli settlements in occupied Palestine results in manifold violations of international human rights law. Among other violations, the settlements infringe upon the right of property, the right to equality, the right to a suitable standard of living and the right to freedom of movement.¹² The settlements directly impede the responsibility of Israel to protect the human rights of the civilian Palestinian population.

19. The obligations imposed on States include a duty to protect against human rights abuses by third parties. States must take appropriate steps to prevent, investigate, punish and redress abuse by private actors. Moreover, standards have developed that extend the applicability of human rights law to non-State entities, including corporations.¹³ Consequently, the obligation of States and companies, and those who act on behalf of such entities, to respect international criminal law norms constitutes a core corporate social responsibility within the evolving legal framework for respecting human rights.

¹⁰ ICRC, “Business and international humanitarian law” (2006). Available from icrc.org/eng/assets/files/other/icrc_002_0882.pdf.

¹¹ See, for example, the advisory opinion of the International Court of Justice of 9 July 2004, paras. 109-113; The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, general comment No. 31 (CCPR/C/21/Rev.1/Add.13), paras. 15, 18; and the Public Commission to Examine the Maritime Incident of 31 May 2010 (the Turkel Commission), “Israel’s mechanisms for examining and investigating complaints and claims of violations of the laws of armed conflict according to international law” (February 2013), p. 64. Available from turkel-committee.gov.il/files/newDoc3/The%20Turkel%20Report%20for%20website.pdf.

¹² See General Assembly resolution 2200 A (XXI), annex.

¹³ See, for example, the International Covenant on Civil and Political Rights; the International Covenant on Social, Economic and Cultural Rights; and General Assembly resolution 60/147.

20. Self-regulating mechanisms have been incorporated by many businesses to ensure compliance with ethical standards and international law.¹⁴ The United Nations is acting to bring human rights directly to bear on corporations through initiatives such as the Global Compact, which was launched by the Secretary-General in 2000. The Global Compact Initiative encourages businesses globally to promote voluntarily and show respect for 10 principles relating to human rights, labour standards, the environment and anti-corruption measures. Furthermore, in 2011 the Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights, which provide guidance on the responsibilities of business enterprises, as well as the necessary measures to be taken by States arising from their existing human rights obligations.

21. The Guiding Principles on Business and Human Rights are pertinent as a framework for analysis because they “outline steps for States to foster business respect for human rights; provide a blueprint for companies to manage the risk of having an adverse impact on human rights; and offer a set of benchmarks for stakeholders to assess business respect for human rights”.¹⁵ A key concept in the Guiding Principles is due diligence, which outlines an ongoing process that a reasonable business needs to undertake to meet its responsibility to respect human rights. The Guiding Principles also outline the related obligations of States, which include respecting human rights (refrain from interfering with or curtailing the enjoyment of human rights), protecting human rights (protect individuals or groups against human rights abuses, including by business enterprises) and fulfilling human rights (positive action to facilitate the enjoyment of basic human rights).¹⁶ The Guiding Principles have been and will continue to be an authoritative point of reference for Governments and businesses concerned with human rights. In this connection, the Working Group on the issue of human rights and transnational corporations and other business enterprises has been established by the Human Rights Council.¹⁷ It has a central role in developing operational advice regarding the Guiding Principles, promoting and providing support for efforts to implement the Guiding Principles and making recommendations, conducting country visits and working in close cooperation with relevant United Nations bodies.

C. International criminal law

22. International criminal law establishes individual criminal responsibility over war crimes, crimes against humanity and acts of genocide. International crimes take into account the collective dimension of the offence, and that can aid in attributing aspects of a collective offence to individuals involved. Attribution of responsibility has extended to multinational corporations on account of their ability to perpetrate such violations. Corporations investing, doing business with or otherwise involved in Governments or groups active in conflict zones can find themselves in a situation

¹⁴ See, for example, Organization for Economic Cooperation and Development, *Guidelines for Multinational Enterprises, 2011 edition* (Washington, D.C., 2011). Available from oecd.org/daf/inv/mne/oecdguidelinesformultinationaleenterprises.htm.

¹⁵ See Office of the United Nations High Commissioner for Human Rights, “The corporate responsibility to respect human rights: an interpretive guide” (2012). Available from ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf.

¹⁶ A/HRC/17/31, annex, paras. 1-10.

¹⁷ See A/HRC/17/4.

of committing or furthering the commission of an international crime. To date, international criminal complicity has only been imputed to natural persons.¹⁸ There is a need for caution when considering the extension of individual criminal responsibility to business managers or employees. Applying international criminal law to corporations is a developing area of international law.¹⁹

1. Ad hoc tribunals

23. The jurisprudence of the international ad hoc tribunals is pertinent to understanding the concept of complicity. The Furundzija case, heard before the International Criminal Tribunal for the Former Yugoslavia, provides the standard for establishing complicity in the form of aiding and abetting. The assistance given must have a substantial effect on the perpetration of the crime, and the person aiding or abetting must have knowledge that the assistance provided is contributing to the perpetration of a crime, even if he or she did not have a common design with the perpetrators.²⁰ The Tribunal recently changed its approach to complicity in *Prosecutor v. Momčilo Perišić*, when it held that “specific direction” is now an element of aiding and abetting, although the degree to which this decision generates a precedent for similar litigation before other tribunals is unclear.²¹

2. International Criminal Court

24. Under article 25 (1) of the Rome Statute, the International Criminal Court has jurisdiction over natural persons. It does not have jurisdiction over legal entities. The Court could, however, adjudicate corporate involvement in international crimes by focusing on the individuals acting on behalf of a corporation. When a State becomes a party to the Rome Statute, it comes within the jurisdiction of the Statute with respect to the crimes set out in the Statute. The Court may exercise its jurisdiction in situations where the alleged perpetrator is a national of a State party or where the crime was committed in the territory of a State party. Also, a State not party to the Statute may decide to accept the jurisdiction of the Court, as set out in article 12 (3) of the Rome Statute. Palestine did so in January 2009, but the Prosecutor at the time stated that the Court only had jurisdiction over States and pointed to determinations of the General Assembly as a guide for determination of entities that qualify as States. It is unclear whether the subsequent granting of non-member observer State status to Palestine by the Assembly will change the status of Palestine before the Court.²² Israel is not a party to the Rome Statute.

25. The Rome Statute is the best source of authority with respect to the elements of complicity in international crimes. Article 25 (3) (c) and (d) outlines aiding and abetting liability, according to which any natural person who aids, abets or otherwise

¹⁸ See, for example, *United States of America v. Carl Krauch et al.* (the *I. G. Farben* case), Judgement, 29, 30 July 1948, *Trials of War Criminals before the Nuernberg Military Tribunals*, United States Government Printing Office, 1952, vol. VIII.

¹⁹ See Antje K. D. Heyer, “Corporate complicity under international criminal law: a case for applying the Rome Statute to business behaviour”, *Human Rights and International Legal Discourse*, vol. 6 (2012).

²⁰ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Furundzija*, case No. IT-95-17/1-T, Trial Chamber II, 10 December 1998, para. 249.

²¹ International Criminal Tribunal for the Former Yugoslavia, *Prosecutor v. Momčilo Perišić*, case No. IT-04-81-A, Appeals Chamber, 28 February 2013.

²² General Assembly resolution 67/19.

assists in the commission or attempted commission of crimes articulated in the statute is individually responsible for such crimes. It consists of a two-pronged test: (1) substantial contribution to the crime; and (2) knowledge and purpose in facilitating or assisting a crime.

26. Therefore, the ability to attribute international criminal responsibility to corporations is not wide in scope. According to the International Criminal Tribunal for the Former Yugoslavia and the International Criminal Court, it must be attributed to an individual as opposed to a company, and that individual must have knowledge that their acts have causally contributed to the commission of an international crime. “Knowing assistance” (i.e., an awareness that one’s actions are assisting in the commission of a relevant crime) is required.

27. The Rome Statute prohibits “the transfer, directly or indirectly, by the Occupying Power of parts of its own civilian population into the territory it occupies”.²³ That information has long been available in the public domain, for example in official United Nations reports and resolutions, and would provide a compelling argument that corporations engaged in business activities with the settlements should by now be fully aware that Israeli settlements violate international law. The argument that requires development is the extent to which the corporation’s activities are causally connected to the international crimes being perpetrated. The International Criminal Tribunal for the Former Yugoslavia has introduced “specific direction”, indicating its belief that the activities in question should be specifically directed to assisting the commission of any crime. If one chooses to follow the Tribunal’s jurisprudence on complicity in relation to Israeli settlements, then questions relevant to some of the corporations discussed in the present and the previous report of the Special Rapporteur to the General Assembly would include the following: Does the provision of equipment or raw materials specifically directed towards the building of settlements and/or related infrastructure constitute a sufficient causal connection to the transfer of the Israeli civilian population to occupied Palestine? Does the provision of loans or similar financial transactions that are specifically directed towards the construction, renovation or purchase of settlements constitute such a connection? Does advertising, promoting the sale of and/or identifying buyers for a settlement constitute such a connection? Whether the Tribunal’s approach to complicity in the *Perišić* case will prove to be authoritative in other future cases is at this point an unknown.

28. What is clear is that prosecuting corporations for complicity at an international level offers a potential avenue for redress. Of course, jurisdictional requirements must be met. For example, the State from which the corporation and its employees are acting must be a party to the Rome Statute for the court to hear the case. The concept of complicity is not limited to international criminal law, however; other judicial mechanisms, such as national courts, could possibly prosecute corporations or their employees for involvement in international crimes.

3. Civil liability

29. Domestic law potentially provides an avenue for enforcing corporate liability for violations of international law. Civil liability is consistent with the principle of

²³ Article 8 (2) (b) (viii) of the Rome Statute prohibits a broader range of actions than article 49 (6) of the Fourth Geneva Convention.

complementarity, which emphasizes the role of domestic legal regimes in the enforcement of international law. Corporate civil liability has the advantage of offering redress and compensation to the victims of the violation.²⁴ Notwithstanding the recent lack of progress in domestic litigation on corporate complicity generally, including in relation to the settlements, it is established that corporations can be subject to civil liability for the wrongful conduct of corporate agents.²⁵ Future cases will no doubt be heard on this issue before domestic courts.²⁶ The United Nations High Commissioner for Human Rights has articulated several reasons why civil liability is an important mode of accountability for corporate complicity:

First, international law obligates States to provide an effective remedy for victims of human rights violations. Second, civil liability for corporations helps promote the international legal principle of ensuring accountability for human rights violators. Third, in accordance with the principle of complementarity, international law necessarily relies on domestic legal mechanisms to ensure the effective protection of human rights. Finally, civil liability for corporations that are complicit in gross human rights violations serves as an avenue for orderly redress of grievances. Absent effective legal mechanisms to provide remedies for victims of gross human rights violations, those victims are likely to resort to extralegal measures to obtain redress for perceived wrongs, thereby threatening the established legal and social order.²⁷

4. Civil society tribunals

30. For educational purposes of dissemination about failures of compliance by Israel, there are also important contributions to public awareness made by civil society initiatives such as was achieved by the Russell Tribunal on Palestine at its session in London in 2010 devoted to corporate responsibility. Such initiatives could mount constructive forms of pressure to secure compliance with standards of corporate responsibility, if preferred modes of voluntary adherence fail to uphold legal and moral standards.²⁸

D. Conclusions on a normative framework

31. It should be noted that neither criminal law nor the law of civil remedies requires that the principal actor be held liable before a secondary actor is prosecuted. The difficulty of holding Governments or armed groups accountable for serious violations of international law means that in most cases of alleged business

²⁴ International Commission of Jurists, *Corporate Complicity and Legal Accountability*, vol. 3 (Geneva, 2008), p. 4.

²⁵ For recent litigation, see United States Supreme Court, *Kiobel v. Royal Dutch Petroleum*, 569 U.S. ____ (2013) for limitations of the Alien Tort Statute; the Dutch National Public Prosecutor's Office dismissal of the case against Riwal; and the Court of Appeal of Versailles decision that ruled against civil liability for private French companies in the construction of a Jerusalem light rail tramway system, available from www.volokh.com/wp-content/uploads/2013/04/French-Ct-decision.pdf.

²⁶ Corporations and other private legal persons can be prosecuted for genocide and crimes against humanity under article 213-3 of the French Penal Code and under the Canadian Crimes Against Humanity and War Crimes Act.

²⁷ Brief of Amicus Curiae Navi Pillay, p. 3, in *Kiobel v. Royal Dutch Petroleum*.

²⁸ See russelltribunalonpalestine.com/en/sessions/london-session.

involvement in those violations the company will be prosecuted independently of the principal actor.²⁹

32. Much of the legal analysis has culminated in a discussion of international criminal law and its concept of corporate complicity.³⁰ The importance of complicity, however, transcends international criminal justice. It has been extended to respect for corporate social responsibility and human rights standards. The Guiding Principles on Business and Human Rights refer to international criminal law in its articulation of corporate complicity for human rights violations. Such initiatives contribute to translating international criminal responsibility standards into guidelines for companies on how to conduct their business in order to avoid responsibility for violations and abuses, for example through due diligence.

IV. Case studies

33. As noted in the previous report of the Special Rapporteur on this issue, there is a wide range of businesses operating in the settlements. The Special Rapporteur surveyed 13 businesses, including several that were Israeli and others that were international. Some businesses were connected with the occupation generally and others with the settlements in particular. In the present report the Special Rapporteur focuses on two discrete areas that relate to settlements. The first area is banking institutions involved in financial transactions, such as loans to construct or purchase Israeli settlements. The company that the Special Rapporteur discusses is the Dexia Group, a European banking group. This builds upon the analysis by the Special Rapporteur of the Dexia Group in the previous report. The second area that the Special Rapporteur draws attention to is real estate companies that advertise and sell properties in settlements. The activities of Re/Max International, a company based in the United States of America, are the focus of analysis in the present report. The case studies aim to determine whether the Dexia Group and Re/Max International, through providing loans and mortgages and through advertising and selling properties in settlements, provide knowing assistance that amounts to aiding in the commission of international crimes associated with transferring the citizens of the Occupying Power to the occupied territory. The Special Rapporteur reiterates that the businesses highlighted are illustrative examples. There are other companies that profit from Israeli settlement activities, both in the economic service areas in which the Dexia Group and Re/Max International are working and in other areas involving goods and services.

A. Dexia Group

34. The Dexia Group carries out activities in the fields of retail and commercial banking, public and wholesale banking, asset management and investor services. The Special Rapporteur previously reported on the activities of Dexia Israel Bank

²⁹ International Commission of Jurists, *Corporate Complicity and Legal Accountability*, vol. 1 (Geneva, 2008), p. 18.

³⁰ Word constraints limited the present analysis on corporate responsibility to business activities connected to the settlements; however, the analysis could potentially be extended to all aspects of the occupation.

Limited (Dexia Israel), of which the Dexia Group is the majority shareholder, such as providing loans to Israelis living in settlements on the West Bank.

35. Since the previous report of the Special Rapporteur, the Dexia Group has continued to implement its revised orderly resolution plan, which was established as a result of the European sovereign debt crisis. In January 2013, Belgium, France and Luxembourg signed a tripartite liquidity guarantee agreement in favour of Dexia Crédit Local. The Dexia Group is now 94 per cent owned by Belgium and France (50.02 per cent Belgium and 44.38 per cent France).³¹ In 2012, the Dexia Group stated that it planned to sell Dexia Israel and that the sale should be completed within 12 months, following a definitive decision on the various legal actions taken against Dexia Israel and Dexia Crédit Local as a shareholder.³² A press release in May 2013 stated that there have been no new material developments in relation to this matter, and a mid-year report stated that legal proceedings between minority shareholders and Dexia Israel continue, but no mention was made of its banking activities.³³

36. The Special Rapporteur previously noted that the Dexia Group was a member of the Global Compact Initiative and that it failed to communicate, in early 2012, on progress made in implementing the standards set by the Compact. The Special Rapporteur has learned that, in April 2013, the Dexia Group withdrew from the Compact, which seems to be a disturbing development from the perspective of securing compliance with the Compact guidelines.³⁴

37. For several years the former and current presidents of the Dexia Group (Jean-Luc Dehaene and Karel De Boeck) have stated that no new contracts have been granted in relation to the settlements. The Belgian movement for international solidarity (Intal) questions the accuracy of this position. Intal's research indicates that new loans to construct and expand settlements continue to be granted, bringing the total amount of loans to €35 million.³⁵ According to Intal, in November 2012 Dexia Israel made a positive financial audit for the Elkanah and Karnai Shomron settlements and Dexia Israel continues to provide services for settlement development. For example, Ariel and Kedumim settlements can open accounts with Dexia Israel to receive Israel National Lottery (Mifal HaPais) grants.³⁶ Mifal HaPais uses its lottery revenue to support various public projects in the field of health, education and the arts. The settlements are considered one such public project and they receive lottery grants which are transferred through Dexia Israel. Who Profits, an Israeli non-governmental organization, has also conducted research on Dexia Israel. According to their research, Mifal HaPais provided grants in 2012 to Israeli local municipalities and regional councils that were specifically intended

³¹ Dexia Group press release, 3 July 2013. Available from dexia.com/EN/journalist/press_releases/Documents/20130703_CP_Dexia_emission_dette_garantie_EN.pdf.

³² Dexia Group, "Annual report 2012" (Brussels, 2012), p. 76. Available from dexia.com/EN/shareholder_investor/individual_shareholders/publications/Documents/RA_2012_EN.pdf.

³³ Dexia Group press release, 8 May 2013. Available from dexia.com/EN/journalist/press_releases/Documents/20130508_CP_resultats_1T_EN.pdf; Dexia Group press release, 7 August 2013. Available from <http://hugin.info/152020/R/1721538/574033.pdf>.

³⁴ See unglobalcompact.org/participant/2887-Dexia-Group.

³⁵ See intal.be/files/20101121_written_statement_RToP_Dexia_-_mario_franssen.pdf and intal.be/fr/article/dexia-et-son-principal-actionnaire-la-belgique-se-portent-garant-pour-couvrir-un-projet-de-l.

³⁶ See intal.be/files/20101121_written_statement_RToP_Dexia_-_mario_franssen.pdf.

to support the construction of settlement facilities, such as schools and community centres, all of which were transferred through Dexia Israel.³⁷ It should be noted that Dexia Israel's activities have also included managing personal bank accounts and mortgage loans for home buyers.³⁸

38. Can the Dexia Group be held accountable for mortgages and loans granted by Dexia Israel to Israeli settlements? As a subsidiary of the Dexia Group (the Dexia Group owns 100 per cent of Dexia Crédit Local, which in turn owns 65 per cent of Dexia Israel), there is a strong basis for imputing the activities of Dexia Israel to the Dexia Group. The methodology of the legal analysis set out above will be applied to this case study in order to assess the grounds for making such an argument. Although that analysis focused on corporations generally, it appears to be accepted that providers of financial services can also be held criminally liable for aiding and abetting crimes. The International Commission of Jurists stated that:

The criminal liability of a financier will depend on what he or she knows about how his or her services and loans will be utilised and the degree to which these services actually affect the commission of a crime. Criminal liability may be less likely for a lender or financier who supports a general project or organisation as opposed to the financier who knowingly facilitates specific criminal activities through funding them or dealing with proceeds of the crimes.³⁹

1. International humanitarian law

39. Dexia Israel's transactions with Israeli settlements render the Dexia Group a business corporation involved in the occupation of Palestine, and it can therefore be held responsible for violating international humanitarian law. Settlements are illegal because of the fact that they are built on occupied land. They are closely linked to the ongoing conflict and the belligerent occupation. Dexia Israel's activities facilitate the growth of settlements, which demonstrates that the majority shareholder Dexia Group is complicit in violating international humanitarian law because, by transferring members of the Israeli population into occupied Palestine, Israel is violating article 49 (6) of the Fourth Geneva Convention, which, owing to its scale and intentionality, is a *prima facie* war crime.

40. Moreover, as States parties to the Geneva Conventions, Belgium and France are obligated to respect and ensure respect for the Conventions. At present, they are majority shareholders in a company that provides loans and mortgages to settlements in occupied Palestine and, in this connection, are violating their obligation to ensure respect for the Conventions.

2. International human rights Law

41. Dexia Israel, through its transactions with settlements, is aiding and abetting human rights infringements on the right of property, the right to equality, the right to a suitable standard of living and the right to freedom of movement, among other

³⁷ Who Profits research paper submitted to the Special Rapporteur, July 2013.

³⁸ Who Profits, "Financing the Israeli occupation" (2010). Available from whoprofits.org/content/financing-israeli-occupation.

³⁹ International Commission of Jurists, *Corporate Complicity and Legal Accountability*, vol. 2 (Geneva, 2008), pp. 39-40.

human rights. The Guiding Principles on Business and Human Rights consider the relevance of complicity to its concept of due diligence: “questions of complicity may arise when a business enterprise contributes to, or is seen as contributing to, adverse human rights impacts caused by other parties”.⁴⁰ As a majority shareholder, liability extends to the Dexia Group. Belgium and France are also under a responsibility to take steps to prevent and punish the activities of private actors within the Dexia Group that have violated the law.¹⁶ Moreover, as owners of the Dexia Group, Belgium and France have an explicit duty to take appropriate action in the face of human rights abuses, including activities of its subsidiary, Dexia Israel, that support the growth of settlements. By failing to do so, these States are not fulfilling their duties under human rights treaties, such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. This duty is recognized by the Guiding Principles, which highlight that, when a State controls a company, its violations may also constitute a violation of the State’s own international law obligations.⁴¹ If a State owns or controls a business, it has the direct means of ensuring that policies, legislation and regulations that respect human rights are implemented.⁴²

42. Self-regulating mechanisms within corporations are relevant to assessing responsibility for potential human rights violations.⁴³ It is regrettable that the Dexia Group has withdrawn from the Global Compact. The observation of the Special Rapporteur in his previous report that the Dexia Group was not up to date on its reporting requirements was intended to encourage compliance, but indications suggest that the Dexia Group has unfortunately chosen to follow an opposite course of action.

3. International criminal law

43. Individual criminal responsibility for the activities of Dexia Israel potentially extends to individual employees of the Dexia Group. Both Belgium and France are States parties to the Rome Statute, rendering their nationals within the jurisdiction of the International Criminal Court. Therefore, charges could be presented against Dexia Group employees for complicity in the war crime of establishing settlements in the occupied territory of Palestine. Take for example Dexia Israel’s proposal to grant a loan of 2.5 million new Israeli shekels to Ariel settlement. Ariel is one of the oldest and most prominent settlements in the West Bank. If Dexia Israel is providing mortgage loans for homebuyers in Ariel or to the regional council, or facilitating grants allocated by Mifal HaPais, these types of assistance directly contribute to the settlement’s growth, and therefore materially facilitate the transfer of Israeli citizens to occupied territory. Based on information available to the Special Rapporteur, there is a reasonable basis for concluding that Dexia Israel’s activities provide the financial assistance for the construction, sustainability and maintenance of settlements such as Ariel and Kedumim. It can be reliably presupposed that Dexia Israel is fully aware of the activities for which it provides financial support, and therefore knowingly assists in the establishment and maintenance of settlements. In turn, it can be assumed that, by owning 65 per cent of the bank, the Dexia Group has

⁴⁰ A/HRC/17/31, annex, para. 17.

⁴¹ A/HRC/17/31, annex, para. 4.

⁴² Office of the United Nations High Commissioner for Human Rights, “The corporate responsibility to respect human rights: an interpretive guide”, p. 22; see also A/HRC/17/31, annex, para. 14.

⁴³ A/HRC/17/31, annex, paras. 15 and 16.

knowledge of the loans its subsidiary grants, and therefore individual criminal responsibility can be attributed to employees in the Dexia Group who have knowledge of the activities of their subsidiary in Israel.

4. State responsibility

44. In addition to individual criminal responsibility, the question of State responsibility is relevant to this analysis. When a State commits an internationally wrongful act (complicity in a war crime), it is obligated to cease the act and make appropriate assurances not to repeat it. In this case, it would appear that Belgium and France must ensure that Dexia Israel stops providing loans and ceases the transfer of Government grants to settlements and settlement-related activities. Further, the State must make full reparation for the injury caused by its past wrongful acts. In this case, Belgium and France could be responsible for reparations to Palestinians adversely affected by settlements that received loans and mortgages from Dexia Israel. Reparation can take the forms of restitution, compensation and satisfaction. The fact that the Dexia Group is now State-owned means that State responsibility and individual criminal responsibility are potential modes of liability. Considering the concern and objections that have been voiced by the European Union about Israeli settlement activity, political and civil society pressure on the Governments of Belgium and France to sell its shares in Dexia Israel may be the most appropriate step to take if compliance is to be belatedly achieved.⁴⁴

5. Civil liability

45. Domestic courts have been faced with litigation against financial institutions, albeit resulting in different verdicts.⁴⁵ In most jurisdictions it must be proven that the banks knew about the criminal activity of the borrower they were financing and could foresee the effects of the loan and the harmful consequences resulting from the transaction.⁴⁶ Civil liability could therefore be potentially imposed on the Dexia Group as an institution, on individuals within the corporation, and/or on Belgium and/or France as owners. The recent Court of Versailles decision on the Jerusalem light rail indicates that, in France at least, civil liability may be difficult to establish in a judicial setting. However, the judicial record of past receptivity by Belgium to universal jurisdiction suggests it may be more ready to respond sympathetically to such an initiative.⁴⁷

46. In relation to civil liability, certain financial entities have demonstrated an increasing awareness of corporate social responsibility and the potential legal

⁴⁴ See European Union, "Statement by the Spokesperson of the High Representative Catherine Ashton on renewed plans for Israeli settlements in and around East Jerusalem", 31 May 2013. Available from consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/137350.pdf.

⁴⁵ See, for example, *South African Apartheid Litigation*, 617 F. Supp. 2d 228, 260-262 (S.D.N.Y. 2009) and *Almog v. Arab Bank*, 471 F. Supp. 2d at 257 (E.D.N.Y. 2007).

⁴⁶ See Juan Pablo Bohoslavsky and Veerle Openhaffen, "The past and present of corporate complicity: financing the Argentinean dictatorship", *Harvard Human Rights Journal*, vol. 23 (2010).

⁴⁷ It should be noted that, as a result of issues raised by the Sharon case (*La Cour de Cassation*, 24 September 2003), which was before the Cour de Cassation at the time, legislators in Belgium made changes to the Amendment to the Law of June 16, 1993, Concerning the Punishment of Grave Breaches of Humanitarian Law (5 August 2003), requiring a direct Belgian link for a case to be heard before the courts.

ramifications relating to Israeli settlements. The Norwegian Government Pension Fund Global excluded the construction company Shikun & Binui because of its involvement in the construction of settlements. The Ethical Council of four of the largest pension funds in Sweden excluded Elbit Systems because of its involvement in the construction and maintenance of the wall. The New Zealand Government Superannuation Fund divested from Elbit Systems, Africa-Israel Investments Limited and its subsidiary Danya Cebus, and Shikun & Binui because of their participation in either the construction of settlements or the wall.⁴⁸

47. Investment committees have recommended that large European banks refuse to extend financial assistance to Israeli companies that manufacture, build or sell products in Palestine and to banks that grant mortgages to builders or buyers of housing therein. The Dexia Group would fall within the latter category. According to *Haaretz*, the recommendations have been put on hold following pressure from Israel exerted in the context of a diplomatic initiative led by the United States.⁴⁹ Nonetheless, the recommendations, the response by the Government of Israel and related reporting in the Israeli press indicate that financial institutions are increasingly concerned about their legal and moral responsibilities associated with any dealings involving the settlements.

B. Re/Max International

48. Re/Max International is a privately held real estate company in the United States that has an international network of franchisee-owned and operated offices. Re/Max International receives 1 per cent of the revenue of sales and a flat fee per associate.⁵⁰ Re/Max International franchises its international brand name affiliation and recognition, start-up training, ongoing training, technological resources, and advertising and marketing support.⁵¹ Re/Max Israel is itself a franchise of Re/Max International. It opened in 1995 and has more than 100 branches, including in settlements on the West Bank. Israeli branches advertise properties and execute sales of settlement homes in the West Bank.⁵² The Re/Max Israel franchise office in Jerusalem, called Re/Max Vision, targets international clients who may be interested in purchasing a home in or around Jerusalem.⁵³ Re/Max International promotes the same properties on its website. A search of its website in June 2013 indicated that there were 51 residential properties advertised in 9 settlements.⁵⁴

49. Can Re/Max International be held accountable for settlement properties sold by Re/Max Israel? By providing international brand name affiliation and recognition, start-up training, ongoing training, technological resources, and advertising and

⁴⁸ Jan Willem van Gelder, Barbara Kuepper and Ewoud Nijhof, "Dutch economic links with the occupation", research paper prepared for Cordaid (Amsterdam, Profundo, 2013), p. 17. Available from cordaid.org/media/publications/Report_Dutch_economic_links_with_the_occupation_1.pdf; see also Norwegian People's Aid, "Dangerous liaisons: Norwegian ties to the Israeli occupation" (2012). Available from npaid.org/Media/20_Files/Om-oss/Annual-reports/Dangerous-liaisons.

⁴⁹ "Danger ahead: an Israel boycott", editorial, *Haaretz*, 14 July 2013.

⁵⁰ See remax-franchise.com/fs/home/general_content/faqs.

⁵¹ See remax-franchise.com/fs/helping-you-succeed/training-and-support.

⁵² See remax-israel.com/OfficeProfile.aspx?OfficeID=5012.

⁵³ See remax-capital.com/new/html/project_2_about.php.

⁵⁴ [Http://global.remax.com](http://global.remax.com).

marketing, as well as by profiting from such sales, Re/Max International has constant interaction and influence over its franchises. Similar to the Dexia Group case study, the methodology used in the legal analysis set out below will be applied in order to assess the legal plausibility of such a case.

1. International humanitarian law

50. Promoting the sale of (for example by advertising) or selling property on or as part of a settlement contributes to the commission of the international crime of transferring citizens of the Occupying Power onto occupied territory. In fact, advertising and selling such properties to citizens of the Occupying Power constitute instances par excellence of participating in such transfers.

2. International human rights law

51. The responsibility to respect human rights requires businesses to avoid contributing to adverse human rights impacts and to mitigate such impacts when linked to their operations.⁵⁵ Re/Max International, through selling properties on Palestinian land, is directly contributing to adverse human rights impacts, such as the restrictions on freedom of movement that obstruct Palestinians' access to land, which is often used for agricultural purposes, and arbitrary and unlawful interference with Palestinians' privacy, family and home.⁵⁶ States parties to the International Covenant on Civil and Political Rights are obliged to regulate the conduct of private groups and ensure that such conduct will not result in violating human rights and, where it does, ensure that effective remedies are available.

52. Re/Max International's code of ethics states that "its affiliates shall undertake to eliminate any practice by real estate professionals in their community which could be damaging to the public".⁵⁷ The statement reveals two things. First, if the Palestinian population is considered to be part of the public in Israel (given that Israel effectively controls the population) then the establishment of settlements is clearly damaging to that sector of the public. Second, the code of ethics extends to the "affiliates" of Re/Max International, which form part of its "community", therefore reconfirming the connection between the global company and its local franchises.

3. International criminal law

53. Neither the United States nor Israel are States parties to the Rome Statute. That makes it difficult to bring a case of complicity against a Re/Max International employee, except if the employee is a national of a party to the Rome Statute. In terms of the causal connection between Re/Max International and its franchises, the fact that it advertises on its website the sale of the properties in settlements demonstrates that it knows about such sales and draws a 1 per cent profit from each sale. Again, by providing international brand name affiliation and recognition, start-up training, ongoing training, technological resources, and advertising and marketing, Re/Max International has an ongoing interaction and influence over its franchises. The Special Rapporteur believes that a strong case could be made that this amounts to knowing assistance in the commission of a crime. Further, the explicit connection of

⁵⁵ A/HRC/17/31, annex, para. 13.

⁵⁶ See General Assembly resolution 2200 A (XXI), annex, articles 12 and 17 and the individual complaint by the Norwegian Refugee Council to the Human Rights Committee, 28 February 2013.

⁵⁷ See, for example, remax-fun.at/?id=qualitaeten&lang=en.

individual salespersons to the promotion and sale of homes in Israeli settlements greatly increases prospects for holding individuals accountable for such crimes.

4. Civil liability

54. Civil liability for corporate complicity may prove a difficult avenue for redress in this case. The United States Supreme Court decision on *Kiobel v. Royal Dutch Petroleum Co.* presents a challenge to litigation against corporations through the Alien Tort Statute, which had been a valuable mechanism to hold corporations accountable for violating international law.⁵⁸ This would make it difficult to bring a case of corporate complicity against Re/Max International in the United States. Nonetheless, civil liability could be prosecuted against individuals within Re/Max International for their role in knowingly assisting in the commission of a crime by providing advertising and other administrative support to Re/Max Israel's property sales in the West Bank, including East Jerusalem. Furthermore, the Guiding Principles on Business and Human Rights emphasize that States must take appropriate steps to ensure that effective remedy is available through judicial, administrative and legislative means.⁵⁹

55. Real estate agents who promote and/or sell properties in settlements in Palestine to citizens of the Occupying Power may be held liable for complicity in the crime of promoting settlement activity in occupied territory. While the present case study examined Re/Max International, the same analysis would apply to other real estate agencies. The unavailability of civil relief in United States court at the present time does not establish that such a remedy might not be available in other national legal systems.

C. Conclusions on case studies

56. The present report proposed a model for legal analysis by focusing on two companies chosen for the particular ways in which their activities potentially implicate them in international crimes. The legal model can be applied to other situations and other companies. The Special Rapporteur stresses again that the companies discussed herein are illustrative examples; however, some conclusions can be drawn about the case studies.

57. Financial institutions and real estate agents may be held accountable for their involvement with settlements in occupied Palestine. Pressure by the international community to uphold international law is no longer limited to States as the primary duty-bearers. Companies, individuals and groups can be implicated for behaviour that contributes to wrongful acts. The Dexia Group and Re/Max International, in different ways, assist in the growth of settlements: the Dexia Group by providing financial services connected to the settlements, and Re/Max International by selling settlement properties. In terms of assessing the causal connection to the policy and practice by Israel of transferring its citizens to Palestine, this must largely be based on the connection between the global companies and the settlement activity. Do the activities of the global companies directly contribute to the violations of international

⁵⁸ The Alien Tort Statute is a legal instrument that enables plaintiffs to sue persons, including foreigners, who acted outside United States territory for breaches of international law before United States district courts.

⁵⁹ A/HRC/17/31, annex, paras. 25 and 26.

law that the settlements constitute? Voluntarily playing a causal role in the commission of a crime can in certain instances be enough to make them accomplices to that crime.

V. Water and sanitation in the West Bank and Gaza Strip

58. During the mission of the Special Rapporteur to the Gaza Strip in December 2012, a number of interlocutors raised serious concerns about the lack of clean water and adequate sanitation facilities in the Gaza Strip. Some of those issues were briefly touched upon in the previous report of the Special Rapporteur to the Human Rights Council.⁸ In the context of the near exclusive control by Israel over all underground and surface water resources in Palestine, the Special Rapporteur reiterates his concerns regarding the occupation-induced water and sanitation crisis.

The situation in the Gaza Strip

59. In the Gaza Strip, 90 per cent of water in the underlying coastal aquifer beneath the Gaza Strip is unfit for human consumption as a result of pollution caused by raw sewage and rising seawater infiltration. In 2012, the United Nations reported that the coastal aquifer on which the Gaza Strip is almost completely reliant could become unusable as early as 2016, with the deterioration becoming irreversible by 2020. Polluted tap water has forced many families to buy expensive water from external vendors or to rely on desalinated water supplied by the Coastal Municipalities Water Utility, putting an unreasonable burden on average household incomes, which are already struggling at or below subsistence levels. Under these circumstances, most Gazans consume an average of 70 to 90 litres per person per day, which is well below the global standard set by the World Health Organization.¹

60. The Israeli blockade of Gaza has exacerbated water scarcity and lack of adequate sanitation facilities. Delays and restrictions on the entry of materials through the Israeli-controlled Kerem Shalom crossing have stalled a number of water and sanitation infrastructure projects. Furthermore, Israel not only extracts a disproportionate share of the water from the coastal aquifer for its own benefit but also blocks the Gazan population from accessing water from the Wadi Gaza, a natural stream that originates in the Hebron Mountains and flows to the Mediterranean Sea.

61. Water scarcity in Gaza has been worsened by the repeated destruction of water and sanitation infrastructure in the course of Israeli military operations.⁶⁰ Israel has destroyed at least 306 wells in the Access Restricted Areas of Gaza since 2005.⁶¹ In this context, the Special Rapporteur strongly condemns the targeting of water and sanitation facilities during Israeli military operations, which cannot be justified as a military necessity, and cannot be explained as a consequence of accidents.

⁶⁰ See A/HRC/22/35/Add.1.

⁶¹ Emergency Water and Sanitation-Hygiene Group, "Fact sheet 13: Water and sanitation in the Access Restricted Areas of the Gaza Strip" (December 2012). Available from [ewash.org/files/library/factsheet%20jan%2021\[1\].pdf](http://ewash.org/files/library/factsheet%20jan%2021[1].pdf).

The situation in the West Bank

62. Palestinians in the West Bank are denied their rightful share of water from the underground mountain aquifer and prevented from accessing water from the Jordan River, which are both classified as shared water resources and thus must be shared equitably under customary international law.⁶² An estimated 500,000 Israeli settlers in the West Bank and East Jerusalem enjoy approximately six times the amount of water used by the Palestinian population of 2.6 million.⁶³ Israeli settlers enjoy ample amounts of water channelled directly to the settlements, which allows settlers to irrigate agricultural land and grow water-intensive crops. In contrast, Palestinian farmers depend largely on water supplies transported in tankers or collected by water cisterns, raising agricultural costs and restricting most Palestinian agriculture to unprofitable small-scale operations growing rain-fed crops, which on average is 15 times less profitable than irrigated crops. In this context, only 6.8 per cent of land cultivated by Palestinians in the West Bank is irrigated.⁶⁴

63. The unequal distribution of water resources has been sustained by the Joint Water Committee, which was established as part of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip. Mandated to grant permits for the drilling and rehabilitation of wells and sewage systems, the Committee is also responsible for setting water extraction quotas. The veto power of Israel on decision-making by the Committee has enabled it to constrain the development of water infrastructure for Palestinian communities, particularly in Area C of the West Bank. In addition, all Palestinian water projects located in Area C need to obtain approval from the Israeli Civil Administration. The Special Rapporteur finds it alarming that from 1995 to 2008, the Committee approved Israeli proposals for 3 wells and 108 supply networks and rejected only 1 of 24 proposed wastewater projects, while during the same period it approved only half of all Palestinian proposals for wells.⁶⁵

64. The loss of scarce Palestinian water resources occurs not only through demolitions undertaken by Israeli authorities of “illegal” water collection facilities, including wells and water collection tanks, but also as a result of deep-water drilling activities by Israeli water companies. The Special Rapporteur is also concerned by acts of violence by settlers in the vicinity of Palestinian communities; there are several reports of Palestinian springs being taken over by settlers and fenced off.⁶⁵

65. Israel systematically blocks the development of the Palestinian wastewater and sanitation sector through bureaucratic constraints imposed by the Joint Water Committee and the Israeli Civil Administration. Between 1995 and 2011, only 4 out of 30 Palestinian wastewater treatment plant proposals were approved by the Committee and their construction has been repeatedly delayed. It is of serious

⁶² Palestinian Water Authority, “Palestinian water sector: status summary report”, report prepared for the meeting of the Ad Hoc Liaison Committee (September 2012). Available from <http://reliefweb.int/sites/reliefweb.int/files/resources/Water%20summary%20for%20AHLC%20report%20FINAL.pdf>.

⁶³ Elizabeth Koek, *Water for One People Only: Discriminatory Access and “Water-Apartheid” in the OPT* (Ramallah, Al-Haq, 2013).

⁶⁴ Emergency Water and Sanitation-Hygiene Group, “Fact sheet 14: Water for agriculture in the West Bank” (March 2013). Available from ewash.org/files/library/WB%20factsheet%20final%20march%202013.pdf.

⁶⁵ See A/HRC/22/63 and Oxfam, *On the Brink: Israeli Settlements and Their Impact on Palestinians in the Jordan Valley* (Oxford, 2012).

concern to the Special Rapporteur that there is only one functioning Palestinian wastewater treatment plant in the West Bank, which has the capacity to treat less than 3 per cent of sewage.⁶²

66. Meanwhile, Israeli authorities profit from the occupation-induced crisis by treating up to 21 per cent of Palestinian sewage in facilities established inside Israel and paid for by Palestinian tax revenues withheld by Israel. The treated wastewater is then reused for the exclusive benefit of the Israeli agricultural sector.⁶² The difficulties experienced by Palestinian communities in securing sewage treatment facilities contrasts with the wastewater treatment plants servicing the settlements, which makes a mockery of the relevance of international humanitarian law in the protection of an occupied people.

The Palestinian right to water and development

67. Considering the unlawful policies and practices of Israel that induce a water and sanitation crisis in occupied Palestine, the Special Rapporteur stresses that the Palestinian Authority has neither been able to uphold Palestinian water rights nor embrace the right to development of water and sanitation facilities.⁶⁶ Support from the international donor community for ad hoc solutions, such as financing desalination plants and sanitation facilities to meet the immediate needs of the Palestinian population, must go hand in hand with pressure exerted on Israeli authorities to put an end to its discriminatory policies. In sum, the discriminatory pattern disclosed is aggravated by the fact that while the Palestinians are being denied their rights to resources situated within Palestine, settlements have been the beneficiaries of these Israeli policies. In effect, illegality is compounded by illegality, with the result being impending threats of de-development hanging over the Palestinian future in the Gaza Strip, and to a lesser degree in the West Bank.

VI. Recommendations

68. If current diplomacy fails to produce a solution to the underlying conflict, the Special Rapporteur recommends that the General Assembly request an advisory opinion from the International Court of Justice as to the legal consequences of the prolonged occupation of Palestine.

69. The Special Rapporteur recommends that the Government of Israel cease expanding and creating settlements in occupied Palestine, start dismantling existing settlements and returning its citizens to the Israeli side of the Green Line and provide appropriate reparations for the damage due to settlement and related activity since 1967.

70. The Special Rapporteur recommends that the Government of Israel inform Israeli businesses that are franchises and subsidiaries of global companies that profit from activity with the settlements of their corporate

⁶⁶ The International Covenant on Economic, Social and Cultural Rights; the Convention on the Elimination of All Forms of Discrimination against Women; the Convention on the Rights of the Child; and the Convention on the Rights of Persons with Disabilities entail obligations for States parties in relation to access to safe drinking water and sanitation. Israel has ratified the aforementioned Conventions except for the Convention on the Rights of Persons with Disabilities, to which Israel is a signatory.

responsibilities and the international legal ramifications of such business activities, in particular concerning potential liability for corporate complicity in overseas domestic courts.

71. The Special Rapporteur recommends that Belgium and France compensate Palestinians who have been directly affected by the settlements to which Dexia Israel has provided mortgages or administered grants.

72. The Special Rapporteur recommends that copies of the present report be forwarded to Robert de Metz (Chair of the Board of the Dexia Group) and David Liniger (Chair and founder of Re/Max International). It is strongly recommended that each of these two companies undertake a prompt review so as to bring it, its affiliates and its employees' policies and practices into full compliance with the laws and standards mentioned in the present report.

73. The Special Rapporteur recommends that the Dexia Group and Re/Max International should agree to comply with and adopt clear guidelines for future corporate social responsibility based on the Guiding Principles on Business and Human Rights.

74. The Special Rapporteur recommends that civil society in Belgium and France be urged to pressure their Governments to sell their shares in the Dexia Group and encourages civil society to demand that all businesses cease their activities that relate to the settlements and henceforth insist that companies act in accordance with the Guiding Principles on Business and Human Rights.

75. The Special Rapporteur recommends that all companies with relations to the settlements comparable to those of the Dexia Group and Re/Max International review their arrangements with an eye towards respect for international law and the Guiding Principles on Business and Human Rights.

76. The Special Rapporteur recommends that Israel immediately end its discriminatory policies and practices that serve to deny Palestinians their rightful share of water resources in the West Bank and the Gaza Strip. In particular, Israel must cease the demolition of water collection facilities, including wells and water tanks, on the pretext that they operate without valid permits.



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Agenda item 69 (c)

**Promotion and protection of human rights: human rights
situations and reports of special rapporteurs
and representatives**

Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General

Corrigendum

Paragraph 33

The ninth sentence *should read*

These case studies aim to determine whether the Dexia Group and Re/Max International, through providing loans and through advertising and selling properties in settlements, provide knowing assistance that amounts to aiding in the commission of international crime associated with transferring the citizens of the Occupying Power to the occupied territory.

Paragraph 34

The last sentence *should read*

The Special Rapporteur previously reported on the activities of Dexia Israel Bank Limited (Dexia Israel), of which the Dexia Group is the majority shareholder, such as providing loans to settlements on the West Bank.

Paragraph 37

The last sentence should be deleted.

Paragraph 38

The first sentence *should read*

Can the Dexia Group be held accountable for loans granted by Dexia Israel to Israeli settlements?



Paragraph 40

The paragraph *should read*

Moreover, in keeping with common article 1 of the Geneva Conventions, Belgium and France, as States parties to the Convention, are obligated to respect and ensure respect for the Conventions. At present, they are majority shareholders in a company that provides loans to settlements in occupied Palestine and, in this connection, are violating their obligation to ensure respect for the Conventions.

Paragraph 43

The sixth sentence *should read*

If Dexia Israel is providing loans to the regional council, or facilitating grants allocated by Mifal HaPais, these types of assistance directly contribute to the settlement's growth, and therefore materially facilitate the transfer of Israeli citizens to occupied territory.

Paragraph 44

The fifth sentence *should read*

In this case, Belgium and France could be responsible for reparations to Palestinians adversely affected by settlements that received loans from Dexia Israel.

Paragraph 47

The second sentence should be deleted.

Paragraph 71

The paragraph *should read*

The Special Rapporteur recommends that Belgium and France compensate Palestinians who have been directly affected by the settlements to which Dexia Israel has provided loans or administered grants.



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Item 69 (c) of the provisional agenda*

**Promotion and protection of human rights: human rights
situations and reports of special rapporteurs and representatives**

Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono, submitted in accordance with Human Rights Council resolution 5/1.

* [A/69/150](#).



Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono, submits his first report to the General Assembly. This short technical report is based on consultations held with the relevant States and other stakeholders in Geneva in June 2014 and outlines next steps towards the fulfilment of the mandates contained in Commission on Human Rights resolution 1993/2 and Human Rights Council resolution 5/1.

I. Introduction

1. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono, was appointed on 8 May 2014, in accordance with Commission on Human Rights resolution 1993/2 and Human Rights Council resolution 5/1. He assumed his functions on 2 June 2014. He is the sixth Special Rapporteur to assume this mandate.

2. This short technical report is based on consultations held with the relevant States and other stakeholders in Geneva in June 2014. The Special Rapporteur intends to conduct a mission to Israel and the Occupied Palestinian Territory at the earliest possible opportunity with a view to preparing his first substantive report, to be submitted to the Human Rights Council at its twenty-eighth session, in March 2015.

II. Mandate

3. The mandate of the Special Rapporteur is outlined in Commission on Human Rights resolution 1993/2 and was renewed by Human Rights Council resolution 5/1.

4. Specifically, the Special Rapporteur is mandated to carry out the following activities:

(a) To investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967;

(b) To receive communications, to hear witnesses and to use such modalities of procedure as he may deem necessary for his mandate;

(c) To report, with his conclusions and recommendations, to the Commission on Human Rights at its future sessions, until the end of the Israeli occupation of those territories.

5. The mandate of the Human Rights Council¹ is therefore clearly to investigate and report on violations of international humanitarian law and international human rights law allegedly committed by Israel, the occupying Power, in the context of its prolonged occupation of the Palestinian territories since 1967.

III. Cooperation

6. Israel has in the past extended full cooperation with the mandate holder. In 1993, the Special Rapporteur received an invitation from the then Minister for Foreign Affairs, Shimon Peres, to visit Israel and the Occupied Palestinian Territory in 1994, as a result of which he carried out two visits during his term. On both occasions, he held meetings with Israeli and Palestinian officials, representatives of non-governmental organizations and of United Nations entities in the Occupied

¹ Pursuant to General Assembly resolution 60/251, the Human Rights Council has assumed the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commissioner for Human Rights.

Palestinian Territory, as well as with victims and witnesses of alleged violations of human rights. He was granted complete freedom of movement during his missions, including access to an Israeli detention facility for the purpose of conducting unsupervised interviews with Palestinian detainees (see [E/CN.4/1994/14](#) and [E/CN.4/1995/19](#)).

7. Cooperation between Israel and subsequent mandate holders then ceased owing to the country's reservations concerning the mandate, although it continued to permit the Special Rapporteurs (with the exception of the fifth Special Rapporteur) to gain access to Israel and the Occupied Palestinian Territory.² This lack of cooperation has been regrettable, given that the full cooperation and engagement of the Government of Israel would positively contribute to the effective, even-handed and impartial implementation of the mandate. The Palestinian authorities have consistently extended their full cooperation to the current mandate holder.

8. As a former journalist and diplomat, the Special Rapporteur recognizes that any narrative is composed of two elements: fact and interpretation. Information contained in second-hand or third-hand reports will necessarily be subject to interpretation and be influenced by the standpoint of the individual or organization, and it can never replace the testimonies and the information gathered from face-to-face meetings with individuals, civil society representatives and government representatives in the Occupied Palestinian Territory and Israel.

9. The credibility of the Special Rapporteur's reports to the Human Rights Council and the General Assembly would also be enhanced by the ability of the mandate holder to duly and objectively reflect the official viewpoints and perspectives on the situation of human rights in the Palestinian territories occupied since 1967. The Special Rapporteur therefore considers meetings with official Israeli and Palestinian interlocutors to be an important element of any country visit.

10. The Special Rapporteur will formally request the Governments of Israel and of the State of Palestine to facilitate a visit to Israel and the Occupied Palestinian Territory before the end of 2014 with a view to preparing his first substantive report, to be submitted to the Human Rights Council at its twenty-eighth session, in March 2015.

11. It is hoped that Israel will, in good faith, extend the same level of cooperation to the current Special Rapporteur as it did to the first and, more recently, to the Special Rapporteur on adequate housing in 2012 and to the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression in 2011, in the context of their respective visits to Israel and the Occupied Palestinian Territory (see [A/HRC/22/46/Add.1](#), [A/HRC/20/17/Add.2](#), [E/CN.4/1994/14](#) and [E/CN.4/1995/19](#)). The Special Rapporteur counts on the facilitation of the Governments of Israel and the State of Palestine in this regard.

12. The Special Rapporteur also looks forward to receiving constructive responses from the Government of Israel to the conclusions and recommendations of his substantive reports to be submitted to the Human Rights Council and the General Assembly during the course of his term as mandate holder.

² Israel deported the Special Rapporteur serving from 2008 to 2014 upon his arrival at Ben Gurion airport in December 2008, as he attempted to enter Israel on mission, and refused to engage in any contact with him thereafter (see [A/HRC/25/67](#)).

IV. Consultations in Geneva

13. From 23 to 27 June 2014, the Special Rapporteur undertook a mission to Geneva for consultations with the States concerned. The primary purpose of the visit was to establish contacts and to discuss the implementation of the mandate with the Permanent Representative of Israel and the Permanent Observer of the State of Palestine to the United Nations Office at Geneva.

14. The Special Rapporteur met the Permanent Observer of the State of Palestine and the Permanent Representative of Israel on 24 and 26 June respectively, and held open and frank discussions with both of them in a spirit of transparency and mutual trust. The meeting with the Permanent Representative of Israel was particularly noteworthy because the Government of Israel had previously ceased all contact with the Special Rapporteur's predecessor for six years. The Permanent Representative of Israel informed the Special Rapporteur of his country's reservations regarding both the one-sided wording and open-ended nature of the mandate, which according to Israel prescribed the violations to be investigated by the Special Rapporteur. The Permanent Observer of the State of Palestine expressed his full support for the Special Rapporteur in the fulfilment of his mandate.

15. The Special Rapporteur also met other relevant interlocutors, including the President of the Human Rights Council, the Deputy United Nations High Commissioner for Human Rights, other staff members of the Office of the United Nations High Commissioner for Human Rights and representatives of non-governmental organizations, in order to apprise himself of the situation in the Occupied Palestinian Territory and to seek advice in relation to the effective fulfilment of the mandate. He also attended a discussion held under item 7 of the agenda of the twenty-sixth session of the Human Rights Council, entitled "Human rights situation in Palestine and other occupied Arab territories", to observe the proceedings.

16. During the aforementioned meetings, the Special Rapporteur expressed a desire to engage in constructive dialogue and the intention to begin working through the established human rights mechanisms available to special procedures mandate holders, including by way of confidential communications, in order to raise awareness of issues of concern pertaining to the situation of human rights in the Occupied Palestinian Territory. The Special Rapporteur reiterated that his only interest was to offer an objective assessment of the situation of human rights in the Occupied Palestinian Territory and to make recommendations with a view to improving the situation of human rights for Palestinians presently living under continued Israeli military occupation. The Special Rapporteur noted that access to Israel and the Occupied Palestinian Territory was an important starting point and expressed a strong interest in undertaking a country visit at the earliest opportunity.

17. A number of interlocutors informed the Special Rapporteur, during his consultations in Geneva, that Israel had conveyed assurances of its cooperation and engagement, including in terms of granting access to the mandate holder for a country visit.

V. Implementation and next steps

18. The intention of the Special Rapporteur in the present report is to provide an overview of the mandate, to address the issue of cooperation and to report briefly on the consultations with relevant stakeholders held in Geneva in June 2014. More time is needed to reflect upon the issues at hand and to gather adequate and credible first-hand information by way of a country visit before embarking on a substantive report.

19. Nevertheless, the Special Rapporteur is gravely concerned at the unfolding tragedy in the Gaza Strip. Since Israel launched military operation “Protective edge” during the night of 7 July 2014, the reported number of Palestinian civilians, including children, killed in the Gaza Strip as a result of Israeli airstrikes, tank and naval shelling on homes, hospitals and schools, including those run by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and other civilian infrastructure has climbed rapidly with each passing day.³ The death toll has risen further since the ground offensive, which began on 17 July.

20. The destruction of several thousands of homes has affected families throughout Gaza.³ Hundreds of thousands of people have had to leave their homes to seek refuge in schools, government buildings, hospitals and the homes of relatives. The number of internally displaced persons hosted by UNRWA is reported to have already exceeded the equivalent figure during Israeli military operation “Cast lead” (27 December 2008-18 January 2009), which represented the deadliest escalation of violence recorded in Gaza since 1967. The gravity of the situation in the Gaza Strip is compounded by a shortage of fuel, electricity, water, medical supplies and other basic necessities for the civilian population.

21. The Special Rapporteur has received dozens of reports of alleged violations of international human rights law and international humanitarian law by Israel, based on the monitoring and documentation work of courageous human rights defenders in Gaza, who are working tirelessly and at great risk to their own safety to bring these terrible cases to the attention of the world.

22. In the light of the gravity of the situation, the Special Rapporteur undertook an exceptional mission to Geneva on 23 July to attend the twenty-first special session of the Human Rights Council on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem. At the session he delivered a statement on behalf of the Coordination Committee of Special Procedures during which he urged that prompt, thorough, independent and effective investigations be conducted into all civilian deaths and injuries, as well as into the destruction of all civilian homes and vital infrastructure, caused by the Israeli military operation in Gaza, as well as by the rockets fired by Palestinian armed groups into Israel.

23. The Special Rapporteur has no illusions about the challenges ahead in the implementation of his mandate. Nevertheless, he will do his utmost to investigate and report on alleged Israeli violations impartially and objectively, with no

³ Office for the Coordination of Humanitarian Assistance, situation report on the Occupied Palestinian Territory of 7 August 2014. Available from www.ochaopt.org/documents/ocha_opt_sitrep_07_08_2014_.pdf.

preconceptions, on the basis of facts set against established international human rights law and international humanitarian law.

24. In future reports, the Special Rapporteur will present conclusions and recommendations that may shed light on alleged human rights violations suffered by victims in the Occupied Palestinian Territory. He hopes that his future reports will contribute to bringing some form of accountability for such violations and, ultimately, to preventing their reoccurrence. He is firmly of the view that lasting peace can be built only on the foundations of human rights and human dignity.

25. The Special Rapporteur takes note of Human Rights Council resolution S-21/1, adopted on 23 July 2014, and looks forward to unhindered access to Israel and the Occupied Palestinian Territory and to full cooperation with the respective authorities in the context of the implementation of his mandate.



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**Promotion and protection of human rights: human rights
situations and reports of special rapporteurs
and representatives**

Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General

Corrigendum

Paragraph 5

For the existing text *substitute*

5. The mandate¹ is therefore clearly to investigate and report on violations of international humanitarian law and international human rights law allegedly committed by Israel, the occupying Power, in the context of its prolonged occupation of the Palestinian territories since 1967.

¹ Pursuant to General Assembly resolution 60/251, the Human Rights Council has assumed the role and responsibilities of the Commission on Human Rights relating to the work of the Office of the United Nations High Commissioner for Human Rights.





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**Promotion and protection of human rights: human rights
situations and reports of special rapporteurs and representatives**

Situation of human rights in the Palestinian territories occupied since 1967

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono, submitted in accordance with Human Rights Council resolution 5/1.



Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono, submits his second report to the General Assembly. The report is based primarily on information provided by victims, witnesses, civil society representatives, United Nations representatives and Palestinian officials in Amman, in connection with the mission of the Special Rapporteur to the region in June 2015. The report addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza.

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I. Introduction

1. The present report is the third submitted by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Makarim Wibisono, and the second presented to the General Assembly.
2. As a result of continued lack of access to the Occupied Palestinian Territory, the Special Rapporteur conducted his second mission to the region in Amman where, from 9 to 12 June 2015, he met with victims, witnesses, non-governmental organizations, United Nations representatives, Palestinian officials and other interested parties to gather information on the situation of human rights in the Occupied Palestinian Territory. The Special Rapporteur extends his gratitude to the Government of Jordan for its support to his mission.
3. Written submissions were received in addition to the oral submissions and information gathered since his previous reports (A/HRC/28/78, A/69/301 and Corr.1). The Special Rapporteur is extremely appreciative of the briefings, testimonies and documentation that were provided and which, to a large extent, have informed the present report. The issue of the human rights impact of business operating in the Occupied Palestinian Territory, including in settlements, remains of concern and may be taken up outside the scope of the present report, which is subject to limitations of space.
4. In the context of the mission, travel restrictions imposed by the Government of Israel affected the ability of some members of Palestinian non-governmental organizations to meet with the Special Rapporteur. Videoconferencing was used several times, including for meetings with Palestinian non-governmental representatives from Gaza. Challenges such as these typify the obstacles faced by Palestinians who wish to travel abroad, or even between Gaza and the West Bank, including East Jerusalem.
5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine, including the agreement to facilitate access to the Occupied Palestinian Territory.
6. Despite a measure of positive interaction through the Permanent Mission of Israel to the United Nations Office in Geneva, including responses to a number of communications sent by the Special Rapporteur to the Government in which he raised human rights concerns, cooperation and access to the Occupied Palestinian Territory were not forthcoming. The Special Rapporteur encourages the Government of Israel to reinforce its engagement in bilateral dialogue, including through communications.
7. The Special Rapporteur stands ready to visit the Occupied Palestinian Territory and reiterates his request to the Government of Israel to grant him unencumbered access, including meetings with relevant Israeli officials. He continues to believe that cooperation with the mandate is in Israel's interest and would contribute to the effective and even-handed implementation of the mandate. The Special Rapporteur recalls the assurances of access made upon his appointment. It is deeply regrettable that, more than a year after his appointment, those assurances, have not been honoured. It is incumbent on Israel, as on any Member State, to extend cooperation to the holder of a mandate appointed by the United

Nations. Should the prospects of gaining access remain unlikely, the Special Rapporteur will have to reconsider how the mandate can best be served.

8. As reflected in the present report, the Special Rapporteur considers that accurate reporting on allegations of Israeli violations of international human rights law and international humanitarian law in the Occupied Palestinian Territory, in line with his mandate, sometimes requires that contextual factors, including the impacts of actors other than Israel, be reflected. The Special Rapporteur reiterates his unequivocal intention to report independently and objectively as long as he continues to hold the mandate.

9. At the outset, the Special Rapporteur wishes to make two overarching observations regarding the situation of human rights in the Occupied Palestinian Territory. The first concerns the extremely precarious circumstances in Gaza following the escalation of hostilities that took place between 7 July and 26 August 2014. During this period, Israel's military operation in Gaza included thousands of air strikes against Gaza and a ground operation by the Israel Defense Forces from 17 July to 5 August.¹ The Special Rapporteur is aware that Hamas and other Palestinian armed groups fired thousands of rockets and mortars towards Israel during the escalation of hostilities.² The Israeli military operation caused immense destruction, death and injury in Gaza and exacerbated an already fragile humanitarian situation, affecting a host of human rights. The current situation results from the cumulative effects of the slow strangulation of the Palestinian economy and livelihoods by the Israeli blockade maintained for over eight years; the deterioration of the physical and psychological well-being of the surviving population of Gaza following three successive escalations of hostilities in six years; and the devastated state of infrastructure, including essential utilities such as water and electricity, as well as housing.³

10. Several human rights organizations in Gaza have warned that the desperate situation in Gaza is creating fertile ground for the growth of extremism and violence. A further erosion of living conditions and human rights standards in Gaza will only continue to destabilize the situation. Rapid improvements in respect for international law, and for human rights in particular, are needed to avert this threat to the security of Palestinians and Israelis alike.⁴

11. The second broad concern is the continuing severe consequences for the human rights of Palestinians resulting from the existence and expansion of Israeli settlements in the West Bank, including East Jerusalem. Settlement-related impacts include forced eviction and forcible transfer of Palestinians in connection with land

¹ See the report of the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 (A/HRC/29/52 and A/HRC/29/CRP.4).

² Impacts reported by Israel include six civilian fatalities in Israel. Israel Ministry of Foreign Affairs, *The 2014 Gaza Conflict (7 July-26 August 2014): Factual and Legal Aspects*, executive summary, May 2015, paras. 31-36.

³ Engaging provisions of international human rights law including articles 6, 11, 12 and 13 of the International Covenant on Economic, Social and Cultural Rights and articles 6, 9 and 12 of the International Covenant on Civil and Political Rights.

⁴ "We must not fail in Gaza", joint statement by 30 international aid agencies issued on 26 February 2015.

confiscations; infringements on the rights to housing, water, health and freedom of movement; settler violence; and excessive use of force by Israeli security forces.⁵

12. Several Palestinian government officials and civil society representatives characterized 2014 as a devastating year. Many highlighted the increased number of fatalities and injuries among Palestinians. The tragic escalation of hostilities in Gaza raised numbers exponentially, while deaths and injuries also rose sharply in the West Bank, including as a result of encounters with Israeli security forces.

13. With respect to the right to self-determination under common article 1 of the International Covenants on Human Rights, information provided left the Special Rapporteur gravely concerned that the impacts of settlements, including on the territorial continuity of occupied Palestinian land and on the environment and natural resources, had reached a point where much of the damage might be irreversible.

14. In the context of the long-standing Israeli-Palestinian conflict, there is a distinct risk that relative inaction by the international community will facilitate a continuation of the destructive cycle of human rights violations and violence. On the basis of information received, the Special Rapporteur is convinced that the situation across the Occupied Palestinian Territory is indeed worsening and that violations of the human rights of Palestinians living under Israeli occupation are being further entrenched.

15. The general failure of accountability for past violations of human rights and international humanitarian law in the Occupied Palestinian Territory is a troubling indication that inaction will only lead to more injustices. Countless United Nations resolutions and reports attest to a situation that involves a persistent disregard for international law, including human rights law. The continuation of this reality, and the implications for future generations, cannot be tacitly accepted.

II. Situation of human rights in Gaza

A. Overview

16. It is an indication of the slow progress in the reconstruction of Gaza that as of June 2015, not a single house that was totally destroyed in the previous year's hostilities had been rebuilt, despite the Gaza Reconstruction Mechanism brokered by the United Nations. A year on from the complete destruction of, or severe damage to, approximately 19,000 housing units, some 100,000 people remained displaced.⁶ In July 2015, the Special Coordinator for the Middle East Peace Process reported on further Israeli-Palestinian coordination to allow Palestinians in Gaza to purchase construction material for the reconstruction of totally destroyed homes and for new construction.⁷

17. Many pledges made at the International Conference on Palestine: Reconstructing Gaza, held in Cairo in October 2014, remain unfulfilled. However, it

⁵ See note 3 above.

⁶ Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory, "Internal displacement in the context of the 2014 hostilities", Gaza One Year On: Humanitarian Concerns in the Aftermath of the 2014 Hostilities, July 2015. Available from: gaza.ochaopt.org.

⁷ Security Council briefing on the situation in the Middle East, 23 July 2015.

is critical that \$3.5 billion of the pledged amount be received to alleviate the situation in Gaza and improve access to basic utilities such as water, sanitation and electricity, through reconstruction of homes and civil infrastructure.

18. In the context of the effects of the blockade, the 2014 hostilities compounded the already dire situation of water and sanitation infrastructure and further destabilized the supply of electricity.⁸ As described by one Gaza-based organization, “Gazans wake up every day to wash with salt water and sleep at the end of the day without electricity”. Several interlocutors referred to Gaza being in a state of “de-development”. An already high unemployment rate soared following the end of hostilities and had reached 43 per cent at the end of the year.⁹ Everyone has a right to an adequate standard of living, but people in Gaza are left struggling for basic necessities, without hope and without prospects.

19. The access restricted areas imposed by Israel affect livelihoods and frequent reports indicate excessive use of force by Israeli forces in their enforcement. The exact limits of these no-go zones, adjoining the border with Israel and at sea off the Gaza coast, are uncertain.¹⁰ Agricultural land, schools and homes several hundred metres from the fence with Israel are affected. At sea, fishermen are prohibited from accessing waters beyond 6 nautical miles, although a number of incidents have occurred within that limit.¹¹ According to the Protection Cluster, the number of incidents in which fishermen were shot at and arbitrarily detained increased during 2014 as compared with the previous year.¹²

20. The impact of the 2014 hostilities on the right to education continues to be felt by children in Gaza.¹³ The Palestinian Ministry of Education noted that several hundred schools, including public schools and schools run by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), as well as higher education facilities and kindergartens, were affected. Further repairs and reconstruction continue to be needed. The Special Rapporteur was relieved to hear that a severe funding crisis was alleviated sufficiently to enable UNRWA schools in Gaza to open the school year on 24 August 2015.¹⁴

B. The blockade

21. The blockade imposed by Israel in 2007 has had a negative impact on a host of human rights of Palestinians in Gaza, including the rights to education, health, work, housing and freedom of movement. Statements made by the Government of

⁸ The Gaza power plant provided about one third of Gaza’s electricity before it was hit by several Israeli attacks in July 2014 (A/HRC/29/52/CRP.4, paras. 450-455 and 580-584).

⁹ International Monetary Fund, “West Bank and Gaza: report to the Ad Hoc Liaison Committee”, 18 May 2015, p. 5.

¹⁰ Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory, *Humanitarian Bulletin: Monthly Report*, May 2015, p. 10.

¹¹ The Oslo Accords provide for Palestinian use of 20 nautical miles.

¹² “Update on access restricted areas, in the Gaza Strip, January-December 2014”, issued by the Office of the United Nations High Commissioner for Human Rights (OHCHR) on behalf of the Protection Cluster.

¹³ Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory, “Repair and reconstruction of schools in Gaza”, Gaza One Year On, April 2015.

¹⁴ Statement by UNRWA, 19 August 2015. Available from: www.unrwa.org/newsroom/official-statements/unrwa-declares-school-year-open.

Israel upon imposing the blockade referred to control by Hamas over Gaza following the elections and rockets fired from Gaza towards Israel.¹⁵ In maintaining the blockade, Israel continues to raise security concerns. The blockade severely restricts imports and exports abroad and transfers of goods between the West Bank and Gaza and was also explicitly intended to “reduce the supply of fuel and electricity”.¹⁶ In addition, Israel further tightened restrictions on the movement of Palestinians in and out of Gaza.

22. The blockade constitutes collective punishment of the people of Gaza, contrary to article 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) (see A/69/327 and A/HRC/28/78). In addition, in terms of Israeli and Palestinian security, while the blockade has been in force, three escalations of hostilities have taken place. It is clear that the main result of the blockade has been to undermine the human rights of the people in Gaza and to intensify their suffering. The Special Rapporteur remains unconvinced by any security-based argument against lifting the blockade in the light of the unconscionable harm, in contravention of international law, its continuation is causing in Gaza. Other measures that are in accordance with its obligations under international law, such as screening goods, should be employed by Israel to address security concerns without severely eroding the human rights of Palestinians and, as noted by the United Nations Conference on Trade and Development, threatening the economic viability of Gaza (TD/B/62/3, para. 60).

23. In imposing the blockade, the Government of Israel stated that it sought to take into account “humanitarian aspects relevant to the Gaza Strip” and “to avoid a humanitarian crisis”.¹⁷ It is now clear that the blockade is a primary factor holding Gaza fast in its current humanitarian crisis, with many people displaced in 2014 still without homes to return to, electrical power cuts of 12-16 hours daily,¹⁸ more than 90 per cent of the water unfit for human consumption, an estimated 80 per cent of its people receiving aid and a 39 per cent poverty rate. Efforts undertaken by Israelis and Palestinians to coordinate efforts towards reconstruction have been insufficient to address the issues; Israel holds the master key to relieving the situation by lifting the blockade and the Special Rapporteur urges Israel to do so.

C. Right to health

24. Some 2,250 Palestinians were killed in Gaza during the 2014 hostilities, almost two thirds of whom were civilians (A/HRC/29/52, para. 20), and it is estimated that 10 per cent of the more than 11,200 Palestinians injured will be permanently disabled, including up to a thousand children (A/69/926-S/2015/409, para. 88). A member of an international medical organization observed to the Special Rapporteur that, in the aftermath of the hostilities, “Many severely injured civilians were desperately trying to rebuild their lives but were faced with the stark

¹⁵ Israel Ministry of Foreign Affairs, “Security Cabinet declares Gaza hostile territory”, 19 September 2007.

¹⁶ Ibid.

¹⁷ See note 15 above.

¹⁸ Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory, “The humanitarian impact of Gaza’s electricity and fuel crisis”, Gaza One Year On, July 2015.

reality of total immobility, at least temporarily until their treatment and physiotherapy were completed, little shelter and no source of financial income.”

25. The 2014 escalation of hostilities was unprecedented in duration, fatalities and injuries, and scale of destruction in Gaza. However, its impacts on the health of the population cannot be viewed in isolation from the impacts of previous escalations and with previous Israeli military operations in 2008/09 and 2012 that resulted in thousands of casualties as well as destruction of, and damage to, homes and civil infrastructure. The health situation is also deeply strongly influenced by the crippling effects of the blockade on the economy and on the state of essential infrastructure in Gaza. A Palestinian doctor at a major hospital in Gaza assessed health care in Gaza as “getting worse day after day”, citing factors including the blockade, poverty and unemployment, and noting that “most if not all health indicators are deteriorating”.¹⁹

26. A representative of the Palestinian Ministry of Health spoke of the “unseen effects” on the population, especially children, of repeated hostilities. According to one international medical organization, even prior to the events of 2014, “many children in Gaza suffered from post-traumatic stress syndrome as a result of previous attacks and political violence”. Following the hostilities, almost 425,000 children were estimated to be in need of immediate psychosocial support after having experienced war, including having fled or lived through attacks on their homes and suffering injuries themselves and the death or injury of family and friends.²⁰ The communities in Gaza that need to nurture these children back to health following physical and psychological trauma are themselves devastated.

