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**HUMAN RIGHTS SITUATION IN PALESTINE AND  
OTHER OCCUPIED ARAB TERRITORIES**

**Report of the Special Rapporteur on the situation of human rights  
in the Palestinian territories occupied since 1967, John Dugard**

## Summary

This year marks the fortieth anniversary of the occupation of the Palestinian territory. Israel's obligations as an occupying Power have not diminished as a result of the prolonged nature of the occupation.

Israel remains the occupying Power in Gaza despite its claim that Gaza is a "hostile territory". This means that its actions must be measured against the standards of international humanitarian law and human rights law. Judged by these standards Israel is in serious violation of its legal obligations. The collective punishment of Gaza by Israel is expressly prohibited by international humanitarian law and has resulted in a serious humanitarian crisis.

The human rights situation in the West Bank has worsened, despite expectations that it would improve following the removal of Hamas from the Government of the West Bank. Settlements expand, the construction of the wall continues, and checkpoints increase in number. Military incursions and arrests have intensified, 779 Palestinian prisoners have been released but some 11,000 remain in Israeli jails.

The right of self-determination of the Palestinian people is seriously threatened by the separation of Gaza and the West Bank resulting from the seizure of power by Hamas in Gaza in June 2007. Every effort must be made by the international community to restore Palestinian unity.

On 27 November a new peace process was initiated at a meeting in Annapolis. This process must take place within a normative framework that respects international law, international humanitarian law and human rights. The Advisory Opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*<sup>1</sup> is an essential feature of this framework and cannot be overlooked by the Annapolis peace process, the Israeli and Palestinian authorities, the Quartet and the United Nations. The Secretary-General as the representative of the United Nations must ensure that the Advisory Opinion, which represents the law of the United Nations, is respected by all parties engaged in the Annapolis process.

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<sup>1</sup> See A/ES-10/273 and Corr.1.

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## **Introduction**

1. The Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 visited the Occupied Palestinian Territory (OPT) from 25 September to 1 October 2007. During this time he visited Gaza, Jerusalem, Ramallah, Bethlehem, Jericho and Nablus, where he met with non-governmental organizations (NGOs) - both Palestinian and Israeli - United Nations agencies, Palestinian officials, academics, businessmen and independent interlocutors. The Special Rapporteur spent a considerable amount of time in the field, visiting factories in Gaza, checkpoints, settlements, Palestinian villages affected by the wall near Bethlehem, Nablus and Qalqiliya, and villages and communities in the Jordan valley. On 30 September he delivered a lecture at Al-Najah University in Nablus. The visit of the Special Rapporteur to the OPT was preceded and followed by visits to Jordan where he met with Jordanian officials. The purpose of these meetings was to obtain a Jordanian perspective on the human rights situation in the OPT.

### **I. CRITICISM OF SPECIAL RAPPORTEUR AND MANDATE**

2. The Special Rapporteur has been criticized for a number of reasons by concerned States.<sup>2</sup> First, reports are repetitious. Second, they fail to address terrorism. Third, they fail to consider human rights violations committed by Palestinians. These criticisms will be briefly considered at the outset of the present report.

#### **A. Repetition**

3. It is true that reports on the OPT follow a familiar pattern and deal with substantially similar factual situations. They record violations of human rights and international humanitarian law that have occurred in a systematic and consistent manner over many years, some going back to the start of the occupation 40 years ago. Settlements, checkpoints, demolition of houses, torture, closure of crossings and military incursions have characterized the occupation for many decades and have featured regularly in reports. Reports inevitably, and correctly, continue to report on such matters and to record their consequences and frequency in a changing environment. New violations of human rights and humanitarian law are added as they occur, such as the construction of the wall (since 2003), sonic booms, targeted killings, the use of Palestinians as human shields, and the humanitarian crisis produced by the non-payment of tax money due to the Palestinians. In short, reports are repetitious because the same violations of human rights and humanitarian law continue to occur in the OPT.

#### **B. Terrorism**

4. Terrorism is a scourge, a serious violation of human rights and international humanitarian law. No attempt is made in the reports to minimize the pain and suffering it causes to victims, their families and the broader community. Palestinians are guilty of terrorizing innocent Israeli

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<sup>2</sup> See the criticisms raised by Israel and the United States in the Third Committee in October 2007 (A/C.3/62/SR.23, paras. 5-7 and 22-26) in response to the report of the Special Rapporteur (A/62/275).

civilians by means of suicide bombs and Qassam rockets. Likewise the Israeli Defense Forces (IDF) are guilty of terrorizing innocent Palestinian civilians by military incursions, targeted killings and sonic booms that fail to distinguish between military targets and civilians. All these acts must be condemned and have been condemned.<sup>3</sup> Common sense, however, dictates that a distinction must be drawn between acts of mindless terror, such as acts committed by Al Qaeda, and acts committed in the course of a war of national liberation against colonialism, apartheid or military occupation. While such acts cannot be justified, they must be understood as being a painful but inevitable consequence of colonialism, apartheid or occupation. History is replete with examples of military occupation that have been resisted by violence - acts of terror. The German occupation was resisted by many European countries in the Second World War; the South West Africa People's Organization (SWAPO) resisted South Africa's occupation of Namibia; and Jewish groups resisted British occupation of Palestine - inter alia, by the blowing up of the King David Hotel in 1946 with heavy loss of life, by a group masterminded by Menachem Begin, who later became Prime Minister of Israel. Acts of terror against military occupation must be seen in historical context. This is why every effort should be made to bring the occupation to a speedy end. Until this is done peace cannot be expected, and violence will continue. In other situations, for example Namibia, peace has been achieved by the ending of occupation, without setting the end of resistance as a precondition. Israel cannot expect perfect peace and the end of violence as a precondition for the ending of the occupation.

5. A further comment on terrorism is called for. In the present international climate it is easy for a State to justify its repressive measures as a response to terrorism - and to expect a sympathetic hearing. Israel exploits the present international fear of terrorism to the full. But this will not solve the Palestinian problem. Israel must address the occupation and the violation of human rights and international humanitarian law it engenders, and not invoke the justification of terrorism as a distraction, as a pretext for failure to confront the root cause of Palestinian violence - the occupation.

### **C. Palestinian human rights violations**

6. The mandate of the Special Rapporteur is concerned with violations of human rights and international humanitarian law that are a consequence of military occupation. Although military occupation is tolerated by international law it is not approved and must be brought to a speedy end. The mandate of the Special Rapporteur therefore requires him to report on human rights violations committed by the occupying Power and not by the occupied people. For this reason this report, like previous reports, will not address the violation of the human rights of Israelis by Palestinians. Nor will it address the conflict between Fatah and Hamas, and the human rights violations that this conflict has engendered. Similarly it will not consider the human rights record of the Palestinian Authority in the West Bank or of Hamas in Gaza. The Special Rapporteur is aware of the ongoing violations of human rights committed by Palestinians upon Palestinians and by Palestinians upon Israelis. He is deeply concerned and condemns such violations. However, they find no place in this report because the mandate requires that the report be limited to the consequences of the military occupation of the OPT by Israel.

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<sup>3</sup> See J. Dugard, *International Law. A South African Perspective*, 3rd ed. (Juta & Co. Ltd., Cape Town, 2005) pp. 166-169.

## II. THE OCCUPATION OF THE OCCUPIED PALESTINIAN TERRITORY

7. What distinguishes the case of Palestine from other situations in which violations of human rights occur is the occupation, an occupation which began in 1967, 40 years ago, and which shows no sign of ending. In Israel, complaints are frequently made that criticism of its policies and practices are too much centred on the occupation. But the occupation is a reality, one which is to blame for the present conflict, and the source of the violation of human rights and of international humanitarian law. Consequently, it is necessary to commence this report - again - with comments on the occupation.

8. Israel has been for 40 years and remains in military occupation of the OPT. This was reaffirmed 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*, when it held that the Palestinian territories (including East Jerusalem) “remain occupied territories and Israel has continued to have the status of occupying Power”. The consequence of this, in the opinion of the International Court, is that the 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 Civil and Political Rights and on Economic, Social and Cultural Rights.<sup>4</sup> Furthermore, Israel’s obligations have not diminished as a result of the prolonged nature of the occupation.<sup>5</sup> On the contrary, they have increased as a result of it. It is now argued that Israel’s occupation has become unlawful as a result of the numerous violations of international law that have occurred during the occupation.<sup>6</sup>

## III. THE OCCUPATION OF GAZA

9. In its Advisory Opinion on the construction of a wall in the West Bank and East Jerusalem, the International Court of Justice was not asked to pronounce on the legal status of Gaza. It, possibly therefore, confined its reaffirmation of the occupied status of the Occupied Palestinian Territory to the West Bank and East Jerusalem.<sup>7</sup> The evacuation of Israeli settlements and the withdrawal of the permanent IDF presence from Gaza in 2005, has now 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 responsibility for Gaza.

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<sup>4</sup> A/ES-10/273, paras. 101, 111 and 112.

<sup>5</sup> See Adam Roberts, “Prolonged military occupation: the Israeli occupied territories since 1967”, *American Journal of International Law*, vol. 84 (1990), pp. 55-57 and 95.

<sup>6</sup> 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.

<sup>7</sup> A/ES-10/273, para. 101.

10. On 19 September 2007 Israel seemed to give a new status to Gaza when its Security Cabinet declared Gaza to be “hostile territory” - a characterization that was shortly afterwards approved by the United States Secretary of State. Although the legal implications that Israel intends to attach to this “status” remain unclear, the political purpose of this declaration was immediately made known - namely the reduction of the supply of fuel and electricity to Gaza.

11. The test for determining whether a territory is occupied under international law is effective control,<sup>8</sup> and not the permanent physical presence of the occupying Power’s military forces in the territory in question. Judged by this test it is clear that Israel remains the occupying Power as technological developments have made it possible for Israel to assert control over the people of Gaza without a permanent military presence.<sup>9</sup> Israel’s effective control is demonstrated by the following factors:

(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, the European Union and the international community’s envoy for the Israeli disengagement from Gaza), 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.

The fact that Gaza remains occupied territory means that Israel’s actions towards Gaza must be measured against the standards of international humanitarian law.

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<sup>8</sup> 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 Congo v. Uganda*, International Court of Justice, 2005, paras. 173 and 174.

<sup>9</sup> See further on this subject, Sari Bashi and Kenneth Mann, “Disengaged Occupiers: the Legal Status of Gaza”, Gisha: Legal Center for Freedom of Movement, January 2007.



#### **IV. ISRAEL'S ACTIONS AGAINST GAZA AND THEIR CONSEQUENCES**

12. Israel has taken a number of actions against Gaza since the withdrawal of Israeli settlers and the IDF in 2005.

##### **A. Military action**

13. IDF military incursions into Gaza have continued regularly over the past year; 290 Palestinians were killed in Gaza in 2007. Of this number at least a third were civilians. On 26 September, the day the Special Rapporteur visited Gaza, 12 Palestinian militants were killed by IDF missiles. Since the Annapolis meeting on 27 November 2007, over 70 Palestinians have been killed of whom 8 were killed in a major military operation in southern Gaza on the day before the first round of talks between Israelis and Palestinians following the Annapolis meeting. A further 13 Palestinians were killed in three separate airstrikes on 18 December. The frequency of targeted killings raises a question as to whether the IDF acts within the permissible parameters for such action laid down by the Israeli Supreme Court in its 2006 judgement on targeted killings. Or does the IDF act without regard to its own law as well as international law in carrying out targeted killings?

14. In the past two years 668 Palestinians have been killed by Israeli security forces in Gaza. Over half - 359 people - were not involved in hostilities at the time they were killed. Of those killed 126 were minors; 361 were killed by missiles fired from helicopters; and 29 of those killed were targeted for assassination. During the same period, Palestinians fired some 2,800 Qassam rockets and mortar shells into Israel from the Gaza Strip. Four Israeli civilians were killed by Qassam rockets and hundreds were injured. Four members of the Israeli security forces were killed in attacks originating from Gaza.<sup>10</sup>

##### **B. Closure of crossings**

15. All the crossings into and out of Gaza 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 capture of Corporal Shalit, and more particularly since mid-June 2007, following the Hamas seizure of power in Gaza, the Rafah crossing has been closed. From mid-June to early August 2007 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. The Karni crossing has likewise been closed for long periods of time during the past 18 months, and more particularly since mid-June 2007. Karem Shalom and Sufa are now used for the import of goods but the number of trucks bringing goods into Gaza has dropped

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<sup>10</sup> These statistics, provided by B'Tselem, the Israeli Information Centre for Human Rights in the Occupied Territories, cover the period 1 September 2005 to 25 July 2007.

alarming - from 253 a day in April 2007 to 74 a day in November. To make matters worse Sufa is possibly scheduled to close - though on 20 November the Israeli Government decided to permit the export of flowers and strawberries from Gaza to Europe via the Sufa crossing. Erez, previously used as a crossing for persons in need of medical attention in Israel, has also been largely closed for this purpose. On the other hand, in December 2007, Israel allowed several hundred Palestinians who reside abroad to leave Gaza via Israel.

### **C. The reduction of fuel and electricity supplies**

16. On 19 September Israel declared Gaza to be a hostile territory and announced that, as a consequence, it would reduce the supply of fuel and electricity to Gaza. Ten Israeli and Palestinian NGOs brought an application before the Israeli High Court of Justice to halt the reduction of fuel and electricity on the ground that this constitutes collective punishment and would cause widespread humanitarian damage but the Israeli High Court has upheld the State's plan to reduce fuel transfers to Gaza. According to the Palestinian Centre for Human Rights fuel supplies have been reduced by more than 50 per cent since the decision to cease fuel supplies on 25 October 2007.

### **D. Termination of banking facilities**

17. Following the designation of Gaza as a hostile territory the only two Israeli commercial banks dealing with financial institutions in Gaza, Bank Hapoalim and Discount Bank, announced that they would cut ties with Gaza. This involves, inter alia, the refusal to clear cheques from Gaza banks and the halting of cash transfers between Israeli banks and Gaza banks. At this stage, the full implications of this decision are not yet clear, but as the Israeli shekel is the official currency in the OPT, in accordance with the Oslo Accords, and must be supplied from Israel, it is likely that this could produce chaos in the Gazan monetary system.

### **E. The humanitarian crisis in Gaza**

18. Regular military incursions, the closure of crossings, the reduction of fuel and the threat to the banking system have produced a humanitarian crisis, which has the following impact on life in Gaza.

#### **1. Food**

19. Over 80 per cent of the population of Gaza is dependent on food aid from the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and the World Food Programme (WFP). This takes the form of flour, rice, sugar, sunflower oil, powdered milk and lentils. Fruit and vegetables are no longer available to supplement these basic rations as farmers do not have the money to get their crops picked and marketed. Few can afford meat, and fish is virtually unobtainable as a result of the Israeli prohibition of fishing. Although critical humanitarian food supplies are being allowed in, only 41 per cent of Gaza's food import needs are currently being met.

## 2. Unemployment and poverty

20. The closure of crossings prevents Gazan farmers and manufacturers from exporting their goods to markets outside Gaza. It also prevents materials from entering Gaza and this has resulted in the end of most construction works and the closure of factories. On 26 September the Special Rapporteur visited the Karni industrial zone and saw factories that had been closed as a result of the failure to import materials and the prohibition on the export of goods. Factory owners are being held responsible by Israeli buyers for non-delivery of goods caused by the closure. Farmers are without income and some 65,000 factory employees are unemployed. According to the Palestinian Federation of Industries, 95 per cent of Gaza's industrial operations have been suspended as a result of restrictions.<sup>11</sup> Fishermen are likewise unemployed as a result of the Israeli ban on fishing along the Gaza coast. On 9 July 2007, 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. In many instances those working in the public sector remain unpaid. Municipal employees in Gaza City have not been paid since March 2007. As a result garbage collection services went on strike in November causing a serious threat to health.

21. Poverty in Gaza is rife. Over 80 per cent of the population live below the official poverty line.

## 3. Health care

22. Health-care clinics are in short supply of paediatric antibiotics, and 91 key drugs are no longer available. Previously, seriously ill patients were allowed to leave Gaza to receive treatment in Israel, the West Bank, Egypt, Jordan and other countries through the Rafah and Erez crossings. Rafah is now completely closed and the Israeli authorities deny passage through Erez to all but the most "severe and urgent cases". The situation has worsened since the declaration of Gaza as a hostile territory. The World Health Organization reports that while 89.4 per cent of patients who applied for permits during the period January-May 2007 were granted permits, only 77.1 per cent of those who applied were granted permits during October 2007. This has resulted in a drastic increase in the number of patients who have died as a result of restrictions: according to the Israeli NGO Physicians for Human Rights, since June 2007, 44 people have died as a result of denial or delay of access to medical care by the Israeli authorities and 13 died in November alone. Mahmoud Abu Taha, a 21-year-old patient with stomach cancer, arrived at Erez at 16.00 hours on 18 October with a Palestinian intensive care unit ambulance, escorted by his father. The patient's entry was delayed for two and a half hours, after which the IDF asked the father to cross to the Israeli side of Erez. His son, the patient, was to enter on a walker and not with the ambulance. The patient was denied access after reaching the end of the 500 metre long tunnel, while the father was arrested by the IDF and held for nine days. On 28 October, a second arrangement for the patient was approved and he was admitted to an Israeli hospital, where he died the same night. In November, hospitals were prevented from carrying out

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<sup>11</sup> "Investing in Palestinian Economic Reform and Development", Report for the Pledging Conference, World Bank, December 2007, para. 13.

operations as a result of the restrictions placed by Israel on nitrous oxide gas that is used for anaesthetics.

#### **4. Education**

23. Gaza's children in UNRWA schools lag behind refugee children elsewhere, according to UNRWA, as a result of the Israeli blockade and military violence. Students are prevented from studying abroad. In November 670 students were denied permission to study abroad, including six Fulbright scholars.

#### **5. Fuel, energy and water**

24. Gaza is largely dependent on Israel for its supply of fuel and electricity. Already there are frequent power outages as a result of Israel's destruction of the main Gaza power plant in 2006 and subsequent damage to electricity transformers. (For instance on 14 November the IDF struck an electricity transformer in Beit Hanoun which knocked out power for 5,000 people in the area.) The supply of water is also affected and there is insufficient power for water pumps. As a result, 210,000 people are able to access drinking water supplies for only 1-2 hours a day. Sewage is also a problem: sewage plants require repairs but materials, such as metal pipes and welding machines, have been prohibited by Israel on the grounds that they may be used for making rockets. At present there is a real danger that sewage plants could overflow. Cutting off fuel and electricity will exacerbate an already dangerous situation. It will endanger the functioning of hospitals, water services and sewage, as well as depriving residents of electricity for refrigerators and household appliances. A humanitarian catastrophe is contemplated if Israel continues to reduce fuel and carries out its threat to reduce electricity supplies.

#### **F. Legal consequences of Israel's actions**

25. 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. 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 Conflicts (Additional 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); and the spreading of terror among the civilian population (article 33 of the Fourth Geneva Convention and article 51 (2) of Protocol I).

26. Israel's siege of Gaza violates a whole range of obligations under both human rights law and humanitarian law. The provisions of the International Covenant on Economic, Social and Cultural Rights that state 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 upon public health, food, family life and the psychological well-being of the Palestinian people constitute a gross form of collective punishment.

27. 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, 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”. 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.

## **V. HUMAN RIGHTS IN THE WEST BANK AND JERUSALEM**

28. It was widely expected that the human rights situation would improve in the West Bank following the exclusion of Hamas from the Government of the West Bank. This initially signalled a new rapprochement between Israel and the emergency Government of President Abbas, under the Prime Ministership of Salam Fayyad. Israel has made some gestures of rapprochement, such as the release of 779 prisoners (mainly belonging to Fatah), the payment of some of the tax money due to the Palestinian Authority, the relaxation of travel restrictions in the Jordan Valley, the granting of amnesty to 178 Fatah militants wanted by Israel and the promised granting of residence permits in the West Bank to 3,500 Palestinians. Unfortunately, Israel has not taken steps to dismantle the infrastructure of occupation. On the contrary, it has maintained and expanded the instruments that most seriously violate human rights - military incursions, settlements, the separation wall, restrictions on freedom of movement, the Judaization of Jerusalem and the demolition of houses.

### **A. Military incursions**

29. Military incursions in the West Bank have intensified since June 2007. For instance, in November the IDF carried out 786 raids in the West Bank in the course of which one person was killed, 67 injured and 398 arrested;<sup>12</sup> public and private properties were damaged; curfews were

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<sup>12</sup> Palestinian Monitoring Group, Monthly Summary, November 2007.

imposed; and countless innocent civilians were terrorized by armed soldiers and dogs. Nablus has been particularly affected: on 17 October, the Israeli army raided the city of Nablus and fired tank shells, killing an elderly civilian and one armed individual, and injuring 14 civilians, including 2 children and a journalist. The IDF has frequently failed to distinguish clearly between military targets and civilians. As in the case of Gaza (see paragraph 25) these actions appear to violate rules of international humanitarian law (articles 48, 51 (4) and 52 (1) of Additional Protocol I).

### **B. Settlements and settlers<sup>13</sup>**

30. There are 149 settlements in the West Bank and East Jerusalem. Despite promises by Israel to freeze settlement growth, the number of settlers has increased by 63 per cent since 1993 to its present population of 460,000. At present new construction is under way in 88 settlements and the average growth rate in the settlements is 4.5 per cent compared with the average growth rate of 1.5 per cent in Israel itself. In addition there are 105 “outposts” - that is, informal structures, which serve as a prelude to a new settlement, and are unauthorized but still funded by Government ministries. Despite Israel’s undertaking in the road map to dismantle all outposts built after 2001, no such action has been taken in respect of the 51 such outposts. More than 38 per cent of the West Bank consists of settlements, outposts, military areas and Israeli nature reserves that are off limits to Palestinians. Settler roads link settlements to each other and to Israel. These roads are largely closed to Palestinian vehicles. (Israel has therefore introduced a system of “road apartheid”, which was unknown in apartheid South Africa.)

31. In a statement to the Third Committee in October 2007 the Israeli delegate, Ms. Ady Schonmann, stated that the Special Rapporteur had failed to indicate that the Israeli NGO, Peace Now, had retracted a report of October 2006<sup>14</sup> which showed that nearly 40 per cent of the land held by Israeli settlements in the West Bank is privately owned by Palestinians. The Special Rapporteur has had contact with Peace Now which has indicated that while it made some corrections to its report in response to representations from the Israeli Government, it has not retracted its finding that 40 per cent of land occupied by settlements in the West Bank is privately owned by Palestinians.

32. Settlements are illegal under international law as they violate article 49, paragraph 6, of the Fourth Geneva Convention. This illegality has been confirmed by the International Court of Justice in its Advisory Opinion on the construction of the wall, by the High Contracting Parties

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<sup>13</sup> See generally, “The Humanitarian Impact on Palestinians of Israeli Settlements and Other Infrastructure in the West Bank”, the Office for the Coordination of Humanitarian Affairs (OCHA), July 2007, available at [http://www.ochaopt.org/?module=displaysection&section\\_id=103&format=html](http://www.ochaopt.org/?module=displaysection&section_id=103&format=html).

<sup>14</sup> *Breaking the Law in the West Bank - One Violation Leads to Another: Israeli Settlement Building on Private Palestinian Property*, Peace Now, October 2006.

to the Fourth Geneva Convention in a declaration published in 2001, and by both the Security Council and the General Assembly. Furthermore settlements constitute a form of colonialism which is contrary to international law.<sup>15</sup>

33. Israel's contempt for international law and opinion is illustrated by recent Government decisions. First, in December shortly after the Annapolis meeting, the Israeli Government announced plans to build 307 new apartments in the settlement of Har Homa. Secondly, in October it announced that it would proceed with plans for the development of E1, a planned new settlement which will have 3,500 apartments, 10 hotels and an industrial park, to accommodate 14,500 settlers, situated adjacent to Maale Adumim. At present Israel has built a police station on E1 (visited by the Special Rapporteur on 25 September) but is prevented from proceeding with its plans to start construction on E1 by the presence of the main road from East Jerusalem to Jericho, which is used by Palestinians. Israel has now confiscated Palestinian land in Abu Dis, Sawareh, Nabi Moussa and al-Khan al-Ahmar to enable it to build an alternate road for Palestinians to Jericho which will free the area for E1. The road is part of Israel's broader plan to replace territorial contiguity with "transportational contiguity" by artificially connecting Palestinian population centres through an elaborate network of alternate roads and tunnels and creating segregated road networks, one for Palestinians and another for Israeli settlers, in the West Bank.

### **C. Checkpoints, roadblocks and permits as obstacles to freedom of movement**

34. 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 561 such obstacles to freedom of movement, comprising over 80 manned checkpoints and some 476 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 November 2007 there were 429 flying checkpoints.

35. Palestinians are subjected to numerous prohibitions on travel and to requirements for permits for travel within the West Bank and to East Jerusalem. Checkpoints ensure compliance with the permit regime. These restrictions violate article 12 of the International Covenant on Civil and Political Rights which has been held to be binding on Israel in the OPT by the International Court of Justice in its Advisory Opinion on the construction of the wall. Israel's argument that these restrictions are justified as security measures is difficult to accept. Many of the checkpoints and roadblocks are distant from the border of Israel, which is in any event protected by the wall. More likely explanations are to be found in the need to serve the convenience of settlers, to facilitate the travel of settlers through the West Bank and to impress upon the Palestinian people the power and presence of the occupier. According to a report in Yedioth Ahronoth, one quarter of all IDF soldiers who have served at roadblocks in the

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<sup>15</sup> See General Assembly resolution 1514 (XV): Declaration on the granting of independence to colonial countries and peoples.

West Bank reported having witnessed or taken part in an act of abuse against a Palestinian civilian. Checkpoints serve to humiliate Palestinians and to create feelings of deep hostility towards Israel. In this respect they resemble the “pass laws” of apartheid South Africa, which required black South Africans to demonstrate permission to travel or reside anywhere in South Africa.<sup>16</sup> These laws generated widespread humiliation and anger, and were the cause of regular protest action. Israel would do well to consider the South African experience. Restrictions on freedom of movement of the kind applied by Israel do more to create insecurity than to achieve security.

#### **D. The wall**

36. The wall that Israel is at present building, largely in Palestinian territory, is clearly illegal. The International Court of Justice in its Advisory Opinion on the construction of the wall found that it is contrary to international law and that Israel is under an obligation to discontinue construction of the wall and to dismantle forthwith those sections that have already been built. 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 83 per cent of the West Bank settler population and 69 settlements are enclosed within the wall bears this out.

37. The wall is planned to extend for 721 kilometres. At present 59 per cent of the wall has been completed and 200 kilometres 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. There are, however, suggestions that the route of the wall will be revised to include additional Palestinian lands in the south-eastern West Bank near to the Dead Sea. If this plan is implemented some 13 per cent of Palestinian land will be seized by the wall. The closed zone includes many of the West Bank’s valuable water resources and its richest agricultural lands.

38. The wall has serious humanitarian consequences for Palestinians living within the closed zone. 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. Over 100 persons residing in the closed zone have not received permits to leave the area. Palestinians who live on the eastern side of the wall but whose land lies in the closed zone face serious economic hardship, as they are not able to reach their land to harvest crops or to graze their animals without permits. Permits are not easily granted and the bureaucratic procedures for obtaining them are humiliating and obstructive. The Office for the Coordination of Humanitarian Affairs (OCHA) has estimated that only about 18 per cent of those who used to work land in the closed zone before the construction of the wall receive permits to visit the closed zone today. The opening and closing of the gates leading to the closed zone are regulated in a highly restrictive manner: in 2007 OCHA carried out a survey

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<sup>16</sup> On these laws, see J. Dugard, *Human Rights and the South African Legal Order* (Princeton, Princeton University Press, 1978).



in 67 communities located close to the wall which showed that only 19 of the 67 gates in the wall were open to Palestinians for use all the year round on a daily basis. To aggravate matters Palestinians coming into and out of the closed zone are frequently subjected to abuse and humiliation at the gates by the IDF. 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.

39. The plight of the village of Jayyus, visited by the Special Rapporteur on 30 September 2007, illustrates the hardships faced by communities living near to the wall, but in the West Bank. The 3,200 residents of Jayyus are separated by the wall from their farmland; 68 per cent of the village's agricultural land and its six agricultural wells lie in the closed zone between the wall and the Green Line and are off limits to those without a visitor's permit. Scores of greenhouses are situated in the closed zone, producing tomatoes, cucumbers and sweet peppers, which require daily irrigation. Only about 40 per cent of the residents of Jayyus are granted permits to access farms, and gate opening times are both limited and arbitrary. By August 2004, one year after the construction of the wall, local production had fallen from 7 to 4 million kilograms of fruit and vegetables. The situation has further deteriorated over the past three years.

40. The section of the wall within the Jerusalem Governorate measures 168 kilometres in length. Only 5 kilometres of its completed length runs along the Green Line. The route of the wall runs deep into the West Bank to encircle the settlements of Maale Adumim. In contrast, many Palestinian villages which are currently in the Jerusalem municipality are placed outside the wall and thus separated from Jerusalem. In some places, such as Abu Dis, the wall runs through Palestinian communities, separating neighbours and families. About 25 per cent of the 253,000 Palestinians living in East Jerusalem have been cut off from the city by the wall. This means they can only enter Jerusalem through checkpoints, which makes it difficult to access hospitals, schools, universities, work and holy sites - particularly the Al Aqsa Mosque and the Church of the Holy Sepulchre.

### **E. Demolition of houses**

41. The demolition of houses has been a regular feature of Israel's occupation of the OPT. Different reasons or justifications are advanced for such demolitions: military necessity, punishment and failure to obtain a building permit. Although the IDF claims to have discontinued punitive home demolitions, instances of such demolitions still occur. On 29 August 2007, the IDF demolished seven housing units in the Naqar neighbourhood of Qalqiliya, which were home to 48 persons (including 17 children) on the ground that they housed members of the military wing of Hamas.<sup>17</sup> Houses are frequently demolished for "administrative" reasons, on the grounds that no permit has been obtained to build - which Israel defends as a normal feature of town planning. Both law and fact show, however, that houses are not demolished in the course of "normal" town planning operations, but are instead demolished in a discriminatory manner to demonstrate the power of the occupier over the occupied.

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<sup>17</sup> See B'Tselem, "Demolition for Alleged Military Purposes".

42. In both East Jerusalem and that part of the West Bank categorized as Area C (60 per cent of the West Bank, comprising villages and rural districts), houses and structures may not be built without permits. The bureaucratic procedures for obtaining permits are cumbersome and in practice permits are rarely granted. As a result, Palestinians are frequently compelled to build homes without permits. In East Jerusalem house demolitions are implemented in a discriminatory manner:<sup>18</sup> Arab homes are destroyed but not Jewish houses. In Area C the IDF has demolished or designated for demolition homes, schools, clinics and mosques on the ground that permits have not been obtained. Between May 2005 and May 2007, 354 Palestinian structures were destroyed by the IDF in Area C. Many Bedouin communities have had their structures demolished. In September 2007 the Special Rapporteur visited Al Hadidiya in the Jordan Valley where the structures of a Bedouin community of some 200 families, comprising 6,000 people, living near to the Jewish settlement of Roi, were demolished by the IDF. This brought back memories of the practice in apartheid South Africa of destroying black villages (termed “black spots”) that were too close to white residents. Article 53 of the Fourth Geneva Convention prohibits the destruction of personal property “except where such destruction is rendered absolutely necessary by military operations”. According to B’Tselem, the Israeli Information Centre for Human Rights in the Occupied Territories, the destruction of homes in the Naqar neighbourhood of Qalqiliya failed to meet this test. The demolition of homes for administrative reasons can likewise not be justified. Both East Jerusalem and Area C are occupied territory, in respect of which the prohibition contained in article 53 applies.

#### **F. Humanitarian situation**

43. 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. Israel withholds 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). Recently, 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 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 money due in law to the Palestinian Authority. Poverty and unemployment are at their highest levels ever; health and education are undermined by military incursions, the wall and checkpoints; and the social fabric of society is threatened.

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<sup>18</sup> Meir Margalit, *Discrimination in the Heart of the Holy City* (Jerusalem, Al Manar Modern Press, 2006).

## G. Conclusion

44. 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.

## VI. THE TREATMENT OF ARRESTED PERSONS AND CONVICTED PRISONERS

45. It is estimated that since 1967 over 700,000 Palestinians have been imprisoned. At present, there are some 11,000 prisoners in Israeli jails, a number which includes 376 children, 118 women, 44 members of the Palestinian Legislative Council and some 800 "administrative detainees" (that is, persons not convicted for any offence, held for renewable periods of up to six months). Israel sees such prisoners as terrorists or ordinary criminals who have violated the criminal law. Palestinians see them as political prisoners who have committed crimes against the occupier. History is replete with examples of such competing perspectives - to cite but South Africa and Namibia as examples. Prisoners are a key issue in any peace settlement. That Israel is aware of this is demonstrated by its release of 779 prisoners (although in November 411 persons were arrested). The release of such a small number of prisoners, however, provides little evidence of a bona fide attempt to reach a peaceful settlement on the part of Israel. To make matters worse prisoners are subjected to humiliating and degrading treatment.

### A. Arrested and detained persons

46. Following arrest, persons are frequently beaten and stripped in a humiliating manner. The interrogation of subjects is then carried out in a degrading and inhuman manner, sometimes amounting to torture. During 2007, two reports published by Israeli NGOs - Hamoked (Center for the Defence of the Individual) and B'Tselem<sup>19</sup> and the Public Committee against Torture in Israel (PCATI)<sup>20</sup> - have shown that arrested persons are 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") are deprived of sleep for more than 24 hours, beaten and subjected to physical ill-treatment. The treatment of children is equally disturbing.

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<sup>19</sup> *Absolute Prohibition: The Torture and Ill-Treatment of Palestinian Detainees*, Hamoked and B'Tselem, May 2007.

<sup>20</sup> *"Ticking Bombs" Testimonies of Torture Victims in Israel*, Public Committee against Torture in Israel, May 2007.

According to Defence for Children International (Palestine Section), children are on average detained for between 8 to 21 days before being brought to court; denied the presence of a parent or lawyer during interrogation; cursed, threatened, beaten and kept in solitary confinement during interrogation.<sup>21</sup>

### **B. Convicted prisoners and administrative detainees**

47. Prison conditions are harsh. Many prisoners are accommodated in tents, which are extremely hot in summer and cold in winter. Food is poor, resulting in anaemia among prisoners, and there is serious overcrowding. Most Palestinian prisoners are held in jails in Israel. This violates article 76 of the Fourth Geneva Convention which requires persons from an occupied territory to be detained in the occupied country, and if convicted, to serve their sentences therein. Family visits are difficult and frequently impossible: all visits for families from Gaza to their relatives detained in Israeli prisons have been suspended since 6 June 2007, affecting some 900 prisoners. On 22 October there was a riot in Ketziot prison in the Negev (in Israel), accommodating some 2,300 prisoners, which resulted in 1 death and some 250 injuries among prisoners.

48. The role of medical doctors in detention centres and prisons requires attention. These doctors witness the result of inhuman treatment - wounds, swollen hands, signs of violence - but remain silent, acting as if they do not know that torture is taking place. This raises ethical questions that in similar circumstances in South Africa were, after years of silence, addressed by the South African Medical Association and international medical bodies. Why, one must ask, has the responsibility of Israeli medical doctors who examine detainees and prisoners not been questioned by the relevant Israeli and international medical professional bodies?

## **VII. SELF-DETERMINATION**

49. The right of self-determination of the Palestinian people has been recognized by the Security Council, the General Assembly, the International Court of Justice and Israel itself. The territory of the self-determination unit within which this right is to be exercised clearly includes the West Bank, East Jerusalem and Gaza. 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 resulting in the death of several hundred Palestinians, mostly belonging to Fatah. At the time of writing, 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

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<sup>21</sup> Semi-Annual Report 2007, Defence for Children International (Palestine Section).

Quartet 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. 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.

### VIII. INTERNATIONAL LAW, THE INTERNATIONAL COURT OF JUSTICE, THE QUARTET AND THE UNITED NATIONS

50. On 8 December 2003 the General Assembly requested an advisory opinion from the International Court of Justice on the legal consequences arising from the construction of the wall being built by Israel in the OPT.<sup>22</sup> Fifty States and international organizations gave written statements to the Court and 15 States and international organizations made oral statements before the Court. The Court provided an advisory opinion<sup>23</sup> by 14 votes to 1, which answered many of the legal questions that have been raised over the past 40 years. The principal findings of the Court were as follows:

(a) The Palestinian people have the right to self-determination<sup>24</sup> and the exercise of this right is violated by the construction of the wall;<sup>25</sup>

(b) Israel is under a legal obligation to comply with the Fourth Geneva Convention in the OPT<sup>26</sup> - a unanimous finding;<sup>27</sup>

(c) Settlements are illegal as they violate article 49 (6) of the Fourth Geneva Convention<sup>28</sup> - a unanimous finding;<sup>29</sup>

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<sup>22</sup> Resolution ES-10/14.

<sup>23</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, ICJ, 2004.

<sup>24</sup> *Ibid.*, para. 118.

<sup>25</sup> *Ibid.*, para. 122.

<sup>26</sup> *Ibid.*, paras. 90-101.

<sup>27</sup> *Ibid.*, declaration of Judge Buergenthal, para. 2.

<sup>28</sup> *Ibid.*, paras. 120-121.

<sup>29</sup> *Ibid.*, dissenting opinion of Judge Buergenthal, para. 9.

(d) Israel is bound by international human rights conventions in the OPT<sup>30</sup> - a unanimous finding<sup>31</sup> - and consequently its conduct is to be measured against both international human rights conventions and the Fourth Geneva Convention;

(e) The regime in force in the closed zone between the wall and Green Line violates the right to freedom of movement contained in article 12 of the International Covenant on Civil and Political Rights<sup>32</sup> and the right to work, health, education and an adequate standard of living contained in the International Covenant on Economic, Social and Cultural Rights;<sup>33</sup>

(f) The destruction of property for the construction of the wall violates article 53 of the Fourth Geneva Convention and cannot be justified on grounds of military necessity or national security;<sup>34</sup>

(g) The wall cannot be justified as an exercise in self-defence;<sup>35</sup>

(h) The annexation of East Jerusalem is illegal;<sup>36</sup>

(i) The construction of the wall by Israel in the OPT, including in and around East Jerusalem, and its associated regime are contrary to international law; and Israel is obliged in law to cease the construction of the wall, to dismantle it and to make reparation for the construction of the wall;<sup>37</sup>

(j) All States are under a legal obligation not to recognize the illegal situation resulting from the wall and to ensure compliance by Israel with the Fourth Geneva Convention;<sup>38</sup>

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<sup>30</sup> Ibid., paras. 102-121.

<sup>31</sup> Ibid., dissenting opinion of Judge Buergenthal, para. 2.

<sup>32</sup> Ibid., paras. 133, 134 and 136.

<sup>33</sup> Ibid., paras. 134, 136 and 137.

<sup>34</sup> Ibid., paras. 132, 135 and 137.

<sup>35</sup> Ibid., paras. 138-139.

<sup>36</sup> Ibid., paras. 75 and 122.

<sup>37</sup> Ibid., para. 163.

<sup>38</sup> Ibid., para. 163.

(k) The United Nations, especially the General Assembly and Security Council, should consider what further action is required to bring an end to the illegal situation resulting from the construction of the wall and associated regime, “taking due account of the present Advisory Opinion”.<sup>39</sup>

51. On 20 July 2004 the General Assembly adopted resolution ES-10/15 which called for Israel to comply with the Advisory Opinion of the International Court of Justice. This resolution was adopted by 150 votes to 6 (Australia, Micronesia, Israel, Marshall Islands, Palau, United States) with 10 abstentions. The Russian Federation and member States of the European Union voted in favour of the resolution.

52. Since 2004, the Advisory Opinion has been ignored by the Security Council. While the General Assembly<sup>40</sup> and Human Rights Council<sup>41</sup> have passed several resolutions reaffirming the Opinion, no attempt has been made by the Security Council to compel Israel to comply with the Opinion or to remind States of their obligation to ensure compliance by Israel with the Fourth Geneva Convention. The reason for this is not hard to find. The Security Council is prevented from giving its backing to the Opinion by the United States which has refused to accept it. Similarly the United States prevents the Quartet from taking steps to implement the Opinion. No statement issued by the Quartet has ever acknowledged the Opinion.<sup>42</sup>

53. Although the Advisory Opinion of the International Court of Justice is an authoritative statement of the applicable law and is designed to contribute to the framework for peace in the Middle East, it is not legally binding on States. In law, the United States is well within its right to refuse to accept the Opinion in the Quartet. The same applies to the Russian Federation and the European Union - although both have compromised themselves by giving approval to the Opinion by supporting General Assembly resolution ES-10/15 and subsequent resolutions. The position of the United Nations is, however, very different. The International Court of Justice is the judicial organ of the United Nations. Moreover the General Assembly has by an overwhelming majority repeatedly given its approval to the Opinion. This means that it is now part of the law of the United Nations. As such the representative of the United Nations in the Quartet - the Secretary-General or his representative - is in law obliged to be guided by the Opinion and to endeavour in good faith to do his or her best to ensure compliance with the Opinion. If the Secretary-General (or his representative) is politically unable to do so he has two choices: either to withdraw from the Quartet or to explain to his constituency - “we the peoples

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<sup>39</sup> Ibid., para. 163.

<sup>40</sup> See, for example, the draft text in A/62/L.21/Rev.1 adopted on 10 December 2007 which calls on Israel to comply with the Advisory Opinion and on all States to comply with the legal obligations mentioned in the Opinion.

<sup>41</sup> HRC resolution 2/4 of 27 November 2006.

<sup>42</sup> See, for example, the statement of the Quartet of 23 September 2007.

of the United Nations” in the language of the Charter - why he is unable to do so and how he justifies remaining in the Quartet in the light of its refusal to be guided by the law of the United Nations. The first course is possibly unwise at this time as this would deprive the United Nations of a role in the peace process. This makes the second course essential.

54. For 40 years the political organs of the United Nations, States and individuals have accused Israel of consistent, systematic and gross violations of human rights and humanitarian law in the OPT. In 2004 the judicial organ of the United Nations, in its Advisory Opinion, affirmed that Israel’s actions in the OPT do indeed violate fundamental norms of human rights and humanitarian law and cannot be justified on grounds of self-defence or necessity. If the United Nations is serious about human rights it cannot afford to ignore this Opinion in the deliberations of the Quartet, as it is an authoritative affirmation that Israel is in serious breach of its international commitments. Failure to attempt to implement, or even to acknowledge, an advisory opinion dealing with international humanitarian law and human rights law, brings the very commitment of the United Nations to human rights into question.

### **IX. PEACE TALKS**

55. At the time of writing negotiations leading to a peace settlement between Israelis and Palestinians have commenced following an initial meeting in Annapolis on 27 November 2007. It is not within the mandate of the Special Rapporteur to comment on what is essentially a political process, except insofar as it has implications for human rights. In this context the Special Rapporteur wishes to make the following remarks.

56. The Oslo Accords have been criticized for failing to consider normative aspects of the Palestinian issue. In particular they failed to pay adequate attention to international law and to the human rights dimension. It is important that the Annapolis process does not make the same mistake. Unfortunately the first indications suggest that this is a serious possibility as the joint statement of 27 November agreed to by the parties as a starting point for the negotiations is premised on the proposals contained in the Quartet road map of 2003 rather than on the legal norms proclaimed by the International Court of Justice in its Advisory Opinion on the construction of the wall. Indeed the joint statement makes no mention of the Advisory Opinion at all. The Secretary-General in his statement at Annapolis also invoked the road map but made no mention of the Advisory Opinion. In the opinion of the Special Rapporteur, the road map is an inappropriate and unhelpful framework for negotiations for the following reasons. First, it is outdated as it takes no account of the Advisory Opinion, Palestinian democratic elections, Israel’s withdrawal from Gaza and the June 2007 separation of Gaza from the West Bank. Second, Israel attached 14 reservations to the road map in May 2003, which makes Israel’s commitment to it unclear. Third, it is, in its own language, “a performance-based and goal driven roadmap” which takes little account of the normative aspect.

57. It must be recalled that article 47 of the Fourth Geneva Convention provides that persons in an occupied territory shall not be deprived of the benefits of the Convention by any agreement concluded between the authorities of the occupied territory and the occupying Power, or by the annexation by the occupying Power of part of the occupied territory. This means that any agreement between the Palestinian authorities and the Israeli Government that recognizes settlements within the occupied Palestinian territory, or accepts the annexation by Israel of Palestinian land within the wall, will violate the Fourth Geneva Convention. This is but one



example of the dangers of a peace process between unequals which has no regard to the normative framework of international law. In its approach to previous peace negotiations, the Israeli Government has insisted on negotiations being restricted to the agreed framework.<sup>43</sup> The Annapolis joint statement which refers only to the road map suggests that Israel does not see itself as being bound by the normative framework accepted by the United Nations.

58. In the opinion of the Special Rapporteur negotiations should take place within a normative framework, with the guiding norms to be found in international law, particularly international humanitarian law and human rights law, the Advisory Opinion of the International Court of Justice, and Security Council resolutions. Negotiations on issues such as boundaries, settlements, East Jerusalem, the return of refugees and the isolation of Gaza should be informed by such norms and not by political horse-trading. In this respect parties might learn from the experience of the negotiations that led to a democratic South Africa in the mid-1990s, which took place within the framework of accepted democratic principles, the rule of law and international law (with special reference to human rights law).

59. The creation of a Palestinian State will not heal the wounds of 60 years of conflict. If real peace and security is to be achieved every effort should be made to achieve reconciliation between Palestinians and Israelis. To do this it will be necessary for both people to address the events, actions and sufferings of the past. Consideration should therefore be given to the establishment of a Truth and Reconciliation Commission to hear the stories of the sufferings of both peoples. Without truth-telling of this kind tensions between Palestinians and Israelis will remain to threaten peace between the two nations.

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<sup>43</sup> <http://www.mfa.gov.il/MFA/Peace+Process/Guide+to+the+Peace+Process>.