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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.

Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967

Summary

The first report of Prof. Richard Falk examines the observance of international humanitarian and international human rights standards by Israel in the occupied Palestinian territory from January to the middle of 2008. It takes Israeli security claims into account in this examination, as well as considers the relevance of acts committed by Palestinians that pose security threats or violate international human rights and humanitarian standards within the context of the occupation. 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, arising due to Israeli use of excessive force to quell nonviolent demonstrations. Attention is also drawn to abuses by Israel at border crossings, with especial concern expressed about the harassment of and assault upon 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, according to Resolution 1993/2-A of the Commission on Human Rights¹, on 26 March 2008 and took up his position on 1st May 2008. The Special Rapporteur was not yet able to visit Israel and the occupied Palestinian territory so as to fulfil his mandate and offer a first-hand accounting 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, and he will seek to enlist the cooperation of the government of Israel in this effort.
2. This is the first report since the Special Rapporteur took up his mandate on 1st May 2008. The report covers developments taking place primarily in the period between 1 January and 31 July 2008. It is based upon reliable information gathered by human rights NGOs 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, as well as 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 this report.
3. The Special Rapporteur takes particular note of the fact that the military occupation of the Palestinian territory now exceeds forty years, and possesses characteristics of colonialism and apartheid, as has been observed by the previous Special Rapporteur. Especially in light of this background, the further prolongation of the occupation constitutes a deepening threat to and cumulative encroachment upon the most fundamental human right of all, the right of self-determination of the Palestinian people. This 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 that pertain to military occupation. In this regard, note should be taken of

¹ E/CN.4/RES/1993/2, 19 February 1993

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 Territory*, supported by 14 of the 15 judges, and overwhelmingly endorsed by the General Assembly.² This general observation relating to the continuing occupation has two implications for the United Nations. First, as part of the Annapolis peace process, the UN 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 would be relied upon to assess rival claims of both Israel and Palestine in the course of negotiations on outstanding issues of controversy. Secondly, 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 evidences of disregard detailed in this report, should serve to prompt the Secretary-General, General Assembly and other organs 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 preeminent 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, as well as 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 this 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

² See A/ES-10/273 and Corr. 1, with call for compliance contained in UNGA Res ES-10/15

to ensure respect for the present Convention in all circumstances.” (emphasis added) It is high time to heed the call of this provision.

5. The Government of Israel has contended that the Gaza Strip is no longer under occupation since its implemented disengagement plan in 2005, and that for this reason international humanitarian law is not applicable. It is Israel’s official position, often repeated, that the IDF’s “belligerent occupation of the Gaza Strip” 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.³ From this perspective, the Government Israel relies on a decision of the Israeli Supreme Court in the Al-Boussiouni v. the Prime Minister (HCJ 9132/07), according to which the government “does not have a general duty to take care of the welfare of Strip residents.” The Special Rapporteur disputes this 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 following dimensions of Gaza: borders, entrance and exit, airspace, and territorial waters. In addition, it has mounted numerous military incursions, deadly attacks on targeted individuals, and subjected the entire civilian population of the territory to siege conditions ever since the Hamas convincingly won the general legislative elections in January 2006, and tightened the siege after Hamas took over administrative control in mid-June 2007. By establishing and seeking international participation in a siege imposing great stress on the inhabitants of Gaza it has made it impossible for the administering Palestinians authorities to provide for the minimum wellbeing of the 1.5 million inhabitants. On the basis of these considerations it is beyond 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 the Geneva Conventions remain fully operative.