27. Significant public health risks result from the living conditions of the substantial number of displaced persons, including contaminated water and sewage and wastewater flowing into the environment because of poor and damaged sanitation infrastructure, increasing the risk of disease.²¹ Moreover, thousands of explosive remnants of war in the rubble of destroyed homes and other infrastructure remain latent threats (A/HRC/29/CRP.4, para. 575).

28. The Health Cluster in the Occupied Palestinian Territory has noted that “from day one of the [2014] conflict, health facilities have not been spared from destruction”.²² Thirteen public and private health facilities were destroyed and 104 facilities, including hospitals, clinics and pharmacies, were damaged during the escalation of conflict.²³ The Special Rapporteur received detailed information on several cases alleging violations by Israel of international humanitarian law and international human rights law in attacks on hospitals and ambulances and obstruction of medical evacuations. Rehabilitation of medical facilities has been slowed by lack of construction material and shortage of funding. Damages for loss

¹⁹ Interview conducted by an international medical organization approximately one year after the 2014 hostilities.

²⁰ Office for the Coordination of Humanitarian Affairs, *Humanitarian Bulletin: Monthly Report*, October 2014.

²¹ Health Cluster, *Gaza Strip: Joint Health Sector Assessment Report*, September 2014, section 5.8.

²² *Ibid.*, section 4.1; on coordination in the health sector, see section 6.4.

²³ Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory, “Reconstruction of health sector facilities impaired by shortages of materials and funding”, Gaza One Year On, April 2015.

of infrastructure and equipment for the health sector alone have been estimated at \$23,983,168.²⁴

29. The lack of clean water makes it difficult to sterilize medical equipment and the unreliable electricity supply negatively affects sensitive medical equipment. About 50 per cent of the medical equipment is not functioning for various reasons, including the inability to obtain spare parts for or adequately maintain the equipment. The Palestinian Ministry of Health pointed out to the Special Rapporteur its efforts to supply thousands of litres of fuel every month to power life-saving equipment such as dialysis machines. Chronic shortages of medical supplies, reported in mid-2015, included shortages of about 30 per cent of essential medicines and almost 40 per cent of medical disposables such as gloves and needles. According to article 55 of the Fourth Geneva Convention, as the occupying Power, Israel “has the duty of ensuring the ... medical supplies of the population ... if the resources of the occupied territory are inadequate”.

30. It is in the context of damaged and destroyed facilities and severe shortages of equipment and medicines that the health sector in Gaza must cope with the increased caseload of physical and psychological traumas resulting from the hostilities. International aid²⁵ and the tenacity of Palestinian health workers are critical factors keeping the health sector in Gaza afloat. Lack of medical supplies and unpaid salaries of more than 4,500 health workers in Gaza, who have generally continued to work, are linked to the financial and political situation of Palestinian authorities in the West Bank and Gaza, which in turn is negatively affected by the blockade and other occupation-related policies, including the withholding of tax funds by Israel.²⁶ While coordination, including of foreign aid, salaries and supplies, are also challenges facing Palestinian authorities, the Health Cluster in the Occupied Palestinian Territory observes that “it will not be possible to effectively rebuild the Gaza health sector while the Israeli blockade remains in place”.²⁷

31. The state of the health sector in Gaza drives referrals by the Palestinian Ministry of Health and hospitals in Gaza for specialized care in the West Bank, including East Jerusalem, and in Israel, as well as abroad. The positive efforts by Israeli coordinators (Coordinator of Government Activities in the Territories Unit) to facilitate individual medical transfers at the Erez crossing with Israel have been noted.²⁸ Figures provided by WHO show an increase of 33 per cent in applications for permits for medical treatment between 2013 and 2014.²⁹ However, the percentage of permits to cross through Erez for medical treatment that have been approved by the Israeli authorities decreased from 88.7 per cent in 2013 to 82.4 per cent in 2014 and further to 81.6 per cent in 2015. The Special Rapporteur is concerned about the relatively high percentage of persons who are denied access to appropriate health care outside Gaza by Israeli-imposed movement restrictions,

²⁴ World Health Organization (WHO) briefing, June 2015, referencing the Detailed Needs Assessment and Recovery Strategy for the Health Subsector, April 2015.

²⁵ WHO, “Report of a field assessment of health conditions in the occupied Palestinian territory”, document WHO-EM/OPT/006/E, pp. 15-16.

²⁶ Susan Power and Nada Kiswanson van Hooydonk, *Divide and Conquer: A Legal Analysis of Israel's 2014 Military Offensive Against the Gaza Strip* (Ramallah, Al-Haq, 2015).

²⁷ *Gaza Strip: Joint Health Sector Assessment Report*, p. 4.

²⁸ WHO, document WHO-EM/OPT/006/E, p. 9.

²⁹ A contributing factor is the decline in referrals to Egypt since the restricted access/closure of the Rafah crossing in 2013. *Ibid.*

especially as the dire situation of the health sector in Gaza is to a large extent due to Israeli measures.

32. While both Palestinians and Israelis suffered tragic losses during the escalations of conflict in recent years, the people who undeniably bore the brunt of the hostilities in terms of the volume of fatalities, injuries and sheer destruction still cannot heal. It is a fact that the blockade keeps the Gaza health sector in a state of dependency, on crutches donated by the international community.

III. Situation of human rights in the West Bank, including East Jerusalem

A. Settlements

33. Israeli policies and practices related to settlements continue to be central to most violations of the human rights of Palestinians in the West Bank, including East Jerusalem, and put immense pressure on Palestinians to leave their homes and lands, especially in Area C and East Jerusalem, where most settlements are concentrated. Reportedly, in 2014, construction was started on some 1,300 housing units. Although this was less than in the previous year, the number of tenders issued in 2014 for new settlement construction (almost 4,500 units) was greater than in previous years, indicating further expansion in the future.³⁰

34. Article 49 of the Fourth Geneva Convention prohibits the transfer by the occupying Power of its civilians into occupied territory. By the same article, individual or mass forcible transfers of protected persons are prohibited, except if their security or imperative military reasons requires evacuation within the occupied territory. Thus, the illegality under international humanitarian law of Israeli settlements and forcible transfers of Palestinians is well established.

35. Dividing the West Bank into Areas A, B, and C under the Oslo Accords entailed a graduating level of Israeli/Palestinian control, from mainly Palestinian control in Area A to full Israeli control in Area C, which covers more than 60 per cent of the West Bank. The Palestinian Ministry of the Interior informed the Special Rapporteur of cases of emergencies, such as fires or traffic accidents, especially in Area C, where Israeli authorities did not act and prevented the Palestinian civil defence from providing assistance.

36. While the exact number of settlers living in the West Bank is unknown, estimates tend to range from 500,000 to 600,000 people, about one third of them in East Jerusalem. When compared with the Palestinian population of some 320,000 in East Jerusalem and some 300,000 in Area C, and the almost exclusive control exercised by Israel over matters including law enforcement, planning, water allocation and construction, the vulnerability of Palestinians in these areas is apparent.

37. The destruction of homes and livelihood structures is one factor leading Palestinians to leave their land and move to areas where Israel exerts less control in

³⁰ Information provided by the Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory, referencing figures from the Israeli Central Bureau of Statistics for building starts and Peace Now for tenders.

Areas A and B. The Israeli planning and zoning regime has been widely criticized as discriminatory against Palestinians. The majority of land in Area C has been designated either specifically for settlements or as State land, closed military zones, nature reserves or for other purposes. While 30 per cent of the remaining land is ostensibly available for construction by Palestinians, it is reported that as building depends on prior approval of plans by Israel, in effect, less than 1 per cent of the land is available for that purpose. Consequently, many Palestinians are left with no option but to build without the required permit.

38. The existence or lack of a building permit does not alter the fact that Israel is prohibited from destroying private Palestinian property.³¹ According to information received, between June 2014 and June 2015, 524 Palestinian structures, including homes, schools, water cisterns and animal pens, were demolished by Israeli authorities in Area C and East Jerusalem. Reportedly, in the first half of 2015, there was a 37 per cent increase in the destruction of donor-funded structures provided to Palestinians as humanitarian assistance. Demolitions give rise to a host of human rights concerns, including violations of the right to an adequate standard of living, including food and housing, and the rights to work and education.

39. Regrettably, there appears to be little legal protection for Palestinians facing demolition orders. The village of Susiya, in Hebron Governorate, is a case in point. All of its 170 structures located in Area C,³² from homes to animal shelters, schools and latrines, have received demolition orders. While the plan to further develop the nearby settlement of Susya has been accepted, attempts by the Palestinian villagers to gain approval from the Israeli authorities for planning schemes, a prerequisite for applying for building permits, have failed. Even while a petition against the rejection of the village's planning scheme was pending before the Israeli High Court of Justice, the Court refused to order an interim injunction freezing demolitions.

40. The disparity between the amounts of water allocated to Palestinians and to settlers continues to be a central factor in settlement expansion and displacement of Palestinians. On average, Israeli settlers consume 369 litres per capita per day for domestic use, while Palestinians consume 70 litres (A/68/513, para. 38). Interlocutors highlighted the fact that settlements tend to be located close to water sources. A youth group from the Jordan Valley explained that Israel controls most water resources, including West Bank aquifers and wells, and noted that Israelis drilled deep wells with powerful pumps, depleting local Palestinian wells and springs. According to the non-governmental organization NGO Monitor, the allocation of water is in line with the Oslo Accords and water projects are subject to approval by the Israeli/Palestinian Joint Water Committee. However, as reported by the Secretary-General, despite the existence of this committee, "in practice ... the Israeli water management system and policies in place discriminate against Palestinians" (A/68/513, para. 38). This corresponds with information received that settlements, especially in the fertile Jordan Valley, enjoy an ample water supply and can grow water-intensive crops, while yields from Palestinian agriculture in the area are negatively affected by limited access to water. In addition, the Palestinian Ministry of Agriculture informed the Special Rapporteur of destruction and

³¹ This prohibition (article 53 of the Fourth Geneva Convention) applies unless an absolute necessity for military operations exists.

³² Part of the village is in Area B.

demolitions of agricultural assets, including wells and irrigation lines, by settlers and by Israeli authorities.

41. A particularly vulnerable group, highlighted by the Special Rapporteur in a previous report (A/HRC/28/78) and a press release,³³ is the Bedouin communities in Area C. Plans by the Israeli Civil Administration provide for the eviction and transfer of individuals and families from some 46 communities resident in the central West Bank, including the East Jerusalem periphery, to three Government-designated sites in the Jerusalem and Jericho Governorates of the West Bank. The three sites are Fasayil, Nuweima and Al-Jabal, the last associated with health concerns owing to its location next to a refuse dump. Reportedly, on 5 May 2015, representatives of the Israeli Civil Administration entered Abu Nwar village and sought to persuade residents to sign a transfer agreement for their “relocation” to Al-Jabal, at the same time allegedly informing residents that they would be moved whether they signed or not.

42. On 19 August 2015, United Nations officials called for an immediate freeze on demolitions in the West Bank after 22 structures were demolished in 4 of the 46 communities affected by the plan. The strategic implications and the link with the E1 settlement project were highlighted: “These demolitions are occurring in parallel with settlement expansion. The relocation plan for these communities would effectively remove Palestinian presence in and around the planned E1 settlement project”.³⁴

43. A representative from Khan Al Ahmar, a village affected by the August 2015 demolitions, briefed the Special Rapporteur, explaining that during April 2015, an unmanned aerial drone was observed several times a week carrying out surveillance of the community. Residents also felt that they were being watched by settlers who entered the community, sometimes shining their vehicle headlights at homes during the night. The combined effect of the transfer plan, a lack of genuine consultations, threats and implementation of demolition orders, restrictions on movement, surveillance and settler violence creates a coercive environment that puts pressure on Palestinians to move. While forced eviction and forcible transfer are contrary to international law, communities face the stark reality that resisting Israeli demands means enduring infringements of their rights to security of the person, health, freedom from arbitrary interference with privacy, family and home, freedom of movement and residence and the right to an adequate standard of living for themselves and their families, including housing, water and sanitation.

44. The Special Rapporteur is deeply dismayed that despite clear, repeated and unequivocal calls on Israel by the international community, including the Secretary-General (see A/69/348), not to contravene international humanitarian law and international human rights law by implementing these plans, they are being advanced, with devastating consequences for the affected communities.

45. The Special Rapporteur was also briefed on settlement expansion in the Gush Etzion bloc, which affects several villages in the Bethlehem area. The planned route

³³ “UN human rights expert urges Israel to abandon plans to transfer Bedouins in the occupied West Bank”, 5 June 2015.

³⁴ UNRWA, “UN officials call for an immediate demolitions freeze in the West Bank”, 19 August 2015.

of the wall, which has been declared illegal by the International Court of Justice,³⁵ runs approximately 56 km into Bethlehem Governorate. During his visit, the Special Rapporteur was stunned to see that in 2015 the wall threatens to cut straight through the length of Wadi Fukin village, located in Areas B and C and home to a majority refugee population. In 2014, Israeli authorities confiscated 1,500 dunums — half of its remaining land — from this farming village, famous for its irrigation infrastructure.

46. Wadi Fukin is one of four villages with a total population of about 22,000 Palestinians affected by three nearby settlements of approximately 50,000 Israelis. According to UNRWA, groundwork for the construction of 218 housing units for the settlements on land seized from Wadi Fukin is under way. The Special Rapporteur saw photographs showing the Betar Illit settlement towering over Wadi Fukin in the valley below, whereas before the year 2000 the hill was bare. He also saw photographic and video documentation of sewage from the settlement flowing into the village and was briefed by the village mayor on how land and water sources had been contaminated, affecting produce which farmers could no longer sell. Reportedly, the contamination also led to diseases among the villagers. UNRWA reported numerous incidents of harassment of Wadi Fukin residents, including armed settlers visiting irrigation pools and intimidating villagers, noting that “the Israeli authorities persistently failed to prevent or reduce” such incidents.

47. The phenomenon of settler violence is another factor contributing to displacement of Palestinians. The Special Rapporteur is aware of high tensions between settlers and Palestinians and abhors any violent attack. The arson attack on the Dawabsha family home in the West Bank village of Duma on 31 July 2015, which led to the death of a toddler and his parents, leaving his four-year-old brother an orphan, appears to be a tragic consequence of settlement advancement and lack of accountability for settler violence, as well as the illegal actions of the perpetrator.

48. During the first six months of 2015, a monthly average of 7 incidents of Palestinian casualties and 11 incidents of damage to property as a result of settler violence was recorded. In 2014, there were 331 recorded incidents of settler violence against persons or property.³⁶

B. Excessive use of force

49. Heightened tensions and clashes in the West Bank, including East Jerusalem, in mid-2014 exacerbated existing concerns over excessive use of force against Palestinians by Israeli security forces (A/HRC/28/78, paras. 41-47). Tensions spiked following the murders of Israeli and Palestinian youths in June and July 2014 and in the context of the escalation of hostilities in Gaza. Fifty-six Palestinians were reported killed in the context of confrontations with Israeli forces in the West Bank in 2014, which were especially violent in the months of June, July and August, and close to 6,000 were injured.³⁷ The total number of fatalities in 2014 was double the figure of 2013 and more than six times as high as in 2012. Fatality figures from the

³⁵ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I. C. J. Reports 2004*, p. 136.

³⁶ Office for the Coordination of Humanitarian Affairs office in the occupied Palestinian territory, *Humanitarian Bulletin: Monthly Report*, July 2015, annex.

³⁷ *Ibid.*, December 2014, p. 9.

first quarter of 2015 indicate a return to levels comparable with those of previous years, although serious concerns remain over fatalities and serious injuries resulting from actions by Israeli security forces, including increased use of live ammunition during protests in circumstances that appear to pose no imminent threat.³⁸

50. In one incident reported to the Special Rapporteur, on 27 February 2015, during the annual “Open Shuhada Street” non-violent protest in Hebron, Israeli security forces allegedly used live ammunition as well as tear gas, stun grenades and rubber bullets. Among those injured were six Palestinians, who sustained injuries from live ammunition. UNRWA reported that it “continues to regularly document cases of Palestinian demonstrators being injured by live ammunition employed by Israel security forces”. Refugee camps located close to settlements and the wall, areas with a heavy Israeli security presence, are particularly exposed. UNRWA highlighted concern over incidents involving Israeli security forces in the Jalazone refugee camp, including cases of teenagers severely injured by live bullets. In one reported case, on 18 March 2015, during a demonstration in Jalazone refugee camp, 21-year-old Ali Safi was shot with live ammunition allegedly fired by an Israeli soldier from a distance of approximately 70 metres; he later succumbed to his injuries.

51. The Special Rapporteur is also concerned about the use of so-called “less-lethal weapons”, which can be, and have been, used with fatal consequences. Several interlocutors mentioned the case of the Palestinian physician in Abu Dis who died in May 2014 after inhaling tear gas reportedly fired by Israeli security forces.

52. According to the Association for Civil Rights in Israel, in mid-2014, Israeli officers began using a new, harder kind of “sponge” bullet during riots and demonstrations in East Jerusalem. Testimonies collected in 10 such cases between July 2014 and May 2015 documented serious injuries. Although regulations stipulate that sponge bullets may not be used against minors, among the victims in these cases were six children, including one child as young as six. Their injuries reportedly included facial fractures and loss of an eye.

53. One of these incidents occurred in March 2015 in East Jerusalem, when a boy of about 12 years of age was allegedly shot by Israeli security forces with a sponge bullet while on his way home from school. In the affidavit provided by Al-Haq, the boy relates that he hid between parked cars as at least 25 shots were fired by Israeli officers to prevent the schoolchildren from approaching parts of the wall that were under construction. After he emerged from his hiding place the boy was hit by a shot in the left eye, which had to be surgically removed.

54. The Special Rapporteur strongly reiterates his recommendation that Israel ensure compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990. There must be no impunity for excessive use of force.

55. The use of so-called “skunk water” in the West Bank, including in East Jerusalem, has a worrying impact on rights, including health and work, and the freedoms of expression and peaceful assembly.³⁹ This foul-smelling liquid,

³⁸ On the increased use of live ammunition, including in “crowd-control” situations, see also A/HRC/29/52, para. 70.

³⁹ Who Profits Research Center, *Proven Effective: Crowd Control Weapons in the Occupied*

composed of water, yeast and sodium bicarbonate, can cause skin and eye irritation, nausea and abdominal pain.⁴⁰ The lingering sewer-like odour is also a source of embarrassment to those whose person or property is sprayed. While it was designed to disperse crowds by spraying from a distance, sources describe skunk being sprayed by Israeli forces directly at homes and businesses, that is, not to disperse crowds, but in an apparently punitive manner. During tense periods between July and December 2014, the Association for Civil Rights in Israel described how “streets in almost every neighbourhood of East Jerusalem had been covered in tremendous amounts of skunk liquid. Most of the liquid was aimed towards residential properties, cars and shops”.

C. Right to health

56. Restrictions on movement imposed by Israel are a central obstacle to access by Palestinians to health-care services in urban centres, especially in East Jerusalem, where several hospitals are located. Area C land, where movement is especially restricted by checkpoints, road gates and roadblocks, often surrounds “islands” of Areas A and B land.

57. Palestinians living in Area C are especially vulnerable to negative impacts on their right to health. This includes many rural Bedouin communities who typically also have high poverty rates and lack local health facilities. Access is also especially difficult in the old city of Hebron, where Palestinians live in close proximity to a large settler population. A survey undertaken by WHO in 2011 of 102 households in the old city of Hebron showed that 63 per cent of them had to cross Israeli checkpoints to access health services. One Hebron resident described to the Special Rapporteur his personal experiences of Palestinian ambulances either being prevented from entering the area to attend to emergencies or experiencing long delays owing to the need to coordinate Israeli agreement for access.

58. Physical barriers to access to health are accompanied by procedural barriers. Following referral, under the permit regime Palestinians who need to access health services, which are often located in East Jerusalem, must seek Israeli approval through Palestinian Coordination offices. According to WHO, about 20 per cent of patients who apply are denied access, either because of refusal of their requests or lack of response. A 2014 study revealed that 4 in 10 patients and those accompanying them who were denied permits by Israeli authorities were rejected for “security reasons” or with no reason given. Also affected by the permit regime are more than 1,000 Palestinian health workers who live elsewhere in the West Bank but work in East Jerusalem and are regularly required to apply for permits to access their workplace.

59. Other impacts of occupation policies and practices on the right to health include injuries and fatalities related to settler violence and encounters with Israel security forces. Concerns were also raised about the health implications of pollution of Palestinian crops by untreated waste from settlements and from Israeli factories. The Palestinian Ministry of Environment, among others, expressed serious concern

Palestinian Territories (Tel Aviv, April 2014).

⁴⁰ See www.skunk-skunk.com/image/users/121755/ftp/my_files/MSDS_Skunk.pdf?id=3225191.

about hazardous waste, including chemical materials and electronic rubble, from Israel and settlements being “dumped” in the West Bank.

60. Nearly half a century of occupation and practices related thereto entailing humiliation and loss of control over activities of daily life have also had a detrimental impact on the mental health and well-being of the Palestinian population. People live in the climate of insecurity fostered by encroaching settlements, threats and execution of home demolitions, settler violence, excessive use of force by Israeli forces, the wall, restrictions on movement and on access to education, work, land and water, along with the power exerted by the Israeli military justice system over children and adults in the community.

D. East Jerusalem

61. East Jerusalem represents Palestinian aspirations for a future capital of the State of Palestine and fulfilment of the right to self-determination. Although Israel annexed East Jerusalem, in contravention of international law (Security Council resolutions 476 (1980) and 478 (1980)), representatives of the Negotiations Affairs Department of the Palestine Liberation Organization, described East Jerusalem, in the context of a two-State solution, as the political, socioeconomic, cultural and spiritual heart of Palestine, geographically linking the northern and southern parts of the Occupied Palestinian Territory.

62. The ability of Palestinians to maintain their “permanent residency” status in East Jerusalem is continually challenged. According to Palestinian representatives, the Palestinian population in East Jerusalem was 36 per cent of the total population of Jerusalem at the end of 2014. Several interlocutors described the Israeli policy of maintaining a demographic ratio in Jerusalem of about 70 per cent Jewish and 30 per cent Palestinian; the Local Outline Plan — Jerusalem 2000 indicates a ratio of 60:40. This plan, originally proposed in 2004, notably sets out policies for the whole of Jerusalem. It is a troubling indication of the mindset of the Israeli administration that there is no reference to Palestinians and East Jerusalem in the plan, which refers to “Arab residents in the eastern part of the city”.⁴¹

63. Since 1967, the residency status of more than 14,000 Palestinians was reportedly revoked by Israel, with about half of that number revoked between 2007 and 2013. Under the “centre of life” policy Palestinians must continually prove their residency, by providing documentation such as property tax receipts or water and telephone bills to the Israeli Ministry of the Interior to preserve their status. According to the Palestinian Ministry on Jerusalem Affairs, the financial situation of many in East Jerusalem is strained, with 72 Israeli taxes levied on Palestinian residents. In addition, residency status is not automatically conferred through marriage or to children of permanent residents. As a result, a number of Palestinians live in East Jerusalem without formal status and, consequently, the accompanying entitlements. According to Al-Haq, between 2002 and mid-2015, the Israeli Ministry of the Interior rejected more than 3,300 of some 11,000 applications for family reunification in East Jerusalem. In addition, about a quarter of child registration applications were denied by Israeli authorities between 2002 and March 2015, and several thousand Palestinian children are without residency status.

⁴¹ See http://pcc-jer.org/arabic/Publication/jerusalem_master_plan/engchapt/Intro.pdf.

64. Because of Israeli settlements, the wall and the permit regime, East Jerusalem is increasingly being isolated from the rest of the West Bank. Some 140 km of the wall are reportedly within the municipality of Jerusalem. This has the effect of cutting segments of East Jerusalem communities off from the rest of the city, leaving them on the West Bank side of the wall and dependent on access, through Israeli checkpoints, to essential services such as health and education. Several West Bank communities and East Jerusalem suburbs that were previously closely connected to the city now find themselves “walled out”.

65. Israeli planning and zoning policies restrict the ability of Palestinians in East Jerusalem to build. Within the municipal borders of Jerusalem as defined by Israel, only 13 per cent of the land area of East Jerusalem is available for Palestinian use following the allocation of 35 per cent for settlements, 30 per cent left “unplanned” and 22 per cent reserved as “green areas”. Even if land were available, purchasing a permit to build or expand housing is beyond the means of most people, forcing many Palestinians to build without a permit and risk demolition by Israeli authorities. According to Palestinian representatives, an estimated 220,000 Israeli settlers live in some 55,000 housing units in East Jerusalem while about 321,000 Palestinians live in some 50,000 housing units. The presence of Israeli settlements within East Jerusalem creates a tense environment and increases the risk of settler violence.

66. In addition to the threat of demolition, Palestinian homes are also at risk of being taken over by settlers. With respect to one such case (see A/HRC/30/27, case No. ISR 1/2015), the Special Rapporteur, in a joint communication of 30 April 2015, raised concerns with the Government of Israel over an order to evict a Palestinian family from their home in the old city of East Jerusalem. The order had been issued following a legal challenge by settlers claiming that the family had abandoned the property. It appeared that the family was not afforded due process to refute the claim and that attempts were made to forcibly evict the family, contrary to international humanitarian law and international human rights law. The Special Rapporteur regrets that to date no response has been received, and he urges the Government of Israel to refrain from such forced evictions.

67. Linked to the discriminatory planning and zoning is the shortage of some 1,500 classrooms for Palestinian pupils, which forces Palestinian schools to rent apartments to serve as classrooms.⁴² Children who are residents of East Jerusalem are entitled to free education under Israeli law, but several thousand children are not enrolled in school. Some parents pay for private education owing to overcrowded and substandard facilities in Palestinian schools; others enrol their children in Israeli-run schools where they must follow the Israeli curriculum. Despite Israel’s obligation, under article 50 of the Fourth Geneva Convention and article 13 of the International Covenant on Economic, Social and Cultural Rights, to provide access to education, several Palestinian-run schools and facilities such as playgrounds are threatened with demolition orders or cannot be built because they have not been granted a building permit.

68. The Special Rapporteur is gravely concerned about policies linked to Israeli settlements and aims to achieve a particular demographic balance in Jerusalem. These work to stifle the natural growth of the Palestinian population in East

⁴² Figure provided by the Palestinian Ministry of Education. See also <http://www.acri.org.il/en/wp-content/uploads/2015/05/Jerusalem-Infographic-Acri-English-3.png>.

Jerusalem, eliminate the possibility for most Palestinians of moving there and put pressure on Palestinians to leave. They affect all aspects of Palestinian life, including the rights to freedom of movement, adequate housing, access to education and health services, respect for family life and freedom from discrimination.

IV. Prisoners and detainees

69. According to Addameer Prisoner Support and Human Rights Association, as of April 2015, 414 Palestinians were being held under administrative detention, without charge or trial, under six-monthly orders which can be renewed indefinitely. Among them were seven members of the Palestinian Legislative Council. This group initially included Khalida Jarrar, who, several non-governmental organizations asserted, was being held because of her political activities and her role as a prominent advocate for Palestinian human rights. While Mrs. Jarrar continued to be held at the time of drafting, on 15 April 2015, charges were brought, although concerns over whether she would receive a fair trial remain.⁴³

70. Two Israeli legislative initiatives affecting the situation of Palestinian prisoners and detainees are notable. On 30 July 2015, in the face of warnings, including by several independent experts,⁴⁴ that it was incompatible with human rights standards, the Knesset passed a law allowing for the force-feeding of prisoners and detainees on hunger strike.⁴⁵ The measure is expected to affect Palestinian prisoners, especially those under administrative detention, and uses cruel and inhuman treatment, removing the personal autonomy of those who would put their lives on the line in peaceful protest.

71. In an amendment to the Penal Code adopted on 20 July 2015, those convicted of throwing stones or any other objects at moving vehicles could face up to 20 years' imprisonment.⁴⁶ While not condoning stone-throwing, whether by settlers or Palestinians, the Special Rapporteur is concerned at these severe sentences, especially in the light of serious questions of adherence to fair trial principles and due process guarantees for Palestinians accused under the Israeli military justice system. Even without proof of harmful intent by stone-throwing, the revised law provides for sentences of up to 10 years' imprisonment. The Special Rapporteur is concerned about the potential effect of such provisions on minors, as most of those charged with stone-throwing are Palestinian children. In both these laws, it seems that security considerations have been invoked as a blanket justification for entrenching in law provisions that lead to violations of the human rights of Palestinians.

72. The Special Rapporteur met a 19-year-old from Hebron who claimed to have been wrongfully accused of stone-throwing and that Israeli forces had refused to

⁴³ Amnesty International, press release, 28 August 2015. Available from: www.amnesty.org/download/Documents/MDE1523502015ENGLISH.pdf.

⁴⁴ OHCHR, "UN experts urge Israel to halt legalization of force-feeding of hunger-strikers in detention", press release, 28 July 2015 and "Force-feeding is cruel and inhuman — UN experts urge Israel not to make it legal", press release, 25 June 2014.

⁴⁵ The Knesset, "Knesset passes law to prevent damages caused by hunger strikes", press release, 30 July 2015.

⁴⁶ The Knesset, "Knesset approves harsher punishments for stone throwers", press release, 21 July 2015.

check closed-circuit television footage that would have corroborated his account. The Special Rapporteur was moved by the seeming hopelessness of the situation of this young man, who had no real prospects for challenging the charge, and the implications for his future. The young man belonged to Youth Against Settlements, an organization which insists on non-violence in protesting the occupation and settlements. In their briefing to the Special Rapporteur, other members of the organization emphasized that they believed in the right to life of Israelis and Palestinians and that they rejected violent attacks, irrespective of who carried them out.

73. In June 2015, more than 5,400 Palestinians were being held by Israel.⁴⁷ The majority are held in prisons within Israel rather than in the Occupied Palestinian Territory, contrary to article 76 of the Fourth Geneva Convention. In addition to other restrictions on family visits, this makes it difficult for family members to visit prisoners and detainees. While most prisoners and detainees are adult men, women and children are also affected, either as detainees themselves or members of the families of detainees. It has been noted that infrequent or lack of contact with parents, relatives and friends has a significant negative effect on the mental health of prisoners.⁴⁸ According to Addameer, since 1967, up to 20 per cent of the population has at some point been detained by Israeli authorities.

74. Reports regarding the treatment of Palestinian prisoners and detainees held by Israel noted the prohibition under international law of torture or cruel, inhuman or degrading treatment and referred to the use of “stress positions”, beatings, solitary confinement and sleep deprivation. Cases submitted regarding female Palestinian prisoners and detainees detail instances of physical and verbal assault. Allegations were also made that Israeli authorities have used full or partial strip-searches as a punitive measure against female prisoners and detainees.

75. The Special Rapporteur remains concerned at the treatment of hundreds of Palestinian children arrested, detained and imprisoned each year by Israel (A/HRC/28/78) and recalls that article 37 of the Convention on the Rights of the Child provides that a child may only be deprived of his or her liberty as a measure of last resort. The Special Rapporteur acknowledges the engagement of Israel with the United Nations Children’s Fund (UNICEF) regarding recommendations contained in its report of February 2013 in which the organization concluded that “ill-treatment of children who come in contact with the military detention system appears to be widespread, systematic and institutionalized”.⁴⁹ However, he is dismayed by the limited progress as “reports of alleged ill-treatment of children during arrest, transfer, interrogation and detention have not significantly decreased in 2013 and 2014”.⁵⁰ It is regrettable that the pilot scheme introduced in February 2014 to issue written summonses to children as an alternative to terrifying night-time arrests was discontinued in early 2015. No evaluation of the scheme reportedly

⁴⁷ This was the number classified by Israel as “security” prisoners and detainees. In addition, nearly 1,000 Palestinians were held for being in Israel illegally. B’tselem statistics accessed August 2015. Available from: www.btselem.org/statistics/detainees_and_prisoners.

⁴⁸ WHO, document WHO-EM/OPT/006/E, p. 11.

⁴⁹ *Children in Israeli Military Detention: Observations and Recommendations* (Jerusalem, February 2013), executive summary.

⁵⁰ *Ibid.*, Bulletin No. 2, February 2015, p. 2.

took place to assess the feasibility of ending this harmful practice by way of summonses, which should be delivered during the daytime.⁵¹

V. Accountability

76. Scores of reports each year document concerns regarding Israeli violations of international law in the Occupied Palestinian Territory. These reports chart the expansion of illegal settlements; document cases of home demolitions, settler violence and excessive use of force by Israeli security forces; and describe the effects of the blockade, the wall and violations committed during escalations of hostilities. The Special Rapporteur, while focusing on his own mandate, is cognizant of reports of civil society⁵² and the United Nations, including the report of the 2014 independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 (A/HRC/29/52 and A/HRC/29/CRP.4), the summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents that occurred in the Gaza Strip between 8 July 2014 and 26 August 2014 (S/2015/286, annex) and the report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S-9/1 and S-12/1 (A/HRC/28/80 and Add.1), documenting allegations of violations of international law by both Israeli and Palestinian actors.

77. A general failure of accountability followed previous escalations of hostilities in 2008/09 and 2012. The Special Rapporteur notes Israel's statement following the 2014 Israeli military operation in Gaza that it was "committed to investigating alleged misconduct and holding wrongdoers accountable, through criminal prosecutions or disciplinary action".⁵³ The Special Rapporteur is aware that some civil society organizations have submitted cases of alleged violations and in some instances have received updates on decisions regarding investigations; however, he notes that, in general, there is little confidence in the process.

78. According to published information regarding examinations and investigations of cases by Israel, as of June 2015, more than half of the approximately 190 cases of allegations of violations had been examined and referred to the Military Advocate General for decision. Of these, 19 cases were closed without further investigation as not having established "reasonable grounds for suspicion of criminal behaviour". Investigations have been opened in 22 cases, 7 on referral following preliminary examinations carried out by the Fact-Finding Assessment Mechanism and 15 on the basis of prima facie evidence.

79. Two of the 22 investigations opened were closed without any further legal proceedings. One of these concerned the attack on 16 July 2014 in which four boys between the ages of 9 and 11 who had been playing on the beach were killed.

⁵¹ Military Court Watch, "Pilot study to end night arrests suspended", 29 January 2015.

⁵² For example: B'tselem, *Black Flag: The Legal and Moral Implications of the Policy of Attacking Residential Buildings in the Gaza Strip, Summer 2014* (Jerusalem, 2015); Breaking the Silence, *This Is How We Fought in Gaza: Soldiers' Testimonies and Photographs from Operation "Protective Edge"* (2014) <http://www.breakingthesilence.org.il/pdf/ProtectiveEdge.pdf>; Amnesty International, *Unlawful and Deadly: Rocket and Mortar Attacks by Palestinian Armed Groups During the 2014 Gaza/Israel Conflict* (London, 2015).

⁵³ State of Israel, *The 2014 Gaza Conflict, 7 July-26 August 2014: Factual and Legal Aspects*, May 2015, executive summary, para. 59.

Information published by Israel noted that the attack took place in a Hamas naval compound “which was utilized exclusively by militants”. Israel asserted that it was not possible for the Israel Defense Forces entities “to have identified these figures, via aerial surveillance, as children” and that they had been targeted on the presumption that they were militants owing to their presence in the area.⁵⁴ This particular case was witnessed by a number of international journalists who were staying in hotels overlooking the beach. The case itself is evidence that the area was in fact not used exclusively by “militants”. In addition, the Special Rapporteur notes that reporting on the incident does not give the impression of a closed military compound. A journalist who witnessed the attack wrote: “A small metal shack with no electricity or running water on a jetty in the blazing seaside sun does not seem like the kind of place frequented by Hamas militants.... Children, maybe four feet tall, dressed in summer clothes, running from an explosion, don’t fit the description of Hamas fighters, either.”⁵⁵

80. The fact that the Military Advocate General accepted the contention that the aerial surveillance was of insufficient quality to allow operatives to distinguish between young children playing and adult members of armed groups carrying out military activity is disturbing. The 2014 independent commission of inquiry found that given that the compound was located in a city centre between a public beach and an area used by local fishermen, “it could not be ruled out that civilians, including children, might be present” (A/HRC/29/CRP.4, paras. 630-633). The Special Rapporteur joins the independent commission of inquiry in its concern that it appears that the Israel Defense Forces “reversed the presumption of civilian status” on the sole basis of the location of figures in the area and, further, that the Military Advocate General, in deciding to close the case without further legal proceedings, “appears to have validated this incorrect application of international humanitarian law” (ibid.).

81. The Special Rapporteur is troubled by the implications of this case for the overall prospects of accountability through Israeli domestic-level investigations. Investigations into other less well-known cases alleging violations by the Israel Defense Forces are unlikely to be scrutinized to the same degree. As of June 2015, one indictment against three soldiers had been issued in a case involving looting in the Shuja'iyya area on 20 July 2014.

82. The Fact-Finding Mechanism is limited in its scope to examinations of “exceptional incidents”, which might be read as a predetermination that the Israeli operation was generally compliant with international law. A key criticism made by the independent commission of inquiry was that “The fact that Israel did not revise its practice of air strikes, even after their dire effects on civilians became apparent, raises the question of whether this was part of a broader policy which was at least tacitly approved at the highest level of government”.⁵⁶

83. In a response to the report of the independent commission of inquiry, the Israeli Ministry of Foreign Affairs stated that “Israel’s military acted according to the highest international standards. This was confirmed by a comprehensive

⁵⁴ Israel Defense Forces Military Advocate General, “Decisions regarding exceptional incidents that allegedly occurred during Operation ‘Protective Edge’”, Update No. 4, 11 June 2015, para. 7.

⁵⁵ Tyler Hicks, “Through lens, 4 boys dead by Gaza shore”, *New York Times*, 16 July 2014.

⁵⁶ OHCHR, “UN Gaza inquiry finds credible allegations of war crimes committed in 2014 by both Israel and Palestinian armed groups”, press release, 22 June 2015. See also A/HRC/29/52, para. 44.

examination by Israeli military and legal experts, as well as reports produced by internationally renowned military professionals”.⁵⁷ The Special Rapporteur found this broad claim to be generally unsupported by submissions received and public United Nations and civil society reports. However, he encourages Israel to demonstrate its commitment to accountability by acceding to the Rome Statute of the International Criminal Court. In addition to a number of other considerations, the Court will only become involved where domestic mechanisms have shown themselves unable or unwilling to investigate and prosecute the gravest crimes.⁵⁸

84. Regarding civil claims for violations of international law, as noted by the independent commission of inquiry, “Palestinian victims face significant obstacles that impede their right to benefit from effective remedies, including reparations” (A/HRC/29/52 para. 72). One such obstacle is the sweeping exemption of State liability, under the Law on Liability of the State, for any actions taken in the context of combating “terror, hostile acts or insurrections” (A/HRC/29/CRP.4, paras. 646-649). Further, high fees, restrictions on movement and statutes of limitations make it nearly, if not completely, impossible for victims to seek reparations. In December 2014, the Supreme Court of Israel rejected a petition challenging the Israeli policy of denying claimants and witnesses in Gaza seeking compensation for deaths, injuries and property damage resulting from Israeli military actions access to Israeli courts.⁵⁹ According to information received — and raising obvious questions of conflict of interest — the decision accepts that the State has discretion to deny entry, on the grounds of “security considerations”, in compensation cases against the State. On the implications of the decision for access to the courts by claimants in Gaza in compensation cases, Adalah, the Legal Center for Arab Minority Rights in Israel, concluded that “essentially no such opportunity exists”.

85. In the West Bank too, and generally outside the context of acts committed during active hostilities, access to justice for Palestinians via the military justice system and Israeli courts is lacking. Impunity for acts of settler violence has been widely reported. Similarly, accountability is generally lacking in cases of excessive use of force by Israeli security forces and several interlocutors reported that victims either had no faith that they would receive justice or were afraid to come forward. As reported by UNRWA, “victims/survivor families commonly refrain from raising formal complaints with the Israeli authorities for fear of reprisal. Israeli security forces’ internal investigations into Palestinian fatalities ... are closed in the vast majority of cases”. Whether a case concerns settler violence, excessive use of force by Israeli security forces, protesting one’s innocence against allegations of, for example, stone-throwing, or contesting the legality of threatened forced evictions, demolition orders, land confiscations or the construction of the wall,⁶⁰ there is a pervasive sense of injustice in a system which appears inevitably pitted against the protected population.

⁵⁷ Israel Ministry of Foreign Affairs, “Israeli response to the UNHRC Commission of Inquiry”, press release, 22 June 2015, para. 5.

⁵⁸ Rome Statute of the International Criminal Court, articles 1 and 17.

⁵⁹ Al Mezan Center for Human Rights, Palestinian Centre for Human Rights and Adalah, “Israeli Supreme Court approves regulations that ban Palestinians from Gaza from entering Israel for their compensation cases against the Israeli military”, press release, 18 December 2014.

⁶⁰ Engaging articles 2 and 14 of the International Covenant on Civil and Political Rights.

VI. Conclusions and recommendations

86. The cumulative effects of Israeli occupation policies and practices, most prominently settlement expansion and related impacts, the blockade, movement restrictions and the military justice system, are having a debilitating effect on Palestinian society. Avoiding further destabilization requires that the routine violations of the human rights of the Palestinian people living under occupation be addressed. Critically, without accountability, 48 years of occupation have shown that Israeli policies and practices, which run counter to international human rights law and international humanitarian law, will continue.

87. Accordingly, the Special Rapporteur reiterates recommendations previously made (A/HRC/28/78) and presents and re-emphasizes the following recommendations to the Government of Israel:

(a) Lift the blockade on Gaza, which is a primary obstacle to reconstruction, undermines human rights and constitutes collective punishment;

(b) Ensure that domestic-level investigations provide accountability, including by widening the scope of investigations to include the legality under international law of policy decisions guiding the Israel Defense Forces during the 2014 military operation in Gaza;

(c) Halt settlement expansion and refrain from demolitions in the West Bank, including East Jerusalem. In particular, halt and abandon the plan entailing the forced eviction and forcible transfer of Bedouin communities in Area C;

(d) Ensure compliance with the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990 and conduct full investigations into cases of excessive use of force by Israeli security forces and into allegations of settler violence;

(e) Remove procedural and physical barriers, including the wall, that obstruct access to health care for Palestinians in Gaza and the West Bank, including East Jerusalem;

(f) Ensure that all Palestinian schoolchildren in East Jerusalem have access to education, in particular by addressing the shortage of classrooms, and enable them to follow the curriculum set by the Palestinian Ministry of Education;

(g) End the practice of administrative detention and respect the right of Palestinian prisoners and detainees to peaceful protest, including by refraining from force-feeding those who engage in hunger strikes;

(h) Urgently redouble efforts to implement recommendations by UNICEF with respect to the detention of children, in particular, ensuring that children are detained only as a last resort;

(i) Cooperate with the Special Rapporteur and any United Nations-mandated body, as required of a State Member of the United Nations, and facilitate access to the Occupied Palestinian Territory.



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**Promotion and protection of human rights: human rights
situations and reports of special rapporteurs and representatives**

Situation of human rights in the Palestinian territories occupied since 1967*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, submitted in accordance with Human Rights Council resolution 5/1.

* The present report was submitted after the deadline in order to reflect the most recent developments.



Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, hereby submits his first report to the General Assembly. The report is based primarily on information provided by victims, witnesses, civil society representatives, United Nations representatives and Palestinian officials in Amman, in connection with the mission of the Special Rapporteur to the region in July 2016. The report addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza.

I. Introduction

1. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, was appointed on 24 March 2016, in accordance with Commission on Human Rights resolution 1993/2 and Human Rights Council resolution 5/1. He assumed his functions on 1 May 2016. He is the seventh person to assume the mandate.

2. The present report is the first submitted by the Special Rapporteur. He would like to draw attention to the fact that, while he stands ready to conduct a mission to the Occupied Palestinian Territory, permission to do so has not been granted by the Israeli authorities. After assuming his position as mandate holder, the Special Rapporteur made a formal request, on 3 June 2016, to both the Israeli and Palestinian authorities for permission to visit the Occupied Palestinian Territory. As of the time of writing of the present report, no reply had been received from the Israeli authorities. The Special Rapporteur notes that the two preceding mandate holders were similarly not granted access. The Special Rapporteur met the Permanent Observer of the State of Palestine to the United Nations on 7 June 2016, during his first visit to Geneva. He also requested a meeting with the Permanent Representative of Israel, but did not receive a response. This pattern of non-cooperation with the mandate is a serious concern. A full and comprehensive understanding of the situation based on first-hand observation would be extremely beneficial to the work of a Special Rapporteur.¹

3. The report is based primarily on written submissions as well as consultations with civil society representatives, victims, witnesses, Palestinian government officials, and United Nations representatives held in Amman, Jordan during the Special Rapporteur's first mission to the region in July 2016.

4. The mandate of the Special Rapporteur, as set out by the Commission on Human Rights, is to investigate Israel's violations of the principles and bases of international law, international humanitarian law and the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, in the Palestinian territories occupied by Israel since 1967.² With this in mind, the present report focuses on the violations committed by Israel in the context of nearly 50 years of occupation. Israel, as the Occupying Power, has a responsibility to ensure the respect for and protection of the rights of Palestinians within its control.³ The mandate of the Special Rapporteur thus focuses on the responsibilities of the Occupying Power, although he notes that human rights violations by any State party or non-state organization are deplorable and will only hinder the prospects for peace.

5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine. The Special Rapporteur also wishes to extend his thanks to all those who travelled to Amman to meet him, and to those who were unable to travel but made written or

¹ A/HRC/23/21, para. 1.

² See Commission on Human Rights resolution 1993/2.

³ Geneva Convention relative to the Protection of Civilian Persons in Time of War, 12 August 1949 (Fourth Geneva Convention), art. 47.

oral submissions. The Special Rapporteur acknowledges the essential work being carried by those groups in their attempts to create an environment in which human rights are respected and to ensure that violations of human rights and humanitarian law are not committed with impunity and without witnesses. The Special Rapporteur will support such work as much as possible.

6. The Special Rapporteur would like to note that several groups were unable to travel to Amman to meet him, owing to travel restrictions imposed by the Israeli authorities. This was particularly the case with individuals coming from Gaza, and all groups based in Gaza were consulted by videoconference as a result.

7. The report is structured in two parts. It first provides an overview of the situation in the Occupied Palestinian Territory, including East Jerusalem. The discussion highlights current human rights concerns while also aiming to frame the current situation in the broader context of nearly 50 years of occupation. Thus, the discussion is not limited to events within a specific time period, but an emphasis will be placed on issues that were highlighted as particularly critical at the time of writing, on the basis of conversations with and input from individuals and organizations during the Special Rapporteur's mission in July 2016.

8. The second part of the report examines the situation in the Occupied Palestinian Territory through the lens of the right to development, with a focus on development as a human right, and the impact of human rights violations on development in the Occupied Palestinian Territory.

II. The current human rights situation

9. A series of worrying events and trends have emerged since the upsurge in violence that began in October 2015 in the West Bank, including East Jerusalem. During the escalation of violence, more than 230 Palestinians and at least 32 Israelis were killed over the course of 2015 and 2016 in the context of demonstrations by Palestinians, as well as Palestinian attacks or alleged attacks, and the often lethal response of the Israeli security forces.⁴ While the number of violent incidents has declined in recent months,⁵ the continued use of administrative detention, punitive demolitions, movement restrictions and other measures continue to negatively affect the human rights of the Palestinian people on a continuous basis.

10. Violent attacks of any kind by anyone are unacceptable. The fact that the attacks and alleged attacks by Palestinians against Israelis are, not infrequently, responded to with disproportionate and deadly force only compounds the violence. Many of the attacks and alleged attacks have been committed by minors, which is particularly worrying because of the hopelessness it seems to represent. In a striking number of meetings over the course of the Special Rapporteur's mission, those working in the Occupied Palestinian Territory consistently noted a sense of desolation and desperation among children manifesting itself not only in violent

⁴ Office for the Coordination of Humanitarian Affairs, Protection of civilians weekly report, 16 to 22 August 2016. Available from www.ochaopt.org/content/protection-civilians-weekly-report-16-22-august-2016.

⁵ Gili Cohen, "After six months of terror wave, attacks decreasing, says Israeli army", *Haaretz*, 1 April 2016. Available from www.haaretz.com/israel-news/premium-1.712123.

outbursts but also in psychological and physical ailments such as bed-wetting, anxiety and depression. The plight of children is often a barometer for the gravity of a situation. Sadly, in the present circumstances, children born today in the Occupied Palestinian Territory do not enjoy hope for a peaceful future.

A. Violence and lack of accountability

11. The number of casualties of the escalation in violence witnessed in 2015 was the highest in the West Bank since 2005 among both Israelis and Palestinians.⁶ The large majority of those killed have been Palestinians — often as a result of disproportionate use of deadly force by Israeli security forces. According to civil society representatives, of those killed in the West Bank between October 2015 and January 2016, 88 were Palestinians whom the Israeli authorities suspected were responsible for attacks or attempted attacks. Two concerns arise with respect to these cases. First, that they occurred at all — that lethal force is used so often, and frequently without justification.⁷ Second, the fact that, in a majority of cases in which a member of the Israeli security forces used lethal force, no investigation was conducted or if an investigation was conducted, it was closed without any action being taken against the perpetrator.

12. In several documented cases, it is clear those killed had not posed the level of threat that, according to international standards, would merit the use of deadly force. According to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials,⁸ weapons and lethal force should be used only as a last resort.⁹ Human rights organizations have documented a number of cases in which it is clear that this threshold was not met.¹⁰

13. One of the most emblematic examples, widely reported in the media, is the killing of Abd al-Fatah al-Sharif in Hebron on 24 March 2016. Al-Sharif allegedly stabbed and wounded an Israeli soldier, and was later shot and killed by an Israeli soldier while lying immobile and wounded on the ground.¹¹ The incident was caught on video, and the footage, which was shared on YouTube by the Israeli human rights organization B'Tselem, made international headlines. The Special Rapporteur on

⁶ Office for the Coordination of Humanitarian Affairs, “Israel opened 24 criminal investigations into the killing and injury of Palestinians since October 2015, leading to one indictment”, *Monthly Humanitarian Bulletin* (July 2016). Available from www.ochaopt.org/content/israel-opened-24-criminal-investigations-killing-and-injury-palestinians-october-2015.

⁷ See Office of the United Nations High Commissioner for Human Rights (OHCHR), “Basic principles on the use of force and firearms by law enforcement officials”. Available from www.ohchr.org/EN/ProfessionalInterest/Pages/UseOfForceAndFirearms.aspx.

⁸ See *Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: report prepared by the Secretariat* (United Nations publication, Sales No. E.91.IV.2), chap. I, sect. B.

⁹ See OHCHR, “Basic principles on the use of force and firearms by law enforcement officials”.

¹⁰ B'Tselem, “Unjustified use of lethal force and execution of Palestinians who stabbed or were suspected of attempted stabbings”, 16 December 2015. Available from www.btselem.org/gunfire/20151216_cases_of_unjustified_gunfire_and_executions.

¹¹ See www.youtube.com/watch?v=S8WK2TgruMo.

extrajudicial, arbitrary or summary executions noted that, “the images shown carry all the signs of a clear case of an extrajudicial execution”.¹²

14. This is only one example of what appears to be an alarming trend. As noted in a statement by the spokesperson for the United Nations High Commissioner for Human Rights, “this is not the first incident to be captured on video that raises concerns of excessive use of force”.¹³ These few visually documented cases do not represent the true scale of the problem. Further, the recently publicized Israeli open-fire regulations, updated in December 2015, lower the threshold for use of deadly force to a level that is in contravention of international standards.¹⁴ The Basic Principles on the Use of Force and Firearms specify that firearms should be used only in cases of “imminent threat of death or serious injury”, while the new open-fire regulations allow the use of live ammunition against an individual who “appears to be throwing or is about to throw” firebombs, fireworks or stones. This change suggests that the government seeks to create an environment in which use of deadly force is questioned less and accepted more. Under such conditions, the use of excessive force is likely to occur with greater frequency.

15. Further compounding the problem is the fact that in a majority of the cases, there has been little attempt to establish accountability. Between October 2015 and June 2016, the Israeli authorities opened 24 criminal investigations into incidents in which Israeli security forces’ actions led to the injury or death of Palestinians.¹⁵ So far, only the killing of Abd al-Fatah al-Sharif in Hebron has resulted in the indictment and prosecution of a soldier. The trial is ongoing and Israel’s Defense Minister, Avigdor Lieberman, reportedly said, in relation to the case, that Israel “... cannot reach a situation where a soldier must ask for a lawyer before going on a mission” and emphasized that individuals are innocent until proven guilty.¹⁶ Such statements implicitly encourage leniency for soldiers who use deadly force against individuals, which undermines efforts to ensure accountability.

16. The problem of the lack of accountability is far from new. One striking recent illustration of this fact is the announcement by the human rights organization B’Tselem in May 2016 that it will no longer engage with Israel’s military law enforcement mechanism.¹⁷ The organization came to the conclusion, after 25 years

¹² OHCHR, “Hebron killing: ‘all the signs of an extrajudicial execution’ — United Nations expert expresses outrage”, 30 March, 2016. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18544&LangID=E.

¹³ OHCHR, “Comment by the spokesperson for the United Nations High Commissioner for Human Rights, Rupert Colville, on the killing of a Palestinian man in Hebron”, 30 March 2016. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18540&LangID=E.

¹⁴ “Israeli police reveal new open-fire regulations in response to Adalah’s court petition”, Adalah, 5 July 2016. Available from www.adalah.org/en/content/view/8845.

¹⁵ Office for the Coordination of Humanitarian Affairs, “Israel opened 24 criminal investigations into the killing and injury of Palestinians since October 2015, leading to one indictment”.

¹⁶ Isabel Kershner, “Israeli military investigating soldier’s killing of unarmed Palestinian”, *New York Times*, 29 August 2016. Available from www.nytimes.com/2016/08/30/world/middleeast/israeli-military-investigating-soldiers-killing-of-unarmed-palestinian.html.

¹⁷ B’Tselem, *The Occupation’s Fig Leaf: Israel’s Military Law Enforcement System as a Whitewash Mechanism* (May 2016). Available from www.btselem.org/publications/summaries/201605_occupations_fig_leaf.

of work, that “there is no longer any point in pursuing justice and defending human rights by working with a system whose real function is measured by its ability to continue to successfully cover up unlawful acts and protect perpetrators”.¹⁸ B’Tselem noted that, of 739 cases the organization filed with the Military Advocate General since 1989, no investigation had been launched in 182 cases, while in nearly half the cases (343), the investigation was closed with no further action. In the course of 25 years, only 25 cases led to charges being brought against implicated soldiers. In early 2015, the human rights organization Yesh Din published statistics related to indictments in 2014, noting that only 8 out of 229 investigations opened in 2014 resulted in indictments, and that in 2013 there were 199 investigations, which led to 9 indictments. Yesh Din, in interpreting the data, noted that it “reveals the deep, ongoing failure to conduct exhaustive investigations that lead to indictments. The result is near impunity from prosecution for IDF soldiers ...”.¹⁹

17. The lack of accountability is a systemic and deeply ingrained issue. It helps to perpetuate a cycle of continued violence, as soldiers appear to act with impunity, with the message being sent that Palestinian lives do not matter, while the Palestinian population becomes both more fearful and more desperate.

B. Detention

18. Coinciding with the rise in violence is a rise in arrests and in the number of Palestinians in Israeli detention, including those in administrative detention. October 2015 saw a sharp increase in the number of Palestinians in detention, which continues to hold steady at levels not seen in nearly 10 years. As of the time of writing of the present report, according to data collected by B’Tselem and the human rights organization Addameer, there are more than 6,000 detainees currently held on alleged security grounds, as well as approximately 700 administrative detainees. The numbers are staggering and are suggestive of an overarching policy that aims to intimidate and significantly restrict the freedoms of Palestinians.²⁰

Administrative detention

19. The rise in the number of administrative detainees is particularly concerning. Currently, approximately 700 Palestinians are being held on administrative detention orders.²¹ This is the highest number of administrative detainees reported since 2008.²² Detainees are often deprived of basic legal safeguards, as noted in 2016 by the Committee Against Torture in its review of the fifth periodic report of

¹⁸ Ibid.

¹⁹ Yesh Din, “December 2015 data sheet: law enforcement on IDF soldiers suspected of harming Palestinians — summary of 2014 data”, 12 February 2015. Available from www.yesh-din.org/en/december-2015-data-sheet-law-enforcement-on-idf-soldiers-suspected-of-harming-palestinians-summary-of-2014-data/.

²⁰ A wide-ranging set of military regulations govern the arrest and detention of Palestinians living in the occupied Palestinian territory. See Addameer Prisoner Support and Human Rights Association, “Palestinian political prisoners in Israeli prisons”, June 2016. Available from www.addameer.org/sites/default/files/briefings/general_briefing_paper_-_june_2016_1.pdf.

²¹ Addameer, Statistics, August 2016. Available from www.addameer.org/statistics.

²² B’Tselem, Statistics on administrative detention, updated 12 September 2016. Available from www.btselem.org/administrative_detention/statistics.

Israel, as they are held on secret evidence to which neither they nor their lawyers are granted access, and are neither charged nor tried.²³ Since administrative detention orders are indefinitely renewable, some human rights activists argue that the psychological anguish associated with this uncertainty could amount to torture.²⁴

20. Israel's justification for its widespread use of administrative detention is that it is necessary for security reasons. The Israeli government has relied on article 78 of the Fourth Geneva Convention, which states that an Occupying Power "for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment". Internment in international law is defined as "the non-criminal detention of a person based on the serious threat that his or her activity poses to the security of the detaining authority in relation to an armed conflict".²⁵ This means that internment can only be used in non-criminal cases, and not as a substitute for a criminal conviction nor as a form of punishment.²⁶ The fact that administrative detention orders are often issued against individuals whom the Israeli government initially tried to charge with a crime but failed to do so, indicates that many of these arrests are in contravention of this provision.²⁷ According to the commentary to the Fourth Geneva Convention, this article should be read to apply only in very limited circumstances.²⁸ This is among the most serious measures that an Occupying Power can use with respect to the civilian population of an occupied territory.

21. Israel's practice of holding individuals on secret evidence is in clear violation of both international humanitarian law and international human rights law and far oversteps the use of "internment" as envisioned by the Fourth Geneva Convention. The Committee Against Torture, in its review of Israel, called on the State to end the practice of administrative detention, saying concerns exist because "detainees may be deprived of basic legal safeguards as, inter alia, they can be held in detention without charge indefinitely on the basis of secret evidence that is not made available to the detainee or to his/her lawyer".^{23,29}

22. The case of Hasan Safadi, a journalist and the media coordinator for Addameer, an organization that works to protect and promote the rights of detainees, is a clear example of those failings of the Israeli system. Safadi was

²³ CAT/C/ISR/CO/5, para. 22.

²⁴ Addameer, "Induced Desperation: The Psychological Torture of Administrative Detention", 26 June 2016. Available from www.addameer.org/publications/induced-desperation-psychological-torture-administrative-detention.

²⁵ International Committee of the Red Cross, "Internment in armed conflict: basic rules and challenges", opinion paper, November 2014.

²⁶ See Commentary (1958) to article 78 of the Fourth Geneva Convention: "The persons subjected to these measures are not, in theory, involved in the struggle. The precautions taken with regard to them cannot, therefore, be in the nature of a punishment."

²⁷ See, for example, Amnesty International, "Israel/OPT: human rights defender administratively detained: Hasan Ghassan Ghaleb Safadi", 4 July 2016. Available from www.amnesty.org/en/documents/mde15/4376/2016/en/.

²⁸ See <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=D794403E436F0823C12563CD0042CF9A>.

²⁹ In article 43 of the Fourth Geneva Convention, it is noted that anyone placed in internment "shall be entitled to have such action reconsidered as soon as possible" and article 78 specifies a right of appeal. See also the International Covenant on Civil and Political Rights (art. 9 (2)), in General Assembly resolution 2200 A (XXI), annex.

arrested on 1 May 2016 and as of time of writing of the report, has been held on an administrative detention order for a period of five months. According to information provided by Addameer, Safadi was arrested and subsequently interrogated over a period of 40 days. After no evidence was found on which to hold Safadi, he was set to be released on 10 June, pursuant to the decision of the Magistrate Court. On the day of his scheduled release, the Defense Minister signed an administrative detention order, for Safadi to be detained for a period of 6 months. Addameer notes that this “exemplifies the practice of issuing an administrative detention order in the absence of adequate evidence and charges against a detainee to keep him or her in detention”.³⁰

Children in detention

23. Of significant concern is the number of children currently held in detention by Israeli authorities. As of the time of writing, Addameer had documented at least 350 Palestinian minors under the age of 18 currently held in detention by the Israeli authorities.³¹ At the end of 2015, the number was at 422, with at least 116 of those between the ages of 12 and 15.³² The majority of the arrests were related to charges of stone-throwing.³³ As part of the dual legal system in existence in the Occupied Palestinian Territory, Palestinian children arrested in the West Bank are subject to Israeli military law (as are Palestinian adults), while Israeli settlers in the same geographic area are subject to the Israeli civil and criminal legal system. Despite numerous calls for greater attention to the protections that should be afforded children, the practice surrounding the arrest and detention of minors remains extremely problematic. Reports and documentation indicate that parents are often not informed of a child’s arrest until several days after the fact. In many cases, confessions are obtained in coercive conditions and are often written in Hebrew, which most Palestinian children cannot read. Children are also often denied access to an attorney during the initial phase of arrest, and many report ill-treatment.³⁴ Children reported being handcuffed, hand-tied, blindfolded, beaten and subject to solitary confinement.³⁵

24. These practices are not only in contravention of basic legal standards, but they fail to take into account the extremely vulnerable position of a young child. The vulnerability of children is well recognized by the international community and the special protections to which children are entitled are enshrined in a number of legal instruments, including the Convention on the Rights of the Child. A 2012 report

³⁰ Information published by Addameer, available from www.addameer.org/prisoner/hasan-safadi.

³¹ Addameer, Statistics, August 2016. Available from www.addameer.org/statistics.

³² Defense for Children International — Palestine, “No way to treat a child: Palestinian children in the Israeli military detention system”, April 2016. Available from www.dci-palestine.org/palestinian_children_in_the_israeli_military_detention_system.

³³ United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), “Children in distress: raising the alarm for 2016 and beyond”, briefing note, April 2016. Available from www.unrwa.org/sites/default/files/content/resources/children_in_distress_briefing_note.pdf.

³⁴ Defense for Children International — Palestine, “No way to treat a child: Palestinian children in the Israeli military detention system”.

³⁵ Department of State of the United States of America, 2015 report on human rights practices in Israel and the occupied territories, available from www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=252929&year=2015#wrapper.

prepared by a team of independent lawyers found Israeli claims that the Convention did not apply beyond the borders of Israel to be “factually and legally unreal”.³⁶ The International Court of Justice, in its advisory opinion on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, found that the Convention, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights do in fact apply.³⁷ Of the recommendations set out in the “Children in military custody” report, only 2.5 per cent had been implemented as of July 2016.³⁸

C. Collective punishment

25. Israeli authorities have resorted to a number of measures, which they employ on a case-by-case basis, that often amount to collective punishment. The measures, enacted in the name of security and often in response to actions carried out by one person or a small group of people, have a significant impact on the daily lives of almost every Palestinian at some point. Road closures, checkpoints and roadblocks restrict the movement of Palestinians to and from work and school, as well for visiting family members and travelling for medical treatment. Home demolitions deprive entire families of a place to live, based on the alleged actions of one individual.

26. Collective punishment refers to the practice of punishing an entire group for the actions of a particular individual. Collective punishment is prohibited under article 33 of the Fourth Geneva Convention and the Human Rights Committee has further noted that the prohibition on collective punishment is non-derogable.³⁹

Punitive demolitions

27. In 2014, the Israeli Government reinstated the use of punitive home demolitions.⁴⁰ Since that time, the number of demolitions has been on the rise, with 11 demolitions displacing 85 people reported in 2015, while already, as of July 2016, there had been 16 demolitions, displacing 92 people.⁴¹ Punitive demolitions, the purpose of which is to harm the family members of someone suspected of a crime, are in clear violation of the basic tenets of international law.⁴²

³⁶ “Children in military custody”, June 2012, para. 30. Available from www.childreninmilitarycustody.org.uk/.

³⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion of 9 July 2004, I.C.J. Reports 2004*, paras. 102-113.

³⁸ Military Court Watch, Monitoring the treatment of children in Israeli military detention, briefing note, July 2016. Available from www.militarycourtwatch.org/files/server/MCW%20BRIEFING%20PAPER%20-%20JUL%202016.pdf.

³⁹ See General Comment No. 29 (CCPR/C/21/Rev.1/Add.11).

⁴⁰ OHCHR, “Punitive demolitions destroy more than homes in occupied Palestinian territory”, 28 December 2015. Available from www.ohchr.org/EN/NewsEvents/Pages/PunitedemolitionsinOPT.aspx.

⁴¹ B’Tselem, Statistics on punitive house demolitions, updated 31 August 2016. Available from www.btselem.org/punitive_demolitions/statistics.

⁴² Al-Haq, “Punitive house demolitions”, 31 October 2015. Available from www.alhaq.org/advocacy/topics/population-transfer-and-residency-right/983-punitive-house-demolitions.

28. The Human Rights Committee, in its review of the fourth periodic report of Israel, in 2014, also called on the Government to halt its policy of punitive demolitions, noting that it is incompatible with its obligations under the Covenant.⁴³ In addition to amounting to a prohibited form of collective punishment, punitive demolitions are a violation of the prohibition on destruction of civilian property.⁴⁴

Closures, checkpoints and permits

29. The right to freedom of movement is adversely affected on a regular basis by road closures, checkpoints and burdensome permit regimes that affect entire towns and villages. The practices are increasingly being used in villages and areas that those suspected of attacks call home.⁴⁵ As of the end of 2015, the Office for the Coordination of Humanitarian Affairs documented a total of 543 closures in the West Bank. Hebron in particular was subject to such measures, with significantly increased restrictions imposed after a series of demonstrations and related clashes, as well as alleged attacks in the area in November 2015, which resulted in a total of 53 new obstacles deployed, in addition to the 109 already existing obstacles.⁴⁶ Israel asserts that these are security measures. However, their sweeping nature and significant impact on the entire Palestinian population of various towns and cities make them not only a violation of the right to freedom of movement,⁴⁷ but in many cases also a form of collective punishment.

30. One recent incident is particularly illustrative. On 8 June 2016, in a deplorable act, four Israelis were killed in an attack at a popular shopping area in Tel Aviv. Two Palestinian gunmen were involved and, after the attack, police noted the suspects were from Hebron.⁴⁸ In response to the attack, the Israeli Government revoked all 83,000 permits it had granted to residents of the West Bank and Gaza to travel during Ramadan, suspended 204 work permits of individuals in the alleged attackers' extended families and sealed off the suspected attackers' entire hometown.⁴⁹

31. The blockade of Gaza is currently the longest standing measure of collective punishment of the Palestinian people.⁵⁰ The blockade, imposed in 2007, has left the vast majority of 1.8 million inhabitants of Gaza unable to leave. The blockade has

⁴³ See [CCPR/C/ISR/CO/4](#).

⁴⁴ Fourth Geneva Convention, article 53.

⁴⁵ See Office for the Coordination of Humanitarian Affairs, "Fragmented lives: humanitarian overview 2015", June 2016.

⁴⁶ Ibid.

⁴⁷ International Covenant on Civil and Political Rights, article 12, Universal Declaration of Human Rights, article 13, Fourth Geneva Convention, article 27 and commentary to article 27, and *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, paras. 135-137.

⁴⁸ Peter Beaumont, "Four dead in Tel Aviv market shooting", *The Guardian*, 8 June 2016. Available from www.theguardian.com/world/2016/jun/08/tel-aviv-market-shooting-sarona-complex.

⁴⁹ OHCHR, Press briefing note on Yemen and Israel/Occupied Palestinian Territory, 10 June 2016. Available from www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=20082&LangID=E.

⁵⁰ [A/HRC/24/30](#), paras. 21-23.

been decried as a measure of collective punishment by both the Secretary-General and the International Committee of the Red Cross.⁵¹

32. A recent announcement by the Defense Minister provides concerning evidence that these types of measures are likely to continue. In what has been called a “carrot and stick” approach, the Minister proposes to continue using harsh measures such as closures, the increased presence of security forces and demolitions in areas that are home to suspected attackers and, meanwhile, to build infrastructure in areas that are seen by the Israeli authorities as “seeking coexistence”. Notably, this primarily implies coexistence with illegal settlements. The Minister reportedly said of the policy that “[i]ts purpose is to continue to give benefits to those who desire coexistence with us and make life difficult for those who seek to harm Jews”.⁵²

D. Coercive environment and forcible transfer

33. Recent months have seen a significant increase in settlement-related activity, including more government authorization of new buildings, retroactive authorization of construction considered illegal even under Israeli domestic law, demolition of the homes of Palestinians and the continuation of discriminatory planning practices and policies that make it extremely difficult for Palestinians to build. Such policies and practices are particularly prevalent in Area C and East Jerusalem, to such an extent that the Office for the Coordination of Humanitarian Affairs has referred to the situation as a “coercive environment that undermines a Palestinian physical presence and exacerbates the risk of individual and mass forcible transfers”.⁵³

34. Forcible transfer is clearly prohibited by article 49 of the Fourth Geneva Convention. The same article also prohibits the transfer of the population of an Occupying Power into the occupied territory. Forcible transfer is also defined as a war crime and a crime against humanity in the Rome Statute of the International Criminal Court.⁵⁴ “Forcible” in the context of the Rome Statute has been interpreted to mean not only physical force, but may also include “threat of force or coercion, such as that caused by fear of violence, duress, detention, psychological oppression or abuse of power, against such person or persons or another person, or by taking advantage of a coercive environment”.⁵⁵

⁵¹ United Nations News Centre, “In Jerusalem and Gaza, Ban urges ‘courageous steps’ for lasting two-State solution”, 28 June 2016, available from www.un.org/apps/news/story.asp?NewsID=54341#.V81iTJN95E4 and International Committee of the Red Cross, “Gaza closure: not another year!”, news release No. 10/103, 14 June 2010, available from www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm.

⁵² Yossi Melman, “Lieberman unveils new ‘carrot and stick’ policy for West Bank Palestinians”, *Jerusalem Post*, 17 August 2016. Available from www.jpost.com/Arab-Israeli-Conflict/Lieberman-unveils-new-carrot-and-stick-policy-for-West-Bank-Palestinians-464360.

⁵³ Office for the Coordination of Humanitarian Affairs, “Fragmented lives: humanitarian overview 2015”.

⁵⁴ Rome Statute of the International Criminal Court, articles 8.2(a)(vii) and 7.1(d), United Nations, *Treaty Series*, vol. 2187, No. 38544.

⁵⁵ International Criminal Court, *Elements of Crimes* (The Hague, 2011). Available from www.icc-cpi.int/NR/rdonlyres/336923D8-A6AD-40EC-AD7B-45BF9DE73D56/0/ElementsOfCrimesEng.pdf.

35. Bedouin communities in the West Bank are particularly vulnerable, as they are often subject to relocation plans developed by the Israeli Government. Those efforts are based on assertions, for example, that the existing structures and locations are somehow “unsustainable”.⁵⁶ In order to implement relocation plans, the authorities have demolished Palestinian homes and other structures, often relying on the fact that the structures are built without Israel-issued permits. However, permits are notoriously difficult to obtain, with high application fees, frequent rejections and lengthy processes, all of which combine to form a discriminatory permit regime that makes it nearly impossible for Palestinians to “legally” build. On 8 January 2016, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) noted, in reference to the demolition of Bedouin homes in the West Bank carried out by the Israeli authorities on 6 January, that “[d]emolishing residential structures exacerbates an already coercive environment, driving Bedouin communities off the land they have inhabited for decades”.⁵⁷

36. The Office for the Coordination of Humanitarian Affairs has further described the situation in the West Bank, including East Jerusalem, as putting many Palestinian families and communities “at risk of forcible transfer because Israeli practices have created a coercive environment that puts pressure on them to move, mainly through the unavailability of building permits, which are almost impossible to acquire”.⁵⁸ In a letter signed by the ambassadors to Israel of Belgium, Germany, Ireland, Italy, Norway, Spain, Sweden and Switzerland, the ambassadors criticized Israeli forces for confiscating shelters belonging to a Bedouin community in the West Bank, saying “These confiscations as well as previous demolitions, compounded by the inability of humanitarian agencies to deliver relief items to the affected households, create a coercive environment that potentially pressures them to leave their current sites against their will”.⁵⁹

37. The destruction of homes and property is not limited to structures built by Palestinians, but now also includes, with increasing frequency, structures built and funded by international humanitarian assistance. On 16 May 2016, for example, the Israeli authorities demolished seven homes and confiscated materials for three others that had been provided by humanitarian agencies, leaving 49 Palestinian refugees without shelter, 22 of them children.⁶⁰ Since the beginning of 2016, according to civil society data, 187 of the structures destroyed or seized by the

⁵⁶ Office for the Coordination of Humanitarian Affairs, “At risk of forcible transfer”, Monthly Humanitarian Bulletin (May 2016). Available from www.ochaopt.org/content/risk-forcible-transfer.

⁵⁷ UNRWA, “UNRWA condemns demolition of the homes of Palestine refugee Bedouin families at risk of forcible transfer; decries desperate humanitarian consequences”, 8 January 2016. Available from www.unrwa.org/newsroom/official-statements/unrwa-condemns-demolition-homes-palestine-refugee-bedouins-families.

⁵⁸ Office for the Coordination of Humanitarian Affairs, “At risk of forcible transfer”, Monthly Humanitarian Bulletin (May 2016).

⁵⁹ Peter Beaumont, “Ambassadors protest at Israel’s confiscation of West Bank shelters”, *The Guardian*, 18 July 2016. Available from www.theguardian.com/world/2016/jul/18/ambassadors-protest-israel-confiscation-west-bank-bedouin-shelters.

⁶⁰ Office for the Coordination of Humanitarian Affairs, “Humanitarian Coordinator calls on Israeli authorities to stop destruction of humanitarian aid and respect international law”, 18 May 2016. Available from www.ochaopt.org/content/humanitarian-coordinator-calls-israeli-authorities-stop-destruction-humanitarian-aid-and.

Israeli authorities had been provided through donor-funded humanitarian assistance, compared to 108 donor-funded structures destroyed in all of 2015. Destruction of much-needed infrastructure provided through humanitarian aid is in direct violation of Israel's obligations under international law. Article 59 of the Fourth Geneva Convention requires an Occupying Power to facilitate relief for a population in need "by all means at its disposal". Article 55(1) further requires the Occupying Power to ensure the provision of food and medical supplies to the civilian population.⁶¹ If the Occupying Power is not in a position to fulfil that obligation, it has an unconditional obligation to agree to relief schemes.⁶²

III. The right to development and the Occupied Palestinian Territory

38. Thirty years ago, the General Assembly adopted the Declaration on the Right to Development.⁶³ The Declaration, and its subsequent elaborations, state that every human being and all peoples have an inalienable right to economic and social development that is equitable and just, sustainable, participatory and inclusive, non-discriminatory, grounded in the rule of law and fully observant of all human rights and freedoms. The right to development has been recognized as a human right itself, which raises its status to one with universal applicability and inviolability.⁶⁴ While the Declaration is not legally binding per se, it encompasses many of the legal rights and obligations — civil, political, economic, social and cultural — that are recognized as binding on all States parties through the various human rights treaties enacted by the international community over the past 70 years.⁶⁵ In turn, the Declaration has been expressly incorporated within the 2030 Agenda for Sustainable Development.⁶⁶

39. The Declaration on the Right to Development is particularly relevant to understanding the human rights predicament in the Occupied Palestinian Territory. Among other rights, the Declaration expressly includes the following human rights that are binding in international law:

⁶¹ Felix Schwendimann, "The legal framework of humanitarian access in armed conflict", in *International Review of the Red Cross: The Future of Humanitarian Action*, vol. 93, No. 884 (Cambridge and New York, Cambridge University Press, December 2011), p. 1001.

⁶² *Ibid.*, p. 1002.

⁶³ Resolution 41/128, annex. The right was reaffirmed in subsequent international human rights instruments, including the Vienna Declaration and Programme of Action (1993).

⁶⁴ Declaration on the Right to Development, article 1, para. 1; Arjun Sengupta, "On the theory and practice of the right to development", *Human Rights Quarterly*, vol. 24, No. 4, p. 837 (Baltimore, Johns Hopkins University Press, 2002).

⁶⁵ The Declaration on the Right to Development is anchored in the International Covenant on Economic, Social and Cultural Rights (United Nations, *Treaty Series*, vol. 993, No. 14531) and the International Covenant on Civil and Political Rights (United Nations, *Treaty Series*, vol. 999, No. 4668). For a table linking the rights set out in the Declaration to legally binding instruments under international law, see OHCHR, *Frequently Asked Questions on the Right to Development* fact sheet No. 37 (Geneva, 2016).

⁶⁶ Resolution 70/1, para. 10.

- (a) The self-determination of peoples (art. 1);
- (b) The elimination of foreign domination and occupation (art. 5);
- (c) The prohibition against discrimination and the flagrant abuse of human rights (art. 6);
- (d) The full enjoyment of all human rights and fundamental freedoms, including socioeconomic rights (arts. 6 and 8);
- (e) Full sovereignty over one's natural resources (art. 1);
- (f) Participatory decision-making in public affairs (arts. 2 and 8).

These rights lie at the core of the binding human rights and humanitarian obligations under international law, which apply in full to the Occupied Palestinian Territory⁶⁷. They establish not only rights for the Palestinian people, but also create obligations for Israel, the Occupying Power, to respect and protect those rights. The Palestinian people's right to self-determination is widely accepted by the international community,⁶⁸ and the International Court of Justice has stated that "Israel is bound to comply with its obligations to respect the right of the Palestinian people to self-determination and its obligations under international humanitarian law and international human rights law".⁶⁹ While the question of development is necessarily complex in the context of occupation, it is essential that human rights and humanitarian law be interpreted in a way that is consistent with the right to development, regardless of the length of occupation.

40. The Declaration on the Right to Development establishes a rights-based approach to economic growth and social progress. Human rights are to be embedded in all aspects of economic and social development as a necessary precondition to the achievement of real and sustainable progress, expanded capacities and enlarged freedoms for the entire population. Both individuals and peoples are entitled to these rights, and States parties have a responsibility to create the conditions and remove the obstacles to achieve the enjoyment of these rights. Among its core features, the right to development requires both the application of transparent and participatory procedures as well as the substantive realization of equality of opportunity for everyone in their access to basic resources and their socioeconomic rights.⁷⁰

⁶⁷ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, paras. 86-114 and para. 149. These rights are also enumerated in binding human rights treaties, including the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights.

⁶⁸ See resolution 70/141.

⁶⁹ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 149.

⁷⁰ Resolution 41/128, annex, article 8, para. 1; Paul Gready et al., "What do human rights mean in development?", in *The Palgrave Handbook of International Development*, Jean Grugel and Daniel Hammett, eds. (Palgrave Macmillan UK, 2016), p. 453.

A. Economic and social development in the Occupied Palestinian Territory

41. The Palestinian economy is without parallel in the modern world. Its territorial components — the West Bank, including East Jerusalem, and Gaza — are separated physically from one another. Its largest geographic entity, the West Bank, has been divided by Israel into an archipelago of small islands of densely-populated areas disconnected from one another by the wall or by settlements, bypass roads connecting the settlements to each other and to the Israeli transportation system, roadblocks, exclusive zoning laws, restricted areas and military no-go zones. Within these areas occupied by Israel, the local political authority is likewise splintered: the Palestinian Authority has limited rule over a part of the fragmented West Bank, Gaza is governed by a separate political authority not accountable to the Palestinian Authority, and Israel has illegally annexed East Jerusalem.⁷¹ Furthermore, Israel has imposed a comprehensive land, sea and air blockade on Gaza since 2007. Within the West Bank, Israel exercises full civil and security authority over “Area C”, which makes up over 60 per cent of this part of the territory and completely surrounds and divides the archipelago of Palestinian cities and towns, a hybrid situation that one human rights group has called “occunexation”.⁷² The Occupied Palestinian Territory lacks any secure transit access, whether by land, sea or air, to the outside world. All of its borders, with one exception, are controlled by Israel.⁷³ No other society in the world faces such an array of cumulative challenges that includes belligerent occupation, territorial discontinuity, political and administrative divergence, geographic confinement and economic disconnectedness.

42. The Oslo Accords, of 1993, and the Protocol on Economic Relations between the Government of the State of Israel and the Palestine Liberation Organization (the Paris Protocol on Economic Relations, 1994) were meant to be interim arrangements and were considered by Palestine as a diplomatic and economic pathway for Palestinian independence by 1999. During that transitional period, the Oslo Accords left intact the extensive Israeli settlement project and permitted Israel broad authority to act on security concerns throughout the Occupied Palestinian Territory. The Paris Protocol created an economic framework with a significant reliance on Israel for currency, customs-union style trade provisions, foreign exchange arrangements and tax collection capacity that effectively maintained Palestinian dependence on Israel. A final peace settlement between Israel and Palestine has not materialized, and those interim arrangements have now become entrenched. The consequence has been that, while the Palestinian Authority has built much of the administrative and institutional capacity for national governance, it

⁷¹ The Security Council has stated that Israel’s annexation of East Jerusalem is contrary to international law, and that East Jerusalem is deemed to be part of the Occupied Palestinian Territory. See Security Council resolution 476 (1980) and resolution 478 (1980).

⁷² Association for Civil Rights in Israel, “49 years of control without rights: human rights of the Palestinians in the West Bank and East Jerusalem — what has changed?”, 1 June 2016. Available from www.acri.org.il/en/wp-content/uploads/2016/06/49years2016-en.pdf.

⁷³ The only external border point not directly controlled by Israel is the Rafah crossing between Gaza and Egypt. Rafah is used almost exclusively as a civilian crossing, and not as an economic trading junction. Egypt has kept this crossing closed for much of the past three years.

lacks the necessary economic foundation for sovereign development.⁷⁴ Since 2000, the Palestinian economy has experienced a volatile economic growth trajectory. When growth has occurred, it has been judged to be unsustainable because (a) it has been highly dependent upon foreign aid and private consumption of imports,⁷⁵ and (b) the Israeli occupation has increasingly separated and shrunk the different regions of the Palestinian territory, creating a dysfunctional economic base deprived of the capacity for autonomous development.⁷⁶

43. The contradictions of attempting to build a sovereign economy under a prolonged occupation, without the realization of genuine self-determination on the foreseeable horizon, have become quite apparent. A stifled and distorted Palestinian economy provides a non-viable foundation for the sustainable and equitable social development of the Occupied Palestinian Territory. Certainly, Palestine has made steady progress in several important social areas, including maternal mortality, levels of literacy and education and vaccination rates. Yet, other key indicators point to a serious situation, with social conditions and living standards stagnating or getting worse:

(a) The Palestinian economy has not advanced. In 2014, Palestinian real gross domestic product (GDP) per capita was at virtually the same level as it was in 1999, with Gaza's real GDP per capita standing at only 71 per cent of its 1999 level;⁷⁷

(b) Unemployment is growing as a social scourge. In 2016, it stood at 27 per cent in the Occupied Palestinian Territory, compared to 12 per cent in 1999; in Gaza, the unemployment crisis is particularly acute, where it has reached 42 per cent, with 58 per cent of its youth (aged between 15 and 29) without work, among the highest rates in the world;⁷⁸

(c) Poverty has been increasing among Palestinians since 2012, with 26 per cent of the population now deemed to be poor, and 13 per cent estimated to suffer from extreme poverty.⁷⁹ Food insecurity is endemic: an estimated 2.4 million people

⁷⁴ International Bank for Reconstruction and Development/World Bank, "West Bank and Gaza: towards economic sustainability of a future Palestinian State — promoting private sector-led growth" (Washington, D.C., World Bank Group, 2012).

⁷⁵ The World Bank estimated that external donor aid to the Occupied Palestinian Territory declined from 32 per cent of gross domestic product (GDP) in 2008 to 6 per cent in 2015, and noted that such a donor-led growth model is unsustainable. See World Bank, "Economic monitoring report to the ad hoc liaison committee" (Washington, D.C., World Bank Group, April 2016).

⁷⁶ See International Bank for Reconstruction and Development/World Bank, "West Bank and Gaza: towards economic sustainability of a future Palestinian State — promoting private sector-led growth" and UNCTAD/APP/2016/1.

⁷⁷ In 2014, real GDP per capita income in the Occupied Palestinian Territory (West Bank and Gaza, not including East Jerusalem) stood at \$1,737. In 1999, it stood at \$1,723. In 2014, Gaza's real GDP per capita income was \$971, compared to \$1,372 in 1999. All figures are in constant 2004 United States dollars; current (nominal) GDP per capita figures are higher. See data published by the Palestinian Central Bureau of Statistics, available from www.pcbs.gov.ps/Portals/_Rainbow/Documents/e-napcapitacon-1994-2014.htm.

⁷⁸ World Bank, "Economic monitoring report to the ad hoc liaison committee" (Washington, D.C., World Bank Group, September 2016).

⁷⁹ United Nations Educational, Scientific and Cultural Organization (UNESCO), country programming document for Palestine, 2014-2017.

in the West Bank and Gaza (57 per cent of the population) are projected to require some form of humanitarian assistance in 2016;⁸⁰

(d) The industrial, agricultural and natural resource sectors are steadily shrinking in economic significance and employment size, owing to, inter alia: Israeli restrictions on market access; low confidence among potential investors because of political uncertainty; the significant loss of arable land to the Occupying Power; lack of effective economic planning powers; limited Palestinian control over important natural resources (water, land, stone quarrying, and oil and gas reserves); and the limited access to fishing resources.⁸¹ The economy has become deindustrialized and its ability to export has been undercut by the decline of the agriculture and manufacturing sectors;⁸²

(e) The Occupied Palestinian Territory continues to be a captive trading market for Israel, as it has been throughout the occupation: in recent years, about 85 per cent of Palestinian exports have gone to Israel, and it received 70 per cent of its imports from Israel. The restrictions and imbalance in the trading relationship contributed to maintaining a chronic trade deficit in the Palestinian economy of \$5.2 billion in 2015, some 41 per cent of GDP;⁸³

(f) Symptomatic of the Palestinian Government's precarious economic management powers are the substantial fiscal leakages that the Palestinian Government and the Palestinian economy suffer under the current revenue-sharing and collection agreements with Israel. These arrangements are estimated by the World Bank and the United Nations Conference on Trade and Development (UNCTAD) to cost the Palestinian economy at least \$640 million annually (amounting to 5 per cent of GDP);⁸⁴

(g) UNCTAD has estimated that, without the occupation, the economy of the Occupied Palestinian Territory could double its GDP, with significant reductions not only in the unemployment and poverty levels, but also in the chronic trade and budget deficits.⁸⁵

44. Israel, the Occupying Power, effectively controls the economic and social development of the Palestinian territory, but it does so in quite different ways within each region. Measures that amount to violations of the right to development include the blockade of Gaza and the ensuing collapse of its economy, the fragmentation

⁸⁰ Office for the Coordination of Humanitarian Affairs, "Humanitarian dashboard: 2nd quarter 2016", 18 August 2016. Available from www.ochaopt.org/content/humanitarian-dashboard-2nd-quarter-2016. UNRWA reported in March 2016 that 70 per cent of the total refugee population in Gaza, over 930,000 people, were dependent on food assistance, dramatically up from 10 per cent in 2000. See www.unrwa.org/newsroom/emergency-reports/gaza-situation-report-137.

⁸¹ See UNCTAD/APP/2016/1. The World Bank acknowledged in 2015 that "the competitiveness of the Palestinian economy has been progressively eroding since the signing of the Oslo accords, in particular its industry and agriculture". See World Bank, "Economic monitoring report to the ad hoc liaison committee" (Washington, D.C., World Bank Group, September 2015).

⁸² World Bank, "Economic monitoring report to the ad hoc liaison committee" (Washington, D.C., World Bank Group, September 2016).

⁸³ See UNCTAD/APP/2016/1. All amounts are in United States dollars.

⁸⁴ See World Bank, "Economic monitoring report to the ad hoc liaison committee" (Washington, D.C., World Bank Group, April 2016) and UNCTAD/APP/2016/1.

⁸⁵ See UNCTAD/APP/2016/1.

and cantonization of the West Bank, including separation and neglect of East Jerusalem, exploitation and appropriation of Palestinian natural resources, the regime of formal economic dependency, unilateral control over Palestine's external borders, the encumbering of personal and business mobility, restrictions on the use of agricultural lands, limitations on Palestinian fishery, the inequitable revenue sharing and tax collection agreements, and lopsided trade arrangements. The following sections examine the particular nature of Israeli domination of these areas.

Gaza

45. Israel's continued occupation of Gaza is maintained through an extensive military, economic and social blockade of the territory, which reinforces its separation from the world and the rest of the Occupied Palestinian Territory. As a form of collective punishment imposed upon an entire population, the blockade is contrary to international law.⁸⁶ In 2007, when Israel imposed the comprehensive blockade, the economy in Gaza had already been teetering owing to Israeli closures that had begun in the early 1990s, but it has since collapsed, along with the territory's living standards. The misery of the blockade for the population of Gaza has been compounded by the three escalations of violence between Israel and Gaza, in 2008-2009, 2012 and 2014, which killed approximately 2,500 Palestinian civilians, caused tens of thousands of injuries, displaced hundreds of thousands and inflicted extensive damage to Gaza's infrastructure. All reconstruction materials that enter Gaza must be approved by Israel, which has either limited or banned the importation of such necessary items as concrete, wood and other building materials, making the efforts to rebuild slow, difficult and costly.⁸⁷ In 2016, two years after the most recent hostilities ended, only 45 per cent of Gaza's energy needs are being met, causing between 16 and 18 hours of daily power cuts; 70 per cent of Gaza's population only have piped water supplies for between 6 and 8 hours, every 2 to 4 days; and 65,000 displaced Gazans from the 2014 escalation of hostilities still do not have reconstructed homes. An estimated 80 per cent of the population depends upon humanitarian aid to some degree for survival. On a more positive note, many of the damaged or destroyed hospitals and schools from the most recent conflict have been repaired or rebuilt, with funding from the international community.⁸⁸

46. Over the past decade, Gaza has undergone a process of "de-development", with Israel enforcing a policy of maintaining Gaza at a level of essential humanitarian requirements and little more.⁸⁹ A major study by the United Nations in

⁸⁶ A/69/347, paras. 30-34 and A/HRC/25/40, paras. 24-30. The Special Rapporteur notes the conclusion of the Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident ("Palmer Report") (September 2011) which held that the blockade is lawful, but finds that the observations of the group of United Nations independent human rights experts which criticized the conclusion of the Palmer Report to be a more persuasive reading of international law. Report available from: www.un.org/News/dh/infocus/middle_east/Gaza_Flotilla_Panel_Report.pdf.

⁸⁷ Gisha — Legal Center for Freedom of Movement, "Two years later: the long road to reconstruction and recovery" (2016). Available from www.gisha.org/UserFiles/File/publications/2_years_later/Reconstruction_EN.pdf.

⁸⁸ Office for the Coordination of Humanitarian Affairs, "Gaza: two years after", 26 August 2016. Available from www.ochaopt.org/sites/default/files/gaza_war_2_years_after_english.pdf.

⁸⁹ Sara Roy, *The Gaza Strip: The Political Economy of De-development*, 3rd ed. (Washington, D.C.,

2012 questioned whether, under then-current conditions, Gaza would even be a sustainable place to live by 2020.⁹⁰ In 2015, the World Bank reviewed what it called “the staggering cost of violence and blockade on Gaza’s economy and living standards”. The World Bank, after noting the grim levels of unemployment and poverty, stated that the approximately 70 per cent of Palestinians who work in the shrunken private sector in Gaza earn an average monthly salary of \$174, less than the legal minimum wage of around \$400. While Israel has recently allowed a limited amount of goods produced in Gaza to be traded to the West Bank and Israel, exports from Gaza are at only 11 per cent of their level before the 2007 blockade was imposed. The World Bank found that Gaza’s GDP between 2007 and 2012 would have been 51 per cent higher had it not been for the combined effects of the blockade and armed conflict. The economy is now dependent for about 90 per cent of its GDP on expenditures by the Palestinian Government, the United Nations and other external remittances and donor projects.⁹¹

47. With respect to agriculture, Israel has unilaterally decreed a strip of land 300 m within Gaza along the border fence as a prohibited or restricted buffer zone, thus inhibiting the use of approximately 35 per cent of Gaza’s farming land. Israel has also imposed tight restrictions on the maritime zone that Gazan fishermen can utilize, with as little as 3 nautical miles available for fishing. Even within stated limits, fishermen often face arbitrary arrest, confiscation of equipment and have even been shot at.⁹² The restrictions have stunted the capacity of those two sectors to generate economic growth and employment.⁹³

48. The depleted economy has resulted in widespread social anguish for the Palestinians in Gaza. The World Bank reported in May 2015 that “the quality of life for the large majority of Gaza’s citizens is hardly bearable”.⁹⁴ Very few Gazans are able to obtain permission from Israel or Egypt to travel outside of the Strip, whether for business, family, health or educational reasons. As a consequence of the confinement and the armed conflicts, the World Bank stated in the same report that even the sky-high poverty and unemployment rates “fail to portray the degree of suffering of Gaza’s citizens due to poor electricity and water/sewage availability, war-related psychological trauma, limited movement, and other adverse effects of wars and the blockade”. The water aquifer, which supplies Gaza’s drinking source, is vastly overdrawn and only 5 to 10 per cent of the aquifer water is still drinkable. The lack of reliable electricity not only harms the economy but also seriously degrades the quality of everyday life. Most of Gaza’s sewage is dumped into the Mediterranean sea untreated, an estimated 100 million litres daily, because of

Institute for Palestine Studies, 2016).

⁹⁰ UNRWA, “Gaza in 2020: a liveable place?” (Jerusalem, Office of the United Nations Special Coordinator for the Middle East Peace Process, 2012).

⁹¹ World Bank, economic monitoring reports to the ad hoc liaison committee (May 2015, September 2015 and April 2016).

⁹² Al Mezan Center for Human Rights, “Israeli violations against Palestinian fishermen in the naval part of the access restricted area”, first quarterly report, 2016, pg. 11.

⁹³ See Gisha, “Ten years later”. Available from features.gisha.org/ten-years-later/; see also Diakonia, “Within range: an analysis of the legality of the land ‘buffer zone’ in the Gaza Strip” (Jerusalem, Diakonia International Humanitarian Law Programme, 2011).

⁹⁴ World Bank, “Economic monitoring report to the ad hoc liaison committee” (Washington, D.C., World Bank Group, May 2015).

unrepaired damages to the treatment plants, lack of electricity to run them to capacity and failing infrastructure, which raises the risk of infectious diseases.⁹⁵ The quality of health services continues to deteriorate, with significant shortages of essential drugs and disposables, the non-payment or underpayment of medical staff salaries and compromised health-care service delivery owing to prolonged fuel cuts. This is alarming in the face of the thousands of Gazans with major physical disabilities and the estimated 20 per cent of the population who may have acquired mental health problems in the aftermath of the recent conflicts.⁹⁶ Observing the downward slide of living conditions, one leading human rights organization has stated that “life in Gaza is like life in a collapsing third-world country, a reality that is not the result of a natural calamity, but purely man-made”.⁹⁷

The West Bank

49. The economy of the West Bank is not at the dire level of Gaza’s, but nor is it flourishing. Between 1999 and 2014, the economy only grew by 14 per cent in real terms, in large part because of the fragmentation of the territory under the occupation and the pervasive political and economic uncertainty regarding the Occupied Palestinian Territory’s future.⁹⁸ The current stage of the fragmentation can be traced to 1995, when the Oslo II Accords divided the West Bank into three areas (and illegally annexed East Jerusalem):

(a) Area A, which consists of the principal Palestinian cities and towns (except for parts of Hebron), and amounts to 18 per cent of the West Bank; it is under the civil and security governance of the Palestinian Authority, although Israel does conduct regular security intrusions with or without coordination with the Palestinian Authority;

(b) Area B, which comprises about 400 Palestinian villages and adjacent farmland, and amounts to 22 per cent of the West Bank; it is under Palestinian civil authority, but exclusive Israeli security control. The vast majority of the 2.4 million West Bank Palestinians live in Areas A and B;

(c) Area C, encompassing 60 per cent of the West Bank, is under full Israeli civil and security control. Area C contains about 225 Israeli settlements and between 370,000 and 400,000 settlers, along with about 180,000 Palestinians. Area C completely surrounds the Palestinian communities in Areas A and B.

50. In the subsequent two decades since Oslo II, the division has become ever deeper. All Palestinian travel and economic trade that requires crossing between the three Areas, to Israel or to the outside world, is subject to Israeli security arrangements. Although the Palestinian Authority has some civil jurisdiction in

⁹⁵ Ibid.

⁹⁶ See Office for the Coordination of Humanitarian Affairs, “Humanitarian dashboard: 2nd quarter 2016”, 18 August 2016, available from <http://www.ochaopt.org/content/humanitarian-dashboard-2nd-quarter-2016>, and “Gaza two years on: the impact of the 2014 hostilities on the health sector”, Monthly Humanitarian Bulletin (June 2016), available from www.ochaopt.org/content/gaza-two-years-impact-2014-hostilities-health-sector.

⁹⁷ B’Tselem, “Reality check: almost fifty years of occupation”, 5 June 2016. Available from www.btselem.org/publications/201606_reality_check.

⁹⁸ In 2014, real GDP per capita income of the West Bank stood at \$2,269. In 1999, it was at \$1,948. Palestinian Central Bureau of Statistics, Statistical abstract of Palestine.

Areas A and B, all major military, security and economic decisions for the occupied territory rest with Israel. Meanwhile, Israel has financially and administratively devolved virtually all of the West Bank economic and social governance functions to the Palestinian Authority, funded partly by the donor community.

51. Area C is vital to the well-being of the Palestinian economy, as it is endowed with minerals and stone quarrying, productive farmland, the potential for tourism, telecommunications and new housing, and the contiguous territory required for freedom of mobility within the West Bank. The World Bank has estimated that Palestinian GDP could have grown by 35 per cent over existing levels — \$3.4 billion (in 2011 United States dollars) — and Palestinian employment would similarly have increased by 35 per cent were it not for Israel's restrictions on Palestinian access to Area C.⁹⁹ Yet, rather than integrating Area C with the rest of the West Bank to prepare Palestine for sustainable independence, Israel has instead treated Area C as its own economic and political hinterland, and as the main geographic space for its illegal settlements. Despite clear prohibitions in international humanitarian law against pillage by the Occupying Power, Israel has been exploiting the natural resources in Area C for its own benefit, including quarries, Dead Sea minerals and water.¹⁰⁰

52. Israel has unilaterally assigned 70 per cent of Area C for its settlements, their adjacent lands and their extensive road, military and security network; all of this is off-limits to Palestinian development. It has also created a comprehensive planning regime to facilitate the confiscation of West Bank land and the expansion of the Israeli settlements. The planning regime excludes any Palestinian participation or substantive regard for their interests. The consequences are that, in Area C, Palestinians have less than 1 per cent of the land for construction, the vast majority of building permit requests by Palestinians for housing and infrastructure are denied, Israeli military demolitions of Palestinian homes are frequent and growing, and thousands of Palestinians — many of them Bedouins — are being forcibly transferred from their homes and traditional lands.¹⁰¹ As one human rights organization has observed, “tens of thousands of hectares, including pastureland and farmland, have been seized from Palestinians over the years and generously allocated to settlements ... All lands allocated to settlements have been designated closed military zones which Palestinians may not enter without a permit”.¹⁰² This separate and unequal development in the West Bank, and particularly in Area C, has led to the creation of two starkly different legal, economic and political universes within one territory, with Israeli settlers enjoying a vastly superior system of laws,

⁹⁹ Orhan Nksic, Nur Nasser Eddin and Massimiliano Cali, *Area C and the Future of the Palestinian Economy* (Washington, D.C., International Bank for Reconstruction and Development/World Bank, 2014).

¹⁰⁰ Fourth Geneva Convention, articles 33 (2), 47 and 53; B'Tselem, *Acting the Landlord: Israel's Policy in Area C, the West Bank* (Jerusalem, 2013).

¹⁰¹ See Orhan Nksic and others, *Area C and the Future of the Palestinian Economy*; Diakonia, “Planning to fail: the planning regime in Area C of the West Bank — an international law perspective” (Jerusalem, Diakonia International Humanitarian Law Resource Centre, 2013); and Office for the Coordination of Humanitarian Affairs, “Increase in West Bank demolitions during July-August”, *Monthly Humanitarian Bulletin* (August 2016). Available from www.ochaopt.org/content/increase-west-bank-demolitions-during-july-august.

¹⁰² B'Tselem, “Reality check: almost fifty years of occupation”.

roads, judicial systems, personal mobility, security, economic opportunities, civil and political rights and living standards than the West Bank Palestinians among whom they live. Some informed observers have recently speculated as to whether Israel is preparing to formally annex Area C,¹⁰³ with the Government of Israel having already prepared the ostensible legal basis for such a claim.¹⁰⁴

East Jerusalem

53. In recent years, East Jerusalem has become increasingly detached from its natural economic and social connections to the rest of the West Bank through Israel's construction of a ring of settlement blocs and the wall. It has also suffered as a result of long-term neglect by the Israeli Municipality of Jerusalem. After Israel's annexation of East Jerusalem and adjacent parts of the West Bank in 1967, it built 12 settlements on confiscated land in order to create a physical barrier between the city and the rest of the West Bank and to manufacture a sovereign claim over East Jerusalem. In 2014, East Jerusalem's population consisted of 315,000 Palestinians and 210,000 Israeli settlers. Human rights organizations have pointed out that Israel has sought to discourage Palestinian population growth in Jerusalem through a variety of discriminatory planning, social services and residency rights policies.¹⁰⁵

54. The physical isolation of East Jerusalem has meant that its traditional role as the mercantile and trading centre for the West Bank has been significantly reduced. In 2013, a study by UNCTAD noted that the wall had created an estimated direct economic loss of over a billion dollars to Palestinian Jerusalemites since its construction, with a further estimated adverse impact of \$200 million annually in lost economic opportunities. As reported by UNCTAD, "occupation has affected the economy of East Jerusalem at multiple levels, including the labour market, product market, trade and investment", resulting in the city's declining contribution to Palestinian GDP. Only 13 per cent of East Jerusalem is designated for Palestinian housing, compared to triple that area assigned for Israeli settlers.¹⁰⁶

55. Socially, Palestinian East Jerusalem has been largely ignored by the Municipality and living standards are far below those in West Jerusalem and in the Israeli settlements in East Jerusalem. East Jerusalem's infrastructure has been neglected over the years and is in poor shape, with a failing road system, a lack of public parks and serious deficiencies in the public transportation system, emergency services, water, garbage collection, policing and street lighting, with some

¹⁰³ Al-Monitor, "Is Israel annexing West Bank Area C?", 14 August 2016. Available from www.al-monitor.com/pulse/originals/2016/08/oslo-accords-area-c-annexation-economic-development-settlers.html.

¹⁰⁴ See "Report on the Legal Status of Building in Judea and Samaria" (Jerusalem, June 2012). Available from <http://israelipalestinian.procon.org/sourcefiles/The-Levy-Commission-Report-on-the-Legal-Status-of-Building-in-Judea-and-Samaria.pdf>; Israel Ministry of Foreign Affairs, *Israeli Settlements and International Law*. Available from www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx.

¹⁰⁵ See B'Tselem, "Reality check: almost fifty years of occupation"; see also Jerusalem Institute for Israeli Studies, *Statistical Yearbook* (2016), table III/4, available from www.jiis.org.il/upload/yearbook/2016/shnaton_C0416.pdf.

¹⁰⁶ UNCTAD, "The Palestinian economy in East Jerusalem: enduring annexation, isolation and disintegration" (Geneva, 2013).

Palestinian neighbourhoods still not connected to the municipal sewage system.¹⁰⁷ Alarming, 82 per cent of Palestinian Jerusalemites in 2014 were living below the poverty line, which is three times the level of Israeli Jerusalemites, and 6 per cent higher than in 2013.¹⁰⁸ The construction of the wall left approximately 80,000 Palestinian Jerusalemites on its easterly side and they must now travel through checkpoints to access work and social services in the city; while they still pay municipal taxes, many of them receive very little, if any, basic services.¹⁰⁹

B. Assessing Israel's respect for the right to development in the Occupied Palestinian Territory

56. An Occupying Power that is administrating an occupied territory in a manner consistent with the right to development would ensure that the occupation complied fully with the range of international legal principles and obligations set out in the right to development. In particular, the Occupying Power would respect and encourage the right to self-determination. It would treat the territory as an integral whole. It would be dedicated to returning the entire territory to the sovereign power, that is to say, the people of the occupied territory, as soon as security and order permitted. It would actively assist in the creation of an effective sovereign administration to assume authority. It would make no sovereign claim on any part of the territory, nor would it transfer any of its civilian population into the occupied territory. During the occupation, it would administer the territory in good faith and in the interests of the protected population as a trustee and usufructuary, and it would respect their laws, public buildings and infrastructure, political order, economy, property regime, cultural customs and social structure. It would encourage the development of the territory's sovereign economy by allowing it to fully flourish within its potential, and it would refrain from imposing any discriminatory economic practices or unnecessary barriers. It would not plunder, enrich itself or create an economic dependency. It would recognize that the natural resources of the occupied territory belong to the sovereign power, it would act to preserve them and it would only utilize those resources that are truly necessary to effectively administer the occupation while it lasts. It would secure and promote the full enjoyment of human rights, subject only to those restrictions absolutely necessary to protect security and public life. It would not tolerate, let alone inflict, humanitarian suffering. It would prohibit discriminatory laws, practices and treatment. In addition, as much as possible, the Occupying Power would encourage participatory decision-making by the protected population, as a vital step to restoring political power to the sovereign power.

57. Israel's occupation over the past 49 years has been seriously deficient in its respect for the legal principles and obligations embedded in the right to

¹⁰⁷ See Association for Civil Rights in Israel, "East Jerusalem 2015: facts and figures", available from www.acri.org.il/en/wp-content/uploads/2015/05/EJ-Facts-and-Figures-2015.pdf; see also Jerusalem Institute for Israeli Studies, "Explosive reality and proposals for de-escalation", available from [www.jiis.org/upload/East Jerusalem summary_Sept24_2015_Final.pdf](http://www.jiis.org/upload/East%20Jerusalem%20summary_Sept24_2015_Final.pdf).

¹⁰⁸ Jerusalem Institute for Israeli Studies, *Statistical Yearbook* (2016), table 6.1.

¹⁰⁹ See UNCTAD, "The Palestinian economy in East Jerusalem: enduring annexation, isolation and disintegration"; see also Association for Civil Rights in Israel, "Ten years of unfulfilled promises in East Jerusalem", available from www.acri.org.il/en/2015/08/09/ej-10years/.

development. Fundamentally, Israel has obstructed the Palestinian people's right to self-determination by a range of measures. It has illegally annexed East Jerusalem. It has transferred approximately 570,000 Israeli civilians to live in State-sponsored settlements in occupied territory. It has separated Gaza's economy and people from the rest of the Occupied Palestinian Territory. It has treated much of the West Bank as its own sovereign land for economic and demographic purposes. The duration of the occupation has lasted well beyond any reasonable length for any Occupying Power acting in good faith. The diminished geographic territory available to Palestinians is directly linked to Israel's extensive and expanding settlement project, including its network of highways, adjacent lands and extensive military-security apparatus; indeed, without Israel's settlement project, there would be no rationale for the continuing occupation.

58. In turn, the entrenched occupation and its denial of self-determination has bred conditions that lead to a host of other human rights violations, such as widespread food insecurity, the denial of building permits and the destruction of housing, the confiscation of property, the ongoing imposition of collective punishment, arbitrary military raids, a punitive court and detention system and a humanitarian crisis in Gaza. One of the most serious human rights violations has been Israel's entrenchment of a colonial-like regime in the Occupied Palestinian Territory, with two separate and unequal systems as regards laws, roads, justice regimes, access to water, social services, freedom of mobility, political and civil rights, security and living standards. Taken together, Israel has reneged on its obligations to uphold, in the Occupied Palestinian Territory, the right to development and the right to the full and equal enjoyment of all human rights by the Palestinian people.

59. While the Palestinian Government has some limited planning and investment jurisdiction, its powers are subordinate to Israel's overriding ability to control or veto all major economic decisions in the Occupied Palestinian Territory. Israel's discriminatory planning regime, particularly in East Jerusalem and Area C, minimizes or excludes Palestinian participation. The economy has been functioning well below its capacity and potential and remains deeply dependent upon international donor funding. Many international agencies ascribe the Palestinian economy's weak performance primarily to the occupation and its many barriers. The social consequences of the besieged Palestinian economy are dire: very high unemployment rates, widespread poverty, crumbling infrastructure, significant housing shortages, low standards of living and, in Gaza, widespread misery. Rather than the development of a viable economic base as a necessary path to realizing self-determination and satisfying the right to development, the occupation is instead deepening and the horizon for creating a sovereign economy is vanishing.

IV. Recommendations

60. The Special Rapporteur recommends that the Government of Israel bring a complete end to the almost 50 years of occupation of the Palestinian territories occupied since 1967. The Special Rapporteur also recommends that the Government of Israel take the following immediate measures:

(a) Ensure that domestic legislation is in line with international standards as described in the Basic Principles on the Use of Force and Firearms

by Law Enforcement Officials, and is rigorously applied accordingly to those standards;

(b) Conduct thorough, effective, independent and impartial investigations in all instances where the use of lethal or excessive force or the commission of unlawful acts are alleged against Israeli security forces, so as to ensure genuine accountability;

(c) Immediately end the practice of administrative detention and the use of secret evidence, and release or charge all detainees;

(d) Introduce effective measures to reduce the number of children in detention and ensure that any detentions are fully compliant with the protections contained in the Convention on the Rights of the Child and other applicable legal instruments;

(e) Immediately end the practice of collective punishment in all its forms, including punitive demolitions and unjustified restrictions on freedom of movement;

(f) Immediately end the practice of forcible transfer and the destruction of homes and property, including those of Palestinian Bedouin communities.

61. With respect to the international legal obligations contained within the Declaration on the Right to Development, the Special Rapporteur recommends that the Government of Israel:

(a) Allow for freedom of movement of people and goods throughout the Occupied Palestinian Territory;

(b) End the blockade of Gaza and lift all restrictions on imports and exports, with due consideration to justifiable security concerns;

(c) Allow the Palestinian Authority to assume security control in Area B and civil and security control in Area C so as to end the geographic fragmentation of the Occupied Palestinian Territory;

(d) Take meaningful steps to encourage a balanced trading relationship with the Occupied Palestinian Territory, including measures that will enhance the productive capacity of Palestinian manufacturing and resource development;

(e) Immediately end the practice of utilizing the natural resources of the Occupied Palestinian Territory for its own benefit;

(f) Remove the wall and fully compensate for the economic damages that it has caused;

(g) End the punitive practice of withholding the indirect taxes collected for the benefit of the Palestinian Government;

(h) Fully implement the international legal obligations contained in the Declaration on the Right to Development.



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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Palestinian territories occupied since 1967*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, submitted in accordance with Human Rights Council resolution 5/1.

* The present report was submitted after the deadline in order to reflect the most recent developments.



Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, hereby submits his second report to the General Assembly. The report is based primarily on information provided by victims, witnesses, civil society representatives, United Nations representatives and Palestinian officials in Amman, in connection with the mission of the Special Rapporteur to the region in May 2017. The report addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza.

I. Introduction

1. The present report provides a brief overview of the most pressing human rights concerns in the Occupied Palestinian Territory at the time of its submission, as identified by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 in conversations and meetings with civil society. The report then presents a detailed analysis of the international legal framework of the occupation as it continues past its fiftieth year.

2. The Special Rapporteur would like to draw attention to the fact that, while he stands ready to conduct a mission to the Occupied Palestinian Territory, permission to do so has not been granted by the Israeli authorities. The Special Rapporteur has regularly requested access to the Occupied Palestinian Territory from Israel, most recently on 24 March 2017. As at the writing of the present report, no reply had been received. The Special Rapporteur notes that his two immediate predecessors in this position were similarly not given access to the Occupied Palestinian Territory. The Special Rapporteur further notes that an open dialogue among all parties is essential for the protection and promotion of human rights and emphasizes that he is ready and willing to engage with all parties. In addition, he emphasizes that access to the territory is an important component in the development of a comprehensive understanding of the situation. This pattern of non-cooperation with the mandate is a serious concern. A full and comprehensive understanding of the situation based on first-hand observation is extremely beneficial to the work of Special Rapporteurs.

3. The report is based primarily on written submissions as well as consultations with civil society representatives, victims, witnesses, Palestinian government officials and United Nations representatives held in Amman during the Special Rapporteur's annual mission to the region in May 2017.

4. In the present report, the Special Rapporteur focuses on the human rights and humanitarian law violations committed by Israel, as set out in the mandate of the Rapporteur.¹ The Rapporteur notes that human rights violations by any State party or non-State actor are deplorable and will only hinder the prospects for peace.

5. The Special Rapporteur wishes to express his appreciation for the full cooperation with his mandate extended by the Government of the State of Palestine. The Special Rapporteur also wishes to extend his thanks to all those who travelled to Amman to meet with him and to those who were unable to travel but made written or oral submissions. The Special Rapporteur acknowledges the essential work done by human rights defenders and civil society and expresses his commitment to supporting this work as much as possible.

6. The Special Rapporteur would like to note that several groups were unable to travel to Amman to meet with him owing to travel restrictions imposed by the Israeli authorities. This was particularly the case with individuals coming from Gaza; as a result, all individuals and organizations based in Gaza were consulted by videoconference.

II. Current human rights situation

7. In the fiftieth year of the occupation, the human rights situation in the Occupied Palestinian Territory is in a state of severe deterioration. The human rights and humanitarian law violations associated with the occupation have an impact on

¹ As specified in the mandate of the Special Rapporteur set out in Commission on Human Rights resolution 1993/2.

every aspect of life for Palestinians living in the West Bank, including East Jerusalem, and Gaza. The present report does not provide a comprehensive overview of all issues of concern, but instead seeks only to highlight some of the most urgent concerns at this moment.

A. Gaza

8. Since April 2017, Gaza has been facing a severe electricity crisis, which deteriorated even further over the course of June. As at the time of writing of the present report, no durable solution has been found and the people of Gaza are living with often as little as four hours of electricity per day.² Gaza continued to experience electricity outages of 18–20 hours per day, undermining the provision of basic services.³ The right to health for Palestinians is of particular concern as a result of this crisis, as hospitals and medical facilities are severely affected by the lack of electricity. Hospitals are postponing elective surgeries and are forced to discharge patients prematurely. In addition, water supplies are at risk, with most homes receiving water through the piped network for only a few hours every three to five days, while the desalination plants are functioning at only 15 per cent of their capacity. More than 108 million litres of untreated sewage were reportedly being discharged into the Mediterranean Sea every day.⁴ The World Health Organization (WHO) noted that targeted humanitarian interventions were preventing “the complete collapse of the health sector” during the crisis.⁵

9. It must be noted that the humanitarian crisis in Gaza, both the recent sharp decline in the situation as well as the long-term challenges faced in Gaza over the past 10 years, is entirely human made. The current electricity crisis (the result of Israel’s reduction in its supply of electricity to Gaza stemming from a decision of the Palestinian Authority prompted by the internal political divide between Hamas and Fatah) was entirely preventable. In addition, Israel, as the occupying power (A/HRC/34/38, paras. 10–12), is obligated to ensure that adequate hygiene and public health standards are maintained in the occupied territory, as well as to ensure the provision of food and medical care to the population under occupation.⁶ The Special Rapporteur calls upon all parties to respect their obligations to the people of Gaza under international human rights and international humanitarian law.

10. Compounding the health concerns raised by the electricity crisis are the increasing difficulties faced by patients seeking to travel through the Erez crossing point out of Gaza for medical treatment. The rate of Israel’s denial or delay of permit requests rose in the second half of 2016 (A/HRC/34/70, para. 21). In July 2017, the situation remained concerning. Of permit applications in the month of July, 42.6 per cent were denied or delayed (787 applications).⁷ Delayed response

² See www.haaretz.com/middle-east-news/palestinians/1.800735.

³ Office for the Coordination of Humanitarian Affairs, “Humanitarian bulletin: Occupied Palestinian Territory” (August 2017). Available from www.ochaopt.org/sites/default/files/hummonitor_august_2017_2.pdf.

⁴ Office for the Coordination of Humanitarian Affairs, “Gaza crisis: urgent funding appeal” (July 2017). Available from www.ochaopt.org/sites/default/files/gaza_urgent_humanitarian_funding_v5_3july2017_10am_1.pdf.

⁵ World Health Organization (WHO), “WHO situation report: Gaza, Occupied Palestinian Territory — July to August 2017”. Available from www.emro.who.int/images/stories/palestine/WHO-Special-Situation-Report-on-Gaza_July_-_August_.pdf?ua=1.

⁶ Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Geneva Convention), arts. 55 and 56.

⁷ WHO, “Health access for referral patients from the Gaza Strip”, monthly report (July 2017). Available from http://www.emro.who.int/images/stories/palestine/documents/WHO_monthly_Gaza_access_report_July_2017.pdf?ua=1.

times can lead to patients missing appointments and delaying critical care. In August 2017, five cancer patients died while awaiting permits to travel for needed care.⁸

B. West Bank

11. The previous report of the Special Rapporteur highlighted the sharp rise in announcements of new settlement construction seen at the start of 2016 (A/HRC/34/70, paras. 9–12). According to Peace Now, there have been tenders for construction of 2,858 housing units since the start of 2017, a significant increase over 2016 (42 housing units) and more than have been recorded in the past 10 years at least.⁹ In addition, for the first time in 25 years, the Prime Minister of Israel, Benjamin Netanyahu, announced a new settlement, on which ground was broken for construction in June.¹⁰

12. Accompanying the announcements above, there have been a number of statements from political leaders calling for continued settlement expansion and in many cases annexation.¹¹ At the beginning of the year, Mr. Netanyahu reportedly said, in a meeting with members of the inner security cabinet, that he had lifted all restrictions on construction in East Jerusalem and that he would also advance construction in West Bank settlements.¹²

13. These statements, combined with the reality of the expansion of settlements and extensive announcements of new construction, put the two-state solution on life support, with a fading pulse, and ensure the continuation of human rights violations associated with settlements, including limitations on freedom of movement affecting the rights to education and health, heightened risk of arrest and arbitrary detention, use of land and natural resources thus hindering Palestinians' right to development, and many others. In addition, as emphasized in the Special Rapporteur's report to the Human Rights Council in 2017, Palestinians and Israelis seeking to draw attention to these human rights violations are increasingly targeted — in the West Bank with arrest and arbitrary detention and in Israel with campaigns and legislation seeking to delegitimize the work of human rights organizations (see A/HRC/34/70).

C. East Jerusalem

14. In East Jerusalem, as in the rest of the West Bank, settlements, as well as the demolition of homes and the displacement of Palestinians, are of deep concern. On 2 October 2017, Mr. Netanyahu announced his support for the Greater Jerusalem Bill — legislation that would reportedly extend the municipal boundaries of

⁸ Ibid., (August 2017). Available from www.emro.who.int/images/stories/palestine/documents/WHO_monthly_Gaza_access_report_Aug_2017_Final.pdf?ua=1.

⁹ See <http://peacenow.org.il/en/settlements-watch/settlements-data/construction>.

¹⁰ Peter Beaumont, "Israel begins work in first settlement in 25 years as Jared Kushner flies in", *The Guardian*, 20 June 2017. Available from www.theguardian.com/world/2017/jun/20/israel-new-settlement-benjamin-netanyahu-jared-kushner-amichai-amona; and Maayan Lubell, "Israel cabinet approves first West Bank settlement in 20 years", Reuters, 30 March 2017. Available from www.reuters.com/article/us-israel-palestinians-settlement/israeli-cabinet-approves-first-west-bank-settlement-in-20-years-idUSKBN1711K6.

¹¹ Amnesty International, "Israel/Occupied Palestinian Territory: a call to States to stop sustaining illegal settlements", public statement, 7 June 2017. Available from www.amnesty.nl/content/uploads/2017/06/Public-Rationale-English.pdf?x41591, p.2.

¹² Barak Ravid, "Netanyahu pledges unrestricted construction in East Jerusalem, settlement blocs", *Haaretz*, 22 January 2017. Available from www.haaretz.com/israel-news/.premium-1.766796.

Jerusalem to include a number of settlements.¹³ Accompanying moves such as this, demolitions and evictions of Palestinian residents of East Jerusalem continue at a high rate, with 116 total demolitions recorded from the start of the year through mid-September 2017, displacing 202 people.¹⁴ Demolitions in East Jerusalem are justified by the occupying power on either an administrative basis (when buildings are built without proper permits, although permits are nearly impossible for Palestinians to obtain) (A/HRC/34/38, para. 26), or as a punitive measure against families of attackers or alleged attackers (A/HRC/34/36, para. 31, and A/HRC/34/38, paras. 30–33).

III. Legal framework of occupation

15. In June 2017, Israel's occupation of the Palestinian territory (the West Bank, including East Jerusalem, and Gaza) marked its fiftieth anniversary. This is the longest-running military occupation in the modern world.¹⁵ Notwithstanding insistent calls by the international community, most recently in 2016, that the Israeli occupation must come to a complete end,¹⁶ that many of its features are in profound breach of international law,¹⁷ and that its perpetuation both violates the fundamental right of the Palestinian people to self-determination¹⁸ and undermines the possibility of a two-state solution,¹⁹ it has become more entrenched and harsher than ever. Indeed, the Israeli occupation has become a legal and humanitarian oxymoron: an occupation without end.²⁰

16. These resolutions adopted by the Security Council and the General Assembly in 2016 are far from the first time that the international community has spoken with urgency about ending Israel's occupation. Thirty-seven years ago, in June 1980, the Council, sufficiently alarmed by the duration and severity of the occupation and Israel's defiance of prior resolutions, adopted resolution 476 (1980). At the time, the Israeli occupation was already 13 years old. In resolution 476 (1980), the Council reaffirmed the overriding necessity to end the prolonged occupation of Arab territories occupied by Israel" and strongly deplored the continuing refusal of Israel to comply with the relevant resolutions of the Security Council and the General Assembly.

17. The inability to end the Israeli occupation has been an abject failure of international diplomacy, a darkening stain on the efficacy of international law and the source of multiple broken promises to the Palestinian people. Nor does the prolongation of this occupation serve the people of Israel, for it corrodes their society and their public institutions by entangling them in their Government's drive

¹³ Peter Beaumont, "Netanyahu backs annexation of 19 West Bank settlements", *The Guardian*, 3 October 2017. Available from www.theguardian.com/world/2017/oct/03/netanyahu-backs-annexation-of-west-bank-settlements.

¹⁴ Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory, "Protection of civilians, reporting period: 12–25 September 2017". Available from www.ochaopt.org/content/protection-civilians-report-12-25-september-2017.

¹⁵ International Committee of the Red Cross (ICRC), "Fifty years of occupation: where do we go from here?", 2 June 2017. Available from www.icrc.org/en/document/fifty-years-occupation-where-do-we-go-here.

¹⁶ See General Assembly resolution 71/23.

¹⁷ Ibid. See also resolution 71/97.

¹⁸ See General Assembly resolution 71/184.

¹⁹ See Security Council resolution 2334 (2016).

²⁰ John Kerry, Secretary of State of the United States of America, in his "Remarks on Middle East peace" on 28 December 2016, warned against Israel's "permanent occupation", "perpetual occupation" and "seemingly endless occupation" of the Palestinian territory; see <https://2009-2017.state.gov/secretary/remarks/2016/12/266119.htm>.

to foreclose a viable and just solution to the half-century of occupation and the century-long conflict, and makes them the beneficiaries — unwittingly or not — of a profoundly unequal and unjust relationship.

18. If Israel's occupation of the Palestinian territory by 1980 was already prolonged and if it was already a matter of overwhelming necessity to end it, and Israel had already demonstrated by 1980 its unwillingness to comply with the explicit directions of the international community, how are we, in 2017, to characterize the occupation? The prevailing approach of the international community has been to treat Israel as the lawful occupant of the Palestinian territory, albeit an occupant that has committed a number of grave breaches of international law in its conduct of the occupation, including the settlement enterprise,²¹ the construction of the wall,²² the annexation of East Jerusalem²³ and the systemic violations of Palestinian human rights.²⁴ In the view of the Special Rapporteur, while the lawful occupant approach may have been the appropriate diplomatic and legal portrayal of the occupation in its early years, it has since become wholly inadequate both as an accurate legal characterization of what the occupation has become and as a viable political, diplomatic and legal catalyst to compel Israel to completely and finally terminate the occupation in accordance with its international legal obligations.

19. In the present report, the Special Rapporteur considers whether Israel's role as an entrenched and defiant occupant of the Palestinian territory has now reached the point of illegality under international law. To make this determination, the core principles that govern the lawful conduct of an occupation under the relevant principles of international law are identified and employed to examine Israel's administration of the Occupied Palestinian Territory and assess whether Israel's role as the occupying power remains lawful or not.

A. General principles of international law and occupation

20. Two decades into the twenty-first century, the norm that guides our global community is that people are citizens, not subjects, of the State that rules them. Accordingly, they are entitled to express their legal identity and their inalienable rights through their sovereign State. Colonialism, occupation and other forms of alien rule are very much the exception to this norm, and they can only be justified in law and international practice as a short-term and abnormal condition that is leading unhesitatingly towards self-determination and/or sovereignty. Most other forms of alien rule would be, ipso facto, unlawful.

21. In our modern world, fundamental rights and protections (including protections under international humanitarian law, civil and political rights such as the right to self-determination, and economic, social and cultural rights) are to be given a purposive and broad interpretation and a liberal application. This is because they embody the rights and freedoms that go to the core of our humanity and are meant to be universally available to, and actionable by, all of us.²⁵ Conversely, exceptions to these fundamental rights (such as military necessity, significant threats to national security or public emergencies) are to be interpreted and applied in a

²¹ See Security Council resolution 2334 (2016).

²² *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 142.

²³ See Security Council resolution 478 (1980). See also General Assembly resolution 71/25.

²⁴ See General Assembly resolution 71/98.

²⁵ International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights.

measured and narrow fashion, so as not to unduly impair the breadth, accessibility and enjoyment of these fundamental rights by all peoples.²⁶

22. Created in the aftermath of the bitter experiences of total war and extreme civilian suffering in the nineteenth and twentieth centuries, international humanitarian law is embodied in the Regulations annexed to the Convention respecting the Laws and Customs of War on Land of 1907 (the Hague Regulations), the Geneva Convention relative to the Protection of Civilians in Time of War of 12 August 1949 (the Fourth Geneva Convention) and the Protocol Additional to the Geneva Conventions of 12 August 1949 and relating to the protection of victims of international armed conflicts of 1977 (Protocol I), among other instruments, as well as in the practices of the modern world. Three of the core purposes of modern international humanitarian law as related to foreign military occupation are: (a) to closely regulate an occupation to ensure that the territory achieves, or is restored to, a state of sovereignty; (b) to prevent the territory from becoming a fruit of conquest; and (c) to safeguard the protected people under occupation. As with other areas of international law, international humanitarian law is constantly evolving — within the natural scope of its foundational instruments, principles and purposes — to address new challenges in humanitarian protection in situations where the answers are not always expressly laid out in these primary documents.²⁷

23. Two of the most significant developments in international law in recent years have been the acceptance that international human rights law, including the overarching right to self-determination, is integral to the application of the laws of occupation. The International Court of Justice has affirmed that international human rights law continues to apply in times of conflict and throughout an occupation.²⁸ In practice, this means that humanitarian law and human rights law are intended to be complementary, not mutually exclusive, in their application to an occupation,²⁹ and the protected people under occupation are to enjoy the full panoply of human rights, subject only to any legitimate derogations that are scrupulously justified either by emergencies or the requirements of military rule under occupation.³⁰

24. As well, the right of peoples to self-determination, recognized as a right *erga omnes* in international law,³¹ applies to all peoples under occupation and other forms of alien rule.³² The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations provides that: “Every State has the duty to refrain from any forcible action which deprives peoples ... of their right to self-determination and

²⁶ International Covenant on Civil and Political Rights, art. 4 (“... may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation ...”); and International Covenant on Economic, Social and Cultural Rights, art. 4.

²⁷ Eyal Benvenisti, *The International Law of Occupation* (Princeton, New Jersey, Princeton University Press, 2004) (“... it [is] not simply a task of looking up the relevant articles in The Hague Regulations or the Fourth Geneva Convention. International law has evolved significantly since the time these two instruments were drafted.”).

²⁸ *Legal Consequences of the Construction of a Wall, Advisory Opinion*, paras. 106–113; and *Armed Activities in the Territory of the Congo (Democratic Republic of the Congo v. Uganda)*, *Judgment, I.C.J. Reports 2005*, p. 168, paras. 178 and 179.

²⁹ Vaios Koutroulis, “The application of international humanitarian law and international human rights law in situations of prolonged occupation: only a matter of time?”, *International Review of the Red Cross*, vol. 94, No. 885 (Spring 2012).

³⁰ Noam Lubell, “Human rights obligations in military occupation”, *International Review of the Red Cross*, vol. 94, No. 885 (Spring 2012).

³¹ *Legal Consequences of the Construction of a Wall, Advisory Opinion*, para. 88. This means that all States are required to do all that they can to secure self-determination for the people under alien rule.

³² *Legal Consequences of the Construction of a Wall, Advisory Opinion*, para. 88.

freedom and independence”.³³ In its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, the International Court of Justice expressly affirmed the right of the Palestinian people to self-determination, that Israel has a duty to respect this right, and that a number of the features of the Israeli occupation had “severely impede[d]” the exercise of this right.³⁴ Furthermore, the evolution of the laws of occupation, and the application of the right to self-determination to these laws, has meant that sovereignty now lies with the people that live in the occupied territory and not in its government, and the occupying power is required to respect the political interests of this popular sovereignty, the people.³⁵

25. Israel has occupied the Palestinian territory (the West Bank, including East Jerusalem, and Gaza) since June 1967. As such, the Fourth Geneva Convention applies in full. This legal determination has been affirmed by the Security Council on a consistent and regular basis, starting at the very beginning of the occupation in June 1967³⁶ and restated most recently in December 2016.³⁷ This is also the position stated at a 2014 Conference of High Contracting Parties to the Fourth Geneva Convention (A/69/711-S/2015/1, annex, para. 4). As such, the Palestinians in the occupied territory are “protected persons” under international humanitarian law, and are entitled to all of the protections of the Fourth Geneva Convention.³⁸ Israel has denied the application of the Fourth Geneva Convention and does not recognize the Palestinian territory as being occupied,³⁹ a position that the international community has widely rejected.⁴⁰

26. With these principles and observations in mind, a four-part test is proposed to determine whether an occupier is administering the occupation in a manner consistent with international law and the laws of occupation, or whether it has exceeded its legal capacity and its rule is illegal.

B. Test as to whether a belligerent occupier remains a lawful occupant

27. As the Israeli occupation of the Palestinian territory has lengthened in time, and with many of its features found to be in flagrant violation of international law, some international legal scholars have raised the issue of whether an occupation that was once regarded as lawful can cross a tipping point and become illegal. Professor Eyal Benvenisti has written that: “... it would seem that an occupant that in bad faith stalls efforts for a peaceful ending to its rule would be considered an aggressor and its rule would be tainted with illegality.” Professors Ben-Naftali, Gross and Michaeli take a broader view, arguing that violation of any of the fundamental legal

³³ General Assembly resolution 2625 (XXV).

³⁴ *Legal Consequences of the Construction of a Wall, Advisory Opinion*, para. 122.

³⁵ Benvenisti, *The International Law of Occupation*.

³⁶ See Security Council resolution 237 (1967).

³⁷ See Security Council resolution 2334 (2016).

³⁸ Fourth Geneva Convention, art. 4.

³⁹ Israel, Ministry of Foreign Affairs, “Israel settlements and international law”, 30 November 2015 (“In legal terms, the West Bank is best regarded as territory over which there are competing claims which should be resolved in peace process negotiations”). Available from <http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx>. See also *Legal Consequences of the Construction of a Wall, Advisory Opinion*, paras. 90 and 93.

⁴⁰ See resolution 71/96, affirming the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, adopted by a vote of 168 to 6 with 6 abstentions. See also Aeyal Gross, *The Writing on the Wall: Rethinking the International Law of Occupation* (Cambridge, Cambridge University Press, 2017).

principles of occupation (listed below) “renders an occupation illegal per se”.⁴¹ Professor Gross has extended this argument more recently to emphasize the importance of analysing whether an indefinite or permanent occupation has become illegal, so as to counter “... the risk of occupation becoming conquest or a new form of colonialism while hiding behind an imagined temporality”.⁴² They have provided the intellectual foundation for the following test.

28. The four elements of the lawful occupant test are as set out below.

(a) The belligerent occupier cannot annex any of the occupied territory

29. A belligerent occupier cannot, under any circumstances, acquire the right to conquer, annex or gain any legal or sovereign title over any part of the territory under its occupation. This is one of the most well-established principles of modern international law and it enjoys universal endorsement. This is the corollary of Article 2, paragraph 4, of the Charter of the United Nations, which forbids its members from: “... the threat or use of force against the territorial integrity or political independence of any state ...”. Leading public international law scholars have endorsed the “no annexation” principle as a binding legal doctrine.⁴³ The General Assembly unanimously codified the prohibition against acquiring title by conquest in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States.

30. The occupying power cannot impose conditions or create facts on the ground that are designed to establish a claim for title. This principle is anchored in the well-established prohibition in international humanitarian law against the transfer of civilians from the occupying power into the occupied territory, embedded in the Fourth Geneva Convention (art. 49) and its Protocol I (art. 85). Furthermore, the Rome Statute of the International Criminal Court of 1998 (A/CONF.183/9) defined such an act as a war crime (art. 8, para. 2 (b) (viii)). This strict prohibition is intended to forestall an occupier from demographically transforming the territory in order to advance its claim for sovereignty and, simultaneously, undermine the right of the protected population to self-determination.⁴⁴

31. With specific reference to Israel’s occupation of the Arab, including Palestinian, territories captured in June 1967, the Security Council endorsed the principle of “the inadmissibility of the acquisition of territory by war” in resolution 242 (1967) in November 1967. The Council has since reaffirmed this principle on at least seven subsequent occasions dealing with Israel’s annexations of Arab territory.⁴⁵ This principle has also been the longstanding position of the General

⁴¹ Orna Ben-Naftali, Aeyal Gross and Keren Michaeli, “Illegal occupation: framing the Occupied Palestinian Territory”, *Berkeley Journal of International Law*, vol. 23, No. 3 (2005).

⁴² Gross, *The Writing on the Wall*. See also Ardi Imseis, “Prolonged occupation of Palestine: the case for a second advisory opinion of the International Court of Justice”, lecture, 7 October 2015. Available from www.youtube.com/watch?v=X2ijqmlm2Ak.

⁴³ Malcolm N. Shaw, *International Law*, 8th ed. (Cambridge, Cambridge University Press, 2017) (“It is, however, clear today that the acquisition of territory by force alone is illegal under international law”); and Antonio Cassese, *International Law*, 2nd ed. (Oxford, Oxford University Press, 2005) (“... conquest does not transfer a legal title of sovereignty, even if it is followed by *de facto* occupation, and assertion of authority over the territory.”).

⁴⁴ Report to the Commission on Human Rights Subcommission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1993/17), para. 17 (“Population transfer has been conducted with the effect or purpose of altering the demographic composition of a territory in accordance with policy objectives or prevailing ideology, particularly when that ideology or policy asserts the dominance of a certain group over another.”).

⁴⁵ See Security Council resolutions 2334 (2016), 497 (1981), 478 (1980), 476 (1980), 298 (1971), 267 (1969) and 252 (1968).

Assembly.⁴⁶ The International Court of Justice held that the “... illegality of territorial acquisition resulting from the threat or use of force” has acquired the status of customary international law.⁴⁷ This absolute rule against the acquisition of territory by force makes no distinction as to whether the territory was occupied through a war of self-defence or a war of aggression; annexation is prohibited in both circumstances.⁴⁸

(b) The belligerent occupation must be temporary and cannot be either permanent or indefinite; and the occupant must seek to end the occupation and return the territory to the sovereign as soon as reasonably possible

32. Belligerent occupation is inherently a temporary and exceptional situation where the occupying power assumes the role of a de facto administrator of the territory until conditions allow for the return of the territory to the sovereign,⁴⁹ which is the people of the territory. Because of the absolute prohibition against the acquisition of territory by force, the occupying power is prohibited from ruling, or attempting to rule, the territory on a permanent or even an indefinite basis.⁵⁰ As Professor Aeyal Gross has stated: “Temporality, together with the principles of self-determination and non-acquisition of territory by force, is what distinguishes occupation from conquest, and this distinction would be thwarted were occupation construed as indefinite.”⁵¹

33. The laws of occupation do not set a specific length of time for the lawful duration of an occupation. However, the guiding principle that occupation is a form of alien rule which is a temporary exception to the norms of self-determination and sovereignty means that the occupying power is required to return the territory to the sovereign power in as reasonable and expeditious a time period as possible,⁵² subject only to ensuring: (a) public safety and the security of the territory; (b) the resumption, or creation, of governing institutions and a functioning economy; and (c) the security of the occupying military. The occupying power, being obliged to work in good faith to achieve these goals consistent with the principles of the laws of occupation, would have no legitimate purpose to remain in the occupied territory beyond the time when conditions have allowed for the territory to be returned in toto to the sovereign power.⁵³ Indeed, the longer the occupation, the greater the justification that the occupying power must satisfy to defend its continuing presence in the occupied territory.

⁴⁶ See, generally, General Assembly resolution 71/23.

⁴⁷ *Legal Consequences of the Construction of a Wall, Advisory Opinion*.

⁴⁸ Sharon Korman, *The Right of Conquest: The Acquisition of Territory by Force in International Law and Practice* (Oxford, Clarendon Press, 1996) (“... there has been widespread support for the view that Israel’s incorporation of East Jerusalem is illegal on the grounds that ... the acquisition of territory by war, whether defensive or aggressive, is inadmissible ...”).

⁴⁹ Jean S. Pictet, ed., *Commentary IV: Geneva Convention Relative to the Protection of Civilian Persons in Time of War* (Geneva, ICRC, 1958) (“The occupation of territory in wartime is essentially a temporary, de facto situation, which deprives the occupied power of neither its statehood nor its sovereignty; it merely interferes with its power to exercise its rights.”).

⁵⁰ Ben-Naftali, Gross and Michaeli, “Illegal occupation” (“Occupation is temporary. It may be neither permanent nor indefinite.”).

⁵¹ Gross, *The Writing on the Wall*.

⁵² In resolution 1483 (2003), dealing with the occupation of Iraq in 2003, the Security Council noted the commitment of the occupying powers to return the governance of Iraq to its people “as soon as possible”.

⁵³ Ben-Naftali, Gross and Michaeli, “Illegal occupation” (“The temporary, as distinct from the indefinite, nature of occupation is thus the most necessary element of the normative regime of occupation, as it gives meaning and effect — both factual and legal — to the concepts of liberty, freedom, and the right to self-determination.”).

(c) During the occupation, the belligerent occupier is to act in the best interests of the people under occupation

34. The occupying power, throughout the duration of the occupation, is to govern in the best interests of the people under occupation, subject only to the legitimate security requirements of the occupying military authority. This principle has been likened to a trust or fiduciary relationship in domestic or international law, where the dominant authority is required to act in the interests of the protected person or entity above all else.⁵⁴ Accordingly, the authority in power is prohibited from administering the trust in a self-serving or avaricious manner. It is also consistent with the strict requirement on the occupying power to observe, to the fullest extent possible, the human rights of the people under occupation.

35. This best interests principle is anchored in the underlying norms of the laws of occupation, specifically those provisions of the Hague Regulations and the Fourth Geneva Convention that preserve the rights of the protected people and strictly regulate the actions of the occupying power. This is consistent with the shifting of the law on occupation from its early focus on rights of States and political elites to its more contemporary focus on the protections provided for the people under occupation.⁵⁵ Article 43 of the Hague Regulations requires the occupying power to “restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country”. The Fourth Geneva Convention expanded these obligations by requiring the occupying power to ensure a wide spectrum of protections, including the positive duties to protect children, maintain hospitals, preserve natural resources and provide for medical supplies and food. As well, it prohibits the occupant from inflicting collective punishment, pillage, corporal punishment and engaging in individual or mass forcible transfers or deportations.⁵⁶ These protections and prohibitions, together with the application of international human rights law, underscore the centrality of the best interests principle and the trustee character of the occupying power’s responsibility.

(d) The belligerent occupier must administer the occupied territory in good faith, including acting in full compliance with its duties and obligations under international law and as a member of the United Nations

36. The principle of good faith is a cornerstone principle of the international legal system and has become an integral part of virtually all legal relationships in modern international law.⁵⁷ It has been described as the “cardinal rule of treaty interpretation”, which dominates and underlies the entire interpretive process.⁵⁸ The principle requires a State to carry out its duties and obligations in an honest, loyal, reasonable, diligent and fair manner and with the aim of fulfilling the purposes of the legal responsibility, including an agreement or treaty.⁵⁹ Conversely, the good

⁵⁴ Gross, *The Writing on the Wall*.

⁵⁵ Benvenisti, *The International Law of Occupation* (“When the Security Council announced the applicability of the law of occupation to 2003 Iraq, it had to adapt a law that initially reflected the premise that kings were sovereigns and that international law should protect their possessions during wartime, to a new philosophy — the philosophy of international *humanitarian* law — which posited that peoples were the true sovereigns and that human rights had to be respected”).

⁵⁶ These rights and prohibitions under the Fourth Geneva Convention are summarized in Gross, *The Writing on the Wall*.

⁵⁷ Andreas R. Ziegler and Jorun Baumgartner, “Good faith as a general principle of (international) law”, in Andrew D. Mitchell, M. Sornarajah and Tania Voon, eds., *Good Faith and International Economic Law* (Oxford, Oxford University Press, 2015).

⁵⁸ Eirik Bjorge, *The Evolutionary Interpretation of Treaties* (Oxford, Oxford University Press, 2014).

⁵⁹ Markus Kotzur, “Good faith (bona fide)”, in Rüdiger Wolfrum, ed., *Max Planck Encyclopedia of Public International Law* (Oxford, Oxford University Press, 2009).

faith principle prohibits States from participating in acts that would defeat the object and purpose of the obligation, or engaging in any abuse of rights that would mask an illegal act or the evasion of an obligation.⁶⁰

37. The duty to act in good faith is found in many of the foundational instruments of international law, including the Charter (art. 2, para. 2), the Vienna Convention on the Law of Treaties (art. 26) and the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States. The International Court of Justice, in the 1974 nuclear tests case, recognized the primacy of good faith in international law, stating that: “One of the basic principles governing the creation and performance of legal obligations, whatever their source, is the principle of good faith.”⁶¹

38. Thus, under international law, a belligerent occupier is required to govern an occupied territory in good faith. This can be measured by whether the occupying power fulfils each of the three core principles governing an occupation stated above: (a) it does not annex any of the occupied territory; (b) it rules on a temporary basis only; and (c) it governs in the best interests of the protected people. As well, a belligerent occupier governing in good faith would also be required to: (d) comply with any specific directions issued by the United Nations or other authoritative bodies pertaining to the occupation,⁶² and (e) comply with the specific precepts of international humanitarian law and international human rights law applicable to an occupation.

C. Applicability of the 1971 advisory opinion of the International Court of Justice on Namibia (South West Africa)⁶³

39. In June 1971, the International Court of Justice issued an advisory opinion on Namibia, at the request of the Security Council, on the legal consequences of the continued presence of South Africa in Namibia. The Court determined that South Africa’s administration of the mandate for Namibia had breached several fundamental obligations under international law, that it had been validly terminated by the United Nations and that South Africa’s continued presence in the territory was thenceforth illegal. The Court’s advisory opinion on the *Legal Consequences for States of the Continued Presence of South Africa in Namibia* contains a number of applicable precedents that support both the proposed four-part legality test and the analysis as to whether Israel’s continuing role as occupant remains lawful.

⁶⁰ Steven Reinhold, “Good faith in international law”, *UCL Journal of Law and Jurisprudence*, vol. 2 (2013).

⁶¹ *Nuclear Tests (Australia v. France)*, Judgment, *I.C.J. Reports 1974*, p. 253, para. 46.

⁶² Article 25 of the Charter of the United Nations stipulates that: “The Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the present Charter.”

⁶³ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council resolution 276 (1970)*, Advisory Opinion, *I.C.J. Reports 1971*, p. 16. The Special Rapporteur owes an intellectual debt for his reading of the Namibia decision to: John Dugard, “A tale of two sacred trusts: Namibia and Palestine”, in Tiyanjana Maluwa, ed., *Law, Politics and Rights: Essays in Memory of Kader Asmal* (Leiden, The Netherlands, Martinus Nijhoff Publishers, 2014); Norman Finkelstein, *Gaza: An Inquest into its Martyrdom* (Oakland, University of California Press, 2018) (forthcoming); and Stephanie Koury, “Legal strategies at the United Nations: a comparative look at Namibia, Western Sahara and Palestine”, in Susan Akram and others, eds., *International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach to Middle East Peace* (Abingdon, United Kingdom of Great Britain and Northern Ireland, Routledge, 2011).

40. After the First World War, the League of Nations, through article 22 of the Covenant of the League, directed that South Africa was to serve as the mandatory over South West Africa. Pursuant to paragraph 1 of article 22, South Africa's mandate was to administer South West Africa as a "sacred trust of civilization" until the territory was ready for independence. As the mandatory, South Africa was obliged to administer South West Africa as a trustee acting in the best interests of the territory and its peoples. The mandatory was accountable to the League of Nations for its administration.

41. After the Second World War, the United Nations assumed responsibility for the mandate system, now known as the international trusteeship system. South Africa refused to place South West Africa under the trusteeship supervision of the United Nations and it proceeded to introduce forms of apartheid into the territory, as well as engage in the de facto annexation of the territory. In 1966, the General Assembly revoked South Africa's mandate over South West Africa and declared that South Africa had no other right to administer the territory.⁶⁴ In January 1970, the Security Council declared that South Africa's continued presence in Namibia was "illegal", and stated that South Africa's "defiant attitude" towards the decisions of the Security Council "undermine[d] the authority of the United Nations".⁶⁵ Subsequently, in July 1970, the Council requested an advisory opinion from the International Court of Justice.⁶⁶

42. The 1971 advisory opinion on Namibia by the International Court of Justice is a sturdy and germane precedent for the assessment of Israel's continuing occupation of the Palestinian territory. Although Namibia was a mandate territory under the trusteeship system, governed by the terms of article 22 of the Covenant, and the Palestinian territory is required to be governed by the laws of occupation, they are different branches of the same tree. Both South Africa (as the mandatory power) and Israel (as the occupying power) are prime examples of alien rule, the governing power in both cases is responsible for respecting the right to self-determination of the protected people, annexation in both cases was/is strictly prohibited, both powers were/are required to govern in the best interests of the protected people and to abstain from any self-serving practices, and the international community was/is responsible in both cases for the close supervision of the alien rule and for bringing this rule to a successful conclusion.

43. In its advisory opinion, the International Court of Justice articulated the following seven legal findings and principles with respect to the mandate territory of Namibia. The Special Rapporteur submits that these legal findings and principles are directly applicable to the question of the continued legality of Israel's occupation:

(a) **Annexation is forbidden, the mandatory must act as a trustee for the benefit of the peoples of the territory, and the end result of the mandate must be the exercise of self-determination and independence;**⁶⁷

(b) **All mandatory powers must fulfil their obligations in good faith. Acting contrary to any of the fundamental obligations of a mandate would all be evidence of a failure to satisfy the good faith obligation;**⁶⁸

⁶⁴ See General Assembly resolution 2145 (XXI).

⁶⁵ See Security Council resolution 276 (1970).

⁶⁶ See Security Council resolution 284 (1970).

⁶⁷ *Legal Consequences for States of the Continued Presence of South Africa in Namibia, Advisory Opinion*, paras. 45–47, 50, 53 and 83.

⁶⁸ *Ibid.*, paras. 53, 84, 90, 115, 116 and 128.

(c) **The strict safeguards imposed by the international community on the mandatory are to ensure that mandate territories cannot become “the objects of disguised cessions”.** The mandatory cannot invoke any of its assigned rights as grounds for delaying or postponing the conclusion of the trusteeship relationship. Nor does a long occupation improve the claim of the mandatory power to annexing any of the territory of the mandate;⁶⁹

(d) **International law is not static but evolutionary, and its interpretation is influenced by subsequent developments in the law through the Charter of the United Nations and customary international law.** Where the right exists as the general principle of law, it can be implied to be an integral part of the treaty or agreement;⁷⁰

(e) **The deliberate and persistent violation of a party’s obligations destroys the very object and purpose of the relationship or vested power, and the party cannot thereby claim any of the rights which derive from that relationship;**⁷¹

(f) **The breach of the mandatory’s fundamental obligations under international law can render its continuing presence in the mandate territory illegal.** An illegal situation must be brought to an end, and Member States must recognize the illegality and invalidity of the situation, including the duty of non-recognition;⁷²

(g) **The determination that a mandatory power is in fundamental breach of its international obligations, that the mandate is revoked and that its continued presence in the mandate territory is illegal does not affect the ongoing application of the governing legal framework protecting the peoples of the mandate.** As such, the mandatory continues to remain accountable for any violations of its international obligations and it must honour its duty to protect the rights of the peoples of the mandate.⁷³

44. The 1971 advisory opinion on Namibia retains its relevance and its force of reasoning today. In 2004, the International Court of Justice, in the advisory opinion on the *Construction of a Wall*, relied upon the advisory opinion on Namibia with respect to its findings on the applicability of the right to self-determination to non-self-governing territories, including the Occupied Palestinian Territory.⁷⁴ The overriding similarities between the two situations (an alien power using the mask of an international supervisory regime to assert permanent control in a trust relationship) means that the legal principles pertaining to the illegal continuation by a mandatory of a mandate apply, mutatis mutandis, to the determination of whether an occupying power’s ongoing occupation has become illegal.

D. Application of the legality test to Israel’s occupation

Prohibition against annexation

45. Israel’s formal annexation of East Jerusalem in 1967 and 1980, and its de facto annexation of significant parts of the West Bank, are intended to solidify its claim for sovereignty. This constitutes a flagrant breach of the absolute prohibition against annexation and violates Israel’s obligations under international law.

⁶⁹ Ibid., paras. 54, 55, 66, 82 and 83.

⁷⁰ Ibid., paras. 52, 53, 96–98, 100 and 133.

⁷¹ Ibid., paras. 84, 91, 95, 96, 98, 100 and 102.

⁷² Ibid., paras. 108, 109, 111, 115, 117, 122 and 123.

⁷³ Ibid., paras. 118 and 125.

⁷⁴ *Legal Consequences of the Construction of a Wall, Advisory Opinion*, para. 88.

46. After capturing the Palestinian territory (the West Bank, including East Jerusalem, and Gaza) in the June 1967 war, Israel annexed East Jerusalem and parts of the West Bank in late June 1967 by a Cabinet decision. In July 1967, the General Assembly unanimously denounced the annexation and called upon Israel to rescind the measures that would alter the status of Jerusalem.⁷⁵ Subsequently, in July 1980, the Israeli Knesset adopted the Basic Law on Jerusalem, declaring Jerusalem to be the “complete and united” capital of Israel. The Security Council in August 1980 censured Israel “in the strongest terms” for its enactment of the Basic Law, affirmed that the Law was in breach of international law, and determined that Israel’s annexation was “null and void” and “must be rescinded forthwith.”⁷⁶ Israel remains non-compliant with all United Nations resolutions on Jerusalem, there are presently about 210,000 Israeli settlers living in occupied East Jerusalem, and Israel has stated that it will not leave East Jerusalem.⁷⁷

47. Beyond Jerusalem, Israel is actively establishing the de facto annexation of parts of the occupied West Bank. The International Court of Justice, in the advisory opinion on the *Construction of a Wall*, warned that the reality of the wall and the settlements regime was constituting a fait accompli and de facto annexation.⁷⁸ The Association for Civil Rights in Israel has characterized Israel’s regime in the West Bank as an “occunexation.”⁷⁹ Professor Omar Dajani has observed that, given the absolute prohibition today in international law against conquest, acquisitive States have an incentive to obfuscate the reality of annexation.⁸⁰ In the West Bank, Israel exercises complete control over Area C (making up 60 per cent of the West Bank), where its 400,000 settlers live in approximately 225 settlements. The settlers live under Israeli law in Israeli-only settlements, drive on an Israeli-only road system, and benefit greatly from the enormous sums of public money spent by Israel on entrenching, defending and expanding the settlements. Few of these benefits, except incidentally, flow to the Palestinians in Area C. Only 1 per cent of Area C is designated for Palestinian use, notwithstanding the approximately 300,000 Palestinians who live there.⁸¹ What country would invest so heavily over so many years to establish so many immutable facts on the ground in an occupied territory if it did not intend to remain permanently?⁸²

⁷⁵ See General Assembly resolutions 2253 (ES-V) and 2254 (ES-V).

⁷⁶ See Security Council resolution 478 (1980). See also Council resolution 476 (1980).

⁷⁷ Prime Minister of Israel, Benjamin Netanyahu, in 2015: “Forty-eight years ago, the division of Jerusalem was ended and we returned to be united ... We will keep Jerusalem united under Israeli authority.” Available from www.cnn.com/2015/05/17/middleeast/israel-netanyahu-united-jerusalem/.

⁷⁸ *Legal Consequences of the Construction of a Wall, Advisory Opinion*, para. 121.

⁷⁹ Association for Civil Rights in Israel, “49 years of control without rights: human rights of the Palestinians in the West Bank and East Jerusalem — what has changed?”, available from www.acri.org.il/en/wp-content/uploads/2016/06/49years2016-en.pdf.

⁸⁰ Omar M. Dajani, “Israel’s creeping annexation”, *American Journal of International Law Unbound*, vol. 111 (2017).

⁸¹ Orhan Niksic, Nur Nasser Eddin and Massimiliano Cali, *Area C and the Future of the Palestinian Economy* (Washington, D.C., World Bank, 2014); and Diakonia International Humanitarian Law Resource Centre, “Planning to fail: the planning regime in Area C of the West Bank — an international law perspective” (2013).

⁸² Benjamin Netanyahu, Prime Minister, Israel, in August 2017: (“We are here to stay forever. There will be no further uprooting of settlements in the Land of Israel ... This is our land.”) Available from www.latimes.com/world/middleeast/la-fg-israel-netanyahu-settlements-20170828-story.html.

Occupations must be temporary, and not indefinite or permanent

48. Israel's occupation is 50 years old, and counting. The duration of this occupation is without precedent or parallel in today's world.⁸³ Professor Adam Roberts has stated that an occupation becomes prolonged if it lasts longer than five years into a period, closely resembling peacetime, when hostility is reduced.⁸⁴ Modern occupations that have broadly adhered to the strict principles concerning temporariness, non-annexation, trusteeship and good faith have not exceeded 10 years, including the American occupation of Japan, the Allied occupation of western Germany and the American-led coalition's occupation of Iraq.⁸⁵

49. Employing the precept that the longer the occupation, the greater the onus on the occupying power to justify its continuation, Israel lacks any persuasive reason to remain as the occupant after 50 years. Israel has signed peace treaties with Egypt (1981) and Jordan (1994) that have stood the test of time, and the absence of peace agreements with its other two neighbours (the Syrian Arab Republic and Lebanon) cannot be invoked to justify its continuing occupation of the Palestinian territory. Contrary to the repeated declarations by many Israeli leaders, the Palestinian Authority is accepted by the international community as a legitimate negotiating partner for peace. The primary engine of Israel's ongoing occupation — the settlement enterprise — detracts from, rather than enhances, Israel's security.⁸⁶ Professor Gershon Shafir has written that: "A circular logic is in play here: Israel is able to use the stipulation of the temporary character of occupation to make long-term changes in the name of extended security risks, many of which are the result of the violations of the law of occupation."⁸⁷

50. The only credible explanation for Israel's continuation of the occupation and its thickening of the settlement regime is to enshrine its sovereign claim over part or all of the Palestinian territory, a colonial ambition par excellence. Every Israeli Government since 1967 has pursued the continuous growth of the settlements, and the significant financial, military and political resources committed to the enterprise belie any intention on its part to make the occupation temporary.⁸⁸ Every Israeli Government since 1967 has left office with more settlers living in the occupied territory than when it assumed office. (Certainly, in various peace negotiation rounds in the 1990s and the 2000s, Israeli leaders had proposed to withdraw from some of the West Bank, but even in the most advanced of these negotiations — under Prime Minister Ehud Olmert between 2006 and 2008 — Israel insisted on keeping many of its settlements in East Jerusalem and the West Bank in any final agreement.)⁸⁹ The current Israeli Government is strongly committed to deepening

⁸³ Yoram Dinstein, *The International Law of Belligerent Occupation* (Cambridge, Cambridge University Press, 2009).

⁸⁴ Adam Roberts, "Prolonged military occupation: the Israeli Occupied Territories since 1967", *American Journal of International Law*, vol. 84, No. 1 (January 1990).

⁸⁵ These three occupations are sometimes cited as examples of "transformative" occupations, which raise separate legal questions that are not addressed in the present report. See, generally, Gregory H. Fox, "Transformative occupation and the unilateralist impulse", *International Review of the Red Cross*, vol. 94, No. 885 (Spring 2012).

⁸⁶ Israeli Council for Peace and Security (June 2012), quoted in Gershon Shafir, *A Half Century of Occupation: Israel, Palestine, and the World's Most Intractable Conflict* (Oakland, University of California Press, 2017), para. 98.

⁸⁷ Shafir, *A Half Century of Occupation*.

⁸⁸ Idith Zertal and Akiva Eldar, *Lords of the Land: the War Over Israel's Settlements in the Occupied Territories, 1967–2007* (New York, Nation Books, 2007).

⁸⁹ Dajani, "Israel's creeping annexation".

the settlement enterprise.⁹⁰ Professor Shafir observes that “temporariness remains an Israeli subterfuge for creating permanent facts on the ground”, with Israel able to employ the seemingly indeterminate nature of the occupation’s end-point to create a “permanent temporariness” that intentionally forestalls any meaningful exercise of self-determination and independence by the Palestinians.⁹¹

51. The Israeli occupation has long exceeded the temporariness principle under international law. It has not acted in a manner consistent with the requirement that it take all necessary steps to bring the occupation to a successful close in as reasonable and expeditious a time period as possible. Indeed, far from it. Whether the occupation is said to be indefinite or permanent, the lack of a persuasive justification for its extraordinary duration places Israel, as the occupying power, in violation of international law.

Best interests/trust principle

52. Under international law, Israel is required to administer the Occupied Palestinian Territory in the best interests of the Palestinian people, the protected people under occupation, subject only to justified security concerns. It is prohibited from governing the occupied territory in an acquisitive or self-interested manner. Contrary to these requirements, Israel has acted in its own expansionary interests unaccompanied by most of the responsibilities attached to a belligerent occupier.

53. The social and economic impact of the occupation on the Palestinians in the occupied territory, which had always been disadvantageous, has become increasingly dire in recent years. According to recent reports by the World Bank⁹² and the United Nations,⁹³ the expanding Israeli settlement enterprise and the supporting apparatus of occupation has deepened the already separate and distinctly inferior civil and economic conditions imposed upon Palestinians in the West Bank. There, the Palestinians are subject to a harsh and arbitrary legal system quite unequal to that enjoyed by the Israeli settlers.⁹⁴ Much of the West Bank is off-limits to Palestinians, and they regularly endure significant restrictions on their freedom of movement through closures, roadblocks, and the need for hard-to-obtain travel permits.⁹⁵

54. Access to the natural resources of the occupied territory, especially to water, is disproportionately allocated to Israel and the settlers.⁹⁶ Similarly, the planning system administered by the occupying power for housing and commercial development throughout the West Bank, including East Jerusalem, is deeply discriminatory in favour of settlement construction, while imposing significant barriers on Palestinians,⁹⁷ including ongoing land confiscation,⁹⁸ home demolitions

⁹⁰ Samantha Power, Permanent Representative of the United States of America to the United Nations, “Speech after abstention on anti-settlement vote”, New York, 23 December 2016. (“The Israeli Prime Minister recently described his government as ‘more committed to settlements than any in Israel’s history’ ...”). Available from www.timesofisrael.com/full-text-of-us-envoy-samantha-powers-speech-after-abstention-on-anti-settlement-vote/.

⁹¹ Shafir, *A Half Century of Occupation*.

⁹² World Bank, “West Bank and Gaza: Area C and the future of the Palestinian economy”, report No. AUS2922 (2013).

⁹³ Office for the Coordination of Humanitarian Affairs, Occupied Palestinian Territory, “Fragmented lives: humanitarian overview 2016” (2017).

⁹⁴ Limor Yehuda and others, “One rule, two legal systems: Israel’s regime of laws in the West Bank” (Association for Civil Rights in Israel, 2014).

⁹⁵ See Human Rights Watch, *World Report 2017: Events of 2016*. Available from www.hrw.org/world-report/2017/country-chapters/israel/palestine.

⁹⁶ Amnesty International, “Troubled waters: Palestinians denied fair access to water” (London, 2009).

⁹⁷ Human Rights Watch, “Separate and unequal: Israel’s discriminatory treatment of Palestinians in the Occupied Palestinian Territories”, 19 December 2010. Available from www.hrw.org/report/2010/12/19/separate-and-unequal/israels-discriminatory-treatment-palestinians-occupied.

and the denial of building permits.⁹⁹ Israel employs practices that in some cases may amount to the forcible transfer of Palestinians, primarily those living in rural areas, as a means of confiscating land for settlements, military weapons training areas and other uses exclusive to the occupying power that have little or nothing to do with its legitimate security requirements.¹⁰⁰

55. As for East Jerusalem, the occupation has increasingly detached it from its traditional national, economic, cultural and family connections with the West Bank because of the wall, the growing ring of settlements and related checkpoints, and the discriminatory permit regime. It is neglected by the municipality in terms of services and infrastructure,¹⁰¹ the occupation has depleted its economy and the Palestinians have only a small land area on which to build housing.¹⁰²

56. In Gaza, Israel vacated its formal presence in 2005, but its effective control over the Strip — through its dominance over Gaza’s land and sea frontiers and its air space — means that it retains its responsibilities as an occupier. As Tamir Pardo, former head of Israel’s Mossad, stated recently: “Israel is responsible for the humanitarian situation [in Gaza], and this is the place with the biggest problem in the world today.”¹⁰³ Since 2007, Israel has maintained a suffocating economic and travel blockade that has driven Gaza back to the dark ages. More than 60 per cent of the population of Gaza is reliant upon humanitarian aid, it is unable to secure more than one third of the electrical power that it requires, it will soon exhaust its sources of safe drinking water and, virtually unique in the world, its gross domestic product is actually lower than it was in 2006.¹⁰⁴

57. All these restrictions in the civil and commercial life of the Palestinians have created a shattered economic space which has resulted in a highly dependent and strangled economy, mounting impoverishment, daily impositions and indignities, and receding hope for a reversal of fortune in the foreseeable future.¹⁰⁵

58. On the probative evidence, Israel, the occupying power, has ruled the Palestinian Territory as an internal colony, deeply committed to exploiting its land and resources for Israel’s own benefit, and profoundly indifferent, at very best, to the rights and best interests of the protected people.¹⁰⁶ As such, Israel is in breach of

⁹⁸ Adam Aloni, *Expel and Exploit: The Israeli Practice of Taking Over Rural Palestinian Land* (B’Tselem, 2016).

⁹⁹ Office for the Coordination of Humanitarian Affairs, “Fragmented lives”.

¹⁰⁰ Simon Reynolds, *Coercive Environments: Israel’s Forcible Transfer of Palestinians in the Occupied Territory* (Badil Resource Centre for Palestinian Residency and Refugee Rights, 2017).

¹⁰¹ Association for Civil Rights in Israel, “East Jerusalem: facts and figures 2017”, 21 May 2017.

Available from <http://www.acri.org.il/en/wp-content/uploads/2017/05/Facts-and-Figures-2017-1.pdf>.

¹⁰² United Nations Conference on Trade and Development (UNCTAD), “The Palestinian economy in East Jerusalem: enduring annexation, isolation and disintegration”, document UNCTAD/GDS/APP/2012/1.

¹⁰³ Gili Cohen, “Ex-Mossad chief says occupation is Israel’s only existential threat”, *Haaretz*, 22 March 2017. Available from www.haaretz.com/israel-news/1.778650.

¹⁰⁴ United Nations country team in the Occupied Palestinian Territory, “Gaza ten years later”, July 2017. Available from https://unsco.unmissions.org/sites/default/files/gaza_10_years_later_-_11_july_2017.pdf.

¹⁰⁵ UNCTAD, “Report on UNCTAD assistance to the Palestinian people: developments in the economy of the Occupied Palestinian Territory”, document UNCTAD/APP/2016/1. In this report, UNCTAD estimated that the Palestinian economy would be twice its present size in the absence of the Israeli occupation.

¹⁰⁶ David Kretzmer, *The Occupation of Justice: The Supreme Court of Israel and the Occupied Palestinian Territories* (Albany, State University of New York Press, 2002) (“On the political level, the government relates to the Occupied Territories as colonies, with all that this entails: exploitation of their resources and markets for the benefit of the home country and its citizens and a clear distinction between the status of the “natives” and those of the settlers.”).

its obligations to administer the occupation as a trustee for the well-being of the protected people under occupation.

Good faith

59. For an occupying power to govern an occupied territory in good faith, it must not only comply with the three principles stated above, but it must also be fully compliant with any specific directions issued by the United Nations or other authoritative bodies pertaining to the occupation. Further, it must comply with the specific precepts of international law, including humanitarian law and human rights law, applicable to an occupation.

60. Since 1967, the Security Council has adopted, in clear and direct language, more than 40 resolutions pertaining to Israel's occupation of the Palestinian Territory. On the settlements, the Council has variously stated that they "have no legal validity", they must be "dismantled" and they constitute a "flagrant violation under international law", and that settlement activities must "immediately and completely cease" and they "are dangerously imperilling the viability of a two-state solution".¹⁰⁷ Similarly, the Council has affirmed, with specific reference to the Israeli occupation, that the acquisition of territory by war or by force is inadmissible.¹⁰⁸ The Council has censured "in the strongest terms" Israel's annexation of East Jerusalem, it has "deplored" Israel's "persistence in changing the physical character, demographic composition ... and status of the Holy City of Jerusalem", it has called these changes a "flagrant violation" of the Fourth Geneva Convention, and it has stated that these changes "must be rescinded."¹⁰⁹ Repeatedly, the Security Council has affirmed that the Fourth Geneva Convention applies to the Occupied Palestinian Territory and has called upon Israel to "scrupulously" abide by it.¹¹⁰

61. In the face of the persistent Israeli refusal to accept and apply any of these resolutions, the Security Council has "strongly deplored the continued refusal of Israel, the occupying power, to comply with the relevant resolutions of the Council and the General Assembly."¹¹¹ Immediately following the adoption of resolution 2334 (2016) by the Council in December 2016 condemning the settlement enterprise and Israel's failure to apply the Fourth Geneva Convention, Mr. Netanyahu sharply criticized the resolution and announced that Israel would not submit to it.¹¹² In October 2017, the United Nations Special Coordinator for the Middle East Peace Process reported to the Council that Israel was not complying with the resolution and that indeed its settlement activity was continuing at a high rate.¹¹³

62. Israel has been deemed to be in breach of many of the leading precepts of international humanitarian and human rights law. Its settlement enterprise has been characterized as illegal by the Security Council.¹¹⁴ The prohibited use of collective

¹⁰⁷ See Security Council resolutions 2334 (2016), 465 (1980), 452 (1979) and 446 (1979).

¹⁰⁸ See Security Council resolutions 2334 (2016), 497 (1981), 478 (1980), 476 (1980), 298 (1971), 267 (1969), 252 (1968) and 242 (1967).

¹⁰⁹ See Security Council resolutions 2334 (2016), 478 (1980) and 476 (1980).

¹¹⁰ See Security Council resolutions 2334 (2016), 478 (1980), 476 (1980), 471 (1980), 465 (1980), 452 (1979) and 446 (1979).

¹¹¹ See Security Council resolutions 478 (1980), 476 (1980) and 446 (1979).

¹¹² Isabel Kershner, "Netanyahu promises retribution for 'biased' U.N. resolution", *New York Times*, 24 December 2016. Available from www.nytimes.com/2016/12/24/world/middleeast/israel-benjamin-netanyahu-united-nations.html.

¹¹³ Nickolay Mladenov, Special Coordinator for the Middle East Peace Process, "Briefing to the Security Council on the situation in the Middle East: report on Council resolution 2334 (2016)", 25 September 2017. Available from <https://reliefweb.int/report/occupied-palestinian-territory/nickolay-mladenov-special-coordinator-middle-east-peace-3>.

¹¹⁴ See Security Council resolutions 2334 (2016), 478 (1980), 476 (1980), 471 (1980), 465 (1980), 452 (1979) and 446 (1979).

punishment has been regularly employed by Israel through the demolition of Palestinian homes of families that are related to those suspected of terrorism or security breaches and by extended closures of Palestinian communities (which resumed in 2014, after a moratorium lasting since 2006).¹¹⁵ Bedouin communities in the West Bank and East Jerusalem are the latest Palestinian communities to be at risk of forcible transfer instigated by the occupying power.¹¹⁶ The right to liberty, with its accompanying right not to be subjected to arbitrary arrest, are violated by the high rates of arbitrary detention, including administrative detention, and the revocation of the residency rights of many thousands of Palestinians.¹¹⁷ Freedom of movement is impaired through a complex system of administrative, bureaucratic and physical constraints that affects virtually every aspect of daily life for the Palestinians.¹¹⁸ And above all, the entrenched and unaccountable occupation — through its denial of territorial integrity, genuine self-governance, a sustainable economy and a viable path to independence — substantively violates, and undermines, the right of the Palestinians to self-determination, the platform right that enables the realization of many other rights.

63. Whether measured by the criteria of substantive compliance with United Nations resolutions or by the satisfaction of its obligations as occupier under the framework of international law, Israel has not governed the Occupied Palestinian Territory in good faith. As a United Nations Member State with obligations, it has repeatedly defied the international community's supervisory authority over the occupation. As the occupant, it has consciously breached many of the leading precepts of international humanitarian law and international human rights law that govern an occupation.

IV. Conclusion

64. International law is the promise that States make to one another, and to their people, that rights will be respected, protections will be honoured, agreements and obligations will be satisfied, and peace with justice will be pursued. It is a tribute to the international community that it has sustained this vision of international law throughout its supervision of Israel's occupation of the Palestinian territory. But it is no tribute that — as the occupation deepened, as the occupier's intentions became crystal clear, and as its defiance grew — the international community recoiled from answering Israel's splintering of the Palestinian territory and disfiguring of the laws of occupation with the robust tools that international law and diplomacy provide. International law, along with the peoples of Palestine and Israel, have all suffered in the process.

65. States who administer another territory under international supervision — whether as an occupier or a mandatory power — will cross the red line into illegality if they breach their fundamental obligations as alien rulers. The International Court of Justice in its advisory opinion on Namibia supports this conclusion. The Special Rapporteur submits that Israel's role as occupant has crossed this red line. The challenge now facing the international community is to

¹¹⁵ See www.btselem.org/topic/punitive_demolitions.

¹¹⁶ Office for the Coordination of Humanitarian Affairs, "Demolition and seizure of service infrastructure in Palestinian communities in Area C exacerbates risk of forcible transfer", 11 October 2017. Available from www.ochaopt.org/content/demolition-and-seizure-service-infrastructure-palestinian-communities-area-c-exacerbates.

¹¹⁷ Human Rights Watch, "Israel: 50 years of occupation abuses", 4 June 2017. Available from www.hrw.org/news/2017/06/04/israel-50-years-occupation-abuses.

¹¹⁸ Office of the United Nations High Commissioner for Human Rights, "Freedom of movement: human rights situation in the Occupied Palestinian Territory, including East Jerusalem" (February 2016). Available from www.ohchr.org/Documents/Countries/PS/SG_Report_FoM_Feb2016.pdf.

assess this analysis and, if accepted, to devise and employ the appropriate diplomatic and legal steps that, measure by measure, would completely and finally end the occupation. As Amos Schocken, the publisher of *Haaretz*, has written about his own country's leadership: "... international pressure is precisely the force that will drive them to do the right thing."¹¹⁹

66. A determination that Israel's role as occupant is now illegal would serve several significant purposes. First, it would encourage Member States to take all reasonable steps to prevent or discourage national institutions, organizations and corporations within their jurisdiction from engaging in activities that would invest in, or sustain, the occupation. Second, it would encourage national and international courts to apply the appropriate laws within their jurisdiction that would prevent or discourage cooperation with entities that invest in, or sustain, the occupation. Third, it would invite the international community to review its various forms of cooperation with the occupying power as long as it continues to administer the occupation unlawfully. Fourth, it would provide a solid precedent for the international community when judging other occupations of long duration. Most of all, such a determination would confirm the moral importance of upholding the international rule of law when aiding the besieged and the vulnerable.

V. Recommendations

67. **The Special Rapporteur recommends that the Government of Israel bring a complete end to the 50 years of occupation of the Palestinian territories in as expeditious a time period as possible, under international supervision.**

68. **The Special Rapporteur also recommends that the General Assembly:**

(a) **Commission a United Nations study on the legality of Israel's continued occupation of the Palestinian territory;**

(b) **Consider the advantages of seeking an advisory opinion from the International Court of Justice on the question of the legality of the occupation;**

(c) **Consider commissioning a legal study on the ways and means that Member States can and must fulfil their obligations and duties to ensure respect for international law, including the duty of non-recognition, the duty to cooperate to bring to an end a wrongful situation and the duty to investigate and prosecute grave breaches of the Geneva Conventions;**

(d) **Consider the adoption, in accordance with General Assembly resolution 377 (V), entitled "Uniting for peace", of a resolution with respect to the question of Palestine, in the event that there is a determination that Israel's role as occupier is no longer lawful.**

¹¹⁹ Amos Schocken, "Only international pressure will end Israeli apartheid", *Haaretz*, 22 January 2016. Available from www.haaretz.com/opinion/.premium-1.698874.



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Promotion and protection of human rights: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Situation of human rights in the Palestinian territories occupied since 1967*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, submitted in accordance with Human Rights Council resolution 5/1.

* The present report was submitted after the deadline in order to reflect the most recent developments.



Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, hereby submits his third report to the General Assembly. The report is based primarily on information provided by victims, witnesses, civil society representatives, United Nations representatives and Palestinian officials in Amman, in connection with the mission of the Special Rapporteur to the region in June 2018. The report addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza.

I. Introduction

1. The present report provides a brief overview of the most pressing human rights concerns in the Occupied Palestinian Territory at the time of submission, as identified by the Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 in conversations and meetings with civil society. The report then presents a detailed analysis of the question of annexation, examining the relevant legal frameworks as well as the situation in the Occupied Palestinian Territory, in particular the West Bank, including East Jerusalem.

2. The Special Rapporteur would like once again to highlight that, despite his requests, he has not yet been granted access to the Occupied Palestinian Territory by Israel. He most recently requested access to the Occupied Palestinian Territory on 24 April 2018. At the writing of the present report, no reply had been received from the Government of Israel. The Special Rapporteur emphasizes once again his view that an open dialogue among all parties is essential for the protection and promotion of human rights and reminds Israel that he is ready and willing to engage. In addition, he continues to highlight that access to the Occupied Palestinian Territory would play a key role in understanding the fundamental realities of the human rights situation in the territory. The pattern by Israel of non-cooperation with the mandate is a serious concern and contrary to its obligations as a State Member of the United Nations.

3. The present report is based primarily on written submissions as well as consultations with civil society representatives, victims, witnesses, Palestinian government officials and United Nations representatives held in Amman during the Special Rapporteur's annual mission to the region, in June 2018. The Special Rapporteur would like to note that several groups were unable to travel to Amman to meet with him owing to travel restrictions imposed by the Israeli authorities. This was particularly the case with individuals coming from Gaza, and all individuals and organizations based in Gaza were consulted by videoconference as a result.

4. In the present report, the Special Rapporteur focuses on the obligations of Israel under international human rights law and international humanitarian law, as set out in the mandate.¹ The Rapporteur emphasizes that those obligations are by no means limited to Israel and calls upon all actors to ensure respect for international human rights law and international humanitarian law, in accordance with their obligations, noting that violations of those bodies of law by any actor are deplorable and will only hinder the prospects for peace.

5. The Special Rapporteur wishes to express his appreciation to the Government of the State of Palestine for its full cooperation with the mandate. He also wishes to extend his thanks to all those who travelled to Amman to meet with him and to those who were unable to travel but made written or oral submissions. He further extends his thanks once again to Jordan for its support and for the opportunity to hold meetings in Amman.

6. The Special Rapporteur emphasizes once again his admiration and support for the vital work being done by Palestinian, Israeli and international human rights organizations. That work is indispensable not only to the Rapporteur as he seeks to fulfil his mandate, but also to the broader international community. The efforts of human rights organizations to ensure that accurate and complete information about the situation in the Occupied Palestinian Territory is readily available should not go unacknowledged. As highlighted in the report of the Special Rapporteur to the Human Rights Council in March 2017 (A/HRC/34/70), those organizations often face

¹ As specified in the mandate of the Special Rapporteur set out in Commission on Human Rights resolution 1993/2.

significant obstacles in carrying out their work, and the Rapporteur notes that those obstacles have only increased and intensified in the intervening years. The Rapporteur calls upon the international community to ensure that the rights of those undertaking this difficult and, in some cases, perilous work are respected and protected and that any attempts to delegitimize or otherwise discredit the work of those organizations is to be condemned.

II. Current human rights situation

7. Since the previous report of the Special Rapporteur to the General Assembly (A/72/556), the human rights situation in the Occupied Palestinian Territory, particularly in Gaza, has only deteriorated. In his statement following his mission to the region in June 2018, the Rapporteur noted that, in his third visit to the region since assuming his role as mandate holder, he was presented with the bleakest picture yet of the human rights situation in the Occupied Palestinian Territory.² The key issues raised during the mission included the continued expansion and development of settlements; the proposal of legislation that could formally annex parts of the West Bank; the possible forcible transfer of vulnerable Bedouin communities; the continued existence of a coercive environment in many parts of the West Bank, including East Jerusalem, seen in measures such as checkpoints, closures, residency revocations and movement restrictions; a continued deterioration in nearly all aspects of life in Gaza; and the apparent excessive use of force against protestors in Gaza, resulting in high numbers of deaths and injuries.

8. The present report cannot present a comprehensive overview of all issues of concern owing to space limitations. Instead, the Rapporteur seeks to highlight here several of the most urgent concerns at the time of writing. That discussion will be followed by an in-depth analysis of the question of annexation, examining both the applicable legal framework as well as the current situation in the Occupied Palestinian Territory.

Gaza

9. The humanitarian and human rights situation in Gaza continues to unravel steadily. The electricity crisis that deepened last year has continued with little change, severely restricting Palestinians' access to medical care, education, and livelihoods. Since the start of 2018, residents of Gaza have not had access to more than six hours of electricity per day; most days they have had only four or five hours.³ In recent months, the United Nations has called repeatedly for emergency fuel to be provided to Gaza in order to prevent a complete and catastrophic breakdown in essential services, particularly after Israel introduced restrictions on the entry of fuel to Gaza.⁴

² Office of the United Nations High Commissioner for Human Rights (OHCHR), "Occupied Palestinian Territory: bleakest picture yet, says UN expert after regional visit", 29 June 2018. Available at www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=23298&LangID=E.

³ United Nations, Office for the Coordination of Humanitarian Affairs, Gaza Strip electric supply database, available at www.ochaopt.org/page/gaza-strip-electricity-supply.

⁴ See for example, United Nations, Office for the Coordination of Humanitarian Affairs, "Funding for emergency fuel needed immediately to avoid catastrophic breakdown in essential services", 5 September 2018. Available at www.ochaopt.org/content/funding-emergency-fuel-needed-immediately-avoid-catastrophic-breakdown-essential-services; and "Entry of emergency fuel urgently needed to avoid closure of hospitals and overflow of sewage in Gaza streets", 8 August 2018. Available at <https://www.ochaopt.org/content/entry-emergency-fuel-urgently-needed-avoid-closure-hospitals-and-overflow-sewage-gaza>.

The World Bank has reported that the Gaza economy is current in “free fall”, with minus 6 per cent growth in the first quarter of 2018; it cited the blockade as the core issue but noted also other contributing factors, including the significant cuts to the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the decision by the Palestinian Authority to cut salaries in Gaza.⁵

Demonstrations and the use of force

10. The demonstrations along the Gaza fence began on 31 March 2018 under the banner of the “Great March of Return”, with Palestinians in Gaza calling for their right to return to their homes and for an end to the blockade. Most of the Gaza population comprises Palestinians who have been forcibly expelled from their homes and lands during and after 1948. Gaza has been under a comprehensive land, sea and air blockade for 11 years, with many residents never having had the chance to ever leave Gaza. Access to essential health-care services, education and livelihoods is severely restricted. The unprecedented cuts to the funding of UNRWA, which provides a range of services from medical care to education to protection, will have a devastating impact on the residents of Gaza.⁶ In the face of those challenges, residents of Gaza have gathered at the fence between Gaza and Israel each Friday since 30 March, in varying numbers, to protest those conditions.

11. At the time of writing, more than 200 Palestinians had been killed by Israeli security forces in Gaza, 150 of those in the context of demonstrations. Among those killed, 38 were children. On 14 May alone, at least 42 Palestinians were killed in the context of demonstrations, including 6 children.⁷ Alongside the high number of fatalities has been an extremely high number of injuries, with more than 21,000 Palestinians wounded, including over 5,300 wounded by live ammunition. Other injuries have been caused by tear gas inhalation, rubber-coated metal bullets, among other things. Also during the reporting period, 1 Israeli was killed and 37 injured.⁸ Demonstrations are ongoing and deaths and injuries continue to mount; for example, seven Palestinians, including two children, were killed by Israeli security forces on 28 September 2018.⁹ The negative impact of that situation on children cannot be overstated, and despite calls from the international community to ensure respect for the rights of children, they continue to be killed and injured.¹⁰

⁵ World Bank, “Cash-strapped Gaza and an economy in collapse put Palestinian basic needs at risk”, press release, 25 September 2018. Available at www.worldbank.org/en/news/press-release/2018/09/25/cash-strapped-gaza-and-an-economy-in-collapse-put-palestinian-basic-needs-at-risk.

⁶ Stephane Dujarric, Spokesman for the Secretary-General, statement for the Secretary-General on United Nations Relief and Works Agency for Palestine Refugees in the Near East, 31 August 2018. Available at www.un.org/sg/en/content/sg/statement/2018-08-31/statement-attributable-spokesman-secretary-general-unrwa.

⁷ Jamie McGoldrick, Humanitarian Coordinator for the Occupied Palestinian Territory, statement on Palestinian casualties in the Gaza Strip, 29 September 2018. Available at www.ochaopt.org/content/statement-humanitarian-coordinator-occupied-palestinian-territory-mr-jamie-mcgoldrick and <https://www.ochaopt.org/content/fifty-five-palestinians-killed-and-thousands-injured-gaza>.

⁸ For all figures in this paragraph, see United Nations, Office for the Coordination of Humanitarian Affairs, “Humanitarian snapshot: casualties in the context of demonstrations and hostilities in Gaza”, 30 March–4 October 2018. Available at www.ochaopt.org/content/humanitarian-snapshot-casualties-context-demonstrations-and-hostilities-gaza-30-march-4.

⁹ McGoldrick, statement on Palestinian casualties in the Gaza Strip.

¹⁰ Jamie McGoldrick, Humanitarian Coordinator in the Occupied Palestinian Territory, James Heenan, Head of OHCHR in the Occupied Palestinian Territory, and Genevieve Boutin, United Nations Children’s Fund Special Representative in the State of Palestine, “Children’s rights must be put first”, joint press statement, 1 August 2018. Available at www.ochaopt.org/content/children-s-rights-must-be-put-first.

12. While the demonstrations have been largely peaceful, incidents have occurred in which Palestinians have thrown Molotov cocktails towards the border or flown burning kites that drop their material on Israeli land, igniting crops. Demonstrators have reportedly attempted to break through the fence between Gaza and Israel. All acts of violence are deplorable and must be condemned. However, serious concerns about the response of Israel to the demonstrations are not alleviated by the fact that some of the demonstrators may have used violent means themselves.¹¹ The applicable legal framework holds that the test is not the use of violence, but rather whether the law enforcement official faces an imminent threat to life. As the United Nations High Commissioner for Human Rights noted, it is difficult to see how tyre-burning or stone-throwing, or even Molotov cocktails thrown from a significant distance at heavily protected security forces in defensive positions, can be seen to constitute such threat.¹²

13. The Government of Israel has described the demonstrations as a “confrontation campaign” launched by Hamas and has placed the responsibility for the killing of Palestinians by Israeli forces with Hamas.¹³ It has also connected the current events in Gaza to the previous escalation of violence in the West Bank, which began in October 2015 and lasted several months, calling the period since 2015 a “wave of terror”.¹⁴ The Special Rapporteur notes that, indeed, many of the concerns raised in his 2016 report to the General Assembly (A/71/554), which also addressed the uptick in violence in the West Bank, have only heightened today, in particular the apparent excessive use of force by Israeli security forces. As noted in that report, more than 230 Palestinians were killed in the West Bank, including East Jerusalem, in a roughly one-year period in the context of demonstrations and of attacks or alleged attacks by Palestinians against Israelis (see A/71/554 paras. 9–14). The recent months in Gaza, there have been similarly high numbers of deaths and extremely high numbers of injuries of Palestinians by Israeli forces. The practice of responding with deadly force to demonstrations is greatly at odds with human rights law and with the protected international values of the right to freedom of expression, assembly and association.

14. According to the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, weapons and lethal force should be used only as a last resort and only in cases of imminent threat of death or serious injury. The Principles are informative here, given that Israeli forces along the fence between Israel and Gaza are acting in a law enforcement capacity. Palestinian demonstrators face heavily armed and well-equipped Israeli security forces in defensive positions, often hundreds of metres away. Even in cases in which Palestinians have thrown stones, Molotov cocktails or otherwise approached Israeli soldiers, according to the extensive evidence gathered by a number of human rights organizations and reviewed by the Special Rapporteur, the majority of those incidents did not appear to pose a credible threat to life or risk of serious injury to the heavily armed Israeli forces that would

¹¹ Sari Bashi, “Don’t blame Hamas for the Gaza bloodshed”, Human Rights Watch, 22 May 2018. Available at www.hrw.org/news/2018/05/22/dont-blame-hamas-gaza-bloodshed.

¹² OHCHR, “Gaza deaths: Israel must address excessive use of force, Zeid says”, 27 April 2018. Available at <https://ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22995&LangID=E>.

¹³ Israel, Ministry of Foreign Affairs, “Hamas launches confrontation campaign on Israel’s border”, 6 April 2018. Available at <http://mfa.gov.il/MFA/ForeignPolicy/Issues/Pages/Hamas-launches-confrontation-campaign-on-Israelis-border.aspx>; and Noa Landau, “Netanyahu on Gaza protesters: Israel tried non-lethal methods, but Hamas wants them to die”, *Haaretz*, 7 June 2018. Available at www.haaretz.com/israel-news/netanyahu-on-gaza-protesters-hamas-wants-them-to-die-1.6156392.

¹⁴ Israel, Ministry of Foreign Affairs, “Wave of terror 2015–2018”, 17 October 2018. Available at <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Wave-of-terror-October-2015.aspx>.

justify the use of deadly force under the relevant human rights law provisions.¹⁵ Indeed, most of those killed were reportedly unarmed and were shot with live ammunition in the back, head or chest.

15. In that context, and more worrying, a message — that was later deleted — on the social media website Twitter from the official account of the spokesperson of the Israel Defense Forces at the start of the demonstrations on 31 March read: “Nothing was carried out uncontrolled; everything was accurate and measured, and we know where every bullet landed.”¹⁶ It should be noted that, in the context of an occupation such as that in Gaza, killings resulting from the unlawful use of force may constitute wilful killings, a grave breach of article 147 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention). Grave breaches of the Geneva Conventions are categorized as war crimes under article 8 of the Rome Statute of the International Criminal Court.¹⁷

Access and movement restrictions in the context of demonstrations

16. In addition to the use of force, Israel has responded to the demonstrations by imposing restrictions on movement and access that have had a significant negative impact on the residents of Gaza. As highlighted in my report to the Human Rights Council in March 2018 (see [A/HRC/37/75](#), paras. 36–60), residents of Gaza face serious challenges with respect to the right to health owing to the crumbling infrastructure in Gaza resulting from 11 years of blockade by Israel and its closure of Gaza, as well as delays or denials in the issuance of permits that would allow them to travel outside of Gaza for medical treatment. Those concerns continue at present, and the situation has only been exacerbated by the spike in needs associated with the large numbers of injuries sustained during the demonstrations. In June 2018, the Office for the Coordination of Humanitarian Affairs and the World Health Organization warned of the desperate situation of the Gaza health sector, citing the electricity shortage, cuts in salaries for government employees and shortages of essential medicines as key problems that have weakened the sector in recent years and months.¹⁸ In addition to the high number of injuries, the complexity of treating bullet wounds has been raised as a key issue that will impact longer-term recovery of many patients.¹⁹

¹⁵ See for example, Human Rights Watch, “Israel: Gaza killings unlawful, calculated”, 3 April 2018. Available at www.hrw.org/news/2018/04/03/israel-gaza-killings-unlawful-calculated; B’Tselem, “If the heart be not callous, on the unlawful shooting of unarmed demonstrators in Gaza”, position paper, April 2018. Available at www.btselem.org/publications/summaries/201804_if_the_heart_be_not_callous; Al Mezan Center for Human Rights, “Child killed and 112 protestors injured on the 16th Friday of demonstrations”, press release, 15 July 2018. Available at www.mezan.org/en/post/23073/Child+Killed+and+112+Protesters+Injured+on+the+16th+Friday+of+Demonstrations.

¹⁶ Hazem Balousha and Oliver Holmes, “The Gaza Strip mourns its dead after protest is met with bullets”, *The Guardian*, 31 March 2018. Available at www.theguardian.com/world/2018/mar/31/weary-angry-gazans-bury-dead-after-deadly-border-conflict.

¹⁷ See also, Fatour Bensouda, Prosecutor, International Criminal Court, statement regarding the worsening situation in Gaza, 8 April 2018. Available at www.icc-cpi.int/Pages/item.aspx?name=180408-otp-stat, noting that “violence against civilians — in a situation such as the one prevailing in Gaza — could constitute crimes under the Rome Statute of the International Criminal Court ... as could the use of civilian presence for the purpose of shielding military activities.”

¹⁸ United Nations, Office for the Coordination of Humanitarian Affairs, “Gaza’s health sector struggles to cope with massive influx of casualties amid pervasive shortages”, Humanitarian Bulletin: Occupied Palestinian Territory, May 2018. Available at www.ochaopt.org/content/gaza-s-health-sector-struggles-cope-massive-influx-casualties-amid-pervasive-shortages.

¹⁹ Médecins sans frontières, “Gaza: a long ordeal awaits hundreds of wounded from the march of return”, 8 August 2018. Available at www.msf.org/gaza-long-ordeal-awaits-hundreds-wounded-march-return.

17. Given the volume of patients and their complex needs, many have required medical care not available in Gaza. However, difficulties in obtaining permits in a timely manner, or at all, have been a serious concern. In the case of gunshot wounds, quick treatment is often essential to avoid amputation. In one case, two injured young men aged 17 and 20 were denied exit permits, which resulted in each having to undergo a leg amputation. The Israeli authorities cited their participation in the demonstrations as the reason for denying the exit permits.²⁰ On 8 April, the human rights organizations Adalah and Al Mezan filed a petition on behalf of the patients with the Israeli High Court. While awaiting the decision of the Court, both patients underwent amputations. On 16 April, the Court ruled that one of the men, Yousef Al-Kronz, should be permitted to leave Gaza for additional surgery as he was at risk of having his second leg amputated.²¹ Denial of access to medical treatment is not justifiable and is in violation of the obligations of Israel under human rights law as well as its obligations as an occupying power under international humanitarian law.

18. In addition to restrictions on the travel of individuals, Israel has in recent months imposed restrictions on the entry of essential goods to Gaza. Israeli authorities have clearly stated that those measures are undertaken in response to the flying of burning kites into Israeli territory that has resulted in significant damage to Israeli crops.²² That has resulted in severe shortages of, among other things, emergency fuel. As noted above, the United Nations has on several occasions warned of the possibility of total collapse of essential services if fuel is not allowed to enter Gaza. The fact that the entire Gaza population could be subject to an even more serious degradation of conditions owing to the actions of a few points to the imposition of collective punishment, which is prohibited under article 33 of the Fourth Geneva Convention.

Accountability

19. At the onset of the demonstrations, the Secretary-General called for independent and transparent investigations into the incidents.²³ That call has been echoed on numerous occasions by the Office of the United Nations High Commissioner for Human Rights and a number of mandate holders of the special procedures of the Human Rights Council, including the Special Rapporteur.²⁴ Given the centrality of accountability to any efforts to achieve peace and prevent future violations of international law, the Special Rapporteur commends the decision by the Human Rights Council in its resolution S-28/1 to create an independent commission of

²⁰ Jack Khoury, “Israel denied passage for medical treatment to two Palestinians who protested in Gaza — and their legs were amputated”, *Haaretz*, 12 April 2018. Available at www.haaretz.com/israel-news/two-gazan-protesters-legs-amputated-after-israel-denies-entry-1.5993161.

²¹ Al Mezan Center for Human Rights, “Israel Supreme Court rules on Adalah-Al Mezan petition: Israel must let Palestinian youth wounded by Israeli gunfire at protests leave Gaza for urgent care”, press release, 16 April 2018. Available at www.mezan.org/en/post/22707.

²² BBC, “Israel closes main Gaza goods crossing in response to arson attacks”, 10 July 2018. Available at www.bbc.com/news/world-middle-east-44777297.

²³ Farhan Haq, Deputy Spokesman for the Secretary-General, statement for the Secretary-General on the situation in Gaza, 30 March 2018. Available at www.un.org/sg/en/content/sg/statement/2018-03-30/statement-attributable-spokesman-secretary-general-situation-gaza.

²⁴ OHCHR, “UN human rights experts condemn killings of Palestinians near Gaza fence by Israeli security forces”, 17 April 2018; “UN rights experts condemn Israel’s response to Palestinian protests in Gaza”, 6 April 2018; “Press briefing note on Gaza and Guatemala”, 17 April 2018; “Gaza deaths: Israel must address excessive use of force, Zeid says”, 27 April 2018. Available from www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22950, www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22924, www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22925&LangID=E, and www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22995&LangID=E, respectively.

inquiry as an important means of seeking to end impunity and achieving more effective redress for victims than has been realized to date.

20. In that resolution, the Council decided to dispatch the commission, noting a “systematic failure by Israel to carry out genuine investigations in an impartial, independent, prompt and effective way, as required by international law, into the violence and offences against Palestinians by the occupying forces, and to establish judicial accountability for its actions in the Occupied Palestinian Territory, including East Jerusalem.”

21. In April 2018, Israeli Defense Minister Avigdor Lieberman said that no investigations would be launched into the killings along the Gaza border.²⁵ Subsequently, in August, Brigadier General Sharon Afek decided to open an investigation into the deaths of two young Palestinians: a 15-year-old who, according to video footage, was shot in the back near the fence in March; and an 18-year-old who was shot during demonstrations near the fence in July.

22. In April, Israeli and Palestinian human rights organizations filed two petitions with the Israeli High Court demanding that it assess the legality of the Israel Defense Forces open-fire regulations.²⁶ In May, the Court issued its decision, relying heavily on the State’s assessment of the facts, and — without examining the rules of engagement of the Israel Defense Forces — deferred legal questions to the Forces’ internal investigation mechanism.²⁷ The High Court’s decision has raised serious concerns, including among legal scholars, about the permissiveness of the judicial scrutiny of the Israeli military’s conduct, as it seems to accept arguments by the State that justify the potential use of lethal force against demonstrators that do not pose any threat to life or serious injury.²⁸ That raises additional concerns about the possibility of achieving accountability within the military justice system.

23. The existence of a system in which cases can be brought to the Military Advocate General is necessary but not sufficient for achieving accountability. There must also be evidence that the system itself works in an independent, impartial and transparent manner, in line with international standards. The Rapporteur echoes the High Commissioner’s sentiment that failures by the Military Advocate General undermine current and future efforts to achieve accountability for those incidents by “creating the misconception that cases were effectively addressed through the military justice system” (see [A/HRC/37/41](#), para. 14).

²⁵ Loveday Morris and Hazem Balousha, “No inquiry into Gaza border deaths, says Israeli defense minister”, *Washington Post*, 1 April 2018. Available at www.washingtonpost.com/world/middle-east/no-inquiry-into-gaza-border-deaths-says-israeli-defense-minister/2018/04/01/f2562ca2-352d-11e8-b6bd-0084a1666987_story.html?utm_term=.cdab7561d170.

²⁶ Adalah, “Adalah and Al Mezan petition supreme court: order Israeli army to stop using snipers, live ammunition against Gaza protests” 24 April 2018. Available at www.adalah.org/en/content/view/9488; Gisha, “HCJ petition: revoke open-fire regulation permitting live fire on demonstrators not endangering human life”, 15 April 2018. Available from <http://gisha.org/updates/8804>; and Yesh Din, “HCJ petition: revoke rules of engagement permitting live fire at non-dangerous demonstrators near Gaza fence”, 15 April 2018. Available at www.yesh-din.org/en/hcj-petition-revoke-rules-engagement-permitting-live-fire-non-dangerous-demonstrators-near-gaza-fence/.

²⁷ Yesh Din, “HCJ petition: revoke rules of engagement permitting live fire at non-dangerous demonstrators near Gaza fence”.

²⁸ See for example, Eliav Liebllich, “Collectivizing threat: an analysis of Israel’s legal claim for resort to force on the Gaza border”, Just Security, 16 May 2018. Available at www.justsecurity.org/56346/collectivizing-threat-analysis-israels-legal-claims-resort-force-gaza-border/; and Elena Chachko and Yuval Shany, “The Supreme Court of Israel dismisses a petition against Gaza rules of engagement”, Law Fare, 26 May 2018. Available at www.lawfareblog.com/supreme-court-israel-dismisses-petition-against-gaza-rules-engagement.

III. Annexation

24. The annexation of territory is strictly prohibited in modern international law. Indeed, that prohibition has acquired the status of a *jus cogens* norm in international law, meaning that it is accepted as a fundamental principle of law by the international community, for which no exception or derogation is permitted.²⁹ Territorial conquest and annexation are now regarded as intolerable scourges from darker times, because they invariably incite devastating wars, political instability, economic ruin, systematic discrimination and widespread human suffering.³⁰ Although annexation has yet to be completely eradicated in the modern world, its occurrence has become much more infrequent since the creation of the United Nations, with the international community refusing to recognize annexation claims in many cases.

25. Nevertheless, annexation remains a burning issue in the Israeli-Palestinian conflict. Israel, the occupying power, has twice formally annexed occupied territory under its control: East Jerusalem (in 1967 and 1980) and the Syrian Golan Heights (in 1981).³¹ Its refusal to relinquish the two territories in the face of widespread condemnation by the international community has contributed to regional instability and severely limited the efficacy of international law. Furthermore, throughout the years of occupation since the June 1967 war, Israel has continuously entrenched its *de facto* annexation of the West Bank by imposing intentionally irreversible changes to occupied territory that are proscribed by international humanitarian law: the establishment of 230 settlements, populated by more than 400,000 Israeli settlers; the physical and political enclosure of the 2.6 million West Bank Palestinians; the extension of Israeli laws to the West Bank and the creation of a discriminatory legal regime; the unequal access to natural resources, social services, property and land for Palestinians in the occupied West Bank; and the explicit statements by a wide circle of senior Israeli political leaders calling for the formal annexation of parts or all of the West Bank. Those annexation trends have only intensified over the past two years. As one Israeli human rights lawyer recently stated, “[the Government of Israel] is peeling away the last remnants of loyalty to the notion of the occupation as temporary and to any obligation to negotiate with the Palestinians. The goal is clear: a single State containing two people, only one of which has citizenship and civil rights.”³²

26. Accordingly, the focus of the second half of the present report is devoted to exploring the trends of the *de jure* annexation of East Jerusalem by Israel and its *de facto* annexation of the West Bank, their incompatibility with international legal norms and their foreclosing of the right to self-determination by the Palestinian people.

A. Annexation in modern international law

27. After 1945 and the bitter experience of decades of global wars fuelled by ambitions of territorial expansionism, the international community resolved to forbid war, conquest and annexation as instruments of national policy. The Charter of the United Nations, in its Article 2 (3) and (4), requires States Members of the United Nations to settle their differences by peaceful means, with the corollary that

²⁹ Rainer Hofmann, “Annexation”, in *Max Planck Encyclopedia of Public International Law* (Oxford University Press, 2013), paras. 21 and 38.

³⁰ Robert Yewdall Jennings, *The Acquisition of Territory in International Law* (Manchester, United Kingdom of Great Britain and Northern Ireland, Manchester University Press, 1963, 2017).

³¹ These *de jure* annexations have been condemned by the Security Council in its resolutions 478 (1980) and 497 (1981).

³² Michael Sfar, “Israel and annexation by lawfare”, *The New York Review of Books*, 10 April 2018. Available at www.nybooks.com/daily/2018/04/10/israel-and-annexation-by-lawfare/.

annexation had now become illegal.³³ The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (the Declaration on Friendly Relations), adopted unanimously in 1970 by the General Assembly, declares that no territorial acquisition or special advantage resulting from the threat or use of force shall be recognized as legal. From 1967, the Security Council has expressly affirmed the inadmissibility of the acquisition of territory by war or force on at least eight occasions.³⁴ The inadmissibility principle has also been endorsed repeatedly by the General Assembly and the Human Rights Council.³⁵ The International Court of Justice stated in 2004 that this principle has achieved the status of customary international law.³⁶ Leading international legal scholars are widely in agreement that the prohibitions against conquest and annexation are cornerstones of modern international law.³⁷ Annexation is incompatible with the foundational principles of the laws of occupation, which stipulate that the occupying power's tenure is inherently temporary, not permanent or even indefinite, and that it must rule the territory as a trustee for the benefit of the protected population under occupation and not for its own aggrandizement.³⁸ Annexation is also profoundly in breach of the fundamental right to self-determination, an *erga omnes* obligation under international law.³⁹

B. Effectiveness of the prohibition

28. Recently, scholars have affirmed that the legal and diplomatic prohibition of conquest and annexation has had a significant dampening effect on its occurrence in the post-1945 period. In the period 1816–1928, until the signing of the General Treaty for Renunciation of War as an Instrument of National Policy (the Briand-Kellogg Pact), there had been an average of 1.21 conquests per year, with the acquisition of an average of 295,486 square kilometres annually. Between 1928 and 1948, during the initial period following the Pact, only a slight decline in the patterns of conquest and annexation were evident: there was an average of 1.15 conquests per year, involving an average of 240,739 square kilometres. However, since 1948, with the emergence of the United Nations and the consolidation of the prohibitions within international law, there has been a dramatic decline: only 0.26 conquests per year, amounting to an annual average of 14,950 square kilometres. Most importantly, many of the modern conquests and annexations have not been recognized by States. Thus, while war may still sometimes produce a military victory, it does not often yield lasting legal victories.⁴⁰

³³ Hofmann, “Annexation”, para. 14.

³⁴ The latest is Security Council resolution [2334 \(2016\)](#).

³⁵ Most recently in General Assembly resolution [72/14](#) and Human Rights Council resolution [37/36](#).

³⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, para. 87.

³⁷ For example: Malcolm N. Shaw, *International Law*, 8th ed. (Cambridge, United Kingdom, Cambridge University Press, 2017), p. 372. “No territorial acquisition resulting from the threat or use of force shall be recognized as legal”; Jennings, *The Acquisition of Territory in International Law*, p. 56: “Conquest as a title to territorial sovereignty has ceased to be a part of the law.”

³⁸ Orna Ben-Naftali, Michael Sfard and Hedi Viterbo, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory* (Cambridge, Cambridge University Press, 2018), p. 399: “The normative framework limits the occupant’s powers in terms of both material scope and time, forbidding it to act in a manner intended to generate permanent results ... the occupation does not confer title to the territory; ... it is to be managed as a trust; and ... it is temporary.”

³⁹ *Legal Consequences of the Construction of a Wall, I.C.J. Reports 2004*, paras. 88 and 155.

⁴⁰ Oona Hathaway and Scott J. Shapiro, *The Internationalists: How a Radical Plan to Outlaw War Remade the World* (New York: Simon and Schuster, 2017), chap. 13.

C. Definition of de facto annexation

29. “De jure annexation” is widely recognized in international law as the formal declaration by a State that it is claiming permanent sovereignty over territory that it had forcibly acquired from another State.⁴¹ In contrast, “de facto annexation” has been generally employed as a descriptive term to illustrate the actions of a State in the process of consolidating — often through oblique and incremental measures — the legislative, political, institutional and demographic facts to establish a future claim of sovereignty over territory acquired through force or war, but without the formal declaration of annexation.

30. Given the broad international consensus respecting the illegality of annexation, acquisitive States in modern times that wish to annex territory have a strong incentive to obfuscate the reality of their plans.⁴² Typically, they will work assiduously to create a series of “facts on the ground” in order to buttress a sovereign claim, while postponing a formal declaration because of the fear of a diplomatic and political reaction by the international community. With that in mind, the Special Rapporteur submits that, if the prohibition against annexation is to be coherent and effective, particularly in the context of the occupied Palestinian territory, then the liberal purposes of international law should ensure that the absolute prohibition against annexation extends to those incremental, yet substantive, measures being taken by a State in violation of international humanitarian law to lay the ground for a future claim of sovereignty over conquered and/or occupied territory.⁴³

31. Relying upon legal reasoning developed by Omar Dajani, the Rapporteur proposes that the following factors should be employed to assess whether a State engaging in de facto annexation has crossed the tipping point in illegal annexation:

(a) Effective control. The State is in effective control of territory that it forcibly acquired from another State;⁴⁴

(b) Exercises of sovereignty. The State has taken active measures that are consistent with permanency and a sovereign claim over parts or all of the territory or through prohibited changes to local legislation, including the application of its domestic laws to the territory, demographic transformation and/or population transfer, the prolonged duration of the occupation and/or the granting of citizenship;⁴⁵

(c) Expressions of intent. This would include statements by leading political leaders and/or State institutions indicating, or advocating for, the permanent annexation of parts or all of the occupied territory;⁴⁶

(d) International law and direction. The State has refused to accept the application of international law, including the laws of occupation, to the territory

⁴¹ Hofmann, “Annexation”, para. 1.

⁴² Omar M. Dajani, “Israel’s creeping annexation” (2017), *American Journal of International Law*, vol. 111, p. 52.

⁴³ Ibid. p. 53, “... while a formal act of annexation is powerful evidence of intent, the lack of one is by no means dispositive.”

⁴⁴ Ibid. p. 52, citing an element of the older test in international law as to when an annexation had been accomplished.

⁴⁵ Ibid. p. 53, “... it is difficult to conceive of a measure more indicative of a state’s intent to annex territory — short of a declaration to that effect — than its establishment of civilian settlements upon that territory”. In addition, the application by the occupying power of its domestic laws to the occupied territory is incompatible with the laws of occupation and is prohibited precisely to discourage annexation, see Ben-Naftali Sfar and Viterbo, *The ABC of the OPT*.

⁴⁶ Dajani, “Israel’s creeping annexation”, p. 52, citing an element of the older test in international law as to when an annexation had been accomplished. Also see Shaw, *International Law*, p. 371, “intention to annex was a crucial aspect of the equation.”

and/or is failing to comply with the direction of the international community with respect to the present and future status of the territory.⁴⁷

32. The essence of the above test is to determine whether, on the facts of each particular conquest and/or occupation, the State has displayed a pattern of behaviour sufficiently consistent with annexation and inconsistent with the right to self-determination and the fundamental principles of occupation, including temporality, trusteeship and good faith (see [A/72/556](#)). If so, then the State would be in violation of the international prohibition against annexation, even in the absence of a formal declaration.

33. With that legal foundation in mind, we can proceed to examine the conduct of Israel, the occupying power, with respect to East Jerusalem and the West Bank.

D. Annexation and East Jerusalem

34. Several weeks after the military occupation of East Jerusalem and the West Bank — among other territories — by Israel in the June 1967 war, Israel formally extended its law and administration to East Jerusalem and 28 surrounding Palestinian villages in the West Bank, creating a much-enlarged Jerusalem municipality. The 1967 annexation absorbed not only the 6,400 dunams of East Jerusalem — previously ruled by Jordan — but also 65,000 dunams in the West Bank, attaching them to the 38,000 dunams belonging to West Jerusalem. In General Assembly resolutions 2253 (ES-V) and 2254 (ES-V), the international community immediately and overwhelmingly rejected that *de jure* annexation. Israel refused to comply with those resolutions and began to establish permanent demographic, structural and institutional facts on the ground to consolidate its sovereignty claim.

35. Subsequently, in July 1980, the Israeli Knesset enacted the quasi-constitutional Basic Law: Jerusalem, Capital of Israel, which proclaimed that Jerusalem, “complete and unified”, was the capital of Israel. Again, the international community, this time through the Security Council, condemned the annexation in the strongest terms and declared that the Basic Law was a violation of international law and a threat to peace and security. Furthermore, in its resolution 478 (1980), the Council determined that all legislative and administrative measures and actions taken by Israel, the occupying Power, that had altered or purport to alter the character and status of Jerusalem were null and void and must be rescinded.

36. The United Nations, by Council resolution [2334 \(2016\)](#) and Assembly resolution ES-10/19, has recently reaffirmed those declarations, establishing the illegality of the formal Israeli annexation of East Jerusalem.

37. As part of its continuing efforts to ensure that its *de jure* annexation of East Jerusalem is irreversible, Israel has over the past five decades extended its national laws and civil authority to the occupied section of the city; issued numerous declarations of permanent sovereignty; transformed the physical features and historic character of East Jerusalem; moved some of its national institutions, including the Ministry of Justice; and embarked upon an intensive programme of creating and

⁴⁷ Dajani, “Israel’s creeping annexation”, p. 53, “an occupant’s refusal to accept the law of occupation’s applicability would seem probative for drawing this conclusion [acting as a sovereign] — as would a refusal to comply with duties under that law that relate specifically to distinguishing the rights of an occupant from those of a sovereign.”

expanding Israeli settlements.⁴⁸ Two trends in particular are evident, the objective of both being the perpetuation by Israel of its annexation of East Jerusalem.

38. First, the consistent policy of Israel since 1967 has been to secure an overwhelming Israeli Jewish majority in Jerusalem, achieved through settler implantation and demographic gerrymandering. Early in the occupation, Israeli national and municipal leaders adopted two official policy objectives aimed at sustaining permanent Israeli annexation of East Jerusalem: to expand the size of the city, and thereby increase its absorptive capacity for Israeli Jewish settlement;⁴⁹ and to establish a targeted “demographic balance” of 70 per cent Jewish Israelis and 30 per cent Palestinians in the city.⁵⁰ Later, in the 2000s, those leaders added a third policy objective: to prevent the development of any national Palestinian institutions in Jerusalem and thereby dampen Palestinian nationalist sentiment. Notwithstanding the best efforts of Israel since, none of those objectives have been fully successful. No State has formally recognized the claim by Israel to its sovereignty over East Jerusalem. Demographically, Palestinian Jerusalemites in 2016 constituted 38 per cent of the city’s population, up from 28 per cent in 1980.⁵¹ Furthermore, a 2018 poll indicated that 97 per cent of Palestinian East Jerusalem residents strongly objected to the idea that Israel should maintain its annexation of East Jerusalem.⁵² Nonetheless, since 1967, Israel has taken a number of substantial steps to entrench its sovereign claim over East Jerusalem, as described below.

39. A total of 15 official Israeli Jewish settlements have been built within the expanded boundaries of East Jerusalem since 1967, with a total population of 210,000 Israeli settlers. Those settlements constitute a grave breach under international humanitarian law.⁵³ The purpose of the settlements is to create such a large critical mass of settlers that no future Government of Israel would be politically able either to oppose them or uproot them. One disfiguring effect of the settlements, together with the separation wall and the surrounding Israeli settlements just outside of the current municipal boundaries, has been to sever East Jerusalem — the centre of Palestinian life — from the West Bank, thus significantly eroding their economic, social, familial and political interdependency.⁵⁴ Most recently, the Jerusalem municipality has permitted Israeli settlers to dispossess Palestinian Jerusalemites in the Sheikh Jarrah and Silwan neighbourhoods, resulting in frequent friction and violence.⁵⁵

40. In addition, the laws and national authority of Israel apply throughout East Jerusalem, although in a manner that systemically discriminates against the

⁴⁸ Prime Minister Ehud Barak stated in November 2000, “maintaining our sovereignty over Jerusalem and boosting its Jewish majority have been our chief aims, and toward this end Israel constructed large Jewish neighbourhoods in the eastern part of the city, which house 180,000 residents, and large settlements on the periphery of Jerusalem, like the city of Ma’aleh Adumim and Givat Ze’ev.” See <http://mfa.gov.il/MFA/PressRoom/2000/Pages/Address%20by%20PM%20Barak%20on%20the%20Fifth%20Anniversary%20of%20th.aspx>.

⁴⁹ Bimkom — Planners for Planning Rights, *Trapped by Planning: Israeli Policy, Planning and Development in the Palestinian Neighbourhoods of East Jerusalem* (2014).

⁵⁰ B’Tselem, *A Policy of Discrimination: Land Expropriation, Planning and Building in East Jerusalem* (1995).

⁵¹ Jerusalem Institute for Policy Research, *Statistical Yearbook of Jerusalem*, No. 32 (2018), table III/4.

⁵² Udi Shaham, “Poll: 97% of east J’lem residents oppose Israeli control over entire city”, *Jerusalem Post*, 11 May 2018. Available at www.jpost.com/Arab-Israeli-Conflict/Poll-97-percent-of-east-Jlem-residents-oppose-Israeli-control-over-entire-city-556147.

⁵³ Security Council resolution 478 (1980).

⁵⁴ See www.btselem.org/jerusalem.

⁵⁵ Civic Coalition for Palestinian Rights in Jerusalem, *Forced Eviction in Occupied East Jerusalem* (forthcoming).

Palestinian community in the city.⁵⁶ One prime example is the planning laws.⁵⁷ Since 1967, Israel has expropriated over 38 per cent of the land base of East Jerusalem exclusively for Israeli settlements and has zoned only 15 per cent (amounting to 8.5 per cent of Jerusalem as a whole) for the residential needs of Palestinian Jerusalemites. That has created a housing and planning crisis: only 8 per cent of all building permits issued by the Jerusalem municipality are granted for Palestinian neighbourhoods in East Jerusalem, despite the fact that the population density in Palestinian neighbourhoods is twice that of Israeli neighbourhoods.⁵⁸ According to the Association for Civil Rights in Israel, the local and district planning authorities in Israel have not advanced a single outline plan for the Palestinian neighbourhoods for the past decade, resulting in a planning freeze.⁵⁹ A disquieting consequence of that planning discrimination has been the demolition of hundreds of Palestinian homes ordered by Israeli authorities over the past decade that had been constructed without the nearly impossible to obtain building permits. In total, 123 housing units were destroyed in 2016 alone, and more than 15,000 Palestinian homes (in which 100,000 Palestinians reside, representing one third of the Palestinians in East Jerusalem) remain under the threat of demolition.⁶⁰ Many Palestinians in East Jerusalem are also unable to register their land ownership with State authorities, resulting in insecure tenure and the diminished value of their properties.⁶¹ The planning crisis is part of a broader long-term neglect by the Jerusalem municipality of Palestinian East Jerusalem, which — in comparison to West Jerusalem — endures much higher poverty rates, a much smaller allocation of the municipal budget spending, poor social and health services and crumbling public infrastructure.⁶² Although East Jerusalem was forcibly annexed by Israel, its Palestinian residents remain excluded from the relative prosperity of the rest of the city.

41. Furthermore, the legal status of almost all Palestinian Jerusalemites under Israeli law is as a “permanent resident”, which is the same legal status given to foreign nationals in Israel. Palestinian permanent residents pay taxes and are entitled to receive public benefits and services but, unlike citizens, they possess no secure right to remain in Jerusalem. While under the laws of occupation the Palestinian Jerusalemites are “protected persons”, Israel does not recognize that status. Since 1967, Israel has revoked the residency status of more than 14,500 East Jerusalemite Palestinians; since 1995, Palestinian residents of East Jerusalem have to prove that their “centre of life” is in the city in order to retain their permanent resident status or risk losing their status and thus their ability to return to their homes in East Jerusalem. Not having permanent resident status prevents Palestinians from other parts of the Occupied Palestinian Territory from legally residing or even visiting Jerusalem. In addition, Israeli laws severely restrict the right to family reunification by denying

⁵⁶ See generally, Society of St. Yves, *Everyone Pays the Price: Case Study of Jerusalem* (2017).

⁵⁷ Bimkom, *Trapped by Planning*.

⁵⁸ See www.btselem.org/jerusalem. This was measured by population per room.

⁵⁹ Association for Civil Rights in Israel, “East Jerusalem: facts and figures 2017”, 21 May 2017. Available at <https://law.acri.org.il/en/2017/05/24/east-jerusalem-facts-and-figures-2017/>.

⁶⁰ Ir Amim and Bimkom — Planners for Planning Rights, *Deliberately Planned: A Policy to Thwart Planning in the Palestinian Neighbourhoods of Jerusalem* (2017).

⁶¹ “East Jerusalem is the double-edged sword of Israel’s capital”, *Haaretz*, 10 April 2018. Available at www.haaretz.com/opinion/editorial/east-jerusalem-is-the-double-edged-sword-of-israel-s-capital-1.5988771.

⁶² United Nations Conference on Trade and Development (UNCTAD), *The Palestinian Economy in East Jerusalem: Enduring Annexation, Isolation and Disintegration*, UNCTAD/GDS/APP/2012/2 (New York and Geneva, 2013).

many Palestinian Jerusalemites the ability to extend permanent resident status to their spouses and children who do not have recognized residency in Jerusalem.⁶³

42. The other prominent trend is the more aggressive approach taken by the Israeli political leadership in recent years to counter the growing Palestinian demographic presence in East Jerusalem and to bolster the claim by Israel to sovereignty over East Jerusalem. That trend has taken two forms. First, the route of the wall in the 2000s around Jerusalem has deliberately placed a number of Palestinian neighbourhoods on the West Bank side of the wall. And second, the Israeli Knesset has adopted several pieces of legislation, and is considering several other proposed statutes, which seek to ensure that its annexation of East Jerusalem becomes irreversible.

43. The construction of the wall by Israel — which Israel states was built as a security barrier but which also stretches deep inside the occupied territory in many areas — has not followed the boundaries of the expanded Jerusalem municipality. Around Jerusalem, it absorbed some West Bank territory within the wall while unilaterally placing several large Palestinian Jerusalem neighbourhoods, including Kufr Aqab and Shu'fat, outside of the wall. Those Palestinian Jerusalemites living beyond the wall — estimated to comprise 120,000–140,000 persons — officially still live within Jerusalem, still have their “permanent resident” status, still pay taxes to the Municipality and some of whom work in Jerusalem by crossing Israeli checkpoints to enter the city.⁶⁴ However, the Israeli authorities have largely abandoned those neighbourhoods. Even in comparison to the negligible municipal services provided to the Palestinian neighbourhoods within the wall, the excluded neighbourhoods are almost entirely forgotten: they live without basic social services and infrastructure, such as water, garbage collection, road building and sewage; there is a serious shortage of educational and welfare institutions; high crime rates persist; they suffer from housing shortages and overcrowding; and, without an effective system for granting permits, virtually all buildings are constructed without official permission.⁶⁵ The Minister for Jerusalem Affairs in the Israeli cabinet, Ze'ev Elkin, proposed in October 2017 that the detached Palestinian neighbourhoods be removed from the Jerusalem municipality and placed under a new council administration.⁶⁶ It is an inescapable conclusion that the route of the separation wall around Jerusalem — which includes all the Israeli settlements in East Jerusalem as well several nearby West Bank Israeli settlements, while excluding approximately one third of the Palestinian Jerusalemites — has been designed for demographic reasons to maximize the Israeli population in Jerusalem while seeking to substantially reduce the city's Palestinian presence.⁶⁷

44. Recent legislative initiatives at the Israeli Knesset have also aimed at consolidating Israeli sovereignty over East Jerusalem and resetting the “demographic balance” in the city.⁶⁸ Two significant initiatives in particular stand out, as described below.

⁶³ Civic Coalition for Palestinian Rights in Jerusalem, *Israel's Occupation: 50 Years and Counting* (2018).

⁶⁴ Association for Civil Rights in Israel, “East Jerusalem: facts and figures 2017”.

⁶⁵ Rachel Kushner, “‘We are orphans here’: life and death in East Jerusalem’s Palestinian refugee camp”, *New York Times*, 1 December 2016. Available at www.nytimes.com/2016/12/01/magazine/we-are-orphans-here.html.

⁶⁶ Nir Hasson and Jonathan Lis, “Israeli Minister to push plan aimed at reducing number of Arabs in Jerusalem”, *Haaretz*, 29 October 2017. Available at www.haaretz.com/israel-news/premium-israeli-minister-proposes-plan-to-reduce-number-of-arabs-in-jerusalem-1.5461071.

⁶⁷ Al-Haq, “A legal analysis of bills and legislation to revoke the permanent residencies of Palestinians and alter the status of Jerusalem”, legal brief, 7 March 2018. Available at www.alhaq.org/en/wp-content/uploads/2018/03/LegalBriefJerusalem.pdf.

⁶⁸ Ir Amim, “Destructive unilateral measures to redraw the borders of Jerusalem” (January 2018).

45. **The Basic Law: Jerusalem, Capital of Israel.** In January 2018, the Knesset amended the Basic Law to stipulate that any proposal to transfer “the authority related to the area of Jerusalem” in final status negotiations “to a foreign body” could only be authorized if a super-majority of 80 (out of the 120) members of the Knesset approved. The Basic Law had previously provided that such a transfer could occur with a simple majority vote of the Knesset. The amendment would make it more difficult to obtain Knesset support for any peace agreement that would recognize Palestinian sovereignty over East Jerusalem. The amendment also creates the legislative authority to redraw the municipal boundaries of Jerusalem to exclude the detached Palestinian neighbourhoods that are on the West Bank side of the wall.

46. **The “Greater Jerusalem” bill.** Throughout 2017, the Knesset considered a legislative proposal that would have incorporated five West Bank Israeli settlements — Beitar Illit, Ma’aleh Adumin, Giv’at Ze’ev, Gush Etzion and Efrat — as autonomous submunicipalities of the city, while maintaining local autonomy for the settlements. That “soft annexation” bill would have added 120,000 Israeli settlers to Jerusalem, thus enhancing the city’s Jewish majority. The bill was sponsored by MK Yoav Kish (Likud), who stated that it would “weaken the Arab hold on the capital” and “enshrine the Jewish majority.”⁶⁹ The bill was subsequently tabled by the Israeli Prime Minister, citing the need to “coordinate” its legislative agenda on that legislation with the United States of America.⁷⁰

47. At the time of writing, the Palestinian Bedouin village of Khan al-Ahmar in the West Bank, just east of Jerusalem, is being threatened by Israeli authorities with demolition. In the opinion of the Special Rapporteur, and others, the resulting forced eviction of the residents of Khan al-Ahmar would undoubtedly lead to forcible transfer, a war crime under international law.⁷¹ A motivating reason for the removal of the village would be to clear Palestinian communities from the 12-square-kilometre area known as the “E1 corridor”, thereby securing territorial continuity between Jerusalem and the large West Bank settlement of Ma’ale Adumim. The realization of longstanding plans by Israel to develop that area through the construction of more Israeli settlements would serve several annexation purposes: (a) to consolidate Israeli territorial sovereignty and demographic domination in the greater Jerusalem area; (b) effectively to sever the remaining territorial contiguity between the northern and southern West Bank, thus extinguishing any faint remaining hope of a viable two-State solution; and (c) to isolate further Palestinian East Jerusalem from the West Bank.⁷²

⁶⁹ Yossi Verter, “Israeli ministers set to vote annexing West Bank settlements to Jerusalem”, *Haaretz*, 26 October 2017. Available at www.haaretz.com/israel-news/ministers-to-vote-on-annexing-west-bank-settlements-to-jerusalem-1.5460310.

⁷⁰ Jonathan Lis and Amir Tibon, “Netanyahu: Israel must coordinate Jerusalem annexation bill with U.S.”, *Haaretz*, 29 October 2017.

⁷¹ Amnesty International, “Israel/OPT: demolition of Palestinian village of Khan al-Ahmar is cruel blow and war crime”, 30 September 2018. Available at www.amnesty.ca/news/israelopt-demolition-palestinian-village-khan-al-ahmar-cruel-blow-and-war-crime; Noa Landau, “European Parliament warns: eviction, demolition of Khan al-Ahmar would be war crime”, *Haaretz*, 13 September 2018. Available at <https://www.haaretz.com/israel-news/.premium-european-parliament-warns- eviction-demolition-of-khan-al-ahmar-would-be-war-crime-1.6469916>.

⁷² Zena Agha, “Israel’s annexation crusade in Jerusalem: the role of Ma’ale Adumim and the E1 corridor”, Al-Shabaka, 26 March 2018. Available at <https://al-shabaka.org/briefs/israels-annexation-crusade-in-jerusalem-the-role-of-maale-adumim-and-the-e1-corridor/>.

E. Annexation and the West Bank

48. Israel has yet to declare its formal annexation of any part of the occupied West Bank, as it presently lacks international political support from any quarter for such a move.⁷³ Its official position to the rest of the world is that, while it denies that the West Bank (which it refers to as “Judea and Samaria”) is occupied and it has rejected the applicability of the Fourth Geneva Convention, it remains willing to negotiate its future status with the Palestinians.⁷⁴ However, in practice, Israel has taken multiple steps consistent with establishing a sovereign claim over the West Bank since shortly after the occupation began in June 1967, and those steps have escalated significantly in recent years.

49. The first Israeli civilian settlements in the West Bank, initially camouflaged as military camps, were established in the summer of 1967.⁷⁵ Since then, Israel has built and incentivized approximately 230 settlements throughout the West Bank, inhabited by more than 400,000 settlers. No country creates civilian settlements in occupied territory unless it has annexationist designs in mind, which is why the international community has designated the practice of settler-implantation as a war crime.⁷⁶ The political purpose of the Israeli settlement enterprise has always been to establish sovereign facts on the ground and to obstruct Palestinian self-determination. The Drobles plan of 1978, which formulated the motivation for the then-fledgling settlement enterprise, declared: “State land and uncultivated land must be seized immediately in order to settle the areas between the concentration of minority population [i.e., the Palestinians in the West Bank] and around them, with the object of reducing to the minimum the possibility for the development of another Arab state in these regions.”⁷⁷

50. During five decades of occupation, Israel has steadily entrenched its sovereign footprint throughout the West Bank.⁷⁸ The infrastructure of the territory — the sewage connections, the communication systems and the electrical network — has been completely integrated into the domestic system of Israel. The West Bank water system, with its plentiful mountain aquifers, have been owned since 1982 by Mekorot, the national water company, with the benefits flowing primarily to Israel.⁷⁹ The highway network, which before 1967 had been primarily a north-south system, has been reconfigured as an east-west system to connect the settlements with each other and with Israeli cities, thereby disrupting Palestinian transportation.⁸⁰ The West Bank economy is subject to a single customs union agreement with Israel, enabling the more powerful economy to dominate and flourish, while the weaker economy withers through de-development and dependence.⁸¹ The natural resources of the West Bank

⁷³ Noa Landau and others, “White House strongly denies as ‘false’ Netanyahu’s claims of talks with U.S. on annexing West Bank settlements”, *Haaretz*, 12 February 2018. Available at www.haaretz.com/israel-news/.premium-netanyahu-settlement-annexation-being-discussed-with-u-s-1.5810741.

⁷⁴ See www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/israeli%20settlements%20and%20international%20law.aspx.

⁷⁵ Idith Zertak and Akiva Eldar, *Lords of the Land: The War over Israel’s Settlements in the Occupied Territories, 1967–2007* (New York, Nation Books, 2007).

⁷⁶ Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

⁷⁷ David Kretzmer, “Settlements in the Supreme Court of Israel” (2017), 111 *American Journal of International Law*, vol. 111 (2017), p. 42.

⁷⁸ “Regularization law”, in Ben-Naftali, Sfard and Viterbo, *The ABC of OPT*.

⁷⁹ See www.btselem.org/water.

⁸⁰ Dajani, “Israel’s creeping annexation”, p. 54.

⁸¹ UNCTAD, “Report on the UNCTAD Assistance to the Palestinian People: developments in the Economy of the Occupied Palestinian Territory”, TD/B/64/4, September 2017.

are largely controlled by Israel and primarily exploited for its benefit.⁸² Israeli legislation and laws have been extended by the Israeli military commander to West Bank settlers on a personal/territorial basis, while a disfigured version of occupation law, without many of its protections and guarantees, applies to the Palestinians.⁸³ The allocation of “State land” in the West Bank that is assigned for any use has been given almost exclusively to Israeli settlements (99.76 per cent), despite the fact that settlers make up only 12 per cent of the population in the West Bank.⁸⁴

51. Most significantly, Israel exercises full civil and security control over Area C of the West Bank, which comprises more than 60 per cent of the territory. A remnant of the lifeless Oslo Process, Area C has been administered by Israel as an exclusive land base for its West Bank settlements. The World Bank has noted that 68 per cent of Area C is designated for Israeli settlements, 21 per cent for closed military zones and 9 per cent for nature reserves.⁸⁵ In the 1 per cent of Area C that remains for the approximately 180,000–300,000 Palestinian habitants, the Israeli Civil Administration has imposed a highly restrictive planning regime that makes permit application approval for Palestinian residential and commercial construction virtually impossible.⁸⁶ While Israeli settlers enjoy the same full range of legal rights and economic freedoms as Israelis living in Israel, Palestinians in Area C lack essential community infrastructure and are faced with a strangled economy, ubiquitous military checkpoints, limited access to their natural resources and a steady rejection of almost all of their submitted master plans,⁸⁷ all of which amounts, according to the United Nations, to a coercive environment that is forcing Palestinians to leave.⁸⁸ A 2015 amendment to a 2003 military order regarding unauthorized buildings allows the Commander of the Central Command to evict entire Palestinian communities in Area C without the previous need to acquire demolition orders for each structure.⁸⁹

52. What civil society organizations once called the “creeping Israeli annexation” of the West Bank has now been relabelled “leaping annexation”⁹⁰ and “occup’annexation”.⁹¹ The Israeli political leadership has perceived that the current international environment — particularly its relationship with the present United States administration — is conducive to its aspirations to solidify its permanent domination over the West Bank, notwithstanding the lack of support for formal annexation. As a result, there has been a flurry of soft-annexation legislation since early 2017, which appears to be laying the foundation for hard-annexation legislation in the future. In a recent editorial, *Ha’aretz*, the leading liberal daily in Israel, stated that the Government has been practising legal annexation through its recent

⁸² Shawan Jabarin, “Business and human rights in Palestine: a case study on the illegal exploitation of Palestinian natural resources”, Al-Haq, 30 January 2014.

⁸³ Yehuda and others, *One Rule, Two Legal Systems: Israel’s Regime of Laws in the West Bank* (Association for Civil Rights in Israel, 2014).

⁸⁴ Americans for Peace Now, “Land allocation in the West Bank — for Israelis only”, July 2018.

⁸⁵ World Bank, *West Bank and Gaza: Area C and the Future of the Palestinian Economy* (Washington, D.C., 2013).

⁸⁶ See www.btselem.org/topic/planning_and_building.

⁸⁷ Ahmad El-Atrash, “Israel’s stranglehold on Area C: development as resistance”, Al-Shabaka, 27 September 2018. Available at <https://al-shabaka.org/commentaries/israels-stranglehold-on-area-c-development-as-resistance/>.

⁸⁸ Tovah Lazaroff, “UN: Israel policies forcing Palestinians to leave Area C of the West Bank”, *Jerusalem Post*, 27 July 2016. Available at www.jpost.com/Arab-Israeli-Conflict/UN-Israeli-policies-forcing-Palestinians-to-leave-Area-C-of-the-West-Bank-462569.

⁸⁹ Peace Now (Settlement Watch), “Mentality of annexation: changes in the interpretation of the laws regarding occupation”, January 2018.

⁹⁰ Americans for Peace Now, “From creeping to leaping: annexation in the Trump-Netanyahu era”, April 2018.

⁹¹ 11.11.11, “Occup’annexation: the shift from occupation to annexation in Palestine”, Brussels, 2017.

application of “more and more Knesset laws to the West Bank while erasing the Green Line,” resulting in two different and unequal legal systems for the two peoples residing in the territory. “This phenomenon has a name,” it stated, “and Israel will no longer be able to renounce reality and deny to the international community that it is an apartheid State, with all that this implies.”⁹²

53. Over the past two years, the Israeli Knesset has either enacted or considered a number of statutes that extend Israeli law to the West Bank or lay the foundation for some form of future annexation.⁹³ Among the most significant statutes, bills and other initiatives comprising that recent legislative trend are described below.

54. The Settlement Regularization in “Judea and Samaria” Law allows for the retroactive legalization of outposts built on private Palestinian land. While it offers compensation to Palestinian landowners, it denies them any right to property restoration. It was passed by the Knesset in February 2017 but remains unimplemented pending the resolution of a petition to the Israeli High Court by a number of human rights organizations challenging its legality. At the High Court, the Government of Israel argued that the Knesset is not subject to international law and is the source of legal authority in the occupied Palestinian territory. The Israeli Attorney General, while opposing the law, has stated that existing laws already provide for the legalization of Israeli constructions on private Palestinian land in the West Bank (see [A/HRC/37/43](#) paras. 16–17).

55. The Higher Education Law applies the jurisdiction of the Israeli Council for Higher Education, which governs post-secondary institutions in Israel, to academic institutions in the West Bank settlements. It thereby grants the same academic status to those institutions (notably, Ariel University based in the settlement of Ariel) as for all other Israeli universities. The Law, which was enacted in February 2018, is an illustration of the direct application of domestic Israeli law to the occupied territory, which is both forbidden under international law and a clear step towards annexation.

56. The Jewish Nation-State Law is a quasi-constitutional Basic Law, which means that it takes precedence over ordinary Knesset legislation. Adopted in July 2018, it proclaims that the Jewish people alone have the right to self-determination in Israel. One prominent concern about the new Basic Law — based on the use of the term “Land of Israel” — is that it may be applied to East Jerusalem and the West Bank to justify the protection of Israeli settlements and other annexational trends. Article 7 of the Basic Law states: “the State views the development of Jewish settlements as a national value and will act to encourage and promote its establishment and consolidation.”

57. The Administrative Affairs Court Law (amendment), adopted in July 2018, enlarges the jurisdiction of the Israeli Administrative Affairs Court to assume a very broad authority to adjudicate petitions by West Bank Palestinians on a range of issues, including planning and construction issues in Area C, barring individuals from certain areas of the West Bank and the issuance of travel permits. It removes the authority over those subject areas from the Israeli High Court. The primary criticism of the amendment is that it expands the jurisdiction of a domestic Israeli court to include Area C, which becomes another piece in the step-by-step extension of Israeli law to the occupied West Bank.

58. The Israeli political leadership has become much more uninhibited over the past two years in expressing out loud what the actions of the Government of Israel have

⁹² “The Knesset wants apartheid”, *Haaretz*, 1 June 2018. Available from www.haaretz.com/opinion/editorial/the-knesset-wants-apartheid-1.6137367.

⁹³ Foundation for Middle East Peace, “Israel’s ‘creeping annexation’ policies — tables”, September 2018, provides an invaluable overview of recent annexation steps taken by the Knesset. See also <https://goo.gl/c9DK3L>.

been proclaiming for years. Annexation is in the air, and intention is now being openly expressed in words as well as in deeds. One significant illustration of the changing environment was the unanimous vote on 31 December 2017 by the 1,000-member central committee of the ruling Likud party to support a non-binding resolution to formally annex the West Bank. The resolution called upon Likud's elected officials "... to allow free construction and to apply the laws of Israel and its sovereignty to all liberated areas of Jewish settlement in Judea and Samaria."⁹⁴ In addition, in recent months, a number of Israeli cabinet ministers have openly embraced the formal annexation of parts or all of the West Bank:

- Prime Minister Benjamin Netanyahu: "This is the land of our fathers, this is our land. We are here to stay, forever ... There will be no uprooting of communities in the Land of Israel."⁹⁵
- Minister for Technology Ofir Akunis: "All land of Israel is ours, and this cannot be disputed or be divided. The concept of settlements blocs is no longer relevant because there are no Arabs to negotiate with anymore."⁹⁶
- Minister for Education Naftali Bennett: "Today, the Israeli Knesset moved from heading toward establishing a Palestinian State to heading toward sovereignty in Judea and Samaria ... The outpost regulation bill is the tip of the iceberg in applying sovereignty."⁹⁷
- Minister for Transportation Yisrael Katz: "Today I will propose at the security cabinet that we pass the 'Greater Jerusalem Law' that includes extending Israeli sovereignty to the surrounding communities of greater Jerusalem: Ma'ale Adumim, Givat Ze'ev, Beitar Illit and the Etzion Bloc, while joining them to the city of Jerusalem and strengthening it by adding territory and Jewish population."⁹⁸
- Minister for Justice Ayelet Shaked: "I think we should apply the Israeli law to the Israeli towns and villages [settlements], and to normalize the life there, and in the far future, to apply the Israeli law in Area C [the occupied West Bank]. In Area C, there are a half-million Israelis [settlers] and 100,000 Palestinians; they will have citizenship with full rights, of course, like myself. And that Area A and B will be part of a confederation with Gaza, with Jordan."⁹⁹

⁹⁴ Chaim Levinson, "Netanyahu's party votes to annex West Bank, increase settlements", *Haaretz*, 1 January 2018. Available at www.haaretz.com/israel-news/.premium-netanyahu-s-party-votes-to-annex-west-bank-increase-settlements-1.5630099.

⁹⁵ Breaking Israel News, "Netanyahu: Israel will stay in Judea and Samaria forever", 29 August 2017. Available at www.breakingisraelnews.com/93927/netanyahu-israel-will-stay-judea-samaria-forever/.

⁹⁶ Peter Beaumont, "On a rocky ridge over Ramallah, settlers put their faith in Trump", *The Guardian*, 11 February 2017. Available at www.theguardian.com/world/2017/feb/12/israel-settlers-put-their-faith-in-trump-netanyahu-visit-white-house.

⁹⁷ Jewish Link of New Jersey, "Jewish Home's Bennett Says Outpost Bill Paves Way for Annexation of Judea and Samaria", 8 December 2016. Available at www.jewishlinknj.com/world-us/16063-jewish-home-s-bennett-says-outpost-bill-paves-way-for-annexation-of-judea-and-samaria.

⁹⁸ Times of Israel, "Challenging Netanyahu, senior minister floats annexation of Jerusalem-area settlements", 22 January 2017. Available at www.timesofisrael.com/challenging-netanyahu-senior-minister-floats-annexation-of-jerusalem-area-settlements/.

⁹⁹ Interview with Ayelet Shaked, Justice Minister of Israel, AIPAC Policy Conference, Washington, D.C., 7 March 2018. Available from <http://hamodia.com/2018/03/07/exclusive-interview-justice-minister-ayelet-shaked/>.

- Minister for Public Security Gilad Erdan: “Now is the time to extend sovereignty to areas on which there is no controversy [that they will remain part of Israel in a final status agreement]”.¹⁰⁰
- Minister for Jerusalem Affairs Ze’ev Elkin: “Halas [‘enough’ in Arabic] with the story of two States. There is no other option but the State of Israel, certainly between the Jordan [River] to the [Mediterranean] sea there will be one State.”¹⁰¹
- Deputy Defence Minister Eli Ben-Dahan: “We have to focus on the main issue. We are in Judea and Samaria because this is our land, and we are here so that we will never leave it. Sovereignty must be applied in Judea and Samaria as soon as possible.”¹⁰²
- Minister for Housing Yoav Galant: “Strategically speaking, the Jordan Valley is the eastern security zone of the State of Israel, the mountainous area is the holding area, and the Jerusalem-Ashdod-Hadera and Dan is the vital living space in which more than 5 million Israelis live ... We must continue to keep Yehuda, Shomron, and the Jordan Valley under full control and to strengthen settlement in these areas.”¹⁰³

59. Those statements of political intent, together with the colonizing facts on the ground of Israel, its legislative activity and its refusal to adhere to its solemn obligations under international law or to follow the direction of the international community with respect to its 51-year-old occupation, have established the probative evidence that Israel has effectively annexed a significant part of the West Bank and is treating that territory as its own. While Israel has not yet declared formal sovereignty over any parts of the West Bank, the Special Rapporteur submits that the strict prohibition against annexation under international law applies not only to a formal declaration, but also to those acts of territorial appropriation by Israel that have been a cumulative part of its efforts to stake a future claim of formal sovereignty over the occupied Palestinian territory.

IV. Conclusion

60. A fundamental tenet of modern international law is the legal maxim *ex turpi causa non oritur actio*: a lawbreaker cannot benefit from his or her illegal act.¹⁰⁴ In 1967 and again in 1980, the international community clearly stated that the annexation by Israel of East Jerusalem breached international law and was null and

¹⁰⁰ Marissa Newman, “Build in settlements to punish Palestinians, top minister urges”, Times of Israel, 13 February 2017. Available at www.timesofisrael.com/build-in-settlements-to-punish-palestinians-top-minister-urges/?link_id=12&can_id=beb87055f757f06618a29df863283e75&source=email-what-were-reading-what-to-expect-from-the-netanyahu-trump-meeting&email_referrer=what-were-reading-what-to-expect-from-the-netanyahu-trump-meeting&email_subject=what-were-reading-what-to-expect-from-the-netanyahu-trump-meeting.

¹⁰¹ Tovah Lazaroff, “Elkin: start preparing for one million settlers in the West Bank”, *Jerusalem Post*, 14 November 2017. Available at www.jpost.com/Israel-News/Elkin-Start-preparing-for-one-million-settlers-in-the-West-Bank-514251.

¹⁰² Israel National News, “The quiet war against terrorism continues”, 30 May 2002. Available at www.israelnationalnews.com/News/News.aspx/24370.

¹⁰³ The Yeshiva World, “Galant: to keep Yehuda, Shomron and the Jordan Valley”, 22 March 2018. Available at www.theyeshivaworld.com/news/israel-news/1495709/galant-to-keep-yehuda-shomron-and-the-jordan-valley.html?utm_source=General+Mailing+List&utm_campaign=bd366ef597-EMAIL_CAMPAIGN_2018_03_30&utm_medium=email&utm_term=0_586030c60d-bd366ef597-82754635.

¹⁰⁴ Lasa Oppenheim, *International Law: A Treatise*, 8th ed., vol. 1, *Peace* (London, Longmans, Green and Company, 1955), p. 574.

void.¹⁰⁵ It has also spoken decisively about the illegality of the Israeli settlement enterprise,¹⁰⁶ which is the political and demographic engine that has transformed the Israeli occupation into an annexation. However, those repeated condemnations of Israeli annexationist actions have lacked any meaningful steps by the international community to insist upon accountability. Despite the ongoing record of Israel of non-compliance with the directions of the international community, it has rarely paid a meaningful price for its defiance, and its appetite for entrenching its annexationist ambitions in East Jerusalem and the West Bank has gone largely unchecked. A deep-rooted problem at the heart of the conflict has not been the clarity of international law, but the unwillingness of the international community to enforce what it has proclaimed. As one academic stated succinctly: “The problem is not international law per se, but its lack of enforcement; that in the Middle East, international law is closer to power than to justice.”¹⁰⁷ Nothing could more effectively refute that judgment than for the international community to act on the overwhelming evidence before it and insist that Israel either fully annul its annexations and relinquish its occupation, or be prepared to bear the full consequences of accountability for its mocking of international law.

V. Recommendations

61. The Special Rapporteur recommends that the Government of Israel comply fully with international law and bring a complete end to its 51 years of occupation of the Palestinian territory. He further recommends that the Government take the following measures immediately:

(a) End the blockade and closure of Gaza, lift all restrictions on imports and exports as well as on the movement of people, and facilitate full access to medical care, consistent with genuine Israeli security concerns;

(b) Ensure that regulations governing the use of force for Israeli security forces are in strict compliance with international standards, with particular attention to the use of deadly force;

(c) Ensure accountability for alleged violations of international humanitarian law and international human rights law by Israeli security forces, with particular attention to the demonstrations in Gaza;

(d) Take measures to address concerns raised about the independence, impartiality and transparency of the military justice system.

62. With respect to concerns related to the annexation of territory, the Special Rapporteur recommends that Israel:

(a) Comply with all relevant resolutions of the Security Council and the General Assembly with respect to East Jerusalem and the West Bank and relinquish any claim of sovereignty over the territory;

(b) Ensure freedom of movement within the Occupied Palestinian Territory, including between Gaza and the West Bank, including East Jerusalem;

(c) Comply fully with Security Council resolution 2334 (2016) concerning the settlements;

¹⁰⁵ Security Council resolution 2334 (2016), General Assembly resolution 72/14 and Human Rights Council resolution 37/36.

¹⁰⁶ Security Council resolution 2334 (2016).

¹⁰⁷ Victor Kattan, *From Coexistence to Conquest: International Law and the Origins of the Arab-Israeli Conflict, 1891–1949* (London: Pluto Press, 2009), p. 4.

(d) Pursue a good faith approach to the administration of the West Bank, including East Jerusalem and Gaza as occupied territory, adhering to the tenets of international human rights law and international humanitarian law, with a view to bringing the occupation to a complete conclusion within a reasonable time period and enabling Palestinian self-determination.

63. The Rapporteur further recommends that the international community:

(a) In line with common article 1 to the Geneva Conventions, take all measures necessary to respect and ensure the respect by Israel, and all other relevant parties, of the solemn obligations of international humanitarian law;

(b) Seek to hold Israel to the international standards by which all States are to be held, including the prohibition on annexation;

(c) Ensure full accountability of Israeli political and military officials who are responsible for grave breaches of international law in the occupied Palestinian territory;

(d) Commission a United Nations study on the legality of the Israeli annexation and continued occupation of the Palestinian territory.



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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Palestinian territories occupied since 1967*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, submitted in accordance with Human Rights Council resolution 5/1.

* The present report was submitted after the deadline in order to reflect the most recent developments.



Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, hereby submits his fourth report to the General Assembly. The report is based primarily on information provided by victims, witnesses, civil society representatives, United Nations representatives and Palestinian officials in Amman, in connection with the mission of the Special Rapporteur to the region in July 2019. The report addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza.

I. Introduction

1. The present report provides a brief overview of the most pressing human rights concerns in the Occupied Palestinian Territory at the time of submission, as identified by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 in conversations and meetings with civil society. The report then presents a detailed analysis of accountability, impunity and the responsibility of the international community to bring an end to the occupation of the Occupied Palestinian Territory and other Israeli practices amounting to violations of international humanitarian and human rights law.

2. The Special Rapporteur would like once again to highlight that, despite his requests, he has not yet been granted access to the Occupied Palestinian Territory by Israel. He most recently requested access to the Occupied Palestinian Territory on 20 May 2019. At the time of writing the present report, no reply had been received. The Special Rapporteur emphasizes once again his view that an open dialogue among all parties is essential for the protection and promotion of human rights and reminds Israel that he is ready and willing to engage. The pattern by Israel of non-cooperation with the mandate is a serious concern. A full and comprehensive understanding of the situation on the basis of first-hand access would be extremely beneficial to the work of the Special Rapporteur.

3. The report is based primarily on written submissions, as well as consultations with civil society representatives, victims, witnesses, Palestinian government officials and United Nations representatives held in Amman during the Special Rapporteur's annual mission to the region, in July 2019. The Special Rapporteur would like to note that several groups were unable to travel to Amman to meet with him owing to travel restrictions imposed by the Israeli authorities. All individuals and organizations based in Gaza were consulted by videoconference as a result.

4. In the report, the Special Rapporteur focuses on the obligations of third parties under international human rights law and international humanitarian law, as set out in the mandate.¹ He calls upon all actors to ensure respect for international human rights law and international humanitarian law, noting that violations of those bodies of law by any actor are deplorable and will only hinder the prospects for peace.

5. The Special Rapporteur wishes to express his appreciation to the Government of the State of Palestine for its full cooperation with his mandate. He also wishes to extend his thanks to all those who travelled to Amman to meet with him and to those who were unable to travel but made written or oral submissions. He further extends his thanks once again to Jordan for its support and for the opportunity to hold meetings in Amman.

6. The Special Rapporteur emphasizes again his support for the vital work being done by Palestinian, Israeli and international human rights organizations. This work is indispensable not only to the Rapporteur as he seeks to fulfil his mandate, but also to the broader international community. He recalls that these organizations often face significant obstacles in carrying out their work, and notes that such obstacles have only increased and intensified in the past year. He calls upon the international community to safeguard the rights of human rights organizations and to scrutinize and oppose any attempts to delegitimize or discredit their work.

¹ As specified in the mandate of the Special Rapporteur set out in Commission on Human Rights resolution 1993/2.

II. Current human rights situation

7. Since the previous report of the Special Rapporteur to the General Assembly (A/73/447), the human rights situation in the Occupied Palestinian Territory, in particular in Gaza, has continued to be dire. The key issues raised during the mission included the continued shrinking of civic space, the pervasive lack of accountability, especially in relation to the investigation and prosecution of hostilities in Gaza in 2014, home demolitions in the West Bank, in particular in East Jerusalem, the ongoing use of administrative detention and the detention of children, and the impact of various practices on the environment.²

8. The present report cannot provide a comprehensive overview of all issues of concern owing to space limitations. Instead, the Rapporteur seeks to highlight several of the most urgent concerns at the time of writing. The discussion will be followed by an in-depth analysis of the responsibility of third States.

A. Gaza

9. The land, sea and air blockade imposed on Gaza has now entered its twelfth year, severely restricting imports and exports, the movement of people into and out of Gaza and access to adequate health care, education and livelihoods, including agricultural land and fishing.³ Israel has considerably tightened restrictions on the movement of humanitarian staff since 2018, citing security concerns. The blockade of Gaza is a denial of basic human rights and amounts to collective punishment.⁴ The economy of Gaza continues to be close to collapse, as determined by the United Nations Conference on Trade and Development in July 2019 (see TD/B/EX(68)/4). The uncertain financial situation of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and cuts to its programmes have contributed to this situation. As at July 2019, the Agency had managed to raise \$110 million, but still faced a shortfall in meeting its annual budget of \$1.2 billion.⁵ The shortfall is exacerbated by the fact that some countries announced that they would withhold the pledged amounts until information on alleged corruption was clarified.⁶

10. Despite the concerning overall humanitarian situation, there has been some noteworthy improvement in the availability of electricity supply to Gaza. The provision of \$60 million by the Government of Qatar in October 2018 helped to provide additional fuel to Gaza, resulting in an immediate improvement in the electricity supply. This has enabled electricity to be supplied for between 14 and 15 hours per day, as opposed to fewer than 7 hours previously. Despite this improvement, the current electricity supply met less than half of the electricity demands of Gaza for

² Office of the United Nations High Commissioner for Human Rights (OHCHR), “Occupied Palestinian Territory: United Nations human rights expert says Israel bent on further annexation”, 12 July 2019.

³ United Nations, Office for the Coordination of Humanitarian Affairs, “Humanitarian situation in the Gaza Strip”, fact sheet, October 2011.

⁴ United Nations, Office for the Coordination of Humanitarian Affairs, “Increased restrictions on the movement of humanitarian staff in and out of Gaza”, Humanitarian Bulletin: Occupied Palestinian Territory, July 2019.

⁵ James Reinl, “United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) raises \$110m but still cash-strapped after US cuts”, Al-Jazeera, 25 June 2019.

⁶ Jewish Telegraphic Agency and Cnaan Lipshiz, “Swiss and Dutch suspend funding for United Nations aid agency for Palestinians over graft scandal”, *Haaretz*, 31 July 2019.

the first six months of 2019, and interruptions in the power supply still pose a significant obstacle to the functioning of hospitals and medical facilities.⁷

Demonstrations and the use of force

11. The Great March of Return and related protests have resulted to date in 207 Palestinians killed and 33,828 injured.⁸ The commission of inquiry set up in the aftermath found that, in all but two cases, the use of live ammunition by Israeli security forces against demonstrators was unlawful (A/HRC/40/74, para. 94). The commission also found that demonstrators were shot in violation of their right to life or of the principle of distinction under international humanitarian law (ibid., para. 97). Indeed, in the vast majority of cases, the victims were situated far from the fence, and Israeli forces were situated behind earth mounds with sufficient protection. Israel has demonstrated virtually no accountability for these actions despite calls by the international community and civil society for independent and transparent investigations into the incidents.⁹

12. Palestinians in Gaza have continued to demonstrate against the blockade and for the right to return to their homes, every Friday since March 2018. On 6 September 2019, for example, two children were killed by live ammunition from the Israeli security forces while demonstrating near the fence.¹⁰ According to human rights organizations, of the injured, the majority sustained wounds from live fire, while others were hit directly by tear gas canisters.¹¹

13. The health sector in Gaza still struggles to cope with the massive number of injuries, a majority of them from gunshot wounds. The health system in Gaza was already suffering from restrictions on people and materials, a lack of electricity and shortages of certain equipment and supplies, and is severely overwhelmed, to the point of collapse, by the need to treat the additional massive volume of injuries.¹² The overstretched health-care system of Gaza, compounded by the growing numbers of injuries from protests and demonstrations requiring urgent specialist attention, have contributed to a rise in requests for permits to leave Gaza for hospital referrals, most of which have been denied.

Human rights violations by Hamas in Gaza

14. In May 2019, Hamas forces violently suppressed economic protests in Gaza. According to reports, Hamas beat and arrested scores of Palestinians who were protesting against price rises and dire living conditions across the Gaza Strip. The group of activists who had organized the protests called themselves “We want to live” and led small protests in several locations along the Strip.¹³ This latest crackdown by Hamas comes after previous suppression of demonstrations in March 2019, in which

⁷ United Nations, Office for the Coordination of Humanitarian Affairs, “Improvements to Gaza electricity supply”, Humanitarian Bulletin: Occupied Palestinian Territory, June 2019.

⁸ United Nations, Office for the Coordination of Humanitarian Affairs, Data on Casualties database, available at www.ochaopt.org/data/casualties.

⁹ Farhan Haq, Deputy Spokesman for the Secretary-General, statement attributable to the Spokesman for the Secretary-General on the situation in Gaza, 30 March 2018.

¹⁰ Michelle Bachelet, United Nations High Commissioner for Human Rights, statement to the forty-second session of the Human Rights Council, 9 September 2019.

¹¹ Al Mezan Centre for Human Rights, “71th Friday of demonstrations in Gaza, 161 wounded, including 56 children, one woman and six paramedics”, press release, 25 August 2019.

¹² World Health Organization (WHO) and Health Cluster – Occupied Palestinian Territory, *Emergency Trauma Response to the Gaza Mass Demonstrations 2018–2019: A One-Year Review of Trauma Data and the Humanitarian Consequences* (2019).

¹³ Oliver Holmes, “Hamas violently suppresses Gaza economic protests”, *Guardian*, 21 March 2019.

hundreds of demonstrators were subjected to beatings, arbitrary arrest and detention, torture and ill treatment.¹⁴ These actions by Hamas are alarming and in clear violation of Palestinians' rights to freedom of expression and association, depriving them also of their right to freedom from arbitrary detention and to physical integrity. It is the duty of Hamas to ensure that Palestinians in Gaza are free to exercise their rights without threats, intimidation or abuse.

B. West Bank

15. Against the backdrop of increased calls by the Prime Minister of Israel¹⁵ and senior members of his Government for the annexation of parts or all of the West Bank, levels of settler violence have increased there. Incidents of such violence were recorded in a number of towns in the West Bank, including Hebron, Nablus and Ramallah. The Office for the Coordination of Humanitarian Affairs documented seven Palestinian deaths owing to settler violence in 2019.¹⁶ The frequency of these attacks has particularly increased in parts of the Jordan Valley, especially in the northern district of Tubas, where a number of attacks by Israeli settlers targeted Palestinian shepherds.¹⁷ Many Palestinian inhabitants have been forced to leave these areas as a result of the violence, while Israeli settlements continue to expand, effectively surrounding and reducing the living space for Palestinian communities.

16. In parallel, the rate of home demolitions and seizures of Palestinian-owned structures has increased markedly in 2019 in comparison with previous years. As at July 2019, a total of 362 structures had been destroyed by the Israeli authorities, causing the displacement of more than 481 Palestinians. This marks an increase of 64 per cent compared with the equivalent period in 2018.¹⁸ The locations most affected by demolitions were Hebron, Tubas and Nablus. Israeli authorities have cited a number of reasons for the demolitions, such as security threats and a lack of building permits, including in relation to buildings in the "buffer zone" in close proximity to the separation wall. It is an Israeli policy and trend to reject building permits.

17. Israeli security forces have also intensified their incursions and raids into various parts of the West Bank, targeting specific Palestinian civil society organizations and Palestinian homes, resulting in arrests and arbitrary detentions. For example, on 19 September, Israeli security forces raided the premises of the Addameer Prisoners Support and Human Rights Association and other organizations and seized computer equipment and other documents. The increase in such raids underlines attempts to further silence civil society organizations and human rights defenders, in particular those working on accountability issues.

Restrictions on freedom of expression and association imposed by the Palestinian Authority

18. The Palestinian Authority has continued to impose restrictions on the rights to freedom of expression, association and peaceful assembly in the West Bank. In 2018, several journalists were arrested and charged with violating provisions of the

¹⁴ Amnesty International, "Gaza: Hamas must end brutal crackdown against protesters and rights defenders", 18 March 2019.

¹⁵ Oliver Holmes, "Netanyahu vows to annex large parts of occupied West Bank, *Guardian*", 10 September 2019.

¹⁶ United Nations, Office for the Coordination of Humanitarian Affairs, Data on Casualties database.

¹⁷ B'Tselem, "Israeli settlers and military intensify attacks against Palestinian shepherds in the village of al-Farisiyah in the northern Jordan Valley", 15 May 2019.

¹⁸ United Nations, Office for the Coordination of Humanitarian Affairs, "West Bank demolitions and displacement: an overview", July 2019.

cybercrime law of 2017 (A/HRC/40/39, para. 60, and A/HRC/40/43, para. 46). Despite recent amendments to the law, proceedings that had been initiated prior to the amendment were allowed to continue, including the arrests noted above. In one of the cases, a Palestinian journalist was arrested and charged with defamation and slander on the basis of the law (A/HRC/40/39, para. 60).

C. East Jerusalem

19. Since 2018, several measures have been taken by the Government of Israel to strengthen and promote its claim of sovereignty over East Jerusalem. They include legislation, increased demolition and eviction orders for Palestinian residents, increased construction of settlements and the announced plan for the extension of the Jerusalem municipality into East Jerusalem.¹⁹

20. Recent figures indicate an increased rate of demolition of Palestinian homes in East Jerusalem, as well as settlement construction and expansion. As at 30 April 2019, 111 Palestinian-owned structures had been destroyed in East Jerusalem since the beginning of the year, either directly by the Israeli authorities or by their owners to avoid fines, following the issuance of demolition orders for the lack of building permits. Of these, 57 per cent were demolished in April.²⁰ The increase in both demolitions of Palestinian homes and construction of settlements, spearheaded by the perceived consent of the United States of America, cannot be understood in any way other than being for the purpose of changing the demographic balance – reducing the Palestinian presence and strengthening the Jewish majority in East Jerusalem.²¹

21. On 4 October 2018, the municipality of Jerusalem announced a plan to extend its control to all of Jerusalem, including East Jerusalem, and to replace UNRWA services with local municipal services. As part of the announcement, the outgoing mayor of Jerusalem, Nir Barkat, made an explicit commitment to dismantling UNRWA facilities in East Jerusalem and noted the municipality's intention to provide medical, education and sanitation services instead of allowing UNRWA to do so.²² Subsequently, Israeli forces entered an UNRWA clinic in East Jerusalem and demanded to see a permit.²³ UNRWA has since stated that it was not notified of the municipality's decisions and has expressed its strong opposition to the attempt by Israel to change the Agency's operational area. In a statement dated January 2019, UNRWA reminded Israel of its obligation to protect the Agency's installations in areas under its authority.²⁴ As highlighted in my previous report to the General Assembly, the extension by Israel of its laws and civil authority to occupied East Jerusalem is part of its continuing efforts to ensure that the de jure annexation of East Jerusalem is irreversible (A/73/447, para. 37).

22. Against the backdrop of the municipality's increased demonstration of control, the Israeli police intensified its incursions into the Palestinian neighbourhood of Isawiyah in June and July 2019, carrying out approximately 340 arrests. Most of those arrested were released shortly afterwards. According to some sources, charges were

¹⁹ Information provided by an international humanitarian organization. See also Al-Haq, "The occupational annexation of Jerusalem through Israeli bills and laws", 5 March 2018.

²⁰ United Nations, Office for the Coordination of Humanitarian Affairs, "United Nations officials call for an immediate halt to demolitions in East Jerusalem and respect for international law amidst rise", 3 May 2019.

²¹ Jerusalem Legal Aid and Human Rights Centre, "Annual report 2018", 2018.

²² Al-Jazeera, "Jerusalem to remove UNRWA to 'end lie of Palestine refugees'", 4 October 2018.

²³ Nir Hasson, "UNRWA says Israeli inspectors tried to raid its East Jerusalem clinic", *Haaretz*, 8 October 2018.

²⁴ UNRWA, "UNRWA was not notified of any decision to close down schools it operated in East Jerusalem", 21 January 2019.

filed against five suspects.²⁵ The enhanced police operations and presence included the use of roadblocks on roads leading to the village, the close inspection of cars, nightly checkpoints inside the village and late-night house searches and arrests. Clashes broke out in the village as a result of the heightened police presence and the anger of residents. Many residents were reportedly injured in the clashes, most by rubber bullets, and at least one Palestinian man was killed by the police in late June.²⁶

23. Finally, Israeli interference with Palestinian children's right to education in East Jerusalem is also a concern. In May 2018, the Government of Israel announced that it would invest 1.85 billion new shekels in infrastructure and services for East Jerusalem. According to the non-governmental organization Ir Amim, however, 43.4 per cent of the budget is intended to narrow the discrepancies in education between West and East Jerusalem, with the condition that the Palestinian matriculation system be transitioned to the Israeli system.²⁷ Palestinians in East Jerusalem essentially find themselves between a rock and a hard place, having to choose what would provide their children with more opportunities in the short term even if it leads to further erosion of Palestinian identity and autonomy. The attempt by Israel to influence schools to change the curriculum, in conjunction with the municipality's intention to close down UNRWA, paints a concerning picture of efforts to further diminish Palestinian autonomy and identity in East Jerusalem.²⁸

D. Human rights of children

24. Children constitute almost 48 per cent of the Palestinian population in the West Bank and Gaza; 1.3 million children live in the West Bank and 1 million in the Gaza Strip.²⁹ Children in both places continue to suffer adverse physical and psychological affects stemming from their exposure to continuous violence, including in the context of the Great March of Return and other demonstrations. In 2018, according to the report of the Secretary-General on children and armed conflict, the United Nations verified the highest number of Palestinian children killed (59) and injured (2,756) since 2014 (A/73/907-S/2019/509, para. 84).

25. Children in Gaza continue to face barriers in their access to adequate health care, including through the denial or delay of applications to cross into Israel for medical treatment. The approval rate for such applications is significantly lower for Palestinian children who were injured during demonstrations in Gaza than for those injured in other circumstances. In 2018, 22 per cent of applications were approved, compared with an average approval rate of 75 per cent for other cases involving children (ibid., para. 94). Israeli authorities continue to deny or delay applications for companions applying to travel with children in need of specialized health care in Israel.³⁰

26. Children's access to education is severely restricted in the occupied West Bank and Gaza. According to the annual report of the Secretary-General on children and armed conflict, 118 incidents of interference with education in the Occupied Palestinian Territory were verified in 2018, affecting 23,188 children, with more than

²⁵ Nir Hasson, "340 arrests and only five indictments: summer-long police sweep strikes fear in Isawiyah", *Haaretz*, 28 August 2019.

²⁶ Ibid.

²⁷ Ir Amim, "The state of education in East Jerusalem: budgetary discrimination and national identity", August 2018. Available at http://www.ir-amim.org.il/sites/default/files/The%20State%20of%20Education_2018_1.pdf.

²⁸ Nir Hasson, "Israel promises 'revolution' for East Jerusalem schools. Palestinians say it's 'brainwashing'", *Haaretz*, 29 August 2018.

²⁹ United Nations Children's Fund, "Children in the State of Palestine", November 2018.

³⁰ WHO, "Health access: barriers for patients in the Occupied Palestinian Territory", June 2019.

half of the incidents involving Israeli forces firing live ammunition, tear gas and sound grenades in and around schools (*ibid.*, para. 91). In Gaza, there is a serious shortage of classrooms, leading to the operation of a shift system for classes. Students study in 274 UNRWA schools across the Gaza Strip, of which 84 operate on a single-shift basis, 177 on a double-shift basis and 13 on a triple-shift basis, staffed by 8,676 education personnel.³¹

27. Palestinian children also suffer along with their families the anxiety associated with living under the threat of demolition of their homes. Accordingly, they have been subjected to growing levels of stress as the number of evictions and demolition orders has risen, in particular in East Jerusalem.³² In 2019, there have been many examples of Palestinian homes demolished by Israeli forces that resulted, among other things, in the displacement of entire families and adverse effects on children's well-being. For example, on 25 April 2019, Israeli authorities demolished a home in the village of Zawiyah in Area B of the West Bank, on punitive grounds. This demolition resulted in the displacement of five children and their parents.³³ Displacement, in particular for the most vulnerable, is traumatic and has lasting consequences, and this is especially the case for children.

III. Accountability, impunity and the responsibility of the international community

28. Accountability – the duty to account for the exercise of power – is an indispensable cornerstone of the rule of law and a rules-based international order. No legal system, domestic or international, can acquire and sustain popular legitimacy if it cannot impose effective sanctions and provide restorative remedies when its laws are breached. Without accountability, power trumps law, justice becomes a hollow promise and those without power are left either to suffer or to pursue irregular and even violent means outside the legal order to achieve their own rough measure of justice. A right without a remedy is ultimately no right at all.

29. The enemies of accountability are impunity and exceptionalism. As was stated recently in the Security Council: “International law is not an à la carte menu”.³⁴ Those who maintain that they are exempt from the directions of the international legal and diplomatic order not only defy the rule of law, but also fail the test of political realism. For no country can sustain for long its standing and influence among the community of nations if it asserts special arguments forbidden to others,³⁵ and no international rules-based order can command the requisite compliance with its laws and directions if it allows defiance and exceptionalism to thrive unchallenged. Impunity anywhere is a danger to justice everywhere.

30. An acute problem in the modern world is not the absence of laws, but the absence of international political will. As the Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland, Jonathan Allen, pointed out during a Security Council briefing on international humanitarian law in April

³¹ See www.unrwa.org/activity/education-gaza-strip.

³² Palestinian Counselling Centre, Save the Children and Welfare Association, “Broken homes: addressing the impact of house demolitions on Palestinian children and families”, April 2009.

³³ United Nations, Office for the Coordination of Humanitarian Affairs, “Protection of civilians”, Biweekly Highlights, 23 April–6 May 2019.

³⁴ Christoph Heusgen, Permanent Representative of Germany to the United Nations, statement at the Security Council open debate on the Middle East, 23 July 2019.

³⁵ Benjamin R. Barber, *Fear's Empire: War, Terrorism and Democracy* (New York, W.W. Norton and Company, 2003).

2019. “We do not lack law, we lack enforcement and accountability.”³⁶ Far too often, accountability has been applied by the international community in a selective and partisan fashion to many serious issues, reflecting a dispiriting mixture of design and indifference, collusion and apathy. On too many occasions, defiance has been ignored and outliers have been excused or appeased. This deficit of accountability erodes popular trust in the efficacy of international law, thereby jeopardizing a precious common good.

31. The 52-year Israeli occupation of the Palestinian territory – Gaza and the West Bank, including East Jerusalem – is a bitter illustration of the absence of international accountability in the face of the systemic violations of Palestinian rights under human rights and humanitarian law. Accountability is the key to opening the titanium cage that is the permanent occupation, and its principled application is the best path to a just and durable settlement. Israel, a relatively small country in terms of geography and population and with a particular dependence on the international community for both trade and investment and diplomatic cooperation, could not have sustained such a prolonged and repressive occupation in clear violation of international law without the active support and malign neglect of many in the industrialized world. While the international community has issued numerous resolutions and declarations critical of the unending occupation by Israel and its steady designs for annexation, such criticisms have rarely been matched by any meaningful consequences. In a comment that aptly applies to the wider world, the former European Union Special Representative for the Middle East, Miguel Moratinos, stated with regard to the Israeli occupation: “We Europeans excel at declarations. It is compensation for our scarcity of action.”³⁷

32. In the next part of the report, the obligations of the international community to bring serious human rights violations to an end and closely regulate belligerent occupation are reviewed, and its duty to ensure that its directions are obeyed by its fellow members is examined. Later in the report, the impunity enjoyed by Israel is assessed. Finally, the various accountability measures that the international community has adopted and applied in select conflicts and zones in relation to human rights violations are discussed, and it is considered which of these could be meaningfully applied to bring an end to the Israeli occupation.

A. Legal responsibilities of the international community

33. Since 1945, the community of nations has codified an impressive body of international law, in which it has established the responsibility of States to live by, and enforce, a rules-based international order. The promise of accountability – the mobilization of the collective will and effective countermeasures to defend justice – is at the heart of the international order. The Special Rapporteur has identified three significant sources for the legal obligations that require the international community to marshal its political authority to compel Israel to completely end its illegal occupation and to remove its barriers to the fulfilment of Palestinian self-determination. They are:

- (a) Common article 1 to the four Geneva Conventions of 1949;

³⁶ Jonathan Allen, Deputy Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations, “International humanitarian law: we lack enforcement and accountability”, statement at the Security Council briefing on international humanitarian law, 1 April 2019.

³⁷ Akiva Eldar, “Israel can’t afford to postpone Mideast peace much longer”, *Haaretz*, 12 November 2010.

- (b) The articles on responsibility of States for internationally wrongful acts, of 2001;
- (c) Article 25 of the Charter of the United Nations.

Common article 1 to the Geneva Conventions of 1949

34. The Fourth Geneva Convention of 1949 applies in full to the Israeli occupation of the Palestinian territory. This was first declared by the Security Council in its resolution 237 (1967), within days of the occupation, and has been reconfirmed by the Council many times since, most recently in its resolution 2334 (2016). Other primary bodies of the United Nations, including the General Assembly (in, for example, its resolution 73/97), the Human Rights Council (in, for example, its resolution 40/23) and the International Court of Justice,³⁸ have endorsed this view. Although Israel ratified the Conventions on 6 July 1951 and was called upon by the Security Council, in its resolution 446 (1979), to abide by them scrupulously, it denies that the Fourth Geneva Convention applies to the conflict or that it is the occupying Power of the Palestinian territory.³⁹ However, its position has found little support within the international community or among international law scholars.

35. According to common article 1 to the four Geneva Conventions: “The High Contracting Parties undertake to respect and to ensure respect for the ... Convention in all circumstances”.⁴⁰

36. This solemn obligation is central to the enforcement of the rights guaranteed in the four Geneva Conventions and in international humanitarian law. Contemporary legal scholars have stated that common article 1 has acquired a “quasi-constitutional nature”,⁴¹ an elevated legal status that requires States not only to obey the Conventions themselves, but also to take all steps within their capacity to insist that other States meet their obligations under international humanitarian law.⁴² Common article 1 is also reflective of customary international law, giving it universal standing.⁴³

37. The authoritative commentary on the four Geneva Conventions was issued by the International Committee of the Red Cross (ICRC) in 2016.⁴⁴ On common article 1, the ICRC noted in the commentary that the obligation to ensure respect was not a “loose pledge but a commitment vested with legal force”.⁴⁵ In interpreting this provision, the International Court of Justice stated that the term “undertake” was “not merely hortatory or purposive”, nor was it meant to simply introduce subsequent obligations, but was itself intended to “accept an obligation”.⁴⁶ ICRC further explains

³⁸ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 101.

³⁹ International Committee of the Red Cross (ICRC), “International humanitarian law, ICRC and Israel’s status in the territories”, 31 December 2012.

⁴⁰ See www.icrc.org/en/doc/war-and-law/treaties-customary-law/geneva-conventions/overview-geneva-conventions.htm.

⁴¹ Laurence Boisson de Chazournes and Luigi Condorelli, “Common article 1 of the Geneva Conventions revisited: protecting collective interests”, ICRC, 31 March 2000.

⁴² Knut Dörmann and Jose Serralvo, “Common article 1 to the Geneva Conventions and the obligation to prevent international humanitarian law violations”, ICRC, 21 September 2015.

⁴³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 158.

⁴⁴ See <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588AFA66200C1257F7D00367DBD>, paras. 118–191.

⁴⁵ *Ibid.*, para. 170.

⁴⁶ *Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro), Judgment, I.C.J. Reports 2007*, p. 43, para. 162.

in its commentary that, “by committing themselves to ‘respect and to ensure respect’ for the Conventions, States have also recognized the importance of adopting all reasonable measures to prevent violations from happening in the first place”.⁴⁷ When violations of the Conventions occur, the High Contracting Parties will only satisfy their legal obligations under common article 1 “as long as they have done everything reasonably in their power to bring the violations to an end”.⁴⁸

38. ICRC emphasizes in its commentary that the obligations in the Conventions are of such fundamental importance to the international community that they are *erga omnes partes*, obligations owed towards all other High Contracting Parties, at all times.⁴⁹ Regarding common article 1, this creates two primary interdependent obligations: (a) every individual High Contracting Party is duty-bound to all other High Contracting Parties to respect all of its own obligations under the Conventions (a negative duty not to violate); and (b) all High Contracting Parties bear a duty, individually and collectively, to ensure that every other High Contracting Party is respecting all of its obligations under the Conventions (a positive duty to compel others to comply).⁵⁰

39. It is therefore necessary to ask what nature of violations of international humanitarian law would trigger the obligations of other High Contracting Parties to ensure respect for the Conventions. Common article 1 must be read broadly and purposively.⁵¹ Political considerations, such as domestic inertia or unwillingness to confront an ally, are insufficient reasons to abstain from fulfilling the obligations to ensure accountability. As international law experts Théo Boutruche and Marco Sassòli have stated, in their legal opinion on this topic:

By definition, the existence of a legal duty in the form of the obligation to ensure respect requires an objective assessment and prevents a State from using mere political considerations to claim that no steps can be taken under that obligation. The fact that the fulfilment of an international obligation can prove to be politically difficult cannot serve as a ground to refuse to take any measure in the implementation of that obligation.⁵²

40. While States have an obligation to ensure respect for the Conventions “in all circumstances” and with respect to all violations, it is abundantly clear that serious violations and grave breaches of the Conventions trigger a particularly compelling international onus on all other High Contracting Parties to use all available means to bring such violations and breaches to an end.⁵³ Serious violations and grave breaches under international humanitarian law would include: wilful killing; extensive destruction and appropriation of property; collective punishment; unlawful deportation, transfer and unlawful confinement; the launching of indiscriminate attacks affecting the civilian population; the transfer by the occupying Power of parts of its own civilian population into the occupied territory; and practices of racial separateness and discrimination.⁵⁴ All of these grave breaches have been either

⁴⁷ See <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588AFA66200C1257F7D00367DBD>, para. 121.

⁴⁸ *Ibid.*, para. 165.

⁴⁹ *Ibid.*, para. 119.

⁵⁰ *Ibid.*, paras. 153–173.

⁵¹ Robin Geiß, “The obligation to respect and to ensure respect for the Conventions”, in Andrew Clapham, Paolo Gaeta and Marco Sassòli, eds., *The 1949 Geneva Conventions: A Commentary* (Oxford University Press, Oxford, United Kingdom, 2015), p. 113.

⁵² Théo Boutruche and Marco Sassòli, “Expert opinion on third states’ obligations vis-à-vis IHL violations under international law, with a special focus on common article 1 to the 1949 Geneva Conventions”, 8 November 2016.

⁵³ Reinforced by the Fourth Geneva Convention, art. 146, and Additional Protocol I, art. 86.

⁵⁴ Fourth Geneva Convention, arts. 33, 49 and 147, and Additional Protocol, art. 85.

substantively alleged or actually established during Israeli conduct of the occupation.⁵⁵

41. The International Court of Justice, in advisory opinion of 2004 on the legal consequences of the construction of a wall in the Occupied Palestinian Territory, expressly stated that the High Contracting Parties bore a responsibility to ensure that Israel, the occupying Power, fulfilled its obligations under the Fourth Geneva Convention.⁵⁶

42. Taken together, the special place of international humanitarian law within international law, the direction of the International Court of Justice that the responsibilities of the international community under the Geneva Conventions are lawful obligations rather than moral sentiments and the emphasis in the ICRC commentary that the Conventions are invested with binding obligations cumulatively place a substantive legal duty on all High Contracting Parties to take all measures within their power to bring the Israeli occupation and its multiple violations of the law to a swift and complete end. While the occasional declarations by the High Contracting Parties regarding the humanitarian principles applicable to the occupation and the conflict are welcome,⁵⁷ much more is required to satisfy the obligation to ensure respect for the Conventions.

Articles on responsibility of States for internationally wrongful acts

43. In August 2001, at the end of a five-decade-long codification process, the International Law Commission adopted the articles on responsibility of States for internationally wrongful acts. The General Assembly accepted the articles in December 2001 (see resolution 56/83, annex). A basic norm of international law is that all States are to obey international law at all times, consistent with their obligations under the rules-based international order. It is established in the articles, as a foundational principle, that all States assume a legal responsibility to ensure that other States respect international law at all times. As such, all States bear the responsibility not to recognize as lawful any situation created by a serious breach of an obligation by another State arising from a peremptory norm of general international law. The articles are widely considered to reflect customary international law on State responsibility.⁵⁸

44. According to article 40 of the articles on responsibility of States for internationally wrongful acts,

chapter III of the articles “applies to the international responsibility which is entailed by a serious breach by a State of an obligation arising under a peremptory norm of general international law” and “a breach of such an obligation is serious if it involves a gross or systematic failure by the responsible State to fulfil the obligation”.

45. A peremptory norm (a *jus cogens* norm) of general international law is a lawful obligation that is accepted by the international community as a norm from which no

⁵⁵ Human Rights Watch, Amnesty International, Al-Haq, Al Mezan, B’Tselem and Gisha, among others.

⁵⁶ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 159.

⁵⁷ The Conference of the High Contracting Parties issued statements and declarations on the humanitarian principles applicable to the Israeli occupation of Palestinian territory in 1999, 2001 and 2014. Available at <https://unispal.un.org/UNISPAL.NSF/0/E7B8432A312475D385257DB100568AE8>.

⁵⁸ James Crawford, *State Responsibility: The General Part* (Cambridge University Press, New York, 2013), p. 43.

derogation or exception is permitted.⁵⁹ According to the substantive commentary on the articles issued by the United Nations in 2008,⁶⁰ peremptory norms of law would include respect for the basic rules of international humanitarian law and the right to self-determination, as well as the prohibitions against racial discrimination, apartheid, genocide, annexation, aggression and torture.⁶¹ A systematic violation, as mentioned in article 40 (2), is one that is carried out in an “organized and deliberate way”, while a gross violation “denotes violations of a flagrant nature, amounting to a direct and outright assault on the values protected by the rule”.⁶²

46. According to article 41 of the articles on responsibility of States for internationally wrongful acts, “States shall cooperate to bring to an end through lawful means any serious breach within the meaning of article 40” and “no State shall recognize as lawful a situation created by a serious breach within the meaning of article 40, nor render aid or assistance in maintaining that situation”.

47. In accordance with article 41, States assume three basic obligations as part of their responsibility to ensure that other States uphold international law: (a) they cannot recognize as lawful situations those created by serious breaches as understood by article 40; (b) they cannot offer aid or assistance in maintaining any situation involving serious breaches; and (c) they have a positive duty to cooperate with each other in bringing such serious breaches to an end.⁶³ The purpose for these special third-party responsibilities is to counteract the challenge that such serious breaches pose to the legal, political and moral order of the international community as a whole.

48. The obligation of non-recognition of an unlawful situation resulting from a serious breach of a peremptory norm is to prevent the validation of an illegal *fait accompli* from crystallizing into a law-creating fact over time.⁶⁴ It is grounded in the legal principle of *ex injuria jus non oritur*: legal rights cannot derive from an unlawful act. According to the articles, States are prohibited from offering recognition to a transgressing State which would allow it to acquire, among other acts, sovereign title to annexed territory, lawful condonation of its practices of racial discrimination or apartheid, or legal acceptance of its denial of self-determination through its sustained defiance and the passage of time.⁶⁵

49. The obligation not to provide aid or assistance for maintaining a serious breach of international law is based on the principles of interdependence and solidarity that underlie the Charter of the United Nations and other lawful duties inherent in the rules-based international order.⁶⁶ This obligation requires States to individually refuse to offer any form of support to the transgressing State in its continuation of the serious breach. States that knowingly provide assistance to the transgressing State which aids in the ongoing breach, will themselves become responsible for the adverse effects of their assistance.⁶⁷ The Security Council, in its resolution 465 (1980), directed the international community to apply this principle with respect to the Israeli settlements.

⁵⁹ Convention on the Law of Treaties, art. 53.

⁶⁰ *Yearbook of the International Law Commission, 2001*, vol. II, Part Two (United Nations publication, Sales No. E.04.V.17 (Part 2)), chap. IV, sect. E.2 (Draft articles with commentaries thereto).

⁶¹ *Ibid.*, commentary on art. 40.

⁶² *Ibid.*

⁶³ *Ibid.*, commentary on art. 41.

⁶⁴ Martin Dawidowicz, “The obligation of non-recognition of an unlawful situation”, in James Crawford, Alain Pellet and Simon Olleson, eds., *The Law of International Responsibility* (New York, Oxford University Press, 2010).

⁶⁵ Draft articles with commentaries thereto, commentary on art. 41.

⁶⁶ Nina H.B. Jørgensen, “The obligation of non-assistance to the responsible State”, in Crawford, Pellet and Olleson, eds., *The Law of International Responsibility*.

⁶⁷ Draft articles with commentaries thereto, commentary on art. 41.

50. The obligation of cooperation creates a positive duty on all States to jointly partake in lawful actions on behalf of the international community to bring an end to the serious breaches of the transgressing State.⁶⁸ Without providing details of the forms of cooperation that may be required, the obligation nevertheless establishes the duty to take collective action where serious breaches have occurred. This builds upon the obligation of cooperation found in the Declaration on Principles of Friendly Relations and Cooperation among States, adopted by the General Assembly by its resolution 2625 (XXV) in October 1970.

Article 25 of the Charter of the United Nations

51. Article 25 of the Charter of the United Nations provides that

“the Members of the United Nations agree to accept and carry out the decisions of the Security Council in accordance with the ... Charter”.

The prevailing view regarding the scope of Article 25 is that resolutions adopted by the Security Council in which something is decided, rather than simply recommended, are binding decisions on all Members of the United Nations and must be obeyed and implemented.⁶⁹ This binding authority of Council decisions follows the fact that all States, in agreeing to become Members of the United Nations, have consented to be bound by the terms of the Charter.⁷⁰

52. The leading judicial interpretation of the meaning and scope of Article 25 was provided by the International Court of Justice in its *Namibia* advisory opinion of 1971. In its commentary on Article 25, the Court ruled on three significant issues. First, it dismissed the argument advanced by the apartheid regime of South Africa that Article 25 was limited only to those occasions when a Security Council resolution specifically contained a mention of Chapter VII (the chapter of the Charter on enforcement mechanisms to address threats to or breaches of the peace).⁷¹ This finding confirmed that the Council was entitled to issue legally binding decisions outside of Chapter VII, thus ensuring its effectiveness in compelling adherence to a variety of its resolutions addressing a range of crises, violations of international law and non-compliance with previous United Nations decisions.

53. Second, in the *Namibia* advisory opinion, the Court laid out a viable legal test to determine when the language of a Security Council resolution constituted a decision and was therefore binding on States Members of the United Nations. It stated that the language of a Council resolution had to be carefully analysed to assess its legally binding nature, including:

- The terms of the resolution to be interpreted
- The discussions leading to it
- The Charter provisions invoked
- All other relevant circumstances⁷²

⁶⁸ Nina H.B. Jørgensen, “The obligation of cooperation”, in Crawford, Pellet and Olleson, eds., *The Law of International Responsibility*.

⁶⁹ Bruno Simma and others, *The Charter of the United Nations: A Commentary*, 3rd ed. (New York, Oxford University Press), 2013, p. 454.

⁷⁰ Hisahi Owada, “Problems of interaction between the international and domestic legal orders”, *Asian Journal of International Law*, vol. 5, No. 2 (July 2015).

⁷¹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, Advisory Opinion, I.C.J. Reports 1971, p. 16, para. 113.

⁷² *Ibid.*, para. 114.

The Court, in the *Namibia* advisory opinion, had reviewed the language of Council resolution 276 (1970) on the expired mandate of the apartheid regime of South Africa in Namibia. The Court ruled that paragraphs 2 and 5 of the resolution were both legally binding on all States Members of the United Nations, “which are thus under obligation to accept and carry them out”:⁷³

- In paragraph 2 of resolution 276 (1970), the Council “declares” that the continued presence of South Africa in Namibia is illegal
- In paragraph 5 of resolution 276 (1970), the Council “calls upon all States” to refrain from dealings with South Africa that are inconsistent with paragraph 2

The Special Rapporteur adopts the position that language used in a Council resolution to make a declaration, demand an action from a Member State or pronounce on the illegality of a situation is likely to be a decision within the meaning of Article 25.

54. Third, the Court, in its *Namibia* advisory opinion, expressly addressed the issue of the legal responsibility of the international community. It stated that, when the Security Council adopts a decision under Article 25 of the Charter, it is legally binding on all Member States.⁷⁴ The Court then elaborated upon the duty of accountability of the international community when a competent organ of the United Nations had issued a binding decision on the illegality of a situation. It ruled that “such a situation cannot remain without consequences” and that the Members of the United Nations would have “an obligation ... to bring that situation to an end”. It continued by stating that “this decision entails a legal consequence, namely that of putting an end to an illegal situation”.⁷⁵

55. Recent debates in the Security Council on the binding nature of its resolutions indicate that some leading Council members accept that such resolutions create legal obligations on States Members of the United Nations. During a special session of the Council devoted to the Middle East, held in July 2019, the Permanent Representative of Germany specifically addressed the binding nature of the resolutions adopted by the Council on the Israeli occupation of the Palestinian territory, with particular reference to resolution 2334 (2016):

We believe in the United Nations and ... Security Council resolutions. For us, they are binding international law. We believe in the force of international law and we do not believe in the force of the strongest. ... For us, resolution 2334 (2016) – just to name the most recent Security Council resolution – is binding law and that is the international consensus.⁷⁶

56. Speaking after the Permanent Representative of Germany, the Permanent Representative of the United Kingdom expressed her agreement with his view about the binding nature of Security Council resolutions:

I just wanted to pick up on something the German representative said about international law. We share his view that the Security Council is responsible for maintaining international peace and security and we all agree that the Arab-Israeli conflict is a threat to international peace and security. It is therefore right that we have adopted resolutions on that topic. We are bound by those resolutions and we all have a responsibility to implement them, just as we do ... on other topics. Indeed, this is the very basis of the Council’s work.⁷⁷

⁷³ Ibid., para. 115.

⁷⁴ Ibid., para. 116.

⁷⁵ Ibid., para. 117.

⁷⁶ Heusgen, statement at the Security Council open debate on the Middle East.

⁷⁷ Karen Pierce, Permanent Representative of the United Kingdom to the United Nations, “Political and economic progress in Israel and the Occupied Palestinian Territories”, speech at the Security Council briefing on the situation in the Middle East, 23 July 2019.

57. In the view of the Special Rapporteur, all Security Council resolutions in which it pronounces on the illegality of the Israeli settlements, the illegality of the Israeli annexation of East Jerusalem and the failure by Israel to fully comply with its legal obligations under international law, or in which it makes declarations on any aspect of the Israeli occupation, are binding decisions that must be complied with by Israel. Its failure to honour any of these decisions places the onus on all other Member States to enforce the obligations within the bounds of the Charter.

B. Lack of accountability in the conduct of the Israeli occupation

58. Israel has occupied the Palestinian territory for more than 52 years, the longest belligerent occupation in the modern world. In particular, the occupation has been characterized by two defining features. First, the conduct of the Israeli occupation has been marked by numerous intentional and serious violations of international law, including humanitarian and human rights law. The annexation of occupied territory, whether de jure or de facto, is illegal (A/73/447, paras. 24–59). The creation of civilian settlements in occupied territory is a grave breach of the Fourth Geneva Convention⁷⁸ and a war crime under the Rome Statute of the International Criminal Court.⁷⁹ The location, permanence and continued existence of the separation wall in the Occupied Palestinian Territory has been found to be a violation of international law.⁸⁰ It has been stated in United Nations reports that war crimes may have been committed by Israel during its various military operations in Gaza (see A/HRC/12/48, A/HRC/29/CRP.4 and A/HRC/40/74). Multiple and systematic human rights violations have been credibly documented by the United Nations and by international, Israeli and Palestinian human rights defenders (see A/HRC/40/43). The Special Rapporteur has determined previously that the occupation itself has become illegal, given its flagrant violations of the foundational principles of modern laws of occupation (see A/72/556).

59. Second, the international community has demonstrated great unwillingness to impose any meaningful accountability on Israel for its permanent occupation and its serious violations of international law. In the face of the volumes of resolutions in which United Nations bodies have insisted that Israel unwind its occupation, end its settlement enterprise, undo its annexation of East Jerusalem, respect all of its human rights obligations, investigate purported war crimes, facilitate the return of Palestinian refugees and remove its obstruction to the full realization of Palestinian self-determination, Israel has remained profoundly resistant to international direction. It has rightly assessed that the international community – in particular the Western industrial nations – has lacked the political will to compel an end to its impunity. As a result, it has rarely faced meaningful consequences for its truculent behaviour. As the Israeli journalist Gideon Levy has written: “No country is as dependent on the support of the international community as Israel, yet Israel allows itself to defy the world as few dare”.⁸¹

Security Council resolutions

60. Throughout its occupation, Israel has acted in direct defiance of a number of Security Council resolutions and decisions.

⁷⁸ Fourth Geneva Convention, art. 49; and Additional Protocol 1, art. 85 (4) (a).

⁷⁹ Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

⁸⁰ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, para. 142.

⁸¹ Gideon Levy, “Netanyahu’s right: the occupation can actually go on forever”, Haaretz, 25 September 2016.

61. **East Jerusalem.** In August 1980, the Security Council declared, in resolution [478 \(1980\)](#), that the de jure annexation of East Jerusalem by Israel that year was null and void and must be rescinded forthwith. It decided not to recognize the “basic law” and such other actions by Israel that, as a result of that law, sought to alter the character and status of Jerusalem. In December 2016, the Council reaffirmed that resolution in adopting its resolution [2334 \(2016\)](#). Almost four decades later, however, Israel remains in violation of Council resolution [478 \(1980\)](#), and its occupation and annexation of East Jerusalem have only become more entrenched.

62. **Settlements.** The Security Council affirmed in its resolutions [446 \(1979\)](#), [452 \(1979\)](#) and [465 \(1980\)](#) that the construction of settlements by Israel was contrary to international law. In its resolution [2334 \(2016\)](#), it further stressed that the Israeli settlements constituted a flagrant violation under international law. In its resolution [2334 \(2016\)](#), the Council, echoing its earlier demands, stated that Israel must immediately and completely cease all settlement activities in the Occupied Palestinian Territory, including East Jerusalem, and that it must fully respect all of its legal obligations in this regard. Earlier, in 2013, the independent international fact-finding mission appointed by the Human Rights Council to investigate the Israeli settlements had found that,

“despite all pertinent United Nations resolutions declaring that the existence of the settlements is illegal and calling for their cessation, the planning and growth of the settlements continues of existing as well as of new structures” ([A/HRC/22/63](#), para. 100).

In each of his three most recent quarterly reports to the Council on the implementation of resolution [2334 \(2016\)](#), the United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organization and the Palestinian Authority stated that, with respect to the Council’s direction to Israel to cease all settlement activity, “no steps were taken to that effect during the reporting period”. Rather, as the Special Coordinator pointed out previously, the Government of Israel had continued to announce significant settlement housing unit plans and the launch of construction.⁸² In 1983, there were 99,000 Israeli settlers in the West Bank and East Jerusalem;⁸³ today, there are 650,000 settlers, an increase of more than 550 per cent.⁸⁴

63. **Annexation.** The Security Council has affirmed the legal principle on at least eight occasions, most recently in its resolution [2334 \(2016\)](#), that the acquisition of territory by force is inadmissible. Although it denounced the annexation by Israel of East Jerusalem in 1980 and of the Syrian Golan Heights in 1981 as unlawful, Israel has not reversed these de jure annexations, nor has its political leadership been impeded from intensifying its de facto annexation of the West Bank through ongoing land confiscation and its burgeoning settlement enterprise. Moreover, the Israeli political leadership continues to regularly express its support for formally annexing parts or all of the West Bank ([A/73/447](#), para. 58). In September 2019, the Prime

⁸² Nickolay Mladenov, Special Coordinator for the Middle East Peace Process, statement at the Security Council briefing on the situation in the Middle East, 20 June 2019; and Nickolay Mladenov, Special Coordinator for the Middle East Peace Process, statement at the Security Council briefing on the implementation of resolution [2334 \(2016\)](#), 20 September 2019.

⁸³ Foundation for Middle East Peace, “Comprehensive settlement population, 1972–2011”, available at <https://fmep.org/resource/comprehensive-settlement-population-1972-2010/>.

⁸⁴ Peace Now, “Population”, Settlements Watch database, available at <https://peacenow.org.il/en/settlements-watch/settlements-data/population>; Peace Now, “Jerusalem”, Settlements Watch database, available at <https://peacenow.org.il/en/settlements-watch/settlementsdata/jerusalem>.

Minister of Israel, Benjamin Netanyahu, announced that, if returned to office, his Government would annex the Jordan Valley and “other vital areas”.⁸⁵

64. **Occupation and non-compliance.** In 1980, the Security Council, in its resolution 476 (1980), reaffirmed the overriding necessity for ending the prolonged occupation of Arab territories occupied by Israel since 1967. In the same resolution, the Council stated that it strongly deplored the continued refusal of Israel, the occupying Power, to comply with the relevant resolutions of the Security Council and the General Assembly. Two months later, in resolution 478 (1980), it noted that Israel had not complied with resolution 476 (1980) and reaffirmed its determination to examine practical ways and means, in accordance with the relevant provisions of the Charter, to secure the full implementation of its resolution 476 (1980), in the event of non-compliance by Israel. Almost four decades later, Israeli defiance of the Council remains unchecked, no means have been adopted to stem the ongoing violations of international law and the ineffectiveness of diplomatic pleas and warnings to end the occupation are glaringly self-evident.

United Nations calls for accountability

65. In a variety of forums, the United Nations has frequently called upon the international community to ensure accountability and to end impunity with respect to the Israeli occupation.

66. In four major independent reports commissioned by the Human Rights Council since 2009, the constant theme has been the serious violations of human rights and humanitarian laws by Israel, the necessity to ensure Israeli accountability and the prevailing culture of exceptionalism.⁸⁶ It was stated in the report on the conflict in Gaza in 2008 and 2009 that: “Justice and respect for the rule of law are the indispensable basis for peace. The prolonged situation of impunity has created a justice crisis in the Occupied Palestinian Territory that warrants action” (A/HRC/12/48, para. 1958). In its report of 2013 on the implications of the Israeli settlements, the independent international fact-finding mission called upon Israel “to ensure full accountability for all violations ... and to put an end to the policy of impunity” (A/HRC/22/63, para. 114). In the report on the conflict in Gaza in 2014, concern was expressed that “impunity prevails across the board for violations of international humanitarian and human rights law allegedly committed by Israeli forces Israel must break with its recent lamentable track record in holding wrongdoers accountable” (A/HRC/29/CRP.4, para. 664). Furthermore, in the report of 2019 on the protests in Gaza in 2018, it was found that “to date, the Government of Israel has consistently failed to meaningfully investigate and prosecute commanders and soldiers for crimes and violations” and that “scarce accountability measures arising out of Operations Cast Lead and Protective Edge ... cast doubt over the State’s willingness to scrutinize the actions of military and civilian leadership” (A/HRC/40/74, para. 111).

67. The General Assembly and the Human Rights Council have both accentuated the necessity for accountability by Israel, the occupying Power, in recent years. In a resolution on the Israeli settlements, the Assembly called for the consideration of measures of accountability, in accordance with international law, in the light of continued non-compliance [by Israel] with the demands for a complete and immediate cessation of all settlement activities (General Assembly resolution 73/98, para. 6). Similarly, the Human Rights Council, in March 2019, expressed its alarm and

⁸⁵ *Times of Israel*, “Netanyahu: after Jordan Valley and settlements, I’ll annex other ‘vital areas’”, 16 September 2019.

⁸⁶ Alessandro Tonutti, *International Commissions of Inquiry and Palestine: Overview and Impact – Study Analysis* (Ramallah, Al-Haq Centre for Applied International Law, 2016).

emphasized “the need for States to investigate and prosecute grave breaches of the Geneva Conventions of 1949 and other serious violations of international humanitarian law, to end impunity, to uphold their obligations to ensure respect and to promote international accountability” (see Human Rights Council resolution 40/13).

68. Impunity and the lack of accountability by Israel in its conduct of the occupation have also been addressed by the Secretary-General. In 2016, the former Secretary-General, Ban Ki-Moon, stated that

the lack of any significant movement towards a political resolution and ongoing violations of international human rights and humanitarian law were exacerbated by the lack of accountability for previous violations. and that tackling impunity must be the highest priority ([A/71/364](#), para. 6).

69. The lack of accountability has also been a central concern of the United Nations High Commissioner for Human Rights. In a comprehensive report on accountability issued in June 2017 ([A/HRC/35/19](#)), the former High Commissioner, Zeid Ra’ad Al Hussein, reviewed 551 recommendations issued since 2009 by relevant Human Rights Council mechanisms to determine the degree of compliance and cooperation by Israel with respect to the human rights situation in the Occupied Palestinian Territory. Of the 178 recommendations issued regarding accountability and access to justice, Israel had implemented 2, had partially implemented 8 and had not implemented 168 (90 per cent). A similarly sparse record of compliance by Israel regarding the implementation of recommendations on the arrest and detention of Palestinians (91 per cent not implemented and 8 per cent partially implemented), on settlements (100 per cent not implemented) and on freedom of movement (97 per cent not implemented) was also reported. In total, Israel had fully implemented less than 0.5 per cent of the human rights recommendations presented to it. In his conclusions, the High Commissioner reminded the international community that “all stakeholders must recognize that compliance with international law is a sine qua non condition for peace” (*ibid.*, para. 81).

70. In a report published in March 2019 on accountability ([A/HRC/40/43](#)), the current High Commissioner, Michelle Bachelet, gave details of the long pattern of impunity throughout the Israeli occupation, including:

- In Gaza in 2014, where she noted that the Israeli Military Advocate General had closed a number of cases without any criminal investigation, despite serious allegations and prima facie evidence of international law violations
- In Gaza in 2018 and 2019, where she noted the excessive use of force by Israeli security forces that had killed and wounded a large number of Palestinian demonstrators outside the context of hostilities
- In the case of human rights defenders, in which she pointed to a prevailing atmosphere of intimidation, threats and arrests of human rights defenders and civil society actors by Israel

In the report, the High Commissioner addressed the international community’s responsibility to take measures to prompt States to act in compliance with international humanitarian law. She concluded by observing that the “lack of accountability compromises chances for sustainable peace and security” and urged that addressing impunity should be the “highest priority” (*ibid.*, para. 54).

71. The paradox of accountability is as striking as it is tragic. The international community has knowingly, on countless occasions, either voted for resolutions in United Nations forums or accepted public reports from independent commissions of inquiry and from senior United Nations officials in which the acute lack of

accountability, coupled with the abundant impunity that has characterized Israeli conduct of the five-decade-long occupation, have been recognized. It has also displayed extraordinary lethargy in enforcing what its own laws and decisions, its binding humanitarian obligations and its political precedents would compel it to do. It is therefore necessary to ask whether it is simply to be accepted that, with this occupation, international law is closer to power than it is to justice.

C. Countermeasures as the remedy for impunity

72. Countermeasures are a legitimate, effective and commonly used tool of international politics and diplomacy to compel recalcitrant States and organizations to comply with international law and to cease the significant harm that they are inflicting on others. The use of countermeasures is intended as a response to a prior intentionally wrongful act, and not as a form of punishment or reprisal for wrongful conduct. They must be targeted against the offending State, they should be reversible upon a significant reform in State behaviour, they must respect the Charter (including all humanitarian and human rights obligations) and they must be proportionate and effective.⁸⁷ In the case of a serious violation by a State or an organization of an obligation owed to the international community, other States have not only the power but also the obligation to initiate countermeasures. Serious violations would include contraventions of the peremptory norms of international law, including grave breaches of international humanitarian law, many of which are widespread in the Occupied Palestinian Territory.

73. Countermeasures commonly employed in the modern world would include: (a) diplomatic démarches and public statements; (b) diplomatic sanctions; (c) trade sanctions; (d) the reduction or suspension of cooperation and aid; (e) financial and economic sanctions; (f) flight bans; (g) arms embargoes; and (h) travel restrictions. Countermeasures have been applied in recent years to promote democracy and human rights, advance the rule of law, oppose annexation and aggression, combat terrorism, address threats to international peace and security, rectify serious humanitarian crises, protect vulnerable minorities and end conflicts and civil wars.

74. Scholars have identified three principal purposes of countermeasures and sanctions: (a) to coerce a change in the behaviour of the targeted State or organization; (b) to constrain a targeted State or organization from engaging in a prohibited activity; and (c) to signal and/or stigmatize a targeted State or organization regarding its violations of international laws or norms. Countermeasures and sanctions have been found to be the most effective in the following instances:⁸⁸

- **Targeting friends and close trading partners.** These States have more to lose than those with limited or adversarial relations. This reflects the willingness of States in a broad alliance to bow to pressure from allies because of the importance of the larger relationship.
- **Democracies are more responsive to countermeasures than autocrats.** Democratic leaders have to pay more attention to domestic public opinion and independent domestic institutions, which often value good international relations.
- **Sanctions with maximum impact work best.** If the goal is to change policies of behaviour, high economic costs imposed by the countermeasures or sanctions

⁸⁷ See, generally, Jeremy Matam Farrall, *United Nations Sanctions and the Rule of Law* (New York, Cambridge University Press, 2007).

⁸⁸ Gary Clyde Hufbauer and others, *Economic Sanctions Reconsidered*, 3rd ed. (Washington, D.C., Peterson Institute for International Economics, 2007).

work best. Minor sanctions may work well as initial signals, but they have to escalate swiftly if they do not modify the targeted behaviour.

- **Significant international cooperation is important, but is not always a guarantee of success.** The cooperation of an international organization in which the alliance of countries and the targeted State are members increases the chances of success.
- **Choosing the appropriate countermeasures is key.** Not just any sanction will do. Understanding the susceptible pressure points of the targeted State or organization is key to success.
- **The purposes of the sanctions should be well articulated.** This enables stronger public support, clarifies what countermeasures should be used and explains when success has been achieved or changes have to be made.

75. In its 2016 commentary on the Geneva Conventions, ICRC listed a series of non-exhaustive measures that may be taken individually and/or collectively by the High Contracting Parties to ensure respect for international humanitarian law:⁸⁹

- Addressing questions of compliance within the context of a diplomatic dialogue
- Exerting diplomatic pressure by means of confidential protests or public denunciations
- Conditioning joint operations on a coalition partner's compliance with its obligations under the Conventions and/or planning operations jointly in order to prevent such violations
- Intervening directly with commanders in the case of violations, such as an imminent unlawful attack against civilians, by a coalition partner
- Referring, where applicable, a situation to the International Humanitarian Fact-Finding Commission
- Requesting a meeting of the High Contracting Parties
- Applying measures of retorsion, such as the halting of ongoing negotiations or refusal to ratify agreements already signed, the non-renewal of trade privileges, and the reduction or suspension of voluntary public aid
- Adopting lawful countermeasures, such as arms embargoes, trade and financial restrictions, flight bans and the reduction or suspension of aid and cooperation agreements
- Conditioning, limiting or refusing arms transfers
- Referring the issue to a competent international body, such as the Security Council or General Assembly
- Referring, where possible, a specific issue to the International Court of Justice or another body for the settlement of disputes
- Resorting to penal measures to repress violations of humanitarian law
- Supporting national and international efforts to bring suspected perpetrators of serious violations of international humanitarian law to justice

76. Much more can be said about the range of appropriate countermeasures that the international community has at its disposal to ensure accountability and an end to impunity regarding the Israeli occupation. The Special Rapporteur reserves the

⁸⁹ See https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=72239588AFA66200C1257F7D00367DBD#_Toc452378926, para. 181.

opportunity to expand upon this issue in a future report. Suffice it to say for now that the international community possesses a great deal of power to ensure a positive, durable and just solution to the occupation. Indeed, it will not end without the international community acting decisively in support of international law and its common values to compel Israel to fulfil its obligations. As Hagai El-Ad, the executive director of B'Tselem, a leading Israeli human rights organization, stated to the Security Council in 2016: "Israel will not cease being an oppressor simply by waking up one day and realizing the brutality of its policies. ... We need your help".⁹⁰

IV. Conclusion

77. No occupation in the modern world has been conducted with the international community so alert to its many grave breaches of international law, so knowledgeable about the occupier's obvious and well-signalled intent to annex and establish permanent sovereignty, so well informed about the scale of suffering and dispossession endured by the protected population under occupation, and yet so unwilling to act upon the overwhelming evidence before it to use the tangible and plentiful legal and political tools at its disposal to end the injustice.

78. An international community that took seriously its legal responsibilities to challenge and end internationally wrongful acts would have concluded long ago that Israel, the occupying Power, was not sincere about seeking to end the occupation. It would have drawn the necessary lessons from the many unfulfilled Security Council and General Assembly resolutions, the inordinate duration of the occupation, the innumerable facts on the ground and the aimless rounds of negotiations. It would have determined that the status quo of this occupation and annexation was endlessly sustainable without decisive international intervention because of the grossly asymmetrical balance of power on the ground. It would accept that its duty was not to oversee the management of the occupation, but to end it. Such an international community would take the prudent and necessary steps to collectively construct a list of effective countermeasures that would be appropriate and proportional to the circumstances. Should the occupying Power remain unmoved, the international community would apply and escalate the range of its targeted countermeasures until compliance had been achieved. It would realize that bold measures and the determination to enforce accountability in these circumstances would greatly improve the chances that the next obstinate occupier would not likely want to test its resolve.

V. Recommendations

79. **The Special Rapporteur recommends that the Government of Israel should fully comply with its obligations under international law and that it should completely end its 52 years of occupation within a reasonable time period and enable the realization of Palestinian self-determination.**

80. **The Rapporteur recommends that the international community:**

(a) **In line with common article 1 to the Geneva Conventions, the articles of responsibility of States for internationally wrongful acts and Article 25 of the Charter of the United Nations, take all measures, including countermeasures and sanctions, necessary to ensure the respect by Israel, and all other relevant parties, of their obligations under international law to end the occupation;**

⁹⁰ Hagai El-Ad, Executive Director of B'Tselem, statement to the Security Council, 18 October 2018.

(b) **Seek to hold Israel to the international standards that all States are required to obey;**

(c) **Ensure full accountability of Israeli political and military officials who are responsible for grave breaches of international law in the Occupied Palestinian Territory;**

(d) **Adopt the recommendation of the former United Nations High Commissioner for Human Rights issued in June 2017. The General Assembly should make use of its powers under Article 96 (a) of the Charter of the United Nations to seek an advisory opinion from the International Court of Justice on the legal obligation of Israel to end the occupation and the international community's legal obligations and powers to ensure accountability and bring an end to impunity;**

(e) **Commission a United Nations study on the legality of the Israeli annexation and continued occupation of the Palestinian territory.**



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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Palestinian territories occupied since 1967*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, submitted in accordance with Human Rights Council resolution 5/1.

* The present report was submitted after the deadline in order to reflect the most recent developments.



**Report of the Special Rapporteur on the situation of human rights
in the Palestinian territories occupied since 1967, Michael Lynk**

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, hereby submits his fifth report to the General Assembly. The report is based primarily on information provided by victims, witnesses, civil society representatives and United Nations agencies. The report addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza, and is the second report focusing on accountability-related issues.

I. Introduction

1. The present report provides a brief overview of the most pressing human rights concerns in the Occupied Palestinian Territory at the time of submission, as identified by the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 in conversations and meetings with civil society. The report then presents a detailed analysis of the latest human rights concerns in the Occupied Palestinian Territory, with a specific focus on accountability.

2. The Special Rapporteur would like to highlight once again that, despite his repeated requests, he has not yet been granted access to the Occupied Palestinian Territory by Israel. The Special Rapporteur emphasizes once again his view that an open dialogue among all parties is essential for the protection and promotion of human rights and reminds Israel that he is ready and willing to engage. In addition, the Special Rapporteur continues to highlight that access to the Occupied Palestinian Territory would play a key role in understanding the fundamental realities of the human rights situation in the territory. The pattern of non-cooperation by Israel with the mandate is a serious concern.

3. The Special Rapporteur was not able to travel to the region, including Amman, owing to travel restrictions in connection with the spread of coronavirus disease (COVID-19). However, he was able to engage actively with members of civil society and United Nations agencies and collect important information on the topic, most notably through submissions.

4. In the present report, the Special Rapporteur focuses on two issues. First, he reviews the responsibilities of the Security Council in terms of accountability for ensuring that its decisions and directions on the Israeli occupation are obeyed. He then assesses the responsibilities of private corporations in terms of accountability for operating in, or benefiting from, directly or indirectly, the Israeli settlements and the Israeli occupation.

5. The Special Rapporteur wishes to express his appreciation to the Government of the State of Palestine for its full cooperation with his mandate.

6. The Special Rapporteur emphasizes again his support for the vital work being done by Palestinian, Israeli and international human rights organizations. This work is indispensable not only to the Rapporteur as he seeks to fulfil his mandate, but also to the broader international community. The efforts of human rights organizations to ensure that accurate and complete information about the situation in the Occupied Palestinian Territory is readily available should not go unacknowledged.

II. Current human rights situation

A. Impact of COVID-19

7. The spread of the COVID-19 pandemic in the Occupied Palestinian Territory has accentuated some of the existing and long-standing negative repercussions of Israeli occupation. In some respects, it has exposed further the structural deficiencies in vital sectors, particularly the health sector in the West Bank and Gaza, as a result of Israeli practices on the ground. It has also clearly demonstrated that, during a serious health crisis, one that crosses borders and communities, a two-tier occupation regime reinforces unequal rights, particularly the right to adequate health. Despite existing conditions on the ground, in the initial phase of the pandemic, specifically in the months of March and April 2020, duty bearers applied strict preventive measures that have effectively curbed the spread of the virus. Some coordination, although

short-lived, was noted at the time between the Palestinian Authority and Israel.¹ However, an exponential increase in cases has been observed since late June, when the total number of confirmed cases was only at 2,765.² By 13 October, the total number of confirmed cases had increased markedly and reached 52,292 in the West Bank and 4,175 in Gaza.

8. This exponential increase has significantly strained an already weakened and overstretched health sector, particularly in Gaza. This additional strain was further compounded by the suspension of security coordination between the Palestinian Authority and Israel on 19 May, which came in the aftermath of the announcement by Israel of its planned annexation of parts of the West Bank and the Jordan Valley.³ This situation has significantly affected Palestinians' access to health care, generally reduced humanitarian assistance and significantly reduced the Palestinian Authority's monthly revenues by more than 80 per cent, severely limiting its capacity to pay its employees, particularly health personnel. Israel has withheld the Palestinian Authority's tax revenues numerous times in the past. Since December 2019, those revenues have been withheld again. In his briefing to the Security Council, the United Nations Special Coordinator for the Middle East Peace Process noted that he was also concerned that the level of coordination was far below that which existed at the beginning of the year, when the first wave of the virus hit, a situation that could have serious repercussions on the ability to control the spread of the virus and mitigate its impact on people's lives (see [S/2020/736](#), annex 1).

9. Beyond the impact of this suspension, facts on the ground demonstrate that Israel, the occupying Power, through the imposition of existing measures, has significantly reduced Palestinians' access to health care and to humanitarian assistance. These measures include a vast settlement infrastructure with associated security zones and bypass roads, the separation wall, zoning policies and an extensive network of fixed and mobile checkpoints that effectively dissect the West Bank into separate, fragmented and disconnected areas. In terms of accessing proper health care – including more equipped and specialized hospitals – Palestinians continue to face restrictions on movement not only within the West Bank but also when attempting to receive treatment in East Jerusalem. Moreover, delays continue to be reported in terms of receiving vital medical equipment, including testing kits and other necessary equipment for prevention.⁴

10. Continued Israeli control over law enforcement, planning and reconstruction in Area C, constituting more than 60 per cent of the occupied West Bank, has also hampered efforts to combat the pandemic. Palestinians living in Area C, currently estimated to be around 300,000, face additional complications in accessing proper health care. Palestinians are thus prevented from taking initiatives of their own to curb the spread of the virus while in many cases being offered no alternatives by relevant Israeli authorities. Attempts to coordinate the entry of Palestinian police into the H2 zone in Hebron to reinforce prevention measures with Palestinians living there have so far failed. In East Jerusalem, similar dynamics could be observed. In April, Israeli security forces raided a COVID-19 testing clinic in the Palestinian neighbourhood of Silwan under the pretext that it was run and supported by the

¹ See www.un.org/press/en/2020/sc14167.doc.htm.

² See World Health Organization, <https://app.powerbi.com/view?r=eyJrIjoiaODJlYWM1YTEtNDIxZS00OTFILThkZjktNDA1ODY2OGQ3NGJkIiwidCI6ImY2MTBjMGJlLWJkMjQtNGIzOjS04MTBiLTNkYzI4MGFmYjU5MCIslmMiOj99>.

³ See <https://reliefweb.int/report/occupied-palestinian-territory/end-palestinian-authority-coordination-israel-response>.

⁴ See <https://mondoweiss.net/2020/09/palestinians-faces-consistent-testing-kit-shortages-during-covid-19/>.

Palestinian Authority.⁵ While rates of infection were markedly increasing during that period, Palestinians in East Jerusalem lacked adequate access to medical facilities, services and testing kits. The lack of provision of aggregated data by Israel on cases is also hampering efforts to combat the pandemic. Since then, Israeli authorities have opened another centre in the neighbourhood. With the recent spike in cases, there remain severe restrictions on the operations of health care professionals in East Jerusalem as health development efforts continue to be undermined by the occupying Power.

11. In another worrying development, there was an increase in rates of infection among Palestinian detainees in Israeli detention centres, including one reported case of a child.⁶ In April, the Special Rapporteur had called for the release of the most vulnerable detainees, including children, women, older persons and those with pre-existing conditions. The increase in infections among Palestinian detainees again highlights the critical need to release Palestinian political prisoners or find alternative arrangements for detention to ensure their safety.

12. As rates of infection increase significantly in the Occupied Palestinian Territory, the impact of structural issues resulting directly from occupation and Israeli practices will continue to be increasingly felt. The complex set of measures applied to different areas by the occupying Power, often resulting in discriminatory practices, is bound to compound the impact of occupation, especially under such a serious health crisis. Even in the midst of a serious health pandemic, the demolition of Palestinian homes and instances of excessive use of force continue to be recorded and, in some cases, have increased. It is imperative that Israel, as the occupying Power, and in the light of the currently alarming rates of COVID-19 infection, reverse these practices and allow for the better protection of Palestinians and improved access to health-care services. Absent such measures, health conditions for Palestinians, who are already suffering the scourge of occupation, are bound to worsen.

B. Planned annexation and illegal settlement expansion by Israel

13. As part of a unity deal, on 20 April, the Prime Minister of Israel, Benjamin Netanyahu, and the leader of the Blue and White party, Benjamin Gantz, agreed to formally initiate a process to annex parts of the West Bank and the Jordan Valley.⁷ The planned annexation would have affected a third of the West Bank if implemented. The Special Rapporteur stressed that besides leading to a cascade of human rights violations, any annexation, even if partial, would be a serious breach of international law and the Charter of the United Nations and would set a dangerous precedent for the rules-based international order.⁸ The United Nations High Commissioner for Human Rights, Michelle Bachelet, also stated, on 29 June, that annexation was illegal and that it would have disastrous consequences not only for Palestinians but also for Israel itself.⁹

14. While formal annexation plans appear to have been delayed for the time being, it is imperative to stress that the de facto annexation of Palestinian territory by Israel is ongoing and has intensified in 2020, most notably through illegal settlement

⁵ See www.middleeastmonitor.com/20200416-israel-closes-coronavirus-testing-centre-in-occupied-east-jerusalem/.

⁶ See www.dci-palestine.org/palestinian_child_detainee_tests_positive_for_coronavirus_in_israeli_prison.

⁷ See www.amnesty.org/en/latest/news/2020/07/israelopt-10-things-you-need-to-know-about-annexation/.

⁸ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=25857&LangID=E.

⁹ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26009&LangID=E.

expansion. In 2020 alone, Israel has approved or advanced more than 12,150 settlement homes, making it the single highest rate on record since 2012, when such figures started to be recorded by Peace Now.¹⁰ More than 5,000 of these housing units were approved in mid-October alone. Settlements and settlement construction are illegal under international law and are one of the major obstacles to peace. Concurrently, demolitions of Palestinian-owned structures have increased significantly over the past year. In 2020 alone, more than 560 structures have been destroyed, leading to the displacement of 747 Palestinians.¹¹ The Special Rapporteur stresses that, while it was important to counter the formal Israeli annexation plans, it is also imperative to counter all measures on the ground that amount to de facto annexation, which Israel advances in the plain sight of the international community and which lead to serious breaches of the human rights of Palestinians on a daily basis.

C. Gaza

15. The Israeli-imposed land, sea and air blockade of Gaza has now entered its fourteenth year, with no end in sight. As a result, the 2 million residents of Gaza, including around 1 million children, continue to endure a grave and worsening humanitarian crisis at multiple levels. Gazans have had virtually all their human rights undermined under the weight of the blockade as they continue to lack access to adequate housing, education, water and sanitation. Food insecurity is endemic. Gaza bears one of the world's highest unemployment rates (estimated to be around 45 per cent), with poverty levels that exceeded 53 per cent as of late 2019.¹² The economy of Gaza is flat on its back, with growth in gross domestic product virtually at zero in 2019 and with an export sector that has nearly expired as a result of the closure and severe restrictions (see [TD/B/67/5](#), paras. 2 and 13).

16. Students in Gaza continue to lack adequate education infrastructure and the tools for distance learning, especially under the current pandemic. More than 575,000 children and teenagers lack access to computer equipment, reliable power supply and the Internet.¹³ It is estimated that only 30 per cent of Gaza households have Internet access, while Internet networks crash more than 10 times an hour on average.¹⁴ Despite their availability for more than 15 years, Gaza still lacks 3G networks, meaning that data upload times are significantly slowed down. As part of its comprehensive blockade, Israel prevents the entry of equipment needed for advanced data network infrastructure. With pre-existing limitations on networks and confinement measures, students in Gaza face insurmountable difficulties to learning and to one of the only gateways they have to the outside world. All of this undermines their fundamental right to education.

17. The health-care system in Gaza is at the verge of total collapse, which would result in a full-blown humanitarian catastrophe. After the first community transmissions in Gaza were detected on 25 August 2020, confirmed cases increased exponentially, putting a significant strain on an already battered health-care system.¹⁵ As of 14 October, there were 4,285 confirmed cases in Gaza, a marked increase from 1 July, when there were only 11 cases. Strict preventive measures have been

¹⁰ See www.aljazeera.com/news/2020/10/15/israels-settlement-approvals-hit-record-high-watchdog.

¹¹ See www.ochaopt.org/data/demolition.

¹² See <https://reliefweb.int/report/occupied-palestinian-territory/increase-gaza-s-unemployment-rate-2019>.

¹³ See <https://gisha.org/en-blog/2020/10/13/remote-learning/>.

¹⁴ See <http://pngoportal.org/en/3049.html>.

¹⁵ See www.aljazeera.com/news/2020/8/25/gaza-in-lockdown-after-first-covid-19-community-transmission.

implemented by the de facto authorities, including the imposition of full and partial curfews and the establishment of quarantine centres. Such measures did mitigate the impact and the spread of the virus but they could not remedy the fundamental structural deficiencies in the health-care sector caused by the blockade.

18. The prohibition of or severe restrictions on the entry of vital and dual-use materials – those that Israel considers could be used for both military and civilian purposes, including cement and steel – chronic power shortages and the contamination of more than 90 per cent of the drinkable water supply in Gaza have debilitated the work of hospitals even before the onset of the current pandemic. Current statistics are extremely disconcerting: it is estimated that there are only 93 ventilators and 110 beds in the intensive care units in Gaza to cover a population of 2 million.¹⁶ As of the end of September 2020, the World Health Organization estimated that 47 per cent of essential drugs were at zero stock level, with supply of less than a month jeopardizing the lives of more than 350 oncology patients and causing the suspension of more than 13,000 elective surgeries. More than 50 per cent of primary health-care staff in Gaza have been reassigned to support the COVID-19 response, gravely affecting an appropriate response to and treatment of non-COVID-19-related illnesses. The Special Rapporteur had specifically warned in early September that “should the COVID-19 pandemic take root in Gaza, the consequences would likely be very serious”.¹⁷

19. Faced with few alternatives for treatment, Palestinians in Gaza, especially those with critical health conditions, continue to experience arbitrary delays and denials of Israeli-issued exit permits needed for essential and often life-saving health care outside of Gaza. The suspension of security coordination between the Palestinian Authority and Israel in May 2020, in the context of announced annexation plans by Israel in the West Bank, has further complicated and delayed the process of exit permit applications. Since September 2020, the World Health Organization has been operating a coordination mechanism to support Palestinian patients in applying for Israeli exit permits in order to mitigate the impact of the coordination suspension.¹⁸ The Special Rapporteur reiterates that Israel, as the occupying Power, has the primary responsibility to ensure respect for and protection and fulfilment of the right to health of Palestinians in Gaza to the full extent of their actual control, while the Palestinian Authority and the de facto authorities in Gaza also have responsibilities to the extent of their effective control over the population.

20. The Israeli-imposed blockade on Gaza contravenes international law, specifically article 33 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), and amounts to the collective punishment of the entire civilian population in Gaza. The Special Rapporteur stated on 1 September that: “Gaza is on the verge of becoming unlivable. There is no comparable situation in the world where a substantial population has endured such a permanent lockdown, largely unable to travel or trade, and controlled by an occupying power in breach of its solemn international human rights and humanitarian obligations. Our international standards of dignity and morality do not allow such experiments in human despair.”¹⁹ The High Commissioner also noted on 14 September in her global update that “the blockade, which contravenes international law, has conclusively failed to deliver security or peace for Israelis and Palestinians, and should urgently be lifted”.²⁰ More than ever and after 14 years, the Israeli security rationale for the blockade has been undermined by the reality on the

¹⁶ See www.icrc.org/en/document/icrc-donates-vital-intensive-care-equipment-gaza.

¹⁷ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26201&LangID=E.

¹⁸ See www.ochaopt.org/content/covid-19-emergency-situation-report-18.

¹⁹ See www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=26201&LangID=E.

²⁰ See www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26226.

ground, demonstrating that the civilian population of Gaza continues to suffer the brunt of the blockade.

21. The latest asymmetrical escalation of hostilities between Israel and armed groups in Gaza, which ended with a mediated ceasefire in late August, demonstrates that instability will remain unless the fundamental human rights of Palestinians are achieved and protected. Short-term solutions will only serve to deepen the humanitarian crisis as a result of the blockade and increase the frustration of a population already living in extremely dire conditions. The Palestinians in Gaza urgently require immediate steps to ease the impact of the blockade. The Special Rapporteur calls for a specific set of measures, including the reconstruction of the Gaza seaport, the building of new power, water and sewage treatment plants and the permission of the entry of much larger quantities of construction materials and freedom of movement for Gazans. The crisis in Gaza is human-made, and only through the exercise of concerted political will by those with authority can a full-blown humanitarian catastrophe be averted.

D. Children

22. The daily lives of Palestinian children continue to be especially negatively impacted by the continuation of occupation and the exposure of children to violence. According to the report of the Secretary-General on children and armed conflict, in 2019, 32 Palestinian children (29 boys, 3 girls) and 1 Israeli girl were killed in the occupied West Bank, including East Jerusalem. Most of the Palestinian children casualties were attributed to Israeli forces and were mostly caused by live ammunition or air strikes. In the same year, 1,539 Palestinian children (1,460 boys, 79 girls) and 8 Israeli children (5 boys, 3 girls) were maimed (see [A/74/845-S/2020/525](#), paras. 85–86). In that report, the Secretary-General urged Israel to end the excessive use of force against children and ensure accountability for cases involving the killing and maiming of children. He urged Palestinian armed groups to ensure children's safety, including by preventing them from being exposed to violence or by abstaining from instrumentalizing children for political purposes (*ibid.*, paras. 91–92).

23. Palestinian children's access to health care continues to be severely affected. The intricate system of movement restrictions in the case of the West Bank, including East Jerusalem, and the 14-year blockade of Gaza by Israel have resulted in serious challenges in access to health-care facilities and specialized medical treatment for children. In Gaza, children continue to face denial of or delay in access to health-care facilities or specialized treatment outside of the Strip.

24. The Special Rapporteur also continues to be seriously concerned about reports of ill-treatment of children during arrest, interrogation or detention. In 2019, the United Nations received testimonies of children who reported breaches of due process and ill-treatment by Israeli forces in the context of detention, including physical violence (*ibid.*, para. 84). Children held in Israeli detention report patterns of ill-treatment, such as the use of blindfolds, hand ties or leg ties and the denial of food and water or access to toilets. Children also report being denied access to lawyers or parents during interrogation, being compelled to sign documents in Hebrew, which many of the children do not understand, and not being adequately informed about their rights (see [A/75/336](#), para. 20). Israeli practices and policies thus continue to prioritize the punishment and criminalization of Palestinian children instead of their rehabilitation.

E. Palestinian Authority and the de facto authorities in Gaza

25. There continue to be reports of cases of arbitrary arrest and detention by the de facto authorities in Gaza, particularly of journalists and human rights and political activists. Many continue to be arrested because of their political affiliation and perceived opposition to the Hamas authorities. Serious restrictions on freedom of expression continue to be in place, particularly in the context of reporting on the socioeconomic impact of the COVID-19 pandemic. There are also concerning reports of excessive use of force against those who violate curfews in relation to imposed preventive measures.

26. During the COVID-19 crisis, it has been reported that the Palestinian Authority has released some prisoners in order to try to contain the pandemic. However, a number of arrests by Palestinian security forces continued to be reported in the West Bank. Many of those arrested were accused of using social media platforms to criticize the Palestinian Authority or for expressing opposing political views.²¹ Limitations on freedom of expression remain a concern for journalists. A number of allegations of ill-treatment of those arrested also continue to be received.

III. Accountability, impunity and the responsibility of the international community

27. Accountability – the institutional check on the exercise of public and private power on behalf of the common good – is the indispensable component of the rule of law. When used purposively and effectively, accountability entrenches fairness and equality, it promotes healing and resolution, it delivers justice to victims and perpetrators alike, it alleviates conflicts and prevents others from igniting, and it sews together the 10,000 threads of accommodation which nurture social trust.

28. Without accountability, the best-designed systems of law and human governance will wither for lack of enforceability and respect. Without accountability, the possibility of political reconciliation, let alone its flourishing, is unattainable. And without accountability, social wounds metastasize, leaving unchecked retaliation, rather than measured restitution, as the likely response to the injustices of the past and present. As the Office of the United Nations High Commissioner for Human Rights (OHCHR) has noted, “lack of the rule of law and accountability for human rights violations leads to failures of justice and impunity for crimes, conflict over unaddressed grievances, and oppressive, unaccountable rule”.²²

29. The accountability principle applies to all stakeholders, public and private, who have the capacity, through their authority or power, to affect the common good. The former Secretary-General of the United Nations, Kofi Annan, endorsed this broad application of the principle in a report to the Security Council in 2004, stating that the rule of law refers to a principle of governance in which all persons, institutions and entities, public and private, are accountable to laws that are publicly promulgated, equally enforced and independently adjudicated, and which are consistent with international human rights norms and standards (see [S/2004/616](#), para. 6).

30. The breadth of this principle ensures that not only must those who are violating the norms of international human rights and humanitarian norms end their transgressions and be held accountable, but – equally as important – those who have the individual and collective capacity to influence the behaviour of these perpetrators

²¹ See www.amnesty.org/en/latest/news/2020/05/palestine-end-arbitrary-detention-of-critics-in-west-bank-and-gaza/.

²² See <https://bangkok.ohchr.org/rule-of-law-accountability/>.

are also accountable to utilize, to the extent possible, their weight to meaningfully sanction and end these breaches and crimes.

31. The international supervision of the 53-year-old Israeli occupation of Palestine illustrates that, between international law and accountability, there is an enormous gap between promise and performance. The tragic paradox is that there has been no other conflict in the modern world to which the United Nations has contributed so decisively to the development of international law in such a large number of significant areas – providing depth and breadth to the rights of refugees, the application and meaning of belligerent occupation, the strict prohibition against the annexation of occupied territory, the legal status of civilian settlements in occupied lands and the centrality of the right to self-determination, among other areas – while delivering such a paucity of actual protections to the occupation’s many victims.²³

32. The United Nations and other authoritative international institutions have spoken, often with lucidity and incisiveness, about the incompatibility of the Israeli occupation with international law and basic rights-based principles. On a number of occasions, they have warned Israel about its defiance of, and non-compliance with, Security Council, General Assembly and Human Rights Council resolutions. Rarely, however, have they actually taken steps to hold Israel accountable – through effective countermeasures and sanctions – for its obstructive policies and practices concerning the occupation.

33. The purpose of this call for consequential accountability is plainly obvious: Israel has been operating a largely cost-free occupation for decades, with every available indicator – whether it is the unrelenting growth in the settlement population, the confiscation of more and more Palestinian public and private lands for settlements and the Israeli military, the repeated proclamations by Israeli political leaders that the occupied lands are Israeli by right, or the refusal by Israel to acknowledge that its rule over the Palestinian territory is governed by the laws of occupation – pointing to an unremitting occupation. The former head of the Israeli Shin Bet (the country’s internal security unit), Carmi Gillon, recently observed, with regret, that “the status quo is good for Israel, because Israel gets all it wants without paying a price”.²⁴

34. Israel is a rational actor, and it understands that, if the incentives to thicken its occupation are high and the deterrents from the international community are virtually non-existent, it can continue to devour the territory meant for a Palestinian State unimpeded. If impunity continues to be indulged and even rewarded by the international community, then it is magical thinking to expect an acquisitive occupying power would do anything else but further expand its settlement enterprise, prepare even more assiduously for a future de jure annexation claim, doom the Palestinians to a future without hope and write the obituary for the two-State solution.

35. In the report of the Special Rapporteur of October 2019 (A/74/507), the section on accountability focused on the responsibilities of the international community. The present report addresses the accountability responsibilities of two other important and influential actors in the context of the occupation: the Security Council of the United Nations and private corporations. The Security Council is the custodian for ensuring international peace and security and has the authority to impose international sanctions and other actions to protect international law when peace and security are threatened. Private corporations play a significant role in sustaining the economic

²³ Susan Akram and others, eds., *International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach to Middle East Peace* (Abingdon, United Kingdom of Great Britain and Northern Ireland, Routledge, 2011).

²⁴ See www.haaretz.com/middle-east-news/palestinians/.premium-the-palestinians-got-screwed-they-are-now-a-non-issue-1.8968748.

viability of the illegal Israeli settlements, thereby inextricably entangling businesses in the abusive human rights record of the occupation.

A. Security Council and the Israeli occupation

Introduction

36. Over the past five decades, the Security Council has repeatedly and unambiguously endorsed three fundamental principles with respect to the Israeli occupation of the Palestinian territory (the West Bank, including East Jerusalem, and Gaza). First, Israel is the occupying Power, the Fourth Geneva Convention of 1949 applies in full, and Israel is required to fulfil all of its obligations under the Convention.²⁵ Second, the acquisition of territory by force or war is inadmissible.²⁶ Third, the creation and expansion of the Israeli settlements is a serious violation of the absolute prohibition under international law of the occupying Power transferring parts of its civilian population into the occupied territory.²⁷ All three of these principles were expressly reaffirmed by the Council in its resolution [2334 \(2016\)](#). These three principles are among the most settled and widely-accepted tenets of modern international law.

37. At no time have any of these three principles been accepted or applied by Israel. The Security Council has spoken, at times sharply, about the defiance of Israel, but it has not imposed any consequences in the face of the ongoing obstructiveness of Israel. There is no other grave international human rights situation, and no other insubordinate State actor, in the world today about which the Security Council has spoken in such quantity and with such critical clarity, but acted with such passivity.²⁸ And yet, even as Israel has deepened its obstinacy in recent years, the Security Council has not only failed to act, it no longer even speaks on the issue with the regularity it had before: since January 2009, the Council has adopted only two resolutions critical of the Israeli occupation,²⁹ even as human rights conditions on the ground have progressively worsened.

Principle 1: Fourth Geneva Convention

38. The Fourth Geneva Convention was enacted in the aftermath of the Second World War to offer broad protections to civilians caught in war, who are the most vulnerable people in any armed conflict. Regarding the applicability of the Convention, Israel has argued – virtually alone in the world – that it does not apply to the Palestinian territory, and therefore that the territory is not occupied. This is because, in its view, no other State had a valid sovereign claim to those lands when it captured them in 1967.³⁰ The Security Council has consistently repudiated this stance, confirming in at least 22 resolutions since 1967 that the Convention applies in full to

²⁵ The Security Council first referred to the applicability of the Fourth Geneva Convention to the Israeli occupation in its resolution [237 \(1967\)](#), adopted within a week of the end of the war of June 1967.

²⁶ See Council resolution [242 \(1967\)](#).

²⁷ See Council resolution [446 \(1979\)](#).

²⁸ Kofi Annan, in his memoirs, observed that “the Council’s aggressive stance against the Syrian presence in Lebanon stood in stark contrast to its passivity regarding Israel’s occupation of Arab lands...the perception of double standards in the Middle East undermined the United Nations”. See Kofi Annan, with Nader Mousavizadeh, *Interventions* (New York, Penguin Books, 2012), p. 298.

²⁹ Resolutions [1860 \(2009\)](#) and [2334 \(2016\)](#).

³⁰ See <https://mfa.gov.il/MFA/MFA-Archive/2003/Pages/DISPUTED%20TERRITORIES-%20Forgotten%20Facts%20About%20the%20We.aspx>.

the Israeli occupation, most recently in 2016.³¹ On various occasions, the Security Council has “strongly deplored” the continued refusal by Israel to comply with previous resolutions directing it to abide by the Convention,³² demanded that Israel “immediately and scrupulously” comply with the Convention³³ and noted that, in the event of non-compliance, it would examine “practical ways and means” to secure “full implementation” by Israel of prior resolutions on the application of the Convention.³⁴

39. Twice in 1980 – after 13 years of occupation – the Security Council affirmed the “overriding necessity to end the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem”.³⁵ Yet, in 2020 – with the Israeli occupation now four times as prolonged as it was in 1980 – the occupation has exponentially deepened and thickened.³⁶ Israel has rejected the applicability of the Fourth Geneva Convention since the very beginning of the occupation,³⁷ and both the United Nations and many respected human rights organizations have determined that Israel has repeatedly breached a number of the guaranteed protections enshrined in the Convention (see [A/HRC/43/67](#)).³⁸

Principle 2: annexation of occupied territory

40. The annexation of occupied territory by an occupying power is not only strictly prohibited by international law,³⁹ it is now deemed to be a crime of aggression under the Rome Statute of the International Criminal Court.⁴⁰ In the context of the Israeli occupation, the Security Council has expressly endorsed the principle of the inadmissibility of the acquisition of territory by war, force and/or military conquest on at least 11 occasions.⁴¹ With respect to the two-stage annexation by Israel of East Jerusalem (in June 1967 by a Cabinet decision and in June 1980 by the Knesset), the Security Council has repeatedly stated that East Jerusalem remains occupied and that the proclamation by Israel of sovereignty is “null and void”, is “a flagrant violation of the Fourth Geneva Convention” and has “no legal validity”.⁴²

41. In the face of the persistent refusal of Israel to unwind its annexation of East Jerusalem, the Security Council has “strongly deplored” contravention by Israel of

³¹ See, generally, resolutions [446 \(1979\)](#) and [2334 \(2016\)](#).

³² See Council resolution [476 \(1980\)](#).

³³ See Council resolution [592 \(1986\)](#).

³⁴ See Council resolution [478 \(1980\)](#).

³⁵ See Council resolutions [471 \(1980\)](#) and [476 \(1980\)](#).

³⁶ Ardi Imseis, “Negotiating the illegal: on the United Nations and the illegal occupation of Palestine, 1967-2020”, *European Journal of International Law* (September 2020); and Michael Sfard, *The Wall and the Gate: Israel, Palestine, and the Legal Battle for Human Rights* (New York, Metropolitan Books, 2018).

³⁷ Theodor Meron, “The West Bank and international humanitarian law on the eve of the fiftieth anniversary of the Six-Day War”, *American Journal of International Law*, vol. 111, No. 2 (April 2017).

³⁸ See also the Israel/Palestine country pages of Amnesty International (www.amnesty.org/en/countries/middle-east-and-north-africa/israel-and-occupied-palestinian-territories/) and Human Rights Watch (www.hrw.org/middle-east/north-africa/israel/palestine).

³⁹ See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 136, at para. 87 (p. 171), where the International Court of Justice stated that the principal “No territorial acquisition resulting from the threat or use of force shall be recognized as legal” has now achieved the status of customary international law.

⁴⁰ Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, article 8 bis, para. 2: “Any of the following acts ... qualify as an act of aggression: (a) ... any annexation by the use of force of the territory of another State or part thereof”.

⁴¹ See resolution [2334 \(2016\)](#), in which the Council reaffirmed the inadmissibility of the acquisition of territory by force.

⁴² See resolutions [471 \(1980\)](#), [476 \(1980\)](#) and [478 \(1980\)](#).

United Nations resolutions, has “urgently” called upon it to “rescind all such measures” and has demanded that Israel “desist forthwith” from any further action to alter the status of Jerusalem.⁴³ On other occasions, the Council has confirmed “in the strongest terms” that the annexation is “totally invalid” and deplored “the failure of Israel to show any regard for the resolutions of the General Assembly and the Security Council”.⁴⁴

42. In reply, Israel has continued to intensify its annexation of East Jerusalem through the creation and expansion of 12 civilian settlements, the presence of 215,000 Jewish settlers and the construction of a wall separating East Jerusalem from the West Bank, and by solidifying the political and infrastructural integration of East and West Jerusalem.⁴⁵ No evidence has ever been forthcoming on the part of Israel that it has begun to comply, or intends to comply, with any of the directions of the Security Council on East Jerusalem, with the Prime Minister of Israel proclaiming in February 2020 that the Government had successfully accomplished its annexation of East Jerusalem in the face of great international opposition.⁴⁶

Principle 3: Israeli settlements

43. International law has strictly forbidden an occupying power from attempting to demographically transform an occupied territory through the implantation of its civilian population.⁴⁷ The purpose of this prohibition is to preserve the indigenous population’s right to self-determination,⁴⁸ to halt an avaricious occupying power from advancing an impermissible annexation claim through territorial colonization,⁴⁹ and to avert the immense human suffering that inevitably follows the process of settler implantation.⁵⁰ Since 2002, settler implantation has been determined to be a war crime under the Rome Statute.⁵¹

44. Beginning in 1979, the Security Council has stated on at least six occasions that the establishment by Israel of civilian settlements in occupied territory has “no legal validity” and, more vividly, is a “flagrant violation under international law”.⁵² In 1980, the Council “strongly deplored” the non-cooperation of Israel and its rejection of prior resolutions on settler implantation.⁵³ In 2016, the Council determined that the

⁴³ See resolutions [252 \(1968\)](#), [476 \(1980\)](#) and [478 \(1980\)](#).

⁴⁴ See resolution [267 \(1969\)](#); see also resolutions [298 \(1971\)](#) and [478 \(1980\)](#).

⁴⁵ Meir Margalit, *The City of Jerusalem: the Israeli Occupation and Municipal Subjugation of Palestinian Jerusalem* (Brighton, United Kingdom, Sussex University Press, 2020).

⁴⁶ Oren Liebermann and Andrew Carey (Cable News Network), “As election looms, Netanyahu announces new construction in East Jerusalem”, 20 February 2020: “‘We did this then in the face of strong international opposition. We overcame every obstacle and we did it, and see what we have done in Jerusalem’, Netanyahu said. ‘We are connecting all parts of the united Jerusalem, the rebuilt Jerusalem. It is a source of great pride and is great news for the entire people of Israel’.”

⁴⁷ See Fourth Geneva Convention, article 49, sixth paragraph.

⁴⁸ See [E/CN.4/Sub.2/1993/17](#) and [E/CN.4/Sub.2/1993/17/Corr.1](#), para. 202: “Policies and practices of population transfer may be aimed specifically at denying a meaningful implementation of the right to self-determination, for instance, by altering the relevant unit of self-determination through demographic manipulation, or policies which have that effect”.

⁴⁹ See International Committee of the Red Cross, commentary of 1958 on the sixth paragraph of article 49 of the Fourth Geneva Convention, available from: www.icrc.org/ihl.nsf/COM/380-600056?OpenDocument.

⁵⁰ See [E/CN.4/Sub.2/1997/23](#) and [E/CN.4/Sub.2/1997/23.Corr.1](#), para. 16: “The range of human rights violated by population transfer and the implantation of settlers place this phenomenon in the category of mass violations of human rights”.

⁵¹ Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, article 8 (2) (b) (viii).

⁵² See resolutions [446 \(1979\)](#) and [465 \(1980\)](#).

⁵³ See resolutions [465 \(1980\)](#) and [471 \(1980\)](#).

settlement enterprise of Israel was gravely imperilling what remained of the two-State solution and demanded that Israel “immediately and completely cease all settlement activities”.⁵⁴ By 2020, however, Israel has created approximately 250 thriving settlements, with more than 650,000 settlers, in East Jerusalem and the West Bank, and it has continued to approve record numbers of new settlement housing units over the past year.⁵⁵ In his 14 quarterly reports to the Security Council since 2017 as to whether Israel has been implementing the clear direction in resolution [2334 \(2016\)](#) that it absolutely halt all of its settlement activities, the Special Coordinator for the Middle East Peace Process has reported, on each occasion, that Israel has taken no steps to satisfy this obligation.⁵⁶

Security Council and accountability

45. Under Article 24 (1) of the Charter of the United Nations, the Security Council has the responsibility of maintaining international peace and security. With that responsibility comes the authority, under Article 41 of the Charter, to apply a broad range of enforcement mechanisms, short of military action, in order to compel errant States and actors to cooperate with international law (such as the 1991 Iraqi invasion of Kuwait), to contain a perceived threat to international peace and security (such as regional nuclear proliferation) or to address the malign actions of specific international, national or subnational actors (such as Islamic State in Iraq and the Levant, Al-Qaida and the Taliban)⁵⁷. Since 1966, the Security Council has established 30 sanctions regimes, and currently maintains 14 ongoing regimes. While Security Council sanctions have had a varied record in effectiveness and have been criticized on occasion for their adverse humanitarian impact,⁵⁸ more recent history has demonstrated that – when applied with precision, purpose, unity and the flexibility to vary and escalate accountability measures – United Nations-led sanctions can produce meaningful changes in behaviour by States and other actors.⁵⁹

46. The defiance of Israel – as termed by the Security Council⁶⁰ – of the direction of the international community is a serious challenge to the rules-based international order. The resolutions and decisions of the Security Council, along with those of the General Assembly, are the bedrock of the international legal consensus on the Israeli occupation of Palestine. As a solemn condition of joining the United Nations, Member States commit themselves to accepting and carrying out the decisions and directions of the Security Council.⁶¹ If the rule of law matters, then so does accountability. If the Security Council is to speak with authority, then the disobedience of Council directions must have consequences.

47. Similarly, the inertia of the Security Council in meaningfully responding to the non-compliance of Israel with its resolutions and directions – particularly on the three

⁵⁴ See resolution [2334 \(2016\)](#).

⁵⁵ See Peace Now, “4,948 settlement units advanced at October 2020 Higher Planning Council sessions”, 15 October 2020: “These approvals officially make 2020 the highest year on record in terms of units of settlement plans promoted since Peace Now began recording in 2012”.

⁵⁶ See, for example, Nickolay Mladenov, Special Coordinator for the Middle East Peace Process, statement at the Security Council briefing on the situation in the Middle East, 29 September 2020 (see [S/PV.8762](#)).

⁵⁷ Larissa Van Den Herik, *Research Handbook on UN Sanctions and International Law* (Cheltenham, United Kingdom, Edward Elgar Publishing, 2017).

⁵⁸ Jeremy Matam Farrall, *United Nations Sanctions and the Rule of Law* (Cambridge, United Kingdom, Cambridge University Press, 2007).

⁵⁹ Enrico Carisch, Loraine Rickard-Martin and Shawna W. Meister, *The Evolution of UN Sanctions: from a Tool of Warfare to a Tool of Peace, Security and Human Rights* (New York, Springer, 2017).

⁶⁰ See Council resolutions [608 \(1988\)](#), [636 \(1989\)](#) and [641 \(1989\)](#).

⁶¹ See Charter of the United Nations, Article 25.

fundamental principles it has so frequently endorsed – is also a body blow to the efficacy of international law.⁶² In his memoirs, Kofi Annan was disturbed by the “prolonged and sometimes brutal occupation” by Israel, and lamented the timidity of the Security Council’s response: “Even when the Council took positions, it did not establish mechanisms to enforce its will”.⁶³ He also identified a leading source for the Council’s paralysis: the “unhealthy possessiveness of the Middle East peace process” by the United States of America.⁶⁴ Since 1973, the United States has cast 31 vetoes at the Security Council against draft resolutions critical of the Israeli occupation; in each case, it has been the only Council member casting a negative vote. No other permanent member of the Security Council has vetoed a Council resolution critical of the Israeli occupation.⁶⁵

B. Private corporations and the Israeli settlements

Introduction

48. In 2011, the Human Rights Council unanimously adopted the Guiding Principles on Business and Human Rights (A/HRC/17/31, annex). The Guiding Principles are a set of non-binding norms to influence corporate decision-making in integrating human rights principles into daily business operations. The Principles are intended to apply to all commercial and corporate sectors and to all geographic regions. They are part of a larger global initiative – including major statements by the International Committee of the Red Cross⁶⁶ and the Organization for Economic Cooperation and Development⁶⁷ – to mainstream a responsive and vibrant human rights culture within the corporate world. The Guiding Principles set out three pillars as part of the United Nations “Protect, Respect and Remedy” Framework to advance human rights practices and compliance:

- (a) The duty of States to protect human rights, including against abuses by corporations;
- (b) The corporate responsibility to respect human rights, including by acting with due diligence to avoid violating the rights of others;
- (c) The need for greater access to effective remedies for victims of business-related abuses.

49. The Guiding Principles are not law, and most international human rights treaties do not contain specific obligations with respect to corporations.⁶⁸ Nonetheless, a number of States have extended criminal and/or civil liability to corporations domiciled within their jurisdictions through their domestic laws, many of which reflect international human rights standards (see A/HRC/17/31, annex, commentary on Principle 12). Some States have also issued national guidance policies and

⁶² In 2020, retired Ambassador of the United States of America, Peter Mulrean, observed that the international community’s “words were never matched by action, however, especially because the United States ensured through pressure on other countries and through the United Nations Security Council veto that Israel was never meaningfully punished by or even harshly criticized in that potentially influential forum” (see www.justsecurity.org/69925/trumps-deal-of-the-century-is-bibis-dream-come-true/).

⁶³ Annan, *Interventions*, p. 256.

⁶⁴ *Ibid.*, p. 290.

⁶⁵ See <https://research.un.org/en/docs/sc/quick>.

⁶⁶ See www.icrc.org/en/doc/resources/documents/misc/business-ihl-150806.htm.

⁶⁷ See www.oecd.org/corporate/mne/responsible-business-conduct-matters.htm.

⁶⁸ Note that there are advanced negotiations for a legally-binding international treaty on business and human rights (see www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/OEIGWG_RevisedDraft_LBI.pdf).

advisories to corporations regarding their compliance with human rights standards internationally. The rich body of modern international human rights legal instruments – regarding labour rights, environmental rights and the rights of vulnerable groups, such as minorities, women, children and persons with disabilities, among other guarantees – is the North Star for directing corporations on how to satisfy their human rights responsibilities.

50. Among the relevant principles found in the Guiding Principles with respect to corporate activity in the Israeli settlements and the occupation are the following:

(a) **Principle 7.** States should assist businesses that are involved in conflict-affected areas to identify, prevent and mitigate human rights risks, and should deny access to businesses involved in gross human rights abuses;

(b) **Principle 11.** Businesses should avoid infringing the human rights of others and should address human rights impacts with which they are involved;

(c) **Principle 12.** The responsibility to respect human rights refers to internationally recognized human rights, which would include the International Bill of Human Rights and fundamental labour standards, but would also encompass all other United Nations human rights instruments;

(d) **Principle 13.** The responsibility to respect human rights requires businesses to avoid causing or contributing to adverse human rights impacts, and to prevent or mitigate human rights impacts that are directly linked to their business relationships;

(e) **Principle 23.** In all contexts, businesses should comply with all applicable internationally recognized human rights and treat the risk of causing or contributing to gross human rights abuses as a legal compliance issue.

51. In addition to international human rights law, businesses are expected to incorporate the tenets of international humanitarian law and international criminal law in their operational responsibilities.⁶⁹ International humanitarian law applies to conflict-affected areas and occupied territories and requires that States and individuals adhere to the gold-standard humanitarian legal obligations found primarily in the Geneva Conventions of 1949 and their legal offspring. While companies operating in a conflict zone or in an occupation could contribute to the economic and social well-being of the affected population, their activities, conversely, could become complicit in the commission of human rights and humanitarian abuses or assisting the occupying power to sustain its alien rule once it has become apparent that it is governing in violation of the laws of occupation.

52. The focus of international criminal law is on individuals (rather than States or other institutional actors) who commit, instigate, order, plan or are complicit in prohibited activity under the Rome Statute of the International Criminal Court, such as war crimes and crimes against humanity. Individual corporate decision makers could be liable under international criminal law. Serious issues relating to international humanitarian and criminal law can arise in occupations where the occupying power is engaged in the transfer of parts of its civilian population into the occupied territory. The Guiding Principles on Business and Human Rights require companies in conflict zones and occupations to employ an enhanced due diligence, or “heightened care”, to ensure that their operations are compliant with their legal responsibilities. However, there are some circumstances in which no amount of

⁶⁹ For valuable commentary, see: D. Hughes, “Differentiating the Corporation: Accountability and International Humanitarian Law”, *Michigan Journal of International Law*, vol. 41, No. 1 (2020); and Marya Farah, *Business and Human Rights in Occupied Territory: Guidance for Upholding Human Rights* (Ramallah, Al-Haq, 2019).

enhanced due diligence will avoid corporate complicity in human rights violations in a conflict area or an occupation.

Corporations and the Israeli settlements

53. The Israeli settlements are a profound breach of international law, as determined by the leading deliberative and judicial organs of the United Nations, including the Security Council,⁷⁰ the General Assembly,⁷¹ the Human Rights Council⁷² and the International Court of Justice.⁷³ Other influential international bodies – including the European Union,⁷⁴ the International Committee of the Red Cross⁷⁵ and the High Contracting Parties to the Fourth Geneva Convention⁷⁶ – concur. More seriously, the settlements are a presumptive war crime under the Rome Statute.⁷⁷

54. The disfiguring human rights consequences of the settlements upon the Palestinians in East Jerusalem and the West Bank are pervasive. The United Nations High Commissioner for Human Rights has determined that the human rights violations emanating from the settlements include land confiscation and alienation, settler violence, discriminatory planning laws, the appropriation of natural resources, home demolitions, forcible population transfer, labour exploitation, forced evictions and displacement, physical confinement, discriminatory law enforcement and the imposition of a two-tiered system of unequal political, social and economic rights based on ethnicity. Above all, the settlements serve the broader goal of the Government of Israel of staking an impermissible sovereignty claim over parts of the occupied territory while simultaneously denying Palestinian self-determination (see [A/HRC/43/67](#); see also [A/HRC/22/63](#)). The Israeli settlements and the corresponding shrinking space for Palestinians have created a “coercive environment” in the Occupied Palestinian Territory, according to the United Nations.⁷⁸

55. The United Nations Conference on Trade and Development has found that the territorial restrictions imposed by the settlements – the separate road systems for settlers and Palestinians; the hundreds of roadblocks, checkpoints and obstructions throughout the West Bank; settler violence; and regular area closures and curfews – have created a shattered economic space in the Occupied Palestinian Territory. This has resulted in a highly dependent and captive Palestinian economy, mounting impoverishment, daily impositions and indignities and an accelerating trend towards economic de-development.⁷⁹ In 2018, a leaked memorandum by European Union

⁷⁰ See resolution [2334 \(2016\)](#).

⁷¹ See Assembly resolution [71/97](#).

⁷² See Council resolution [43/31](#).

⁷³ *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, at para. 120.

⁷⁴ Council of the European Union, “Council conclusions on the Middle East peace process” (18 January 2016).

⁷⁵ Peter Maurer, “Challenges to international humanitarian law: Israel’s occupation policy”, *International Review of the Red Cross*, vol. 94, No. 888 (2012), p. 1503.

⁷⁶ Declaration of the Conference of High Contracting Parties to the Fourth Geneva Convention, 17 December 2014, available from: <https://unispal.un.org/UNISPAL.NSF/0/E7B8432A312475D385257DB100568AE8>.

⁷⁷ Ghislain Poissonier and Eric David, “Israeli settlements in the West Bank: a war crime?” *La Revue des droits de l’homme*, No. 17 (2020). See also www.amnestyusa.org/lets-be-clear-israels-long-running-settlement-policy-constitutes-a-war-crime/.

⁷⁸ See www.un.org/unispal/document/ocha-2019-humanitarian-needs-overview/.

⁷⁹ *The Economic Costs of the Israeli Occupation for the Palestinian People: Cumulative Fiscal Costs* (United Nations publication, Sales No. E.20.II.D.6).

diplomats in Jerusalem highlighted the “systematic legal discrimination” imposed by the Israeli occupation and its settlement enterprise against the Palestinian people.⁸⁰

56. Corporate and business activities contribute significantly to the economic viability of the Israel settlement enterprise.⁸¹ It is private corporations that, through tenders issued by the Israeli Government agencies that administer the settlement enterprise, construct the settlements and build and maintain the roads and utility infrastructure that service them. Businesses operating in the settlements and the industrial parks – in particular, manufacturing and service industries, and wineries – provide jobs and commercial activity that economically sustain the settlements, while paying taxes to settlement municipalities. Private security companies guard many of the settlements, and those companies and high-tech businesses supply surveillance and identification equipment. Banks and financial institutions facilitate the fiscal infrastructure to arrange residential mortgages and to lend capital to businesses operating in the settlements. Law firms offer legal services to the settlements, settlers and settlement businesses. Real estate firms coordinate the sale and purchase of residential and commercial properties in the settlements. Agricultural corporations grow a range of foodstuffs for domestic and export markets, utilizing large-scale farming and modern technology. Domestic and international tourism is an emerging sector for the settlements, along with hotels and accommodation rentals. Retail store chains operate in the settlements. Transportation companies link the settlements to each other and to communities within Israel. Extraction companies exploit the Occupied Palestinian Territory’s natural resources, including minerals and water. Equipment companies supply the heavy machinery needed to construct residential and commercial building structures. Waste management companies service both municipalities and industrial enterprises in the settlements. The construction and maintenance of the separation wall through occupied territory solidifies an illegal situation.

57. Many of the corporations and businesses supplying commercial services in, or to, the settlement economy are Israeli companies. However, a number of international corporations also contribute to, and profit from, the settlement economy. International banks and financial institutions underwrite loans to, or invest in, businesses with operations in the settlements. Other companies sell goods and services to the settlements, such as construction materials, heavy machinery and solar power technology, or excavate non-renewable natural resources. Major international transportation companies have participated in the building of the Jerusalem light rail system (which connects a number of the illegal East Jerusalem settlements to West Jerusalem) and the high-speed rail connection between Tel Aviv and Jerusalem (which passes through parts of the occupied territory). Major international accommodation booking companies advertise housing rentals in the Israeli settlements. Goods and services from the Israeli settlements, including manufactured goods, wines and foodstuffs, are exported in quantity to the international market.

58. Without this extensive corporate involvement, the settlements – the engine of the occupation – would be an unsustainable economic burden for the Government of Israel. These businesses – domestic and international – benefit greatly from the illegal

⁸⁰ Andrew Rettman, “No EU cost for Israeli ‘apartheid’ in West Bank”, EUobserver, 1 February 2019.

⁸¹ Paras. 56–58 are informed by the comprehensive overviews of the corporate dimensions of the Israeli settlement economy provided in Amnesty International, *Think Twice* (2019); Amnesty International, *Destination: Occupation* (2019); Farah, *Business and Human Rights in Occupied Territory*; Profundo and 11.11.11, *Doing Business with the Occupation* (2018); Human Rights Watch, *Bankrolling Abuse* (2018); Human Rights Watch, *Occupation, Inc.* (2016); and Diakonia, *The Unsettling Business of Settlement Business* (2015). See also the work of Who Profits, available from: www.whoprofits.org/.

confiscation by Israel of Palestinian land and natural resources, from the discriminatory Israeli two-tier system of rights, benefits and opportunities between the settlements and Palestinian people, and from Palestinian impoverishment (and the resulting employment of low-cost Palestinian labour in the settlements) that is the inevitable consequence of a settlement implantation enterprise.⁸² The question becomes whether companies can become, or remain, involved with the Israeli settlements and still honour their human rights commitments.

Enhanced due diligence or complete corporate abstinence?

59. In 2014, the Working Group on the issue of human rights and transnational corporations and other business enterprises issued a detailed statement on the implications of the Guiding Principles on Business and Human Rights in the context of the Israeli settlements.⁸³ It pointed to the illegality of the settlements and the wide ranges of human rights abuses associated with them. In its conclusion, the Working Group issued a cautionary yellow light to corporate involvement in the Israeli settlements, stating that:

Business enterprises doing business, or seeking to do business, in or connected to the Israeli settlements in the OPT need to be able to demonstrate that they neither support the continuation of an international illegality nor are complicit in human rights abuses; that they can effectively prevent or mitigate human rights risks; and are able to account for their efforts in this regard.

60. In 2018, OHCHR released an interim report regarding its progress towards creating a database of businesses involved in the Israeli settlements. In its conclusion, OHCHR expressed considerable doubt as to whether a company could engage commercially with the Israeli settlements and, at the same time, comply with its human rights responsibilities (see [A/HRC/37/39](#), para. 41):

Considering the weight of the international legal consensus concerning the illegal nature of the settlements themselves, and the systemic and pervasive nature of the negative human rights impact caused by them, it is difficult to imagine a scenario in which a company could engage in listed activities in a way that is consistent with the Guiding Principles and international law.

61. In 2019, Amnesty International published a substantive study on the human rights and legal implications of companies doing business with the Israeli settlements.⁸⁴ It concluded that, given their grave human rights consequences, only a complete red light abstinence would suffice:

A company cannot meet its responsibility to respect human rights and the standards of international humanitarian law while doing business with the settlements. This is because the settlements have been established and developed in breach of the international law rules governing what states can and cannot do in a situation of military occupation. As such, they constitute war crimes and give rise to systematic, widespread and serious human rights violations.

62. The Special Rapporteur takes the view that any form of corporate involvement – whether Israeli or international, whether direct or indirect, whether intentional or incidental – with the Israeli settlements is wholly incompatible with human rights obligations, with the Guiding Principles and with any purposive definition of enhanced due diligence. Three reasons inform this view. First, the Israeli settlements

⁸² Yael Ronen, “Responsibility of businesses involved in the Israeli settlements in the West Bank”, January 2015.

⁸³ See <https://www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf>.

⁸⁴ See Amnesty International, *Think Twice*, p. 25.

are a flagrant violation and a grave breach of the Fourth Geneva Convention and a presumptive war crime under the Rome Statute. These are among the most serious of contraventions under international human rights, humanitarian and criminal law. Second, corporations and businesses operating in, or benefiting from, the settlements provide the indispensable economic oxygen for their growth. Whatever positive benefits are cited by companies in defending their engagement with the settlements – often, the employment of Palestinian labour, or the payment of local taxes⁸⁵ – are far outweighed on the human rights ledger by the scale of gross violations inherent in the settlement enterprise. Third, the settlements are the primary political instrument – the pervasive “facts on the ground” – employed by the Government of Israel to advance its de facto and de jure annexation claims and to deny Palestinian self-determination. Annexation is a crime of aggression,⁸⁶ and self-determination is *primus inter pares* of human rights.⁸⁷

63. Under present conditions, the only form of corporate engagement in the Occupied Palestinian Territory that could comply with the human rights responsibilities of businesses would have to: (a) directly benefit the protected population under occupation; (b) withhold any benefits to, or involvement with, the Israeli settlements; and (c) contribute to the inherent sovereignty claim of the Palestinian people over their territory.

Human Rights Council database

64. In February 2020, OHCHR released the database of business enterprises involved in certain activities related to the Israeli settlements (see [A/HRC/43/71](#)), pursuant to the request of the Human Rights Council in its resolution [31/36](#). Databases of business activities had been previously commissioned by the United Nations with respect to other conflict zones, including the Democratic Republic of the Congo (see [S/2003/1027](#)) and Myanmar (see [A/HRC/42/CRP.3](#)). The Special Rapporteur welcomes the release of the database, as it provides an important spotlight on corporate activity – both Israeli and international – in the settlements and advances public and corporate understanding of the adverse human rights environment sustained by the settlements.⁸⁸ At the same time, the Special Rapporteur recognizes that the database had a restrictive mandate (it did not seek to cover all business activity related to the settlements that may raise human rights concerns), it was interpreted narrowly (a number of companies with important supply relationships with the settlements and/or the occupation were not included) and it did not contain an adjudicative mechanism.⁸⁹ These concerns must be addressed while enhancing the database’s ability to be a living tool.

⁸⁵ Maha Abdullah and Lydia de Leeuw, *Violations Set in Stone* (Amsterdam, Somo, and Ramallah, Al-Haq, 2020).

⁸⁶ Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998, article 8 bis, para. 2 (a).

⁸⁷ Self-determination is the very first human right cited in both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights.

⁸⁸ Valentina Azarova, “Business and human rights in occupied territory: the UN database of business active in Israel’s settlements”, *Business and Human Rights Journal*, vol. 3, No. 2 (July 2018), p. 187.

⁸⁹ See www.haaretz.com/israel-news/premium-why-the-un-s-settlement-database-doesn-t-go-far-enough-1.8589282.

IV. Conclusions

65. In 1970, the Security Council was faced with an international crisis that has striking similarities to that of the Occupied Palestinian Territory: the prolonged rule of apartheid South Africa over Namibia.⁹⁰ Like Palestine, Namibia was ruled through a United Nations-supervised trust relationship – in one case, an occupation; in the other case, a mandate – by an alien power that was exploiting its position and advancing an illegal claim of sovereignty. Like Palestine, South African rule over Namibia was aided by the extensive presence of regional and international businesses. And like Palestine, the alien power in Namibia was defying the long-standing directions of the Council to end its abusive rule and open the path to independence. In response, the Council authorized a comprehensive set of sanctions and countermeasures to bring an end to South African rule over Namibia. These accountability measures – found, among other places, in Council resolution 283 (1970) and the 1971 advisory opinion of the International Court of Justice on Namibia⁹¹ – laid the basis for the international community’s actions against illegal rule by South Africa and the eventual independence of Namibia in 1990.

66. Without the comprehensive accountability measures developed and applied by the Security Council against South Africa, the independence of Namibia would never have occurred when it did. And without the development and application of comprehensive accountability measures by the international community against the Israeli occupation, it will continue well into the future. This occupation will not die of old age. Nor will it crumble from pleas to respect the United Nations which do not promise the inevitability of adverse consequences if disobeyed. Rights under international law are self-evident, but they are not self-executing.

67. In its resolutions 465 (1980) and 471 (1980), the Security Council called upon all States “not to provide Israel with any assistance to be used specifically in connection with settlements in the occupied territories” and for Israel “to end the prolonged occupation”. Forty years later, it is well past time for the Council to lead the international community by drawing from its own precedents respecting Namibia and other modern sanctions regimes to honour its directions to end assistance to the settlements and to end the occupation. As the International Court of Justice stated in its advisory opinion:

It would be an untenable interpretation to maintain that, once such a declaration had been made by the Security Council under Article 24 of the Charter, on behalf of member States, these Members would be free to act in disregard of such illegality or even to recognize violations of law resulting from it.⁹²

V. Recommendations

68. The Special Rapporteur recommends that the Government of Israel should fully comply with its obligations under international law and that it should completely end its 53 years of occupation with all deliberate speed and enable the realization of Palestinian self-determination.

⁹⁰ John Dugard, *Confronting Apartheid: A Personal History of South Africa, Namibia and Palestine* (Johannesburg, South Africa, Jacana Media, 2018).

⁹¹ *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South-West Africa) notwithstanding Security Council Resolution 276 (1970), Advisory Opinion, I.C.J. Reports 1971*, p. 16.

⁹² *Ibid.*, at para. 112 (p. 52).

69. The Rapporteur recommends that the Council, or, if it fails to act, the General Assembly, in accordance with the procedure pursuant to its resolution [377 \(V\)](#), entitled “Uniting for peace”, adopt resolutions containing the following directions:

(a) To call upon all States maintaining diplomatic or consular relations with Israel to issue a formal declaration to the Government of Israel to the effect that they do not recognize any authority of Israel with regard to the Occupied Palestinian Territory and that they consider the continued presence of Israel in the Territory to be illegal;

(b) To request all States to refrain from any relations – including diplomatic, consular, trade and other agreements – with Israel implying any recognition of the authority of the Government of Israel over any part of the Occupied Palestinian Territory;

(c) To call upon all States to ensure that all corporate enterprises regulated by them cease any and all investment, commercial, operational and trade dealings of any sort with respect to the Israeli settlements and Israeli industrial enterprise zones or with companies regulated by the Government of Israel operating in the Occupied Palestinian Territory;

(d) To request all States to undertake, without delay, a detailed study and review of all bilateral treaties between themselves and Israel to identify whether these treaties contain provisions by which they might apply to the Israeli settlements in the Occupied Palestinian Territory;

(e) To call upon all States to discourage the promotion of tourism and emigration to the Israeli settlements;

(f) Also to call upon all States not to permit the entry of any goods and services produced in or originating from, in whole or in part, the Israeli settlements or Israeli-regulated commercial enterprises in the Occupied Palestinian Territory;

(g) To request all States to report to the Secretary-General on measures they have taken on an annual basis in order to give effect to the provisions set forth by the Security Council and the General Assembly.

70. The Rapporteur recommends that the Security Council should ensure that the database of business enterprises involved in certain activities related to the Israeli settlements becomes a living tool, that it clarify and broaden the mandate of the database and that it provide the database with sufficient resources so that its spotlight can properly identify the scope of all business involvement with the settlements and the occupation.



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**Promotion and protection of human rights: human rights
situations and reports of special rapporteurs and representatives**

Situation of human rights in the Palestinian territories occupied since 1967*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, in accordance with Human Rights Council resolution 5/1.

* The present report was submitted after the deadline in order to reflect the most recent developments.



**Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,
Michael Lynk**

Summary

The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, hereby submits his sixth report to the General Assembly. The report is based primarily on information provided by victims, witnesses, civil society representatives and United Nations agencies. The report contains a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and in Gaza, and an in-depth analysis of the responsibility and performance of international actors.

I. Introduction

1. In the present report, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Michael Lynk, provides a brief overview of the most pressing human rights concerns in the Occupied Palestinian Territory at the time of submission, as identified by the Special Rapporteur in conversations and meetings with civil society. He then presents a detailed analysis of the latest human rights concerns in the Occupied Palestinian Territory with a specific focus on the responsibilities and performance of international actors.

2. The Special Rapporteur would like to highlight once again that, despite his repeated requests, he has not yet been granted access to the Occupied Palestinian Territory by Israel. The Special Rapporteur emphasizes once again his view that an open dialogue among all parties is essential for the protection and promotion of human rights and reminds Israel that he is ready and willing to engage. In addition, the Rapporteur continues to highlight that access to the Occupied Palestinian Territory would play a key role in understanding the fundamental realities of the human rights situation in the territory. The pattern by Israel of non-cooperation with the mandate is a serious concern.

3. The Special Rapporteur was not able to travel to the region, including Amman, owing to travel restrictions in connection with the spread of the coronavirus disease (COVID-19). However, he was able to engage actively with members of civil society and United Nations agencies and collect important information on the topic, most notably through submissions.

4. In the present report, the Special Rapporteur focuses on an in-depth analysis of the responsibilities and performance of international actors.

5. The Special Rapporteur wishes to express his appreciation to the Government of the State of Palestine for its full cooperation with his mandate.

6. The Special Rapporteur emphasizes again his support for the vital work being done by Palestinian, Israeli and international human rights organizations. This work is indispensable not only to the Rapporteur as he seeks to fulfil his mandate, but also to the broader international community. The efforts of human rights organizations to ensure that accurate and complete information about the situation in the Occupied Palestinian Territory is readily available should not go unacknowledged.

II. Current human rights situation

A. Excessive use of force by Israel

7. According to the Office for the Coordination of Humanitarian Affairs of the Secretariat, 55 Palestinians have been killed by Israeli forces in the West Bank in 2021, all by live ammunition.¹ In one such recent example, on 15 August, five Palestinians were killed by Israeli forces during search-and-arrest operations in the Jenin refugee camp. They were reportedly killed following an armed clash between Palestinians and an Israeli undercover unit, which entered the camp to arrest a Palestinian reportedly affiliated with Hamas.² On 28 July, an 11-year-old boy was killed in Bayt Ummar. He was in a car that was slowly driving away from soldiers when some of them started running after the vehicle and opened fire. At his funeral,

¹ See United Nations, Office for the Coordination of Humanitarian Affairs, "Protection of civilians: Occupied Palestinian Territory", 10–23 August 2021 (as at 27 August).

² Ibid.

held on 29 July, during protests against his killing, Palestinians threw stones and Israeli forces opened fire, shooting and killing another Palestinian man.³

8. Many incidents of killing and injuries to Palestinians occurred as a result of demonstrations and clashes between demonstrators and security forces, many of which were held to protest against settlements and settlement expansion. On 6 August, for example, during a demonstration in Bayta, Palestinians threw stones at Israeli forces, who fired live ammunition, rubber bullets and canisters of tear gas, killing a Palestinian man.⁴

9. Palestinian journalists who report on human rights violations in the Occupied Palestinian Territory faced harassment and violence in an attempt to intimidate them and prevent media coverage of peaceful Palestinian protests. On 27 August 2021, Israeli security forces arrested seven Palestinian journalists who were covering a peaceful demonstration against the establishment of new outposts and violence by settlers in the southern hills of Hebron. The journalists were arrested and their equipment confiscated when they headed to their cars shortly after the protest ended, although they identified themselves as journalists to the soldiers. They were handcuffed, left to sit in the scorching sun for an hour, and later taken to the Qiryat Arba' police station, where they were interrogated. Two of the journalists claimed that they were attacked and beaten by the soldiers during the arrest.⁵

B. Gaza

10. During the 11-day escalation of hostilities in Gaza in May 2021, 260 Palestinians were killed, including 66 children. A total of 129 of those were killed were civilians. More than 2,200 Palestinians were injured during the hostilities, including 685 children and 480 women, some of whom may suffer a long-term disability requiring rehabilitation.⁶ The escalation in hostilities resulted in 113,000 internally displaced persons seeking shelter and protection at schools run by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) or with families.⁷ During the escalation of hostilities, 290 water, sanitation and hygiene facilities were damaged or destroyed, including water wells, water pumping stations and distribution networks.⁸ As of July 2021, most electricity lines had been reconnected and supplies of Qatari-funded fuel entered Gaza again, resulting in the availability of electricity for an average of 14 hours per day across Gaza.⁹

11. In August 2021, demonstrations resumed along the Gaza fence and were met with force by Israel. On 21 August, a “day of rage” was announced and hundreds of Palestinians held a mass demonstration at the Gaza perimeter fence. During the protest, demonstrators hurled stones and other objects towards Israeli forces while Israeli forces fired live ammunition and canisters of tear gas. Another demonstration followed on 23 August. A 31-year-old man and a 12-year-old child were killed by Israeli fire in these demonstrations and more than 100 Palestinians were injured.¹⁰

³ United Nations, Office for the Coordination of Humanitarian Affairs, “Protection of civilians: Occupied Palestinian Territory”, 27 July–9 August 2021.

⁴ Ibid.

⁵ Human Rights Defenders Fund update, 30 August 2021 (on file).

⁶ United Nations, Office for the Coordination of Humanitarian Affairs, “Response to the escalation in the Occupied Palestinian Territory: situation report No. 8”, 8–28 July 2021.

⁷ Ibid.

⁸ WASH Cluster–State of Palestine, “Gaza WASH sector damage assessment”, 28 June 2021.

⁹ United Nations, Office for the Coordination of Humanitarian Affairs, “Response to the escalation in the Occupied Palestinian Territory: situation report No. 8”.

¹⁰ United Nations, Office for the Coordination of Humanitarian Affairs, “Response to the escalation in the Occupied Palestinian Territory: situation report No. 9”, August 2021.

12. Gaza humanitarian aid worker Mohammad el-Halabi, who was accused of diverting funds from World Vision International to armed groups, continues to be detained by the Israeli authorities. His trial concluded in August and his verdict is pending from the District Court. The prosecution relied on secret evidence and did not initially allow him access to a lawyer. On numerous occasions, Mr. el-Halabi was reportedly pressured to accept a plea bargain in exchange for a mitigated list of charges and a lenient sentence, which he repeatedly rejected. According to information received, heavy restrictions were imposed on his defence lawyer, the decision of the Court regarding the admissibility of the reported confession extracted under duress was classified and the Court held all hearings behind closed doors. The Special Rapporteur reiterates his concern that Mr. el-Halabi was not granted a fair trial (A/HRC/47/57, para. 17),¹¹ and calls on Israel to immediately release him.

C. Freedom of movement

13. Restrictions on freedom of movement continued throughout the Occupied Palestinian Territory as a method for Israel to enforce its regime of occupation. Restrictions were imposed on the movement of Palestinians between the West Bank, including East Jerusalem, the Gaza Strip and with regard to travelling abroad. Some 593 Israeli checkpoints and roadblocks continue to effectively obstruct Palestinians' access to rights and services, including health, education and work. In addition, Palestinians in the West Bank are barred from using roads built for Israeli settlers.¹² Those who attempt to cross checkpoints are routinely harassed and obstructed, severely hindering their freedom of movement. For example, on 5 July 2021, two Palestinian women travelled from a medical appointment to one of their homes in Hebron. Some 200 meters before they reached the woman's house, the two were stopped and Israeli border police refused to open the gate and let them through. While they were held at the checkpoint, settlers came and attacked one of the women, who was later taken to the hospital to treat her injuries. The Israeli border patrol reportedly did not intervene during this incident.¹³ This incident is indicative of the situation in Hebron in particular, which is littered with checkpoints, severely restricting the movement of Palestinians, and in the West Bank more generally.

14. Palestinians were also killed and injured in incidents involving checkpoints and roadblocks. In a particularly egregious incident, on the night of 6 April 2021, Israeli security forces erected a temporary checkpoint between Bi'r Nabala and Al-Jib north of Jerusalem. At the checkpoint, security forces stopped the car of a Palestinian couple, parents of five children, who were driving home from a medical appointment. Soldiers opened fire at the car when the couple drove away, resulting in the death of the man and the wounding of his wife.¹⁴ According to B'Tselem, the Israeli security forces announced the launch of a military police investigation into the incident. However, given the widespread impunity surrounding similar incidents, human rights organizations expressed concerns over a similar outcome in this case.¹⁵

¹¹ See also Office of the United Nations High Commissioner for Human Rights, "Gaza aid worker must be given fair trial or released, say UN experts", 12 November 2020.

¹² Amnesty International, *Amnesty International Report 2020/21: The State of the World's Human Rights* (London, 2021).

¹³ B'Tselem, "Border police and settlers attack family in Hebron during argument over crossing a checkpoint, arrest member and demand he not complain against a settler in exchange for releasing him", 8 August 2021.

¹⁴ B'Tselem, "Not an attack or a car-ramming: soldiers at checkpoint shoot and injure Palestinian parents of five, killing father", 27 April 2021.

¹⁵ Ibid.

15. The ability of Palestinians to leave the Gaza Strip continued to be severely impaired, and to a much greater degree following the escalation of hostilities in May 2021. In early July, more than six weeks after the ceasefire, Israel continued to severely restrict travel to and from Gaza through the Erez crossing point.¹⁶ Measures relating to COVID-19 also contributed to enhanced restrictions. In March 2020, Israel announced that it would further reduce the already small number of people granted permits to leave Gaza for medical purposes. As the pandemic progressed, Israel removed some of the movement restrictions imposed on the West Bank (allowing Palestinians work permits to enter Israel, for example), however, the restrictions imposed on Gaza largely remained.¹⁷ The Palestinian Authority's cessation of security coordination with Israel in May 2020, in response to the intention of Israel to annex parts of the West Bank, also contributed to further restrictions. As a result, applications for permits dropped and in March 2021, for example, traffic at the Erez crossing point was significantly reduced to some 6 per cent of its volume in previous months.¹⁸ In May 2021, 1,000 people were recorded leaving the Gaza Strip; the lowest number of exits in the entire year.¹⁹ While it has been reported that the Israeli authorities have eased some movement restrictions for Palestinian patients since the ceasefire, two of every three patients who apply for such permits are not approved by the time of their scheduled appointment.²⁰

D. Settler violence

16. Despite the election of a new Government in Israel in June 2021, which includes more “centrist” politicians – some of whom have spoken out in the past against the settlements enterprise²¹ – the expansion of settlements has continued, and settler violence has shown no signs of abating. Increasingly egregious cases have been documented in 2021, as well as cases involving active support and collaboration between settlers and Israeli security forces. As at 24 September 2021, the Office for the Coordination of Humanitarian Affairs had documented 246 incidents of settler violence resulting in property damage and 93 incidents resulting in injuries.²² Violence is predominantly ideologically motivated and designed to deny access of Palestinians to their land and to terrorize them. Besides physical violence against Palestinians, many incidents involve targeting the livelihoods of Palestinians in rural areas, including by vandalizing livestock, agricultural lands, trees and homes.²³

17. In one particularly heinous incident that took place on 17 August 2021, settlers reportedly struck a 15-year-old boy with their vehicle near Silat ad-Dhahr village on the Nablus-Jenin road, kidnapped him and transported him to the previously evacuated Israeli settlement Homesh, tied him to a tree and beat him and inflicted burns on his feet until he lost consciousness. An Israeli military jeep found the boy

¹⁶ Gisha, “Israel’s restrictions at Gaza crossings are impairing civilian infrastructure, crushing the economy, and violating human rights”, 12 July 2021.

¹⁷ B’Tselem, “Since pandemic, has Israel allowed almost no Palestinians out of Gaza for medical treatment”, 3 May 2021.

¹⁸ Ibid.

¹⁹ United Nations, Office for the Coordination of Humanitarian Affairs, Gaza Crossings database. Available at www.ochaopt.org/data/crossings.

²⁰ United Nations, Office for the Coordination of Humanitarian Affairs, “Response to the escalation in the Occupied Palestinian Territory: situation report No. 8”.

²¹ For example, see Walla News, “*Michaeli v. Yachimovich*: there is nothing more to build in the settlements”, 23 December 2012. Available at <https://news.walla.co.il/item/2599418>. In Hebrew.

²² United Nations, Office for the Coordination of Humanitarian Affairs, “Protection of civilians: Occupied Palestinian Territory”, 7–20 September 2021.

²³ Office of the United Nations High Commissioner for Human Rights (OHCHR), “Israel/OPT: UN experts warn of rising levels of Israeli settler violence in a climate of impunity”, 14 April 2021.

two hours later and handed him over to an ambulance. The boy was taken to the hospital, where he was treated for contusions and burns. He continues to suffer from serious psychological trauma.²⁴

18. Several incidents have been documented of Israeli security forces actively assisting settlers in their attacks. According to B'Tselem, in two separate incidents on 14 May 2021, settlers and soldiers raided two villages, Urif and Iskaka. The settlers, some of whom were armed, threw stones at homes and local residents. Settlers and soldiers jointly opened fire, injuring a total of 12 Palestinians and killing 2.²⁵

19. The atmosphere of impunity surrounding attacks by settlers is deeply concerning and sends an affirmation to settlers that there will be no consequences for their illegal and egregious acts against Palestinians. Israeli human rights non-governmental organization Yesh Din analysed 63 incidents of settler violence that took place between 2017 and 2020, including violent offences, property damage and the desecration of mosques. While police complaints were filed in 60 of the incidents, the police concluded its investigations in 38 incidents. No indictments were filed in any of the incidents.²⁶ Settler violence has an inescapable impact on Palestinians' lives in the West Bank, creating a lingering sense of terror and intimidation.

E. Palestinian Authority and the de facto authorities in Gaza

20. On 24 June 2021, the long-time critic of the Palestinian Authority, Nizar Banat, died in the custody of Palestinian security forces. Since the killing of Mr. Banat in late June, protests have taken place in Hebron, Bethlehem and Ramallah and have been met with excessive force by Palestinian security forces, whether deployed in their regular uniforms or in civilian clothes.²⁷ On 21 August 2021 in Ramallah, Palestinian security forces arrested 23 Palestinians on the grounds that they were holding a public protest. Those arrested were part of a protest demanding the prosecution of those responsible for the killing of Nizar Banat in June. The majority of those arrested were detained before any protest had started. The planned protest had been reported in advance to authorities as required by law.²⁸ More arrests appear to be taking place. Most have been charged with participating in an illegal gathering, inciting sectarian strife and the defamation of the higher authorities. Several of those arrested are well-known human rights defenders and political activists. The arrests sparked a wave of condemnation from the United Nations, the European Union and human rights organizations, which warned against a dangerous decline in rights and public freedoms. The Special Rapporteur would like to reiterate that the obligation to respect, protect and fulfil human rights rests with the competent authority exercising power. Notwithstanding a harsh occupation by Israel, Palestinian civil society has every right to demand that its own political and security leaders live up to their solemn promises to abide by international human rights commitments.

21. Anger was also fuelled by the decision to indefinitely postpone elections that were scheduled for May and July 2021, and would have been the first Palestinian elections in 15 years.²⁹ The President of the State of Palestine, Mahmoud Abbas, announced the indefinite postponement of the elections on 29 April 2021, owing to

²⁴ Gideon Levy and Alex Levac, "Shackled, beaten, strung up on a tree: Palestinian teen brutally attacked by settlers", *Haaretz*, 26 August 2021.

²⁵ B'Tselem, "May 2021: two Palestinians were fatally shot in two joint attacks by settlers and soldiers in the villages of Iskaka and Urif – Awad Harb and Nidal Safadi", 24 August 2021.

²⁶ Yesh Din, "Settler crime and violence inside Palestinian communities, 2017–2020", May 2021.

²⁷ OHCHR, "Occupied Palestinian Territory: attacks against critics must stop, those responsible arrested – UN experts", 6 July 2021.

²⁸ Amira Hass, "The Palestinian authority is quashing legal protests – again", *Haaretz*, 22 August 2021.

²⁹ Al-Jazeera, "UN, EU condemn Palestinian authority over activist arrests", 24 August 2021.

concerns about Palestinians' ability to vote in East Jerusalem. The Special Rapporteur has noted that the Palestinian elections present an opportunity to renew the democratic process, to address long-standing internal political divisions, to strengthen accountable institutions and to take an important step towards achieving the fundamental national and individual rights of the Palestinian people. For the elections to take place, it is important for Israel to clearly state that it will allow the full democratic participation of Palestinians in East Jerusalem. As the occupying power in East Jerusalem, it must interfere as little as possible with the rights and daily lives of the Palestinians.³⁰

22. On 22 July, an explosion took place in a three-story building in a popular market in the Al Zawiya area. It killed a 68-year-old man and injured 14 others, including 6 children. The de facto authorities' follow-up committee announced that they had instructed the Ministry of Interior to investigate the matter. A number of human rights organizations have called for a prompt investigation into the incident and expressed concerns regarding an increase in explosions in residential areas causing harm to civilians.³¹ As of the time of writing, the investigation is still ongoing.

III. Responsibility and performance of international actors

23. The international community – and particularly, but not only, the United Nations – has long accepted that it bears a special responsibility for supervising the question of Palestine, fully ending the Israeli occupation, realizing Palestinian self-determination and ensuring that all issues related to the conflict are brought to a just and durable resolution.³² These issues have understandably taken on an immense political, legal and popular resonance, which ripples well beyond the Levant. Kofi Annan, the former Secretary-General of the United Nations, recalled in his memoirs that: “The Israeli-Palestinian conflict is not simply one unresolved problem among many. No other issue carries such a powerful symbolic and emotional charge affecting people far from the zone of conflict.”³³

24. It was the United Nations that voted to partition Palestine and enable the creation of the State of Israel,³⁴ cared for millions of Palestinian refugees for seven decades,³⁵ established multiple peacekeeping missions in the region³⁶ and closely monitored the ongoing conflict and occupation through the issuance of hundreds of resolutions and myriad reports.³⁷ The international community has been intimately engaged in the conflict through numerous diplomatic ceasefire and peace initiatives, massive arms sales and significant quantities of aid, trade, grants and investment. This has long been the most widely documented and reported conflict zone in the world. Whenever the conflict between Israelis and Arabs over the Palestine question has reached an acute stage, the United Nations has served as the diplomatic cockpit to

³⁰ OHCHR, “Palestinian election: free, fair, democratic and credible vote must include East Jerusalem – UN experts”, 26 July 2021.

³¹ Al Mezan Center for Human Rights, “Al Mezan calls for investigation into house explosion in Gaza that killed one person and injured 14 others”, 22 July 2021.

³² See General Assembly resolution 75/23 (“Reaffirming that the United Nations has a permanent responsibility towards the question of Palestine”).

³³ Kofi Annan, *Interventions: A Life in War and Peace* (New York, Penguin Books, 2012), p. 254.

³⁴ See General Assembly resolution 181 (II). See, generally, Avi Shlaim, *The Iron Wall: Israel and the Arab World*, 2nd ed. (New York, Norton, 2014).

³⁵ Francesca P. Albanese and Lex Takkenberg, *Palestinian Refugees in International Law*, 2nd ed. (Oxford, Oxford University Press, 2020).

³⁶ Karim Makdisi and Vijay Prashad, eds., *Land of Blue Helmets: The United Nations and the Arab World* (Oakland, University of California Press, 2017).

³⁷ Ardi Imseis, *The United Nations and the Question of Palestine: A Study in International Legal Subalternity* (Cambridge, United Kingdom, Cambridge University Press, forthcoming).

address the crisis. The conflict has become, in many ways, the most international of international conflicts, and it will almost certainly remain at or near the top of the international community's political agenda until peace with justice has been accomplished.

25. Given this special responsibility of the international community, how can we assess its actual performance in seeking to successfully end the Israeli occupation? This is especially important given the occupation's inordinate length – it is the longest occupation in the modern era – and the fact that leading international actors appear resigned to the fact that the end of the occupation is nowhere in sight, and that they have run out of ideas and energy on how to challenge the strategic patience of Israel and enable genuine Palestinian self-determination.

26. In his report dated 21 October 2019 (A/74/507), the Special Rapporteur addressed the issue of international accountability obligations, pointing to the legal and political duties under the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), the articles on responsibility of States for internationally wrongful acts adopted in 2001 and Article 25 of the Charter of the United Nations. In his report dated 22 October 2020 (A/75/532), the Special Rapporteur critically reviewed the role of the Security Council in supervising the occupation, pointing out that the Council had failed to impose any meaningful costs on Israel for deepening its occupation of Palestine in defiance of its own resolutions and international law. In the present report, the Special Rapporteur examines the role of four international actors, the United States of America, the European Union, the World Bank and the Quartet, which have played various influential roles as mediators, funders, facilitators and/or supervisors during part or all of the Madrid-Oslo process overseeing the Israeli occupation.

A. International responsibility for the deepening occupation

27. In recent years, the now 54-year-old Israeli occupation of Palestine – always repressive, always acquisitive – has been metastasizing into something much harsher and more entrenched: the permanent alien rule of one people over another, encased in a two-tiered system of unequal laws and political rights. More than 680,000 Israeli settlers living in segregated and privileged settlements amid 5 million stateless Palestinians; asymmetrical wars; geographic fragmentation; a smothered and heavily aid-dependent economy; separate networks of roads and utilities; impoverished and fenced-in ghettos unique in the modern world; a coercive environment; the growing amount of violence required to maintain the occupation; the denial of self-determination; the deeply lopsided access to property and to social, health and employment rights. All of this based entirely on nationality and ethnicity.³⁸ All of this should be unthinkable in the twenty-first century.

28. Legal scholars, including Israeli academics, have confirmed that, under international law: (a) an occupation must be short-term and temporary; (b) an occupation must be strictly conducted in good faith and for the best interests of the population under occupation; (c) the occupying power acquires absolutely no right to settle any of its civilian population in, or to annex any part of, the occupied territory; and (d) the territory must be returned in toto to the sovereign – the people under

³⁸ See the recent reports of Al-Haq, B'Tselem, Human Rights Watch, Amnesty International and the West Bank Protection Consortium.

occupation – as soon as reasonably possible.³⁹ Israel is in long-standing breach of all of these foundational principles, with its occupation having crossed a bright red line into illegality under international law (see A/72/556).⁴⁰

29. However, the international community has been perplexingly unwilling to meaningfully challenge, let alone act decisively to reverse, the momentous changes that Israel has been generating on the ground. This is a political failure of the first order. This very same international community – speaking through the principal political and legal organs of the United Nations – has established the widely accepted and detailed rights-based framework for the supervision and resolution of the Israeli occupation of Palestine.⁴¹ Accordingly, the protracted Israeli occupation must fully end.⁴² Both the Palestinians and Israelis are entitled to live in peace and security and enjoy the right to self-determination, including sovereign, secure and viable States, within the boundaries of Mandate Palestine, based on the 1967 border.⁴³ Annexation of occupied territory is illegal.⁴⁴ All of the more than 280 Israeli settlements in East Jerusalem and the West Bank are flagrant violations of international law.⁴⁵ East Jerusalem has been illegally annexed by Israel and remains occupied territory.⁴⁶ The Palestinian refugees from the 1948 and 1967 wars have the right to choose to return to their homeland.⁴⁷ Gaza is an integral part of Palestine, it remains occupied, and the Israeli blockade is a prohibited form of collective punishment.⁴⁸ The political and legal duty of accountability means that the international community bears the responsibility of challenging and vanquishing serious violations of international law and human rights,⁴⁹ for which it possesses abundant political and legal powers to sanction violators until they have complied with their obligations.⁵⁰

30. Insisting upon international law and a rights-based framework as the basis for supervising and ending the Israeli occupation, and for the creation of a just and durable resolution for Palestinians and Israelis alike, is neither a flight from reality nor an inflexible impediment to engaged diplomacy. Rather, such a framework establishes the clear political boundaries for permissible and impermissible behaviour that all States and international actors – large and small, strong and weak, democratic and authoritarian – have committed themselves to follow through their ratification of

³⁹ Orna Ben-Naftali, Michael Sfard and Hedi Viterbo, *The ABC of the OPT: A Legal Lexicon of the Israeli Control over the Occupied Palestinian Territory* (Cambridge, United Kingdom, Cambridge University Press, 2018); and Aeyal Gross, *The Writing on the Wall: Rethinking the International Law of Occupation* (Cambridge, United Kingdom, Cambridge University Press, 2017).

⁴⁰ See also Ardi Imseis, “Negotiating the illegal: on the United Nations and the illegal occupation of Palestine, 1967–2020”, *European Journal of International Law*, vol. 31, No. 3 (August 2020).

⁴¹ Kofi Annan stated in 2002: “There is no conflict in the world today whose solution is so clear, so widely agreed upon, and so necessary to world peace as the Israeli-Palestinian conflict.” See UN News, “At Arab summit, Annan urges Sharon, Arafat to lead their peoples ‘back from brink’”, 27 March 2002.

⁴² Security Council resolution 476 (1980) (“Reaffirms the overriding necessity for ending the prolonged occupation of Arab territories occupied by Israel since 1967, including Jerusalem”).

⁴³ Security Council resolution 1850 (2008).

⁴⁴ Security Council resolution 2334 (2016).

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ General Assembly resolutions 73/92 and 73/93.

⁴⁸ Security Council resolution 1860 (2009). See also Ban Ki-Moon, Secretary-General of the United Nations, remarks at a press encounter, 28 June 2016.

⁴⁹ See General Assembly resolution 56/83, annex (Responsibility of States for internationally wrongful acts, arts. 40 and 41). See also James Crawford, *State Responsibility: The General Part* (Cambridge, United Kingdom, Cambridge University Press, 2013).

⁵⁰ Jeremy Matam Farrall, *United Nations Sanctions and the Rule of Law* (Cambridge, United Kingdom, Cambridge University Press, 2009); and International Committee of the Red Cross, “Geneva Conventions of 1949 and Additional Protocols and their Commentaries”, Customary IHL database, available at <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreaties1949.xsp>.

modern treaties, conventions and covenants, and their membership in the United Nations.⁵¹ Obeying international law is not only a duty among international actors but has actually been a widespread practice among States, demonstrated by the flow of international investment and trade, the respect for borders and sovereignty, the proliferation of international institutions that monitor compliance and promote cooperation and the regulation of such ordinary features of daily life as travel, mail, custody rights and technology.⁵²

31. Regarding the occupation of Palestine, among the clear advantages for the international community to demand the compliance of Israel with international legal obligations are the following:

(a) First, it would level out some of the vast disparities in power between Israel and the Palestinians that have plagued the entire peace process, and thereby make the realization of a lasting and equitable agreement more likely;⁵³

(b) Second, it would provide well-defined ground rules as to what is legitimately negotiable (such as trade, security, labour migration and equitable adjustments to the 1967 lines) and what is not (such as the retention of settlements, the continuation of annexation and the abuse of sovereignty), in accordance with the long-standing legal principle of *ex turpi causa non oritur actio*;⁵⁴

(c) Third, it would enhance the chances that an agreement to end the occupation and create a final peace would endure, given that the rules-based international order would provide both predictability and accountability mechanisms in addressing any subsequent difficulties;

(d) Fourth, it would clearly signal to future would-be abusive occupiers that the international community will not accept “no-go zones” for human rights, humanitarian and criminal law. In the modern world, international law cannot be treated as a menu à la carte, with the choice to decide what to obey and what to scorn.

32. Regrettably, the international community’s remarkable tolerance for Israeli exceptionalism in its conduct of the occupation has allowed realpolitik to trump rights, power to supplant justice and impunity to undercut accountability. This has been the conspicuous thread throughout the Madrid-Oslo peace process, which began in 1991. Israel, with little resistance from major international actors, has been able to successfully insist that negotiations with the Palestinians are to be conducted outside of the framework of applicable international law and the prevailing international consensus,⁵⁵ notwithstanding the imperatives of the rules-based international order. This has enabled Israel to maintain an obdurate bargaining stance, with the endgame of formalizing its claims to East Jerusalem and to most, if not all, of its West Bank settlements, while acquiescing to a Potemkin statelet for the Palestinians that would enjoy neither meaningful territory nor sovereignty.⁵⁶ For the international community, this has created a troubling paradox: while there is no conflict zone in the world where the United Nations has pronounced with as much frequency and detail on the framework for conflict resolution, this framework has rarely informed the various

⁵¹ Zaha Hassan and others, “Breaking the Israel-Palestine status quo”, 2021.

⁵² Harold Hongju Koh, “Why do nations obey international law?”, *Yale Law Journal*, vol. 106, No. 8 (1997).

⁵³ Susan Akram and others, eds., *International Law and the Israeli-Palestinian Conflict: A Rights-Based Approach to Middle East Peace* (London, Routledge, 2011).

⁵⁴ Rights cannot arise from illegal acts.

⁵⁵ Khaled Elgindy, *Blind Spot: America and the Palestinians from Balfour to Trump* (Washington, D.C., Brookings Institution, 2019).

⁵⁶ Seth Anziska, *Preventing Palestine: A Political History from Camp David to Oslo* (Princeton, New Jersey, Princeton University Press, 2018); and Jeremy Sharon, “Netanyahu calls for Palestinian ‘state-minus’”, *The Jerusalem Post*, 24 October 2018.

Oslo-related peace process initiatives – including the 1993 Declaration of Principles on Interim Self-Government Arrangements, the 1995 Oslo II agreement, the 2000 Camp David negotiations, the 2001 Clinton parameters, the 2003 Quartet principles, the 2007 Annapolis formula, the 2013/14 Kerry initiative and the 2020 Trump Peace to Prosperity plan – that have successively collapsed in the absence of any sturdy legal scaffolding and political will to sustain a rights-based resolution.

33. The cost of the international community's failure to insist upon its own rights-based framework and to enforce its many resolutions has been the evaporation of what lingering possibilities remain for a genuine two-State solution. In its place has emerged what the European Union has acknowledged to be a one-State reality of unequal rights,⁵⁷ and what regional and international human rights groups have declared to be apartheid.⁵⁸ The Security Council warned in 2016 that Israeli settlement activities were dangerously imperilling the viability of the two-State solution based on the 1967 lines.⁵⁹ Former Secretary-General Ban Ki-Moon stated in June 2021 that: "Israel has pursued a policy of incremental de facto annexation in the territories it has occupied since 1967, to the point where the prospect of a two-State solution has all but vanished."⁶⁰ The minimalist pink lines that the international community has drawn for Israel – no further de jure annexations, no new settlements, no destruction of Palestinian communities – have hardly slowed down the growth of its settler population, the expansion of its transportation and utility infrastructure linking the settlements, its hermetic sealing of Gaza or the regularity of declarations by many in its political leadership that East Jerusalem and the West Bank belong to Israel by right and will never be yielded. The ritual avowals by major international actors that they remain committed to a two-State solution have become a diplomatic pantomime, a cover for paralysis rather than a declaration of resolve, which is occurring with everyone's eyes wide open about the dynamic reality on the ground.

34. The political trends during the summer of 2021 have been dispiriting, if unsurprising. The new Prime Minister of Israel, Naftali Bennett, expressly stated in September that he opposed the creation of a Palestinian State.⁶¹ The Israeli Minister for Defence, Benny Gantz, said that peace negotiations were impossible because of the Palestinian Authority's opposition to Israeli settlements in East Jerusalem and the West Bank: "We're not taking down settlements."⁶² The new Israeli Minister for Foreign Affairs, Yair Lapid, told a meeting of European Union foreign ministers in July that there was no present prospect for a peace process.⁶³ None of this has been receiving serious international pushback.⁶⁴ Instead, with the apparent blessing of

⁵⁷ Barak Ravid, "EU foreign policy chief: Israel's land-grab law entrenches one-State reality of unequal rights", *Haaretz*, 7 February 2017.

⁵⁸ Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (2021); Susan Power, "The legal architecture of apartheid", *Al-Haq*, 12 April 2021; and B'Tselem, "A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: this is apartheid", January 2021.

⁵⁹ Security Council resolution 2334 (2016).

⁶⁰ Ban Ki-Moon, "US should back a new approach to the Israeli-Palestinian conflict", *The Financial Times*, 29 June 2021.

⁶¹ "I oppose a Palestinian state. I think it would be a terrible mistake that would take the terrible situation in Gaza and recreate it in Judea and Samaria." See Tovah Lazaroff, "Palestinian statehood would be a 'terrible mistake' – Bennett", *The Jerusalem Post*, 15 September 2021.

⁶² Neri Zilber, "Israel can live with a new Iran nuclear deal, Defense Minister says", *Foreign Policy*, 14 September 2021.

⁶³ Jonathan Lis, "Israel's Lapid to EU's top diplomats: two-state solution is unfeasible", *Haaretz*, 12 July 2021.

⁶⁴ Anshel Pfeffer, "Israel's Prime Minister now pretends the Palestinians don't exist. It's a brilliant move", *Haaretz*, 30 September 2021. ("In the past three and a half months since he became prime minister, Bennett has noticed how seldom the Palestinian issue came up in his conversations with foreign leaders and how half-hearted they sounded when they did bring it up.")

major international actors,⁶⁵ the focus of the new Government is to “shrink the conflict”⁶⁶ and remove some existing irritants for the Palestinians, such as allowing the construction of a modest number of Palestinian homes in Area C, increasing the number of Palestinians allowed to work in Israel and creating more advanced mobile phone networks.⁶⁷ Such an economic peace is understood by Israeli political leaders not as a path to genuine Palestinian statehood⁶⁸ but as a substitute in order to sustain the status quo.⁶⁹ Mairav Zonszein of the International Crisis Group has remarked that: “You can’t have economic peace or stability under occupation, because occupation prioritizes Israeli interests, resources and expansionism over all else.”⁷⁰

35. The present report is focused on the effectiveness of four of the influential international actors involved in the Middle East process and the supervision of the Israeli occupation. The purpose of focusing on the United States, the European Union, the World Bank and the Quartet is to assess whether they have been assiduously advancing, or effectively retarding, the stated goal of the international community to end the occupation, enable Palestinian self-determination and provide peace, security and a prosperous and shared future for both Israelis and Palestinians.

36. To assess their effectiveness, the Special Rapporteur is proposing five foundational criteria to measure the role of these leading actors. These criteria are important to emphasize, because they go to the heart of the disparate relationship between Israel and Palestine. Any efforts by the international community, collectively or individually, to create a framework for supervising and ending the occupation that does not place these criteria at or near the core of its endeavours will almost certainly crash upon the shoals of Middle East realism:

(a) **Because of the vast asymmetry in power between Israel and the Palestinians, active international intervention is indispensable.** Militarily, Israel has the strongest armed forces in the region. Economically, Israel enjoys a European-level gross domestic product per capita that is 12 times higher than that of the Palestinians. Diplomatically, Israel relies upon the enduring support of major international actors. Territorially, Israel enjoys complete military freedom of action between the Mediterranean Sea and the Jordan River. Only on demography do the Palestinians have the edge: they now constitute a slight majority of the population between the Mediterranean Sea and the Jordan River. Without active and decisive international accountability measures to counter the abuse of this overwhelming power, the vast advantages of Israel will continue to dictate what happens on the ground and at any negotiating table;

(b) **The framework for fully ending the occupation must employ a rights-based approach, anchored in international law and human rights.** Yesterday’s

⁶⁵ President of the United States Joseph Biden, in remarks before the seventy-sixth session of the General Assembly on 21 September 2021, said that he continues to believe in a two-State solution, but “we’re a long way from that goal at the moment”.

⁶⁶ Patrick Kingsley, “‘Shrinking the conflict’: what does Israel’s new mantra really mean?”, *The New York Times*, 30 September 2021.

⁶⁷ Adam Rasgon, “In reversal, Israel’s new government engages with Palestinian authority”, *The New York Times*, 25 September 2021.

⁶⁸ After expressing his opposition to a Palestinian state, Prime Minister Bennett added that: “My outlook is a very business-like one. If we create more business, strengthen the economy and improve living conditions for everyone in Judea and Samaria, that would be better.” See Lazaroff, “Palestinian statehood would be a ‘terrible mistake’ – Bennett”.

⁶⁹ In reporting on this new approach by the Israeli government, the *New York Times* noted that: “Even as the Israeli government takes steps to improve the Palestinian economy and security, it has pledged to continue expanding settlements in the West Bank. It has also continued to demolish Palestinian homes built without permits in areas where permits are rarely issued, and to use a heavy hand against Palestinians at protests and clashes.” See Rasgon, “In reversal”.

⁷⁰ Kingsley, “‘Shrinking the conflict’”.

peace process playbook – relying on the realpolitik of Israeli “facts on the ground”, Palestinian weakness and the absence of law – has only led to repeated diplomatic cul-de-sacs, while enabling the patterns of human rights abuses and an endless occupation to continue largely unimpeded.⁷¹ Ignoring the established international framework on occupation and rights only accelerates this downward trajectory.⁷² Only a rights-based approach can engage the considerable tools of accountability and the already widely endorsed body of international law, including human rights and humanitarian law, to end impunity and advance the interests of both Palestinians and Israelis;

(c) **The end goal must be the realization of Palestinian self-determination. Israel already exists, and has since 1948.** The missing key to enduring peace has always been the denial of Palestinian self-determination.⁷³ But the de facto and de jure annexation of occupied territory by Israel, primarily led by the relentless expansion of its settlements, has undercut any meaningful exercise of self-determination on what remains of Palestinian land. Self-determination is at the heart of modern human rights, and it is the sine qua non for a just and final peace. Palestinian self-determination must be based on the 1967 borders and the realization of authentic sovereignty if a genuine two-State solution remains a possibility. If not, then self-determination must be centred on individual and collective equality rights for all those living between the Mediterranean Sea and the Jordan River;

(d) **Israel is a bad-faith occupier.** This is the inescapable conclusion from the way it has conducted its 54-year occupation of the Palestinian territory. Its non-compliance with hundreds of United Nations resolutions from the Security Council, the General Assembly and the Human Rights Council regarding the occupation, and its refusal to apply the Fourth Geneva Convention, is not an honest policy difference with the world but a sustained show of defiance meant to preserve the fruits of its conquest. To assume that Israel is a responsible occupier, whose intentions are marred only by an errant and unfortunate policy towards the Palestinians, is to indulge in the magical thinking that has led to the past diplomatic failures;

(e) **The occupation must end with all deliberate speed.** Occupations are designed by international law to be temporary: to last only for the period of time necessary for the occupying power to re-establish State and social institutions and civic life in the occupied territory and for the territory to then be returned to the displaced sovereign (the people under occupation).⁷⁴ Alien rule in the twenty-first century can only be justified in exceptional and highly conditioned circumstances. Modern international law and effective international statecraft do not tolerate an indeterminate point in time for when injustice will end, particularly with regard to an avaricious occupation that long ago slipped the restraining bonds of legitimacy.

⁷¹ “Editorial: Israel’s final warning from the ICC”, *Ha’aretz*, 22 December 2019. (“Even harder to understand is the claim that the issue of the Israeli-Palestinian conflict must be left for dialogue and negotiations and the legal process will only harm it, while it is clear to all that there is no such process on the table because the Israeli government is not interested in it.”)

⁷² Dimitris Bouris and Nathan J. Brown, “The Middle East Quartet’s quest for relevance”, Carnegie Europe, 20 July 2016.

⁷³ General Assembly resolution [75/172](#).

⁷⁴ Security Council resolution [1483 \(2003\)](#), which welcomed the commitment of the powers occupying Iraq to restore sovereignty to the people of Iraq “as soon as possible”, and that it “must come quickly”. See also General Assembly resolution [75/172](#) (“Stressing the urgency of achieving without delay an end to the Israeli occupation”).

B. The four international actors

United States of America

37. The United States has played an outsized role in the Middle East peace process over the past 50 years, leading virtually every significant international peace initiative, while at the same time delivering enormous amounts of cutting-edge military aid to Israel and acting as that country's diplomatic patron at the United Nations and other international forums. This two-hatted role of the United States in the peace process has been an overriding reason why the Israeli occupation stays intact and the quest for Palestinian self-determination remains unfulfilled. Kofi Annan spoke of the "unhealthy possessiveness" that the United States has had over the peace process, and its "reluctance to share it meaningfully with others".⁷⁵ Ban Ki-Moon has lamented the "political cover provided by successive [United States] governments to Israel", which is "partly to blame for this lack of accountability".⁷⁶ In many ways, the role of the United States in defending Israel has been to give permission for the Israeli occupation to continue, while tarnishing the global reputation of the United States. In his memoirs, former President of the United States Barack Obama observed that the shielding by the United States of Israeli violations of international law meant that: "Our diplomats found themselves in the awkward position of having to defend Israel for actions that we ourselves opposed."⁷⁷

38. In May 2021, tensions in Jerusalem escalated over attempts by Israeli settlers to displace Palestinians from their homes, leading to rockets fired by Hamas at Israeli civilian targets and a disproportionate military response by Israel, culminating in 11 days of intense violence with heavy civilian casualties and property destruction in Gaza. The diplomatic role of the United States during this violence was discouragingly familiar: at the Security Council, it successively blocked both a draft resolution seeking a ceasefire and the issuance of a Council press statement, arguing that it would only alienate Israel.⁷⁸ This buffer allowed Israel to sustain its assault on Gaza until it had achieved most of its military goals, in the face of diplomatic and public opinion seeking to end the violence much earlier. Since the Israeli occupation began in June 1967, the United States has regularly allowed the Council to adopt resolutions critical of Israel – 77 in total – but it has also used its threat of a veto to thwart the ability of the Council – the most powerful international political forum – to enforce any of these resolutions. In addition, it has vetoed 32 resolutions critical of Israel since 1973.

39. The United States has developed an extraordinary military relationship with Israel, with its annual aid unmatched by any other bilateral relationship in the world. Since the early 1950s, it has delivered more than \$100 billion dollars in military aid (along with \$35 billion in economic aid).⁷⁹ Its military aid has enabled the Israeli armed forces to become one of the most technologically sophisticated militaries in the world. American aid has also allowed Israel to establish a major domestic defence industry, which has permitted it to become one of the world's leading exporters in arms and cybersecurity technology. Indeed, observers have noted that Israeli prowess as a major arms and cybersecurity exporter is due in considerable part to its weapons and security testing as an experienced occupier that regulates the lives of 5 million Palestinians.⁸⁰ This American military assistance is provided notwithstanding the fact

⁷⁵ Annan, *Interventions*, p. 290.

⁷⁶ Ban, "US should back a new approach".

⁷⁷ Barack Obama, *A Promised Land* (New York, Crown, 2020), p. 627.

⁷⁸ International Crisis Group, *Beyond Business as Usual in Israel-Palestine*, Middle East report No. 225 (Brussels, 2021).

⁷⁹ Congressional Research Service, United States, "US foreign aid to Israel", November 2020.

⁸⁰ Matt Kennard, "The cruel experiments of Israel's arms industry", Pulitzer Center, 28 December 2016).

that congressional laws governing weapons exports from the United States state that recipient countries cannot be engaged in consistent patterns of gross violations of human rights.⁸¹ A recent poll of American public opinion indicated that a slim majority (50 per cent in favour to 45 per cent opposed) favoured restricting military aid to Israel in order to prevent it from being used in military operations against Palestinians.⁸²

40. Given the *sui generis* relationship between the world's one superpower and a small regional power, one might ask, as Shibley Telhami, a professor at the University of Maryland, has: "If an American president cannot leverage this extraordinary and unprecedented support to advance core American values, what hope is there for succeeding anywhere else?"⁸³ The United States has played a fundamental role in the shaping of modern international law and the rules-based international order, yet it has stained that achievement by consistently excluding those things from the Israeli-Palestinian peace process. It regularly endorses the two-State solution, but it also insists that there must be no consequences for Israeli practices that have made that objective impossible. It proclaims human rights as a cornerstone of its foreign policy, but does not apply this yardstick to Israeli conduct. The disturbing reality in the Occupied Palestinian Territory is contrary to everything that the United States proclaims it stands for, yet its close identification with the Israeli occupation says otherwise.

European Union

41. In 1980, the then nine-member European Community issued its influential Venice Declaration, which endorsed the right of the Palestinian people to fully exercise their right to self-determination. In the early 1990s, the European Commission was an active participant in the Madrid-Oslo process, declaring that lasting peace between Israel and the Palestinians was of vital importance for Europe. Throughout the 1990s and 2000s, the European Union provided substantial political and economic support for the peace process (including significant funding to the Palestinian Authority), issued sometimes sharp criticisms of Israeli conduct and, beginning in 1999, promoted the creation of a democratic, viable and peaceful Palestinian State. However, as the European Union joined the Quartet and became part of its policies regarding the road map and the 2006 Palestinian elections, its policies and statements regarding the occupation became more cautious, even as its substantial levels of funding continued.⁸⁴

42. Over the past decade, five features have dominated the approach of the European Union towards the Israeli occupation. First, it remains a substantial funder of the Palestinian Authority, UNRWA and other major organizations that provide capacity-building and social services in the occupied territory. Second, the European Union has maintained close political and economic relationships with Israel, even as points of tension have occasionally arisen. Israel is a member of several significant scientific and economic cooperation agreements initiated by the European Union, the European Union is its largest trading partner and several key members of the European Union are major weapons suppliers to Israel. Third, the European Union has developed a "differentiation" policy regarding the Israeli settlements in the occupied territory. This policy states that European Union agreements with Israel are inapplicable beyond the 1967 Green Line, while it has been left to individual member

⁸¹ Josh Ruebner, Salih Booker and Zaha Hassan, "Bringing assistance to Israel in line with rights and U.S. laws", Carnegie Endowment for International Peace, 12 May 2021.

⁸² Chicago Council on Global Affairs, "Americans split on military aid to Israel, say political status quo unacceptable", 25 August 2021.

⁸³ Shibley Telhami, "Biden's bungled response on the Israel-Palestinian conflict", *Boston Globe*, 19 May 2021.

⁸⁴ Anders Persson, *EU Diplomacy and the Israeli-Arab Conflict, 1967–2019* (Edinburgh University Press, 2020).

States to decide how to apply the differentiation policy in their bilateral relations with Israel. Fourth, in recent years, the European Union has spoken with an increasingly less united and softer voice on the Israeli occupation, as some member States from Eastern Europe have developed close relationships with Israel and a common European position on the occupation has become more difficult.⁸⁵ During the recent Israeli violence in Gaza in May 2021, the European Union acted largely as a bystander, unable to issue a common statement of the Council of the European Union because of its “unanimity rule”.

43. The fifth and most significant feature of contemporary European Union policy has been its aversion to employing its considerable economic and political clout to impose substantive costs on Israel for its failure to comply with its international obligations and fully end the occupation.⁸⁶ To its credit, the European Union’s diplomatic opposition to the de jure annexation plans made by Israel in 2020 contributed greatly to the shelving of the proposals of the Peace to Prosperity plan put forward by former President of the United States Donald Trump. This was an important defensive accomplishment, but it has done little to alter the thickening occupation and the reality of de facto annexation. Beyond this, however, the European Union has been largely risk-averse. Among its major agreements involving Israel is the European Union-Israel Association Agreement of 1995, which included human rights obligations and respect for common values, breaches of which would entitle the European Union to suspend the Agreement, but the European Union has taken no steps to do so. The most glaring gap in European Union policy is its passive approach towards the Israeli settlements. Its differentiation policy is exacting a small cost that Israel is willing to bear, with no noticeable changes to the permanence of the occupation or to the growth of settlements. The settlements, which are a presumptive war crime under the Rome Statute, are the product of Israeli State policy, and there is no hope of dismantling them until European accountability measures meaningfully target Israel itself (see [A/HRC/47/57](#)).

44. European Union policy towards the occupation is ultimately hindered by two interrelated propensities: its commitment to the dead star that is the Madrid-Oslo process, and its unwillingness to separate itself from the United States, no matter how partial and ineffective American policy has been. Whatever its original promise, the Madrid-Oslo process has become a cover for the maintenance of the occupation and the avoidance of hard decisions. With imagination and courage, European diplomacy could create a qualitatively new approach to securing Middle East peace, based on rights and international law.⁸⁷ To do this would require an honest reckoning with Israeli intransigence and American dominance. But to do anything less would continue to implicate Europe in one of the greatest diplomatic failures of the past half-century.

World Bank

45. The World Bank has been intimately involved in the development of economic policy in Palestine since the dawn of the Madrid-Oslo process. In 1993, it published a significant six-volume study – *Developing the Occupied Territories: An Investment in Peace* – which set out a strategy to reform, reorganize and advance the economic and social capacities of the Palestinian territory. Its stated emphasis was technical: to

⁸⁵ Omar Dajani and Hugh Lovatt, *Rethinking Oslo: How Europe Can Promote Peace in Israel-Palestine* (London, European Council on Foreign Relations, 2017); and Hugh Lovatt and Mattia Toaldo, *EU Differentiation and Israeli Settlements* (London, European Council on Foreign Relations, 2015).

⁸⁶ Beth Oppenheim, “Can Europe overcome its paralysis on Israel and Palestine?”, Centre for European Reform, February 2020.

⁸⁷ Hugh Lovatt, *The End of Oslo: A New European Strategy on Israel-Palestine* (London, European Council on Foreign Relations, 2020).

focus on Palestinian institution-building, private sector investment and optimal economic planning, while leaving the issues of security, international law and final status issues to the political arena. A disquieting feature of that report was that its description of the dilapidated Palestinian economy in 1993 – high unemployment, stagnant income, deep poverty, overstretched public institutions and services, a deep dependence on the Israeli economy, vulnerability to Israeli political retaliation and enormous economic disparities between Israelis and Palestinians – remains entirely accurate today even after 28 years of substantive institution-building and billions of dollars in aid.

46. In the years since 1993, the World Bank has issued dozens of reports on the Palestinian economy, many of them highly technical reviews of specific sectors, and some of them containing understated observations on the myriad ways that Israel stunts and throttles the Palestinian economy. In particular, the World Bank presents comprehensive twice-yearly economic reports to the Ad Hoc Liaison Committee for the Coordination of the International Assistance to Palestinians, a body of States and institutions (including the United States and the European Union) that coordinates international aid to the Palestinian Authority and for which the World Bank acts as secretariat.

47. At their best, the World Bank reports depict the encumbering patterns of economic and social control imposed by Israel on the West Bank and Gaza, including the tight enclosures, the restrictions on freedom of movement, the withholding of taxes and clearance revenues, the growth of the settlements, the blockade of Gaza, the restriction of dual-use products and the constraints on Palestinian telecommunications.⁸⁸ In addition, some of these reports – particularly those issued in the 2000s – linked these many constraints to wider patterns of distress in Palestinian society, including declines in school enrolment, food insecurity, depression among schoolchildren and fragmenting social cohesion.⁸⁹ In 2013, the World Bank released one of its more impactful reports, focusing on Area C (the 61 per cent of the West Bank completely under Israeli security and civil control, where all of its settlements are located). In its report, the World Bank persuasively detailed how the alienation of this critical land resource from the Palestinians was crippling its economy, obstructing freedom of personal and commercial movement and closing the possibility of independent development.⁹⁰

48. But even at its best, the technocratic approach of the World Bank misses the forest for the trees. The punishing features of the smothering Israeli control over the Palestinian economy are not the result of regrettable Israeli policy, and are susceptible to change on the basis of empirically richer data and more comprehensive recommendations by the World Bank. Nor will enhanced institutional capacity for the Palestinians significantly alter the disfiguring reality on the ground. The reports focus on the troublesome symptoms of an economy and society encased in an ossified occupation, while ignoring the larger morbidity. This misdiagnosis is as fatal to a desperate political situation as it is in medicine. The term “occupation” never appears in any of the World Bank reports. Even more troubling, the World Bank’s reports on the “Palestinian territories” only reference the West Bank and Gaza; although East Jerusalem has long been designated by the United Nations as occupied territory that has been illegally annexed by Israel, it is never included in the World Bank’s coverage, apparently because this would require the World Bank to “pre-judge its

⁸⁸ See, for example, World Bank, “West Bank and Gaza update”, June 2008; and World Bank, “Economic monitoring report to the Ad Hoc Liaison Committee”, 27 September 2018 and 2 June 2020.

⁸⁹ See, for example, World Bank, “West Bank and Gaza update”, November 2004, November 2007 and March 2008.

⁹⁰ World Bank, *Area C and the Future of the Palestinian Economy*, report No. AUS2922 (Washington, D.C., 2013).

status”, hardly a neutral position.⁹¹ And the World Bank does not attribute Israeli policies and practices towards the Palestinians to a strategy of de facto annexation and permanent control over the Palestinian territory, notwithstanding the plentiful economic and political evidence.

49. It does not have to be this way. In comparison to the World Bank’s sotto voce approach, the biannual reports from the United Nations Conference on Trade and Development (UNCTAD) employ a much sharper analysis, attributing the ravaging of the Palestinian economy directly to the Israeli occupation. In recent years, UNCTAD has issued substantive reports on the cumulative economic costs of the Israeli occupation on the Palestinian people,⁹² the barriers posed by the occupation to the realization of Palestine’s oil and natural gas potential,⁹³ the relationship between the growth of the settlements and widening Palestinian poverty (see TD/B/67/5) and the economic collapse of Gaza behind an airtight blockade (see TD/B/EX(68)/4). By naming the actual phenomena, the UNCTAD reports deliver a more authentic understanding of the economic reality in Palestine and provide a fuller understanding as to why the billions in international aid and the institutional capacity-building for the Palestinians have perversely achieved close to the opposite of the stated goals of the international community: not a state-in-the-making, but a broken territory in formaldehyde.

Quartet

50. The Quartet – made up of the United States, the European Union, the United Nations and the Russian Federation – was created in 2002 to enable a more multinational dimension in the search for lasting peace between Israel and the Palestinians. It was formed in the aftermath of the second Palestinian intifada and the collapse of the 2000 Camp David peace process. At its inception, the benefits of such a unique organization were thought to be its small but influential membership, its adaptability and informality, its ability to make swift decisions and the political buy-in from both Israel and the Palestinians.⁹⁴

51. Today, the Quartet is a shell of what it once was. It has been without a high-profile political envoy since the resignation of former Prime Minister of the United Kingdom of Great Britain and Northern Ireland, Tony Blair, in 2015. It conducts low-level technical and economic improvement projects for the Palestinians, including water, energy, movement and trade, telecommunications and rule of law initiatives.⁹⁵ Its most recent statement, issued in March 2021 by the envoys of the four members (after not meeting for more than four years), was brief and antiseptic, expressing concern about the unsustainable economic disparity between Israelis and Palestinians and urging the parties to refrain from unilateral actions.⁹⁶ The Quartet’s published strategy for 2021–2023 does not once mention the term “occupation” or reference settlements and their destructive role, does not provide any critical analysis of the harsh control of Israel over the Palestinians and provides no explanation as to how the Quartet’s economic improvement projects can flourish in an economy suffocated

⁹¹ World Bank, *Developing the Occupied Territories: An Investment in Peace*, vol. 1 (Washington, D.C., 1993), note 45, and table 1.1. In this 1993 report, the World Bank acknowledged the central economic importance of East Jerusalem to the Palestinian economy.

⁹² *The Economic Costs of the Israeli Occupation for the Palestinian People: The Impoverishment of Gaza under Blockade* (United Nations publication, 2019).

⁹³ *The Economic Costs of the Israeli Occupation: Unrealized Oil and Natural Gas Potential* (United Nations publication, 2019).

⁹⁴ Khaled Elgindy, *The Middle East Quartet: A Post-Mortem*, analysis paper No. 25 (Washington, D.C., Brookings Institution, 2012).

⁹⁵ Office of the Quartet, “Annual report: January–December 2020”, December 2020.

⁹⁶ United Nations Special Coordinator for the Middle East Peace Process, “Statement by the Middle East Quartet envoys”, 23 March 2021.

by barriers, walls, tariffs and checkpoints and without geographic trading access to the outside world.⁹⁷

52. The source of the Quartet's ineffectiveness can be traced to two important and fateful turning points early in its existence. In 2003, it issued its road map to peace in the Middle East, with a declared goal of ending the occupation and enabling a two-State solution by 2005, based on detailed performance measures. While the road map placed demands on both parties, the greater demands were borne by the Palestinians (an end to the intifada, elections, new institutions, a reformed government, the acceptance of provisional borders). The final status issues were to be negotiated by the parties, but without reference to international law (particularly with regard to the settlements and the annexation of Jerusalem) and without accounting for the vast disparities in power. Israel ostensibly accepted the road map, but was permitted by the Quartet members to issue 14 reservations, which effectively undercut its viability. According to the most comprehensive appraisal of the Quartet's performance, the United States discarded the road map in 2005 to support the unilateral withdrawal of Israel from Gaza, with the reluctant acquiescence of the other three members.⁹⁸

53. The Quartet's second fateful turning point was the decision in 2006 to boycott the Palestinian Government after the election of Hamas. One can regard Hamas as an organization that had and has committed odious acts, but still recognize that the 2006 Palestinian election was free and fair and that the Quartet's imposition of demands on the new Government, absent any corresponding demands on Israel to comply with its considerable international obligations, debilitated its authority and purpose. Some members of the Quartet supported economic sanctions on the new Palestinian Government, something they had never considered imposing on Israel for its serious violations. This decision contributed to the Palestinian political split which persists today. The then United Nations Special Coordinator for the Middle East Peace Process and Personal Representative of the Secretary-General to the Palestine Liberation Organization and the Palestinian Authority subsequently noted that this post-election position: "effectively transformed the Quartet from a negotiation-promoting foursome guided by [the road map] into a body that was all but imposing sanctions on a freely elected government of a people under occupation as well as setting unattainable preconditions for dialogue."⁹⁹

54. An overriding lesson arising from the Quartet's predicament is that the acceptance by the other three members of American dominance meant that, in these circumstances, the Quartet's positions frequently reflect the lowest common denominator: that of the United States. Hence the quip: "the Quartet *sans trois*."¹⁰⁰ Given the extraordinary political, diplomatic and military relationship between the United States and Israel, the result was that international law had no place in the Quartet's policies, the United States assumed the sole role of monitoring compliance by Israel with the road map, and the Quartet rarely took positions critical of the role of Israel as a covetous occupier, which might have once salvaged the vanishing two-State solution.¹⁰¹ This imbalance has not only seriously diminished any potential effectiveness of the Quartet, but it has tarnished the image and role of the United Nations, whose foremost responsibility is to uphold international law and United Nations resolutions.

⁹⁷ Office of the Quartet, "Strategy 2021–2023", December 2020.

⁹⁸ Elgindy, *The Middle East Quartet*.

⁹⁹ Álvaro de Soto, *End of Mission Report* (2007).

¹⁰⁰ Patrick Müller, "Informal security governance and the Middle East Quartet", *International Peacekeeping*, vol. 21, No. 4 (August 2014).

¹⁰¹ De Soto, *End of Mission Report*.

IV. Conclusion and recommendations

55. The international community bears a significant responsibility for the persistence of the Israeli occupation of Palestine and the failure to secure a just and lasting peace in the region. The occupation is more embedded than ever. The living conditions of the Palestinians, let alone their political future, have become even more precarious. The defiance of Israel has gone almost completely unchecked. The peace process is moribund, if not comatose, and there is no serious talk about reviving it. In this post-colonial era, in the third decade of the twenty-first century, the world is tolerating the intolerable: the imposition of a colonial reality in Palestine. All of this favours the acquisitive occupier. All of this works against the rights of the subjugated, who are long overdue for restitution.

56. Measured against the five criteria proposed in the present report, none of the four international actors, all of whom have influence on the Israeli occupation of Palestine, come close to incorporating what is necessary to create a viable new foundation for genuine Middle East peacemaking. The door remains open, however. The United States can make good on its promise to stand up for human rights everywhere.¹⁰² The European Union can display diplomatic courage in charting an independent course anchored on a rights-based approach.¹⁰³ The World Bank can address the economic reality of the occupation through a human rights lens that will lead to much better policy recommendations. And the Quartet can elevate its impact by insisting upon the established international framework for peace with justice in the Middle East.

57. It should be clear that the realpolitik playbook for the Middle East peace process is well past its best-by date. More of the same is not working, and will not work. The new diplomatic playbook must be endowed with rights and legality at its core. While these are necessary preconditions, they are, by themselves, insufficient. Imaginative and brave diplomacy, and a willingness to finally ask the honest questions as to why this five-decade-old occupation has become indistinguishable from annexation and apartheid, is also indispensable. All of these things, together with the international application of accountability, could finally enable Palestinians and Israelis to enjoy the prosperity of a shared future together.

58. The Special Rapporteur recommends that the Government of Israel fully comply with its obligations under international law and completely end the occupation of the Palestinian territory with all deliberate speed.

59. The Special Rapporteur recommends to the international community, including international actors who are deeply involved in supervising the occupation, that it:

(a) Develop a comprehensive list of accountability measures to be applied to Israel until it complies with all relevant United Nations resolutions and accepts the international direction respecting the administration and termination of the occupation;

(b) Fully support the work of the Office of the Prosecutor of the International Criminal Court with respect to its investigation of the situation in Palestine;

(c) Adopt the five criteria developed in the present report to guide its future work in supervising the question of Palestine in all its aspects.

¹⁰² Agence France-Presse in Washington, D.C., “Antony Blinken says the US will ‘stand up for human rights everywhere’”, *The Guardian*, 30 March 2021.

¹⁰³ Lovatt, *The End of Oslo*.



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Promotion and protection of human rights: human rights situations and reports of special rapporteurs and representatives

Situation of human rights in the Palestinian territories occupied since 1967*

Note by the Secretary-General

The Secretary-General has the honour to transmit to the General Assembly the report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, in accordance with Human Rights Council resolution 5/1.

* The present report was submitted after the deadline in order to reflect the most recent information.



Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese

Summary

In the present report, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, addresses a number of human rights concerns, in particular regarding the right of the Palestinian people to self-determination, in the context of the settler-colonial features of the prolonged Israeli occupation.

I. Introduction

1. In the present report, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, Francesca Albanese, addresses a number of concerns pertaining to the situation of human rights in the West Bank, including East Jerusalem, and Gaza and presents an in-depth analysis of the right of the Palestinian people to self-determination. She clarifies legal tenets, meaning and implications of this right, which remains unrealized for the Palestinian people despite being foundational to the mission that the United Nations Member States pledged to achieve in the aftermath of the atrocities committed and witnessed during World War II.¹

2. The Special Rapporteur has not been able to visit the occupied Palestinian territory, including East Jerusalem (“occupied Palestinian territory”), before the submission of the present report, despite an invitation received by the Permanent Observer of the State of Palestine to the United Nations Office and other international organizations in Geneva. Access to the occupied Palestinian territory is a key element of her mandate and will be pursued in the future. As her request to meet with the Permanent Representative of Israel to the United Nations Office and other international organizations in Geneva was declined, the Special Rapporteur underscores that the pattern of non-cooperation by Israel with the mandate holder is a serious concern. As open dialogue among all parties is essential for the protection and promotion of human rights, the Special Rapporteur reminds Israel that she remains willing to engage.

3. The present report is based on legal research and analysis, and enhanced by consultations and submissions. The Special Rapporteur had consultations with fellow and previous Special Rapporteurs, the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and in Israel, and in-person and online meetings with State representatives, academics and non-governmental organizations from the occupied Palestinian territory, Israel and beyond. She examined reports submitted by local and international human rights organizations, in particular from the occupied Palestinian territory and Israel.

4. The geographic and temporal limitations of the Special Rapporteur’s mandate limited the scope of this inquiry, including how violations covered in the report may affect the Palestinian people outside the occupied territory. This does not prejudice the examination of this collective right as it applies to Palestinians who hold Israeli citizenship, and to Palestinian refugees of 1948 and 1967, also entitled to the well-established rights to return, restitution and compensation. Given the interconnectedness of the Israeli occupation that began in 1967 with what preceded it, the Special Rapporteur looks back at certain points in history that may inform and illuminate present circumstances.

II. Rationale for investigating the right to self-determination

A. Current situation and predominant debates

5. For 55 years, three generations of Palestinians in the occupied Palestinian territory have grown up under Israeli occupation. About 40 per cent of them are refugees expelled by Israel since 1948 (including their descendants) who fled the

¹ Charter of the United Nations, Arts. 55 and 56.

violence that accompanied the creation of the State of Israel.² Most of the residents of Gaza, together with many currently facing forcible transfer across the West Bank, including East Jerusalem, are refugees – originally from Galilee, Haifa, Jaffa, Ramleh and Lydda and the Naqab. The 1967 war displaced most of them anew, destroying and depopulating Palestinian villages and denying refugees return, as in 1947–1949.³ The Palestinians who in 1967 managed to “remain” could not know that, 55 years later, they would still wake up under the yoke of foreign domination, with their rights suspended and, the refugees among them, without concrete prospects of returning to their ancestral lands.

6. Since 1967, the human rights situation in the occupied Palestinian territory has been steadily deteriorating, primarily as a result of gross violations of international law, including racial segregation and subjugation by the occupying Power, Israel. This has taken various forms: draconian restrictions on Palestinian movement inside and outside the occupied Palestinian territory; repression of political and civic participation; denial of residency rights, status and family unification; dispossession of Palestinian land and property; forcible transfers; unlawful killings; widespread arbitrary arrests and detention, including of children; the obstruction and denial of humanitarian aid and cooperation; the denial of ownership and access to natural resources; settler violence; and violent suppression of popular resistance against the occupation. All together, these practices constitute collective punishment of the Palestinian people.⁴

7. The gravity of the situation notwithstanding, the Israeli occupation of Palestinian territory continues to be addressed predominantly, and sometimes exclusively, through three main approaches:

(a) *Humanitarian approach.* The grave economic and humanitarian conditions generated by a violent occupation are addressed as a (chronic) humanitarian issue that needs to be managed, rather than a political issue to be solved according to international law; Israeli violations are largely addressed with the aim of “improving” certain aspects of life under occupation;

(b) *Political approach.* The question of Palestine is often framed as a “conflict” between opposing parties that can be resolved through negotiations. Accordingly, ending the occupation will come about only through a “negotiated peace agreement”; then the humanitarian and economic emergencies in the occupied Palestinian territory will be resolved;

(c) *Economic development approach.* In recent years, seekers of a solution have insisted on a framework that hinges on developing the Palestinian territory and artificially sustaining its economy without providing a political solution addressing the root causes of the “conflict”, including the numerous violations of Palestinians’ rights and freedoms. The aim of this approach is to resolve conflict by promoting businesses and creating opportunities that accompany growth and sustainable development, not through the fulfilment of fundamental human rights.

8. The proponents of these approaches seem to believe that the occupation will end when the parties, starkly unequal in power, are able to achieve a negotiated solution. Regrettably, these perspectives leave unchecked the broader context that frames and unites endless emergencies, political challenges and economic fallouts. Failing to capture critical overarching issues concerning the Israeli occupation, these

² Benny Morris, *The Birth of the Palestinian Refugee Problem Revisited*, revised ed. (Cambridge, United Kingdom of Great Britain and Northern Ireland, Cambridge University Press, 2004).

³ Tom Segev, *1967: Israel, the War, and the Year that Transformed the Middle East*, 1st ed. (New York, Metropolitan Books, 2007).

⁴ [A/HRC/44/60](#) (2020), paras. 24 and 27.

perspectives conflate root causes and symptoms, and focus on Israeli lack of compliance with international law as a siloed phenomenon, rather than a longstanding structural component of the prolonged disfranchisement of the Palestinians under occupation.

9. In recent years, a number of reputable scholars and organizations have concluded that systemic and widespread discriminatory Israeli policies and practices against the Palestinians amount to the crime of apartheid under international law.⁵ While the international community has not fully acted upon it, the concept that Israeli occupation meets the legal threshold of apartheid is gaining traction. This may help overcome a certain tendency to scrutinize Israeli violations, often individual and decontextualized, under specific bodies of international law rather than the very system through which Israel rules over the Palestinians.

10. At the same time, if considered alone and not as part of a holistic examination of the experience of the Palestinian people as a whole, the apartheid framework presents some limitations:

(a) First, with few exceptions,⁶ the scope of recent reports on Israeli apartheid is primarily “territorial” and excludes the experience of Palestinian refugees. The recognition of Israeli apartheid must address the experience of the Palestinian people in its entirety and in their unity as a people, including those who were displaced, denationalized and dispossessed in 1947–1949 (many of whom live in the occupied Palestinian territory);

(b) Second, a focus on Israeli apartheid alone misses the inherent illegality of the Israeli occupation of the Palestinian territory, including East Jerusalem. The Israeli occupation is illegal because it has proven not to be temporary, is deliberately administered against the best interests of the occupied population and has resulted in the annexation of occupied territory, breaching most obligations imposed on the occupying Power.⁷ Its illegality also stems from its systematic violation of at least three peremptory norms of international law: the prohibition on the acquisition of territory through the use of force; the prohibition on imposing regimes of alien subjugation, domination and exploitation, including racial discrimination and apartheid; and the obligation of States to respect the right of peoples to self-determination.⁸ By the same token, Israeli occupation constitutes an unjustified use of force and an act of aggression.⁹ Such an occupation is unequivocally prohibited

⁵ A/HRC/49/87 (2022) (advance unedited version); Amnesty International, *Israel's Apartheid against Palestinians: Cruel System of Domination and Crime against Humanity* (2022) (available at <https://www.amnesty.org/en/documents/mde15/5141/2022/en/>); Human Rights Watch, *A Threshold Crossed: Israeli Authorities and the Crimes of Apartheid and Persecution* (2021); B'Tselem, “A regime of Jewish supremacy from the Jordan River to the Mediterranean Sea: this is apartheid” (12 January 2021); Al-Haq and others, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination on Israel's Seventeenth to Nineteenth Periodic Reports* (10 November 2019); and Economic and Social Commission for Western Asia (ESCWA), *Israeli Practices towards the Palestinian People and the Question of Apartheid: Palestine and the Israeli Occupation*, issue No. 1 (E/ESCWA/ECRI/2017/1) (2017).

⁶ Amnesty International, Al-Haq and others, *Joint Parallel Report to the United Nations Committee on the Elimination of Racial Discrimination*; and E/ESCWA/ECRI/2017/1 (see footnote 5).

⁷ A/72/556 (2017).

⁸ Ardi Imseis, “Negotiating the illegal: on the United Nations and the illegal occupation of Palestine, 1967–2020”, *European Journal of International Law*, vol. 31, No. 3 (2020), pp. 1055–1085.

⁹ Ralph Wilde, “Using the master’s tools to dismantle the master’s house: international law and Palestinian liberation”, *The Palestine Yearbook of International Law* (Netherlands, Brill, 2021), p. 7.

under international law and contrary to the values, purposes and principles of the United Nations as enshrined in its Charter;

(c) Third, the apartheid framework does not address the “root causes” of the web of racially discriminatory laws, orders and policies that have regulated daily life in the occupied Palestinian territory since 1967 and Israeli *animus* (intention) in seizing land while subjugating and displacing its indigenous people and replacing them with its nationals. This is the hallmark of settler-colonialism, and a war crime under the Rome Statute.

11. In essence, the limitations of the apartheid framework as currently applied bypass the critical issue of the recognition of the Palestinian people’s fundamental right to determine their political, social and economic status and develop as a people, free from foreign occupation, rule and exploitation. Dismantling the Israeli apartheid in the occupied Palestinian territory in particular, while necessary, will not automatically address the question of Israeli domination over the Palestinians, restore permanent sovereignty over the lands Israel occupies and the natural resources therein, nor, on its own, fulfil Palestinian political aspirations.

B. Resetting the mind

12. Discussions around Palestinian self-determination were once limited to the debate concerning the future of Palestine and its people, as part of the decolonization struggle. The Middle East peace process that started in the early 1990s has altered this, giving the impression that the realization of Palestinian self-determination was being achieved via statehood. Exercising the right to self-determination in the form of a politically independent State in all of the occupied Palestinian territory would be a minimum requirement of justice for the Palestinian people; yet its realization is as distant as ever, largely because of settler-colonial endeavours pursued by Israel through its prolonged occupation of the Palestinian territory.

13. Colonialism, a phenomenon often disguised as a “civilization project” and historically imposed by “Western countries” on “third world” countries, was achieved through cultural subordination of the natives, economic exploitation of their land and resources and suffocation of their political claims.¹⁰ Colonialism is characterized as “settler” when also driven by the logic of elimination of the indigenous character of the colonized land.¹¹ This manifests in the establishment and promotion of colonies,¹² namely, settlements of foreign people implanted among the indigenous population with the aim of subjugating and dispossessing the natives and “permanently securing hold” over specific areas.¹³ The violation of the peoples’ right to self-determination is inherent to settler-colonialism.

14. The normative framework of self-determination, especially as affirmed in the context of decolonization processes, provides the necessary lens to (re-)examine and resolve the legitimate claims to emancipation of the Palestinian people from decades

¹⁰ Antony Anghie, “Colonialism and the birth of international institutions: sovereignty, economy, and the mandate system of the League of Nations”, *New York University Journal of International Law and Politics*, vol. 34, No. 3 (2002), pp. 513–634.

¹¹ Patrick Wolfe, “Settler colonialism and the elimination of the native”, *Journal of Genocide Research*, vol. 8, No. 4 (2006), p. 387.

¹² In the occupied Palestinian territory, the term “colonies” is more accurate than the term “settlements”, as the latter neutralizes their illegal character (this resonates with the term *colonies*, as used in French: see, e.g., Security Council resolution 2334 (2016)).

¹³ Lorenzo Veracini, “Introduction: the settler colonial situation”, in *Settler Colonialism* (London, Palgrave Macmillan, 2010).

of Israeli occupation, while respecting the rights of all Palestinians and Israelis in the region.

III. Law of external self-determination An indispensable framework

A. Legal foundation

15. The right to self-determination constitutes the collective right par excellence, and the “platform right” necessary for the realization of many other rights.¹⁴ If a population grouping is not free to “determine their political status and ... pursue their economic, social and cultural development” as a people,¹⁵ other rights will almost certainly not be realized.

16. Prompted by the decolonization movement that spread from the late 1950s through the 1970s, the right to self-determination was universally codified in 1966 with the adoption of the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. This changed the approach to the self-determination framework from a general United Nations principle¹⁶ into a qualified normative framework for peoples to exercise free will as “cohesive national groups”,¹⁷ choose their independent forms of political organization and determine their cultural and socioeconomic development.¹⁸ This includes two intertwined components:

(a) *Political component.* The capacity of a people to choose its own Government and govern itself without interference. This has two dimensions: (i) the internal dimension of self-determination, namely, a people’s entitlement to rule themselves through constitutional and political processes that allow for the democratic exercise of the right in practice within the framework of an existing State;¹⁹ and (ii) the external dimension of self-determination that broadens the scope of the right to the formation of the people’s own will to determine their own political status free from external control and alien domination;²⁰

(b) *Economic component.* The people’s collective right to enjoy their natural wealth and resources as an expression of permanent sovereignty over them.²¹ This is pivotal to realizing and preserving the independent existence of a people through their own means of subsistence.

17. These two interconnected components allow people to exist as independent both demographically (as a people) and territorially (within a given region) and to pursue

¹⁴ A/72/556, para. 62.

¹⁵ International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, common article 1 (1)–(2).

¹⁶ Charter of the United Nations, Arts. 55 and 56.

¹⁷ Ian Brownlie, *Principles of Public International Law*, 5th ed. (Oxford, United Kingdom Clarendon Press, 1998), p. 599.

¹⁸ Antonio Cassese, *Self-determination of Peoples: a Legal Reappraisal*, vol. 12, (Cambridge, Cambridge University Press, 1995), p. 53.

¹⁹ James Crawford, *The Creation of States in International Law*, 2nd ed. (Oxford, Oxford University Press, 2007).

²⁰ Hurst Hannum, “Rethinking self-determination”, *Virginia Journal of International Law*, vol. 34, No. 1 (1993), pp. 1 and 33.

²¹ Catriona Drew, “The East Timor story: international law on trial”, *European Journal of International Law*, vol. 12, No. 4 (2001), pp. 651 and 663.

their cultural, economic and social development through what the territory and associated resources offer.²²

18. The external dimension of the right to self-determination is the precondition to the effective enjoyment of both the political and economic components of the right. How can a Government function independently while remaining subjugated, without enjoying full jurisdiction over the whole of its territory, citizens and resources? Alien domination and foreign occupation are thus incompatible with “the law of external self-determination” as a regulatory framework.²³

19. In essence, the right to self-determination is the right to live and grow as a people within a political community of its own, usually an independent State. This implies the right to resist alien domination, subjugation and exploitation that may impede the fulfilment of this right.²⁴ In 1977, this was spelled out in Additional Protocol I to the Geneva Conventions, in which people’s fight “against colonial domination and alien occupation and against racist régimes in the exercise of their right of self-determination” was recognized.²⁵ Liberation and decolonization struggles across history have shown how the right to exist as a people and the right to resist foreign rule and domination are interconnected. History also shows that international support to anti-colonial struggles, especially from Governments and decision-makers, remains critical for the enfranchisement of a subjugated people. Decolonization became possible when anti-colonial movements and States managed to create a consensus at the United Nations on the illegitimacy of colonial domination; respect for basic human rights played an important role in creating this consensus.²⁶

20. In the 1960s, self-determination became the normative framework for advancing decolonization. In the wake of the “irresistible and irreversible” process of liberation to which all peoples were entitled, colonialism, and all forms of segregation or discrimination associated therewith, were fully banned.²⁷ The normative force of self-determination was drawn from the Charter of the United Nations of 1945, in which the principle of “equal rights and self-determination of peoples” are placed among its primary objectives, together with the maintenance of international peace and security. To achieve decolonization, the General Assembly thus recognized that:

All peoples have an inalienable right to complete freedom, the exercise of their sovereignty and the integrity of their national territory ... All peoples have the right to self-determination; by virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.²⁸

21. In the face of persistent colonial endeavours, the General Assembly explicitly prohibited acts that may undermine colonized peoples’ efforts to achieve independence and prohibited “the use of force” by States or the threat thereof, against the territorial integrity or political independence of any State, existing international boundaries, armistice lines, established by or pursuant to an international agreement, which may result in the deprivation of peoples’ “right to self-determination and freedom and independence”.²⁹

²² Hannum, “Rethinking self-determination” (see footnote 20).

²³ Wilde, “Using the master’s tools to dismantle the master’s house” (see footnote 9).

²⁴ Antonio Cassese, “Terrorism and human rights”, *American University Law Review*, vol. 31, No. 4 (1982), pp. 945–958.

²⁵ Additional Protocol I to the Geneva Conventions (1977), art. 1 (4).

²⁶ Roland Burke, *Decolonization and the Evolution of International Human Rights* (Philadelphia, University of Pennsylvania Press, 2011).

²⁷ General Assembly resolution 1514 (XV) (1960).

²⁸ *Ibid.*

²⁹ General Assembly resolution 2625 (XXV) (1970).

22. The General Assembly also clarified that the territory of a State could be neither “the object of military occupation” nor “acquisition by another State” resulting from the threat or use of force.³⁰ This was reinforced in 1974, when, in defining “aggression”, the General Assembly prohibited the “use of armed force to deprive peoples of their right to self-determination, freedom and independence, or to disrupt territorial integrity”.³¹

23. The inviolability of the right to self-determination stems from its *erga omnes* and *jus cogens* character. *Erga omnes* means that all States have an inherent interest in the realization of and obligation to respect the right to self-determination, owed by and to the international community as a whole.³² Such an obligation exists not only in relation “to their own peoples but vis-à-vis all peoples which have ... been deprived of the possibility of exercising their right to self-determination.”³³ This arises out of the *jus cogens* or peremptory norm character of the right to self-determination, which cannot be violated or derogated (except by another peremptory norm).³⁴ The international community is obliged to ensure that all peoples entitled to self-determination effectively achieve it, and that all obstacles are removed.³⁵

24. International practice from occupied Namibia in the 1950s to occupied Ukraine in 2022 documents how the international community, whether through international tribunals, such as the International Court of Justice,³⁶ the International Criminal Court (ICC)³⁷ and ad hoc tribunals,³⁸ or the General Assembly,³⁹ the Security Council,⁴⁰ and individual States through domestic jurisdictions and sanctions,⁴¹ have used the means provided by international law to end illegal occupations and forms of subjugation. Under the law of external self-determination, the Palestinian people are entitled to and must enjoy comparable international cooperation and determined action.

B. Applicability to the Palestinian people in the occupied Palestinian territory

25. The right to self-determination is an “inalienable right” of the Palestinian people, as affirmed by the General Assembly.⁴² The origins of Palestinians’ right to self-determination can be traced back more than a century, preceding the first codification in the Charter of the United Nations. The people of Palestine (Muslims, Christians and Jews),⁴³ like other peoples in the Levant, also had their right to self-determination recognized under the Covenant of the League of Nations of 1919.

³⁰ Ibid.

³¹ General Assembly resolution [3314 \(XXIX\)](#) (1974).

³² Cassese, *Self-determination of peoples* (see footnote 19).

³³ Human Rights Committee, general comment 12, para. 6.

³⁴ International Law Commission (ILC), [A/CN.4/L.960/Add.1](#) (2022), conclusions 3 and 17.

³⁵ Advisory opinion rendered on 9 July 2004 by the International Court of Justice (ICJ), on the legal consequences of the construction of a wall in the Occupied Palestinian Territory.

³⁶ ICJ, Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution [276 \(1970\)](#).

³⁷ International Criminal Court (ICC), “ICC Presidency assigns the Situation in Ukraine to Pre-Trial Chamber II” (2 March 2022).

³⁸ Security Council resolution [827 \(1993\)](#).

³⁹ General Assembly resolution [43/106](#) (1988).

⁴⁰ Security Council resolution [264 \(1969\)](#).

⁴¹ Government of the United States, Comprehensive Anti-Apartheid Act of 1986, Public Law No. 99-440 (1986).

⁴² General Assembly resolutions [3236 \(XXIX\)](#) (1974) and [2672 \(XXV\)](#) (C) (1970).

⁴³ In the early 1900s, the largest communities were 81 per cent Muslim, 11 per cent Christian and 8 per cent Jewish. See Sergio Della Pergola, “Demographic trends in Israel and Palestine: Prospects and policy implications”, *American Jewish Yearbook* vol. 103 (2003), pp. 3–68.

Article 22 of the Covenant stipulated that “Class A” mandates (Iraq, Lebanon, Palestine, Trans-Jordan and Syria) would enjoy provisional independence “until such time as they are able to stand alone”.⁴⁴ The “wishes” of the local communities were to be “a principal consideration in the selection of the Mandatory”.⁴⁵

26. The culmination of centuries of antisemitism and persecution of Jews in Europe in the genocidal horror of the Holocaust strengthened support for political Zionism. This movement saw Palestine as the land to realize a “State for the Jews” through settlement and colonization.⁴⁶ However, in that land a native Palestinian Arab population had resided for millennia. In 1947, the United Nations resolved to reconcile the separate claims to the land of the indigenous Palestinian people and the largely European Jewish settlers and refugees from Europe,⁴⁷ by recommending the partitioning of British Mandate Palestine into an “Arab State” and a “Jewish State”.⁴⁸ Soon after, the creation of the State of Israel in most of the territory of Mandate Palestine was accompanied by massacres and the mass expulsion, wholesale denationalization and dispossession of most of the Arabs of Palestine. They continue to be deprived of their right to self-determination, together with their descendants, the refugees further displaced in 1967 and other non-refugee Palestinians.

27. The 1967 war that initiated the Israeli occupation was a major turning point. The Security Council, in resolution [242 \(1967\)](#), underscored the “inadmissibility of the acquisition of territory by war” and called for the “withdrawal of Israel[i] armed forces” from the territory that Israel had occupied and emphasized the right of everyone in the region “to live in peace within secure and recognized boundaries free from threats or acts of force”.⁴⁹ This mirrored the General Assembly’s condemnation of any use of force that may result in denial of peoples’ freedom and independence as a clear and incontrovertible expression of colonialism.⁵⁰

28. Since 1967, the United Nations, reflecting the postcolonial sensibility of its expanded membership, adopted resolutions that not only reaffirmed the Palestinian people’s right to self-determination but also viewed resistance against outside domination as justified.⁵¹ In 1974, in the face of the already protracted and unwarranted Israeli occupation, the General Assembly acknowledged the “right to self-determination without external interference” and “the right ... to return” of Palestinian refugees as “inalienable” rights of the Palestinian people.⁵²

29. By 1982, following continuous non-compliance by Israel, the General Assembly affirmed that “the denial of the inalienable rights of the Palestinian people to self-determination, sovereignty, independence and return to Palestine and the repeated acts of aggression by Israel against the peoples of the region constitute a serious threat to international peace and security”.⁵³ In the same resolution, the Assembly also urged “all States, competent organizations of the United Nations system, specialized agencies and other international organizations to extend their support to the

⁴⁴ Covenant of the League of Nations (1919), article 22. The mandate system was established after World War I to deal with ex-Ottoman and ex-German territories. Mandates were classified as A, B or C, based on what was considered a country’s readiness for self-rule.

⁴⁵ *Ibid.*

⁴⁶ Theodor Herzl, *Der Judenstaat* (Leipzig and Vienna, Breitenstein, 1896).

⁴⁷ Official Records of the General Assembly, Second Session, Supplement No. 11 ([A/364](#)) (Report of the United Nations Special Committee on Palestine), vol. I (1947).

⁴⁸ General Assembly resolution [181 \(II\)](#) (1947).

⁴⁹ Security Council resolution [242 \(1967\)](#); see also Security Council resolutions [298 \(1971\)](#), [476 \(1980\)](#) and [2334 \(2016\)](#).

⁵⁰ General Assembly resolution [2625 \(XXV\)](#) (1970).

⁵¹ [A/CONF.32/41](#) (1968).

⁵² General Assembly resolution [3236 \(XXIX\)](#) (1974).

⁵³ General Assembly resolution [37/43](#) (1982).

Palestinian people through its sole and legitimate representative, the Palestine Liberation Organization, in its struggle to regain its right to self-determination and independence”.⁵⁴

30. The General Assembly’s acknowledgement of the Palestinians’ struggle to “regain” their right to self-determination and independence in the context of the worldwide decolonization process, was an important recognition of the Palestinian national resistance led by the Palestine Liberation Organization (PLO) which, by the 1970s, federated the main Palestinian political forces mostly in exile. At that time, it was clear that the law of self-determination legitimated Palestinians’ right to resist, by virtue of the violent and acquisitive nature of Israeli occupation from which Palestinians were struggling to liberate themselves.

31. By 1983, the General Assembly had already exposed the “repeated acts of aggression” by Israel against Palestinians.⁵⁵ Over the past decades, dozens of United Nations resolutions have reaffirmed Palestinians’ right to self-determination, calling for the withdrawal of Israel from the territory occupied in 1967 and for an end to the occupation.

32. In 2016, even the Security Council – generally paralysed on this issue by United States of America support for Israel – declared that “the establishment by Israel of settlements in the occupied Palestinian territory, including East Jerusalem, has no legal validity”, firmly condemning the enterprise as “a flagrant violation under international law”.⁵⁶

IV. Before our eyes Fifty-five years of preventing Palestinian self-determination

A. Reality check

33. As an occupier, Israel has no sovereignty over the occupied Palestinian territory. Even if the occupation was established purely for bona fide Israeli security needs (in itself, an aberration, given its adverse impact on Palestinians’ fundamental rights and freedoms), on what basis does Israel continue to seize Palestinian land to build colonies in the West Bank, exploiting water and energy that belong to the Palestinians? On what basis does Israel destroy essential civilian infrastructure of the occupied population?

34. In defiance of numerous United Nations resolutions recognizing the violation of Israeli obligations as an occupying Power and calling for its withdrawal from the occupied Palestinian territory,⁵⁷ Israel has consolidated its military rule and presence, making it more visible and painful for the Palestinians, while pursuing its own interests.⁵⁸ The way that Israel has administered the occupied Palestinian territory resembles that of a colony, “deeply committed to exploiting its land and resources for Israel’s own benefit, and profoundly indifferent, at very best, to the rights and best interests of the protected people”.⁵⁹

35. The profound illegality of the situation in the occupied Palestinian territory emanates from the intentional unlawful displacement of its native (and refugee)

⁵⁴ Ibid., para. 23.

⁵⁵ General Assembly resolution 38/17 (1983).

⁵⁶ Security Council resolution 2334 (2016).

⁵⁷ Ibid. and Security Council resolution 242 (1967).

⁵⁸ Yehuda Z. Blum, “The missing reversioner: reflections on the status of Judea and Samaria”, *Israel Law Review* vol. 50 (2017), p. 276.

⁵⁹ A/72/556 (2017).

Palestinian inhabitants, coupled with alteration of the legal status, geographical nature and demographic composition of the occupied territory through fragmentation of land, seizure and exploitation of natural resources, impairment of Palestinian economic development, through and for a (growing) colonist minority. Altogether, the imposition of settlers, settlements and settlement infrastructure in the topography and space of the Palestinians has served to prevent the realization of the Palestinians' right to self-determination, violating a number of peremptory norms of international law, absolutely prohibited under international law.⁶⁰

36. Evidence laid out in the following sections confirms that the occupation is not merely belligerent, but is settler-colonial in nature and that Israel has prevented the realization of Palestinian people's right to self-determination, violating each component of that right, wilfully pursuing the "de-Palestinianization" of the occupied territory. This is, in essence, proof of the intent to colonize the occupied Palestinian territory, continuing what the Zionist movement had envisaged for modern-day Israel over a century ago.⁶¹ In parallel, for more than 55 years, the international community has systematically failed to hold Israel accountable, thus enabling its impunity and permitting its settler colonial endeavours.

B. The dawn of occupation Sett(l)ing the grounds

37. When, in 1967, Israel invaded what remained of British Mandate Palestine – which had until then been under the control of Egypt (Gaza Strip) and Jordan (West Bank, including East Jerusalem) – many, both in Israel and abroad, saluted the "capture" of the West Bank, Gaza Strip and the Old City of Jerusalem "with ecstatic revelry".⁶² Emboldened by the swift control over large swaths of lands, Israeli leaders devised plans to consolidate permanent Israeli control over the territory that it had just occupied.⁶³ From the onset of the occupation, successive Governments of Israel have acted as if that territory was "captured" *terra nullius*; this is not dissimilar to the attitude that Zionist movement leaders have displayed towards Palestine since the days of the Ottoman Empire.

38. In the analyses of Israeli strategists of that time, the planned future of the occupied territory would be tied to "creat[ing] a Greater Eretz Yisrael [land of Israel] from a strategic point of view, and establish[ing] a Jewish state from a demographic point of view".⁶⁴ The 1967 Allon Plan articulated a formal vision of a unitary "Jewish state" from the Jordan River to the Mediterranean Sea through the full annexation of the Jordan Valley and the creation of demilitarized Palestinian Bantustans therein.⁶⁵ The Plan provided for a complete redrawing of the map of Israel, where neither the Green Line nor other armistice lines would be relevant.⁶⁶ The Old City of Jerusalem, in the eastern part of the city, was to be annexed and the Palestinians living there

⁶⁰ Security Council resolution 478 (1980); General Assembly resolution 3314 (XXIX) (1974); and Security Council resolution 267 (1969).

⁶¹ Rashid Khalidi, *The Hundred Years' War on Palestine: A History of Settler Colonialism and Resistance: 1917–2017* (New York, Metropolitan Books, 2020).

⁶² Seth Anziska, *Preventing Palestine: A Political History from Camp David to Oslo* (Princeton, Princeton University Press, 2018), p. 7.

⁶³ Segev, *1967: Israel, the War, and the Year that Transformed the Middle East* (see footnote 3).

⁶⁴ Israeli commander (acting Prime Minister, 1969), Yigad Allon, cited by Robert Friedman, *Zealots for Zion: Inside Israel's West Bank Settlement Movement* (New York, Random House, 1992).

⁶⁵ Geoffrey Aronson, *Creating Facts: Israel, Palestinians and the West Bank* (Washington, D.C., Institute for Palestine Studies, 1987).

⁶⁶ Cited in Gershon Gorenberg, *The Unmaking of Israel*, 1st Harper Perennial ed. (New York, Harper Perennial, 2012).

would be given “conditional residency status”.⁶⁷ The rest of the land would be given priority if lightly populated; the lowlands along the Jordan River, argued to be “vital” for the defence of Israel, and the Sinai Peninsula, as well as Bethlehem and Hebron, were to be annexed. The remainder of the territory, more densely populated by Palestinians, was to be granted to Jordanian rule.⁶⁸

39. The Allon Plan has continued to shine and thrive through the actions of successive Governments of Israel. In 1973, the Foreign Minister of Israel, Moshe Dayan, one of the architects of the 1967 occupation, expressed his view for a “new State of Israel with broad frontiers, strong and solid, with the authority of the Israel Government extending from the Jordan [river] to the Suez Canal”.⁶⁹ In 1979, the Prime Minister of Israel, Menachem Begin stated: “the green line no longer exists – it has vanished forever”.⁷⁰ As former Israeli politician Matityahu Drobles revealed in 1980, the intention had always been “to hold forever the territories of Judea and Samaria. The best and most efficient way [to do so] is an accelerated colonization drive in these areas”.⁷¹ A leading example has been Israeli annexation of occupied East Jerusalem since 1967, which was formally consolidated in 1980 via administrative and legislative measures⁷² that altered the status and the character the Old City, repeatedly condemned by the Security Council as “null and void”.⁷³

40. Developments on the ground bear testament to the execution of the Allon Plan, even if it was never formally adopted as an official policy. After decades of Israel building facts on the ground to consolidate the annexation of large parts of the occupied Palestinian territory, in 2019, the then Prime Minister of Israel, Benjamin Netanyahu stated, “a Palestinian state will endanger our existence. I will not divide Jerusalem, I will not evacuate any community and I will make sure we control the territory west of Jordan”.⁷⁴ Multiple Governments of Israel and political and military leaders have reaffirmed these views.⁷⁵ The presence of “settlers” and Kahanists in the Israeli Knesset makes it difficult to disentangle settler-colonialism from Israeli public policy.

41. Since 1967, Israel has settled its civilian population in the 22 per cent of Mandatory Palestine that had become (out of political pressures and pragmatism), the territory where the Palestinians would realize their right to self-determination in the form of independent statehood (while, in 1947, the General Assembly had deliberated that the territory of the “Arab State” would correspond to 45 per cent of the territory which had constituted Palestine under British Mandate).

42. In a tragic irony, Palestinians have experienced an entrenching settler-colonialism at a moment in history when the rest of the world was slowly progressing towards decolonization. Worldwide, national resistance movements, symbolically enabled by the United Nations, challenged their colonizers and succeeded in ending their rule. However, in the occupied Palestinian territory, including East Jerusalem,

⁶⁷ Ibid.

⁶⁸ Ibid.

⁶⁹ Minister of Foreign Affairs of Israel, Abba Eban, cited by Abba Eban, *Abba Eban: An Autobiography* (New York, Random House, 1977).

⁷⁰ “Foreign Minister Dayan on the future of settlements in Judea, Samaria and Gaza”, 24 April 1979.

⁷¹ Matityahu Drobles, “Settlement in Judea and Samaria: Strategy, Policy and Programmes”, in *World Zionist Organization, Settlement Section* (Jerusalem, 1980).

⁷² Knesset, “Basic Law: Jerusalem, Capital of Israel” (1980).

⁷³ Security Council resolution 478 (1980), para. 3.

⁷⁴ “Netanyahu says will begin annexing West Bank if he wins Israel election”, *Haaretz*, 7 April 2019.

⁷⁵ Tovah Lazaroff, “Michaeli: no one thinks half a million settlers will be evacuated”, *Jerusalem Post*, 9 March 2021; “Benny Gantz, Netanyahu rival, gives campaign launch speech: full English transcript”, *Haaretz*, 30 January 2019; and Gil Stern Hoffman, “Lapid: US helped Iran fund its next war against Israel”, *Jerusalem Post*, 26 January 2016.

Israeli expansionism consolidated into an apartheid regime through the longest occupation in modern history.

C. Preventing unity Territorial fragmentation

43. Territorial sovereignty, an essential component of the Palestinian “self-determination unit”,⁷⁶ has been targeted since the early days of the occupation. “Strategic fragmentation” has been part of the Israeli toolbox to contain and control the Palestinian people, curtailing freedom of movement inside and outside the occupied territory, depriving them of access to large areas of land, punctuating it with roadblocks, checkpoints, diversions, the Wall and more.⁷⁷ This is painfully reminiscent of the destruction and attempted erasure of hundreds of Palestinian villages in former British Mandate Palestine that accompanied the creation of the State of Israel, disfiguring its landscapes, reinventing the land to serve the specific interests of Israel and separating, containing and isolating the Palestinian people through areas under its control. Heavy control of the Palestinian population, epitomized by today’s besieged Gaza, has become a hallmark of Israeli policies of domination.

44. The fragmentation and separation between the West Bank, East Jerusalem and the Gaza Strip have been meticulously planned and executed. As of 1967, the adoption of different administrative and military regimes to the Gaza Strip and the West Bank – signalled by the adoption of separate systems ranging from identification cards to car plates – has been the prime vector for this fragmentation.⁷⁸ Since the early days of the occupation, the unlimited land expropriation for the establishment of Israeli colonies has exacerbated it.⁷⁹ The establishment of colonies, which already constituted a grave breach of international law in 1967,⁸⁰ manifests the execution of Israeli leaders’ plans to permanently settle in those areas.⁸¹ This design is particularly visible in East Jerusalem, which Israel has unlawfully treated as “annexed” for decades.⁸² More than 40 Security Council resolutions have reminded Israel of the impermissibility of alteration of the status, character, and demography of Jerusalem.⁸³ However, the annexation, and de-Palestinianization, of Jerusalem and most of the West Bank, has progressed.

45. The Oslo Accords, which Israel and PLO signed between 1993 and 1995, divided the West Bank into “areas” A, B and C, and further fragmented the territory available to the Palestinians. The fragmentation of the West Bank has facilitated the construction and “protection” of Jewish-only colonies in occupied territory. Meanwhile, thousands of Palestinian structures have been destroyed, with tens of thousands of Palestinians forcibly displaced since 2009. Pastoralist and Bedouin communities in Area C, 70 per cent of whom are refugees, are the most exposed to such a “coercive environment”.⁸⁴

⁷⁶ Crawford, *The Creation of States in International Law* (see footnote 19), p. 428.

⁷⁷ E/ESCWA/ECRI/2017/1 (2017) (see footnote 5).

⁷⁸ Jean-Pierre Filiu, *Gaza: A History* (Oxford, Oxford University Press, 2014).

⁷⁹ Military Order 58 (1967).

⁸⁰ Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention), art. 147; International Committee of the Red Cross, commentary of 1958.

⁸¹ ICJ, Legal consequences of the construction of a wall in the Occupied Palestinian Territory, advisory opinion (2004) (see footnote 35).

⁸² Law and Administration Ordinance (Amendment No. 11) Law of 1967.

⁸³ Security Council resolution 2334 (2016).

⁸⁴ A/HRC/31/43.

46. The transformation of the Gaza Strip into a heavily populated, impoverished enclave controlled by Israel through a suffocating sea, land and air blockade, is part and parcel of that same settler-colonial design. The containment of the colonial population into heavily controlled reserves is at the core of the settler-colonial goal to ensure the demographic supremacy and prevent Palestinian self-determination.⁸⁵ Conversely, the obligation to consider the Gaza Strip and the West Bank, including East Jerusalem, as a single territorial unit is rooted in the law of occupation, the principle of self-determination of peoples, and a number of bilateral treaties concluded by Israel and PLO.⁸⁶

D. Preventing economic prosperity Exploiting natural resources

47. Permanent sovereignty over natural resources is integral to peoples' economic development, enshrined in the right to self-determination.⁸⁷ The complex system of control and restrictions that Israel enforces in the occupied Palestinian territory to the exclusive profit of its colonies crushes the possibility for Palestinians to freely pursue their economic development and "dispose of their natural wealth and resources".⁸⁸

48. Palestinian communities, historically self-sufficient through agriculture, livestock and fishing (in Gaza), with income generated from the sale of their products,⁸⁹ are now trapped in a vicious circle of dependency on both Israeli economy and international aid. Access to livelihoods, water, land and roads has been systematically disrupted through Israeli restrictions.

49. In Area C of the West Bank, which contains the majority of the natural resources and almost all the arable land in the West Bank, Israel maintains complete monopoly over water springs⁹⁰ and has designated a mere 1 per cent of land for Palestinian development.⁹¹ The "coordination system" that Israel has ostensibly established to facilitate Palestinians' access to their land is convoluted and inefficient.⁹² Israeli control over Palestinian resources hampers Palestinian production and self-sufficiency, particularly endangering the survival of the Bedouin and other Palestinian pastoral communities in the area. According to United Nations estimates, without the Israeli occupation, the West Bank gross domestic product (GDP) per capita in 2019 would have been 44 per cent higher than its actual value.⁹³

50. In the besieged Gaza Strip, the economic situation is beyond dire.⁹⁴ In 2021 the unemployment rate in Gaza rose above 50 per cent, and 80 per cent of the population was dependent on aid.⁹⁵ Repeated large-scale Israeli military offensives, coupled with

⁸⁵ Tareq Baconi, "Gaza and the one-State reality", *Journal of Palestine Studies*, vol. 50, No. 1 (2020), pp. 77–90.

⁸⁶ Marco Longobardo, "The Legality of Closure on Land and Safe Passage between the Gaza Strip and the West Bank", *Asian Journal of International Law*, vol. 11, No. 1 (2021).

⁸⁷ Drew, "The East Timor story: international law on trial" (see footnote 22).

⁸⁸ International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, common article 1 (2).

⁸⁹ B'Tselem, "Expel and exploit: the Israeli practice of taking over rural Palestinian land" (2016).

⁹⁰ See [A/HRC/37/39](#) (2018).

⁹¹ Orhan Niksic and others, *Area C and the Future of the Palestinian Economy* (World Bank, 2014), p. 13.

⁹² See B'Tselem, "Expel and exploit" (see footnote 89).

⁹³ See United Nations Conference on Trade and Development (UNCTAD), *The Economic Costs of the Israeli Occupation for the Palestinian People: Arrested Development and Poverty in the West Bank* (UNCTAD/GDS/APP/2021/2 and UNCTAD/GDS/APP/2021/2/Corr.1) (2021).

⁹⁴ UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: The Impoverishment of Gaza under Blockade* (UNCTAD/GDS/APP/2020/1) (2020).

⁹⁵ World Bank, *Assistance Strategy for the West Bank and Gaza for the Period FY22-25* (156451-GZ) (2021).

Israeli-imposed electricity shortages, have compounded the difficulties faced by the Palestinian people in Gaza, for whom a dignified life is rendered unattainable.⁹⁶ The illegal Israeli blockade, a form of collective punishment, has also allowed Israel to exploit the offshore natural gas reserves and oil reservoirs of Gaza.⁹⁷

51. Meanwhile, a web of national and international businesses operate in the illegally occupied Palestinian territory.⁹⁸ These businesses “field-prove” military equipment on Palestinians,⁹⁹ exploit water denied to and diverted from Palestinians,¹⁰⁰ farm and graze land, quarry for stone, extract minerals and drill for oil and natural gas and allocate resources almost exclusively for the colonies and the occupying Power.¹⁰¹ Final products are globally marketed as “products of Israel”, generally exported and received within the territories of third States, in some cases tariff-free.¹⁰² The obligation to label these products as from the occupied territory¹⁰³ does not resolve the illegality of trading settlement products; it merely transfers the burden to consumers of the receiving States to decide on products that should not be allowed in territories of High Contracting Parties to the Geneva Conventions.

52. The engineered denial of Palestinian access to and control over their natural resources makes any prospect of economic development a mere surrogate for prosperity.¹⁰⁴ The “de-development” that Israel has imposed on the occupied Palestinian territory¹⁰⁵ has irreparably harmed the Palestinian economy and is the antithesis of the self-determination that the United Nations embraced in the rejection of colonialism.

E. Preventing identity Erasing Palestinian cultural and civil rights

53. In a settler-colonial context and an apartheid regime, any display of collective identity and (re)claimed sovereignty from the subjugated people represents a threat to the regime itself. On 13 May 2022, Palestinian pallbearers were attacked by Israeli forces while also carrying their national flag during the funeral of Palestinian journalist Shireen Abu Akleh who had been killed two days earlier (see para. 58). In fact, Palestinian “symbols”, like the Palestinian flag, are systematically attacked and torn down, in public places, during public events, protests and even funerals, with the display of Palestinian national identity being de facto banned. In the occupied Palestinian territory, preventing the Palestinian people from expressing their collective identity in their own land has taken many forms.

⁹⁶ Ibid.

⁹⁷ UNCTAD, *The Economic Costs of the Israeli Occupation for the Palestinian People: the Unrealized Oil and Natural Gas Potential* (UNCTAD/GDS/APP/2019/1) (2019).

⁹⁸ Wesam Ahmad, “Business and human rights, conflict and the converging legacies of colonialism in the Palestinian present”, *Cambridge Core* blog, May 2021.

⁹⁹ Marya Farah, “Business and human rights in Occupied Territory: guidance for upholding human rights” (Al-Haq, 2020).

¹⁰⁰ Al-Haq, “Water for one people only: discriminatory access and ‘water apartheid’ in the OPT” (2013).

¹⁰¹ Al-Haq, “Palestinian human rights organisations submit file to ICC prosecutor: investigate and prosecute pillage, appropriation and destruction of Palestinian natural resources”, 26 October 2018.

¹⁰² Canada-Israel Free Trade Agreement (2014).

¹⁰³ Court of Justice of the European Union, case C-363/18 (12 November 2019).

¹⁰⁴ Al-Haq and Emergency Water, Sanitation and Hygiene group (EWASH), “Israel’s violations of the International Covenant on Economic, Social and Cultural Rights with regard to the human rights to water and sanitation in the Occupied Palestinian Territory” (2011).

¹⁰⁵ Sara Roy, “De-development revisited: Palestinian economy and society since Oslo”, *Journal of Palestine Studies*, vol. 28, No. 3 (1999), pp. 64–82.

54. This is part of a broader and deeper endeavour to “deconstruct and replace” Palestine from the collective imagination through a combination of cultural appropriation and the erasure of key cultural entities.¹⁰⁶ The Moroccan Quarter in the Old City of Jerusalem, destroyed at the beginning of the occupation to make space for the Wailing Wall esplanade, is one of the first recorded cases of Palestinian venues destroyed or seized and converted to Israeli cultural sites soon after June 1967. Similarly, attempts to erase the Palestinian character of what is left of Palestinian ancestral land include: the elimination of Palestinian history in East Jerusalem schools,¹⁰⁷ the revocation of licences to Palestinian schools not adhering to Israeli curriculum policies¹⁰⁸ and the conversion or closure of sites representing Palestinian cultural, political and religious identity.¹⁰⁹

55. Attacks on cultural objects of significance to eliminate all traces and expressions of Palestinian existence, and the incorporation of a revisionist view of history to assert (false) claims of sovereignty in the occupied Palestinian territory, demonstrate the occupier’s intention to permanently strip the land of its indigenous identity.

F. Preventing political existence (and resistance)

56. The exercise of the right to self-determination constitutes the beating heart of a people as a collective and as a polity. Since 1967, to maintain its domination, Israel has systematically carried out human rights violations, including extrajudicial killings, arbitrary detention and imprisonments (including of elected representatives), residency revocations and mass deportations, including of political figures outside the occupied Palestinian territory, among others. These violations have hampered the organic formation and functioning of a cohesive Palestinian political leadership and thus the exercise of the right to self-determination by Palestinians.

57. Portrayed as terrorists, many civilian Palestinian political leaders and advocates have allegedly been killed for their messages and their potential impact on the formation of Palestinian political thinking.¹¹⁰ What started in the 1960s as security operations in reaction to “terrorist operations”, became, over the years, a policy of assassinations targeting not only operatives of such attacks but also political leaders of organizations designated by Israel as terrorists.¹¹¹ This includes many members of PLO, even though both the United Nations and later Israel recognized it as the “legitimate representative of the Palestinian people” in 1974 and 1993 respectively. Israel has allegedly used targeted killings – extrajudicial executions – as an alternative political strategy to negotiations.¹¹² This approach was reportedly implemented

¹⁰⁶ Wolfe, “Settler colonialism and the elimination of the native” (see footnote 11).

¹⁰⁷ Musa Ismael Basit, “The Israeli curriculum and the Palestinian national identity in Jerusalem”, *Palestine-Israel Journal*, vol. 22, No. 4 (2017).

¹⁰⁸ “Education minister revokes licences of 6 East Jerusalem schools for incitement”, *Times of Israel*, 28 July 2022.

¹⁰⁹ Luma Zayad, “Systematic cultural appropriation and the Israeli-Palestinian conflict”, *DePaul Journal of Art Technology and Intellectual Property Law*, vol. 28, No. 2 (2018), p. 81; Mahmoud Hawari, “Capturing the castle: archaeology, architectural history and political bias at the Citadel of Jerusalem”, *Jerusalem Quarterly* No. 55 (2013); Mahmoud Hawari, “The Citadel of Jerusalem: a case study in the cultural appropriation of archaeology in Palestine”, *Present Pasts* vol. 2, No. 1 (2010); Tom Abowd, “The Moroccan Quarter: a history of the present”, *Jerusalem Quarterly* No. 7 (2000).

¹¹⁰ Eyal Weizman, *Hollow Land: Israel’s Architecture of Occupation* (London, Verso Books, 2012).

¹¹¹ Ronen Bergman, *Rise and Kill First: The Secret History of Israel’s Targeted Assassinations* (New York, Random House Publishing Group, 2019).

¹¹² Weizman, *Hollow Land: Israel’s Architecture of Occupation* (see footnote 110).

during the second Intifada, when 300 Palestinians accused of terrorism were wilfully killed, resulting in a further 150 civilian casualties.¹¹³

58. Humanitarians and journalists are regularly among the victims of the widespread recourse by Israel to lethal force. Lack of accountability remains pervasive. The killing of Palestinian journalist Shireen Abu Akleh, while documenting an Israeli raid on the Jenin refugee camp on 11 May 2022, remains unaccounted for despite numerous investigations concluding that the journalist was hit by Israeli soldiers' fire.¹¹⁴

59. Israel continues to imprison Palestinian Authority ministers, mayors and teachers, human rights defenders and civil society representatives. Ten members of the Palestinian Legislative Council were reportedly incarcerated in 2020 alone. The practice of mass arbitrary arrests, which includes administrative detention without charge or trial, has been increasingly executed since Palestinians began protesting the illegal construction of the Wall in the West Bank and East Jerusalem.¹¹⁵ Almost 4,500 Palestinians are currently detained, 730 without any charge and largely based on secret evidence. Children as young as the age of 12 have been victims of arbitrary arrest and detention – 500–700 minors are held yearly.¹¹⁶ Many believed to be leading resistance, such as public servants, religious leaders and activists, lawyers, journalists and students involved in political activities, have been deported to the Gaza Strip.¹¹⁷ Deporting elected leaders, preventing Palestinians from voting and interfering with Palestinian politics, have inhibited the independent formation of a Palestinian leadership and political will that could challenge Israeli colonial interests.¹¹⁸

60. Civil society organizations and human rights defenders have also been the target of Israeli repression. Using mass spyware surveillance to “monitor” human rights activists and defenders’ devices with the Pegasus software – now exported and used across the globe – Israel has shrunk the space for political activities of Palestinians.¹¹⁹ In 2021, six reputable Palestinian civil society organizations, which are at the forefront of the battle for international justice and accountability in the occupied Palestinian territory, were designated as “terrorist organizations” by Israel without evidence. In August 2022, the premises of these organizations were raided and ordered to be closed by Israel, with some of their senior leaders summoned and threatened. This appears to be an attempt to further shrink, if not outright ban, space for human rights monitoring and legal opposition to the Israeli occupation in the Palestinian territory,¹²⁰ while abusing counter-terrorism legislation.¹²¹ As the designated organizations are fully engaged in the ongoing *Situation of Palestine* case before ICC, Israel, by attacking them and their work, may be “destroying, tampering with, or interfering with the collection of evidence” of war crimes and crimes against

¹¹³ Noura Erakat, “Extrajudicial executions from the United States to Palestine”, *Just Security*, 7 August 2020.

¹¹⁴ See, for example, OHCHR, “Killing of journalist in the occupied Palestinian territory”, 24 June 2022.

¹¹⁵ Addameer, Administrative detention fact sheet 2022 (20 January 2022).

¹¹⁶ Defense for Children International Palestine, “Number of Palestinian children (12–17) in Israeli military detention”, 14 June 2022. Available at www.dci-palestine.org/children_in_israeli_detention.

¹¹⁷ Miftah fact sheet, “The Palestinian Exodus” (2002).

¹¹⁸ Ibid.

¹¹⁹ Front Line Defenders, “Six Palestinian human rights defenders hacked with NSO Group’s Pegasus Spyware”, 8 November 2021.

¹²⁰ Michael Kearney, “Lawfare, legitimacy and resistance: the weak and the law”, *Palestine Yearbook of International Law*, vol. 16, No. 1 (2010).

¹²¹ [A/HRC/40/52](http://www.unhcr.org/refugees/article/2019/04/19-04-2019-a-hrc-40-52.html) (2019).

humanity, absolutely prohibited under international criminal law.¹²² This would constitute an offence against the administration of criminal justice.

61. Attacks on human rights defenders and humanitarian operators are far too common in the occupied Palestinian territory. Salah Hammouri, a French-Palestinian lawyer from Jerusalem, has been subjected to harassment, arbitrary arrest and detention since the age of 16. Detained without charges or trial since 7 March 2022 on allegations of terrorism, Hammouri risks the revocation of his residency in Jerusalem on the ground of breach of allegiance to Israel.¹²³ This would set a dangerous precedent, as he would be the first Jerusalemite deprived of his residency on the ground of secret evidence related to national security threats. Similarly, Mohammad el-Halabi, an aid worker for World Vision in the Gaza Strip, has been convicted of diverting organization funds to Hamas and other terrorism-related crimes, after six years and across 160 court hearings, largely based on secret evidence, and despite an external investigation that found no evidence of wrongdoings.¹²⁴

62. The relentless attacks on the Palestinian people, their political manifestations and even their legal resistance have been assessed as amounting to persecution,¹²⁵ which ultimately restricts Palestinians' ability to develop as a people.

G. Preventing statehood “Negotiating the illegal”?

63. Under the law on State responsibility, the breach of an international obligation by a State gives rise to an internationally wrongful act,¹²⁶ the commission of which requires first and foremost the State responsible to immediately cease the illegal act, ensure non-repetition and provide reparation for the damage done.¹²⁷ It follows that a breach of international law should not be subjected to negotiations, as this would legitimize what is illegal.¹²⁸ Therefore, because of the illegality of the Israeli occupation, owing to its prolonged, acquisitive and bad-faith nature, the obligation of cessation of the occupation cannot in any way be conditioned on negotiations.¹²⁹

64. Since the start of the Middle East peace process with the Madrid Conference of 1991, the main political actors involved (particularly the Middle East Quartet) have argued in favour of advancing peace through bilateral negotiations. As with the Palestinian Declaration of Independence of 1988, PLO had yielded to the ineluctability of a compromise solution and its acceptance of Security Council resolutions 242 (1967) and 338 (1973) was seen as limiting Palestinians' claims to sovereignty to the occupied Palestinian territory.¹³⁰ The Oslo Accords, which many see as the benchmark for resolving the Israeli-Palestinian question via statehood within the 1949 armistice lines, neither realized nor advanced the realization of the Palestinian people's right to self-determination. The Accords, which framed the right to self-determination as the final objective of peacemaking after an interim self-rule, built on the mutual recognition of the State of Israel and PLO (not the State of

¹²² ICC Statute (1998), art. 70 (1) (c).

¹²³ Addameer, “Salah Hammouri”, 8 September 2022.

¹²⁴ Amnesty International, “Israel/OPT: quash flawed conviction of aid worker Mohammed al-Halabi” (16 June 2022).

¹²⁵ Human Rights Watch, *A Threshold Crossed* (see footnote 5), p. 170.

¹²⁶ ILC, articles on responsibility of States for internationally wrongful acts, art. 2 (a) and (b).

¹²⁷ Ibid. arts. 30 (a) (b) and 31 (1) and (2).

¹²⁸ Imseis, “Negotiating the illegal: on the United Nations and the illegal occupation of Palestine, 1967–2020” (see footnote 8), p. 1068.

¹²⁹ Ibid.

¹³⁰ Palestine National Council, “Palestinian Declaration of Independence”, Algeria, 15 November 1988.

Palestine, as it had been declared in 1988),¹³¹ but merely recognized Palestinian autonomy in parts of the West Bank and the Gaza Strip and Palestinians' "legitimate and political rights" in the occupied Palestinian territory.¹³² In practice, the Accords left open the possibility that Palestinian self-rule short of independence could be extended in perpetuity. Critically, they left 61 per cent of the West Bank under full Israeli control.¹³³

65. The right to self-determination remains a fundamental norm of international law that must be ensured by the broader community of States. Under international law, "special agreements [within the terms of the Fourth Geneva Convention] cannot violate peremptory rights nor can they derogate from or deny the rights of 'protected persons' under occupation."¹³⁴ Given the peremptory character of the norm, the Oslo Accords cannot waive Palestinians' right to self-determination. Such a fundamental *jus cogens* norm cannot be negatively affected in negotiations, especially considering the asymmetry of negotiating power between the occupier and the occupied (i.e., between the colonizer and the colonized).¹³⁵ Any interpretation of the Oslo Accords that negates the right to self-determination of the Palestinian people would render the Accords themselves questionable, if not invalid.¹³⁶

66. Indeed, any solution that perpetuates the occupation, that does not acknowledge the power asymmetries between the subjugated Palestinian people and the occupier State of Israel and that does not address once and for all Israeli settler-colonialism, violates the Palestinians' right to self-determination, among other critical provisions of international law.

V. Need for a paradigm shift

67. For more than 55 years, the Israeli military occupation has prevented the realization of the Palestinian right to self-determination attempting to "de-Palestinianize" (i.e., diminish the presence, identity and resilience of Palestinians in) the occupied Palestinian territory, attempting to transform most of it into a permanent extension of Israeli metropolitan territory, with as few Palestinians as possible. This behaviour, reminiscent of a colonial past that the international community firmly rejected decades ago, has become more entrenched with the acquiescence of the international community and failure to hold Israel accountable.

68. The Palestinian people's right to self-determination, as part of the decolonization struggle, has nearly disappeared from the international political and humanitarian discourse, even more so in the context of diplomatic "normalization" with Israel, despite reaffirmations by human rights advocates, scholars and civil society. Some seem to approach it as an ideological slogan rather than as a legal reality from which clear responsibilities emanate.

69. Meanwhile the occupation has become further entrenched with systematic and forced alteration by Israel of the legal status, character and demographic composition

¹³¹ Exchange of letters between PLO Chairman Arafat, Israeli Prime Minister Rabin and Norwegian Foreign Minister Holst (1993). Available at www.un.org/unispal/document/auto-insert-205528/.

¹³² Israel and PLO, "Declaration of Principles on Interim Self-Government Arrangements (Oslo I)" (1993).

¹³³ The Oslo Accords divided the West Bank into Area A (under exclusive Palestinian Authority civil and security control), Area B (under Palestinian Authority civil control and joint Israeli-Palestinian security control), and Area C (under full Israeli civil and military control).

¹³⁴ ICC-01/18 (2021), para. 25.

¹³⁵ Imseis, "Negotiating the illegal: on the United Nations and the illegal occupation of Palestine, 1967–2020" (see footnote 8), p. 1065.

¹³⁶ ICC, *Asem Khalil and Halla Shoaibi*, case No. ICC-01/18-73 (2020), para. 71.

of the occupied Palestinian territory. Without challenging it, the “humanitarian”, “political” and “economic development” approaches to the occupied Palestinian territory normalize the occupation itself,¹³⁷ rendering the regulatory and remedial functions of international law irrelevant.

70. This must change; a paradigm shift is needed as the only possible way to overcome this situation by opting for a solution premised on respect for history and international law. This can only be resolved by respecting the cardinal norm of peoples’ right to self-determination and the recognition of the absolute illegality of the settler-colonialism and apartheid that the prolonged Israeli occupation has imposed on the Palestinians in the occupied Palestinian territory. Given the settler-colonial nature of the occupation, its overall assessment must change, and so the deliberations of the international community.

71. This starts with the recognition of the current reality in the occupied Palestinian territory as that of an intentionally acquisitive, segregationist and repressive regime, which has enabled, for 55 years, the disenfranchisement of the Palestinians, caging them into Bantustans of disrupted memories, broken ties and hopes, pursuing the ultimate goal to consolidate minority rule over a native majority on lands usurped through force, abusive and discriminatory policies and pillaging of resources. A prolonged occupation maintained for ostensible “security reasons” disguising Israeli settler-colonial intentions to extinguish Palestinian people’s right of self-determination while acquiring their receding territory as its own, as explicitly indicated by Israeli political figures, is something that the international community can no longer tolerate. This must be addressed in a holistic fashion.

72. Within the framework of the law of external self-determination, the very existence of such an occupation entails an unlawful use of force and therefore can be seen as an act of aggression. An act of aggression constitutes a violation of the *jus ad bellum*, which cannot be dismissed, as Israel often does, by claims of “pre-emptive” self-defence. This triggers consequences under the Charter of the United Nations and the law of State responsibility. Such grave violations of international law render (a) an immediate withdrawal of Israeli presence imperative and non-derogable, so that sovereignty can be returned to and regained by the native Palestinian people and (b) reparations necessary as a step toward justice and peace for both the Palestinians and the Israelis.

VI. Concluding observations

73. **The violations described in the present report expose the nature of the Israeli occupation: that of an intentionally acquisitive, segregationist and repressive regime designed to prevent the realization of the Palestinian people’s right to self-determination.** Since 1967, Israel has wilfully and intentionally violated the self-determination of the Palestinians in the occupied Palestinian territory, by preventing their exercise of territorial sovereignty over natural resources, suppressing their cultural identity and repressing Palestinian political character and resistance. In short, Israeli endeavours in the occupied Palestinian territory are indistinguishable from settler-colonialism; by seizing, annexing, fragmenting, and transferring its civilian population to, the occupied territory, Israeli occupation violates Palestinian territorial sovereignty; by extracting and exploiting Palestinians’ resources in order to generate profits benefiting third parties, including “settlers”, it violates Palestinians’ sovereignty over natural resources needed to develop an independent economy; by erasing or appropriating symbols expressing Palestinian identity, the

¹³⁷ Daniela Huber, “The EU and 50 years of occupation: resistant to or complicit with normalization”, *Middle East Critique* vol. 27, No. 4 (2018), pp. 351–364.

occupation endangers the cultural existence of the Palestinian people; by repressing Palestinian political activity, advocacy and activism, the occupation violates Palestinians' ability to organize themselves as a people, free from alien domination and control.

74. Realizing the inalienable right of the Palestinian people to self-determination requires dismantling once and for all the Israeli settler-colonial occupation and its apartheid practices. International law is very clear in this regard. No solution can be just and fair, nor effective, unless it centres on decolonization, allowing the Palestinian people to freely determine their political will and pursue their social, economic and cultural development, alongside their Israeli neighbours. The international community must embrace a more accurate diagnosis of the Israeli settler-colonial occupation in the occupied Palestinian territory and abide by its own obligations under international law to fully realize the Palestinian people's right to self-determination.

75. The Middle East "peace process" and subsequent bilateral peacemaking attempts have proven ineffective; they have not focused their approaches on human rights, particularly the right to self-determination, and have overlooked the settler-colonial underpinnings of the Israeli occupation. As the Oslo process has shown, politically mandated peace negotiations cannot succeed without resolving the Palestinians' enduring subordinate status, ergo without challenging Israeli settler colonial endeavours. The end of the settler-colonial occupation must be the sine qua non condition for Palestinians to enjoy their right to self-determination in the occupied Palestinian territory, without being compelled to negotiate the conditions of their subjugation.

76. As a peremptory norm of international law, the right to self-determination cannot be derogated from under any circumstances and gives rise to obligations *erga omnes*. Given that the denial of the Palestinian people's self-determination is intentional and inherent to Israeli settler-colonial occupation, the unwavering enforcement of the law of external self-determination and the law on the use of force must be the cornerstone of any solution. International law, as the force that should orient politics in the pursuit of justice, requires the cessation of Israeli subjugation of the Palestinian people and unlawful attempts to acquire sovereignty over portions of the occupied Palestinian territory. This implies an obligation on Israel to withdraw without conditions or reservations. Third States shall not recognize as lawful, nor aid or abet, the illegal situation created by internationally wrongful acts by Israel. Shielding Israel from respect for international law and accountability undermines deterrence and breeds a culture of impunity. The exceptionalism demonstrated towards Israel not only undermines the effectiveness of international law, but also tarnishes the image, trustworthiness, and role of the international community and the United Nations, including its judicial organs.

VII. Recommendations

77. The Special Rapporteur recommends that the Government of Israel complies with its obligations under international law and ceases to impede the realization of the right to self-determination of the Palestinian people, ending its settler-colonial occupation of the Palestinian territory immediately and unconditionally and making reparations for its wrongful acts.

78. **The Special Rapporteur recommends that all States:**

(a) Condemn the intentional violations by Israel of the Palestinian right to self-determination including through settler-colonial practices. This requires that:

(i) States demand an immediate end to the illegal Israeli occupation, return of all land and resources from which the Palestinian people have been displaced and dispossessed while refraining from making withdrawal subject to negotiation between Israel and Palestine;

(ii) The General Assembly develops a plan to end the Israeli settler-colonial occupation and apartheid regime;

(iii) States stand ready to resort to the diplomatic, economic and political measures afforded by the Charter of the United Nations in case of non-compliance by Israel;

(b) Deploy an international protective presence to constrain the violence routinely used in the occupied Palestinian territory and protect the Palestinian population, in line with the report of the Secretary-General on the protection of the Palestinian civilian population ([A/ES-10/794](#));

(c) Act to ensure a thorough, independent and transparent investigation of all violations of international human rights law and international humanitarian law, including those amounting to potential war crimes, crimes against humanity and the crime of aggression, committed in the occupied Palestinian territory. The Special Rapporteur further recommends that the international community pursue accountability for perpetrators through both ICC in its ongoing investigation into the situation in Palestine, and universal jurisdiction mechanisms;

(d) Take appropriate steps to prevent, investigate and redress human rights abuses by all business enterprises domiciled in their territory and/or under their jurisdiction by adopting the necessary policies to regulate business conduct in the occupied Palestinian territory, including disengaging from the colonies and providing effective remedy for victims.

79. **The Special Rapporteur recommends that the High Commissioner for Human Rights release, without delay, the updated database of businesses involved in settlements ([Human Rights Council resolution 31/36](#)).**

80. **The Special Rapporteur fully supports the Independent International Commission of Inquiry on the Occupied Palestinian Territory, including East Jerusalem, and in Israel, and encourages it to investigate the status of the right to self-determination and Israeli settler-colonial endeavours in more depth than the territorial and geographic limitations of her mandate allow.**



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Human rights questions: situations and reports of special rapporteurs and representatives

The issue of Palestinian pregnant women giving birth at Israeli checkpoints

Report of the High Commissioner for Human Rights**

1. The present report is submitted pursuant to Commission on Human Rights resolution 2005/7 of 14 April 2005, entitled “Israeli Practices Affecting the Human Rights of the Palestinian People and Other Arabs of the Occupied Territory, including East Jerusalem”, paragraph 4 of which reads as follows:

“The Commission on Human Rights,

“

“4. Requests the United Nations High Commissioner for Human Rights to address the issue of Palestinian pregnant women giving birth at Israeli checkpoints owing to denial of access by Israel to hospitals, with a view to ending this inhumane Israeli practice, and to report thereon to the General Assembly at its sixtieth session and the Commission at its sixty-second session;”

2. On 21 July 2005, the Secretary-General addressed notes verbales to the Permanent Mission of Israel and to the Permanent Observer Mission of Palestine to the United Nations Office at Geneva, in which he indicated that he would appreciate receiving any information pertaining to the implementation of the above resolution. No replies had been received at the time of preparation of this report.

3. In addition, the Office of the High Commissioner for Human Rights (OHCHR) addressed letters dated 21 July 2005 to the following United Nations entities and specialized agencies represented in the Occupied Palestinian Territory: Office for the Coordination of Humanitarian Affairs (OCHA), Office of the United Nations Special Coordinator for the Middle East Process (UNSCO), United Nations Development Fund for Women (UNIFEM), United Nations Relief and Works

* A/60/150.

** This report is delayed in order to cover as much updated information as possible.



Agency for Palestine Refugees in the Near East (UNRWA), United Nations Children's Fund (UNICEF), United Nations Population Fund (UNFPA), World Food Programme (WFP) and World Health Organization (WHO).

4. Information was received from UNFPA, UNRWA and WHO in the course of August 2005. WHO quoted statistics from the Palestinian Ministry of Health indicating that 61 women had given birth at checkpoints between September 2000 and December 2004 and 36 of their babies died as a result. A breakdown of these figures shows that in 2000-2001, 31 pregnant women delivered at checkpoints and 17 of the babies died; in 2002, 16 women gave birth in similar conditions and 11 babies died; in 2003 and 2004, the numbers decreased: 8 and 6 women gave birth at checkpoints and 3 and 5 of the babies died, respectively.

5. According to other statistics provided by UNRWA, not yet complete for 2005, in the Gaza Strip, out of eight pregnant women transported to hospital, one woman gave birth inside the Palestinian Red Crescent Society (PRCS) ambulance while waiting at a checkpoint. Another woman, suffering from problems in her six-month pregnancy, aborted inside a PRCS ambulance, as she was held up for one hour at a checkpoint before being allowed to proceed.

6. According to the same source of information, 15 pregnant women in 2004 and 8 others in 2005 were delayed at checkpoints in the Gaza Strip while being transported to hospital by PRCS ambulance. These delays ranged from 1 to 2 ½ hours and increased during the evacuation of emergency cases from closed areas such as Seafa or Mahata; such patients were first brought by ambulance to the checkpoints, where they were transferred to a second ambulance on the other side. It was reported that prior coordination with the Israeli Defence Forces (IDF) was necessary when these transfers occurred after crossing hours.

7. For its part, UNFPA stated that "as a result of increased security procedures at checkpoints and the construction of the Separation Barrier, access of the Palestinian people to hospitals and medical facilities had been significantly impaired. Since 2001, UNFPA had recorded more than 70 cases of women in labour who had been delayed at checkpoints, which resulted in unattended and risky roadside births, causing maternal as well as newborn deaths".

8. The Palestinian Ministry of Health registered an increase of 7.9 per cent in home deliveries in the West Bank (against 0.5 per cent in the Gaza Strip) for 2005, indicating that Palestinian women preferred to give birth at home, without taking the risk of being subjected to potentially hazardous delays at checkpoints. This was also confirmed by UNFPA.

9. Several testimonies of Palestinian pregnant women who were allegedly held at checkpoints by Israeli military were brought to the attention of OHCHR. One such testimony concerned the death of a baby girl at a checkpoint close to Salem village, Nablus Governorate, in August 2003, after her mother gave birth with the assistance of the father, who had to cut the umbilical cord himself with a stone, as both of them were waiting for a second ambulance on the other side of the checkpoint to take them to the hospital.

10. It was also reported that although ambulances were allowed to transport patients through checkpoints during curfews, on the basis of advance coordination with IDF, delays often occurred and ambulances were forced to use secondary roads.

When ambulances were not allowed to go through checkpoints, pregnant women had to be transferred from one ambulance to another on the other side.

11. Several sources indicated that many pregnant women in the Occupied Palestinian Territories feared that they would not be able to reach a hospital in time to give birth. The problem was more acute in rural areas, especially for those women who lived in villages cut off by checkpoints from the cities where the hospitals were located. The drive to a hospital could take several hours, even if the distance was only a few kilometres. Such journeys were impracticable at night, during curfews or when there were military incursions. Additional information received referred to more than 30 per cent of births taking place at home, increasing the risk of complications and the subsequent death of mothers or infants. A growing number of Palestinian women were requesting Caesarean deliveries as a result of psychological apprehension and the fear of not receiving adequate medical care.

12. OHCHR and its Office in Palestine will continue to compile information regarding the issue of Palestinian pregnant women giving birth at Israeli checkpoints, in cooperation with the agencies represented in the United Nations Country Team.