³ Quoted in “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 Defense, 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 report is to convey a well-evidenced understanding of the extent to which the situation in all parts of the oPt has continued to deteriorate, reaching dangerous and non-sustainable levels of mental and physical suffering and trauma, for the Palestinian people living under occupation. This counters the view that because of several developments such as the Gaza Ceasefire, the positive relations between Israel, the United States 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 has eased the burdens of the occupation. It does seem true that the situation for Israel has improved economically and politically during this 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 a very recent government of Israel's approval for construction of 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 motif of this report is that the Palestinian reality is worse than ever before, with no indication of any substantial improvement.
7. This 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. The Special Rapporteur, due partly to limitations of space in any report, will select for each report a single thematic dimension of the occupation as a focal point. In this report, the selected topic is 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 Israel/Palestine 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, estimated running as high as 500,000, crossed the border into the Egyptian city of Rafah, seeking especially to buy food, medicines, and a variety of consumer goods unavailable in Gaza. The Egyptian President, Hosni Mubarak, was quoted as saying when asked by border guards for guidance, "I told them, 'Let them come to eat and buy food, then they go back, as long as they are not carrying weapons.'"⁴ 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."⁵ 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: "...the Gaza wall-breaking was an easy call: no people killed, some may have been saved, and the spectacle of exodus into Egypt effectively dramatized a gross injustice."⁶ Nairn's language captures the main realities illuminated in relation to the occupation: exodus, spectacle. It was not possible to witness these events without appreciating the desperation of people long confined by a stultifying occupation that threatened human wellbeing, even survival, and should not be allowed to endure. In a few days the Gazans were required to return to Gaza, the wall was

⁴ See New York Times, Jan. 24, 2008. Allan Nairn, "Justified Violence: Breaking the Wall," *The Nation*, Jan. 29, 2008

⁵ Ibid.

⁶ Allan Nairn, "Justified Violence: Breaking the Wall," *The Nation*, Jan. 29, 2008

repaired, and the conditions of siege and confinement re-established. It is possible that subtle changes for the better resulted from the exodus and spectacle of the departing mass from Gaza by gaining some 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 in Cairo between representatives of the Government of Israel and of Hamas under Egyptian auspices 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 publicity, especially the pictures broadcast worldwide, of the wall-breach encouraged Israel to become more receptive to long-standing Hamas offers to establish a mutual ceasefire. The negotiations were rather prolonged, but in the end succeeded. On 20 June 2008 a ceasefire was declared, and despite some infractions on both sides, has generally held.⁷ 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. There have been indications that Hamas has done its best to enforce the ceasefire, and this effort has 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%, and is considering further steps designed to ease tensions and hardships. Nevertheless, because the duration and intensity of the siege imposed on preexisting 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 positive aspect of these developments is the implicit recognition by Israel of the de facto governance of Gaza by Hamas. As Meir Javedanfar, a respected Tel Aviv Middle

⁷ For an assessment of the ceasefire see Uri Avnery, "The Ceasefire," *London Review of Books*, 31 July 2008, 30

East specialist has been quoted as saying of the relations with Hamas, “This is the power that Israel has to deal with. It’s not full 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] realized that talking to its enemies is the shortest and most cost-effective path militarily, economically, and strategically.”⁸ 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 (and without any reciprocal undertakings by Israel) meet three conditions before it will change its formal diplomatic stance: recognition of Israel’s right to exist as a Jewish state, affirmation of past agreements between Palestine Authority and Israel, and renunciation of violence.

13. But these recent facts speak for themselves to a certain extent: there is no doubt that Hamas has emerged from this process producing a ceasefire as the only governmental voice currently capable of representing the people of Gaza 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. Hopefully, this 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 this 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 these 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 Israel’s obligations at occupying power are

⁸ An early assessment of the ceasefire is found in article by Joshua Mitnick, “As Gaza cease-fire holds, Israel eases economic blockade,” *Christian Science Monitor*, June 23, 2008

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 oPt are not part of this 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 these hopes. The negotiation of an agreement between Hezbollah and the Government of Lebanon offers some basis for greater stability. The ongoing Israel/Syria negotiations 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 consider withdrawing from territory occupied in the 1967 War. Egyptian initiatives with respect to the situation in Gaza are also part of this more constructive atmosphere in the neighbourhood of the OPT, 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 requites an Israeli withdrawal from substantially all occupied Palestinian territory, including East Jerusalem, in accordance with the iconic call of Security Council Resolution 242 adopted in the aftermath of the 1967 Arab-Israeli War. But this has been deemed extremely unlikely to happen without bilateral negotiations that address all issues in dispute between Israel and the Palestinian Authority. From this perspective it had seemed somewhat hopeful to view the Annapolis Meeting 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 (UN, EU, U.S., Russia) in its so-called 'roadmap' 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 U.S. Government toward 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 this negotiating track will produce meaningful results. It is also 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 of this year. 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 on an accelerated pace and in the absence of any reports of outposts being dismantled, as well as an increase in the number or 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 Israeli comparable moves on settlements the process is likely to be indefinitely stalled or abandoned. At this stage there is no basis for optimism about the likelihood that the Annapolis initiative will lead to the timely end of the occupation or to peace or to compliance by Israel with 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: illustrating incidents

- a. **Freedom of expression and harassment of media personnel: the case of Mohammed Omer**

18. Mohammed Omer is a journalist who had obtained an exit visa from his Gaza residence to receive the Martha Gellhorn Award for Journalism and to accept invitations to speak in Europe. His visa was given after a considerable lobbying effort was made by a Dutch parliamentarian to persuade the Government of Israel to allow Mr. Omer to leave Gaza. The Gellhorn Award for Journalistic Excellence is given to a journalist who displays courage and ability in covering war zones, and Mr. Omer was the youngest recipient so honored. On the basis of direct contact with Mr. Omer and a variety of distinguished persons to whom he is known, it is clear that this young man of 24 is widely admired for his personal qualities as well as for his journalistic abilities displayed in recent years by reporting on the situation in Gaza. Mr. Omer's difficulties occurred on his way back to Gaza, when he tried to transit Israel from the Allenby Bridge Crossing so as to enter Gaza, reaching the Jordan border without the benefit of Dutch diplomatic escort, which arrived late at the border, and according to Mr. Omer did not fulfill a commitment made to him when encouraging him to leave Gaza to accept the award. These events took place on 26 June 2008, and have been reported upon in a variety of accounts in world newspapers. By private communication, the Special Rapporteur has been assured by the Dutch ambassador in Geneva that the incident is being taken 'extremely seriously' and an explanation is being sought from the Government of Israel. I have reinforced this 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 I quote: "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."⁹ Mr. Omer is

⁹ Omer, "Truth and Consequences Under the Israeli Occupation," *The Nation*, July 31, 2008; I have a more complete narration of the sequence of events in my possession with the title, "Summary of Events in the

convinced that this brutal assault on his person was carried out by Shin Bet personnel that 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 this experience at Allenby, Mr. Omer reportedly lost consciousness, was transferred to a Palestinian hospital in Jericho on the West Bank, and then to the Erez Crossing from where he was again transferred for treatment to the European Hospital at Khan Younis refugee camp.

19. This unfortunate incident cannot be discounted as an accident or an anomaly associated with undisciplined Israeli security personnel. This treatment of Mr. Omer's experience seems to have been motivated by Israeli anger toward international recognition of his journalism describing the occupation of Gaza, his willingness to repeat his descriptions abroad, and his dedication to continue in this 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 toward journalists seems particularly severe. During his time in Europe Mr. Omer spoke before European parliamentary audiences, specifying 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 offense, 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 Geneva Convention IV: "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 also is relevant as it proscribes "...cruel, inhumane or degrading treatment or punishment." More directly responsive to Mr. Omer's situation are the efforts of Article 19 in both the UDHR and the International Covenant on Civil and Political Rights (ICCPR) (1966). Article 19(2) of ICCPR that has been interpreted to apply particularly to the vocation of journalist in its effort to uphold rights "to receive and impart information of all kind...in writing or in print...or through any media of his choice." Additionally, Article 13(2) of the UDHR confirms the right of a person to return unimpeded

to a country of residence: "Everyone has the right to leave any country, including his own, and to return to his country." This right was grossly violated in relation to Mr. Omer.

20. Although this incident affects only an individual person, it has inevitably 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: "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, Brig. General Avihai Mendelblit, prompting the Reuters Editor-in-Chief, David Schlesinger to make the following response: "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 Israeli abusive behavior toward Palestinian and foreign journalists in Gaza and the West Bank issued by such respected organizations as Reporters Without Borders and Committee to Protect Journalists. In sum, the experience of Mohammed Omer appears to be 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 IDF 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 continuing to make exit and entrance 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 by easing restrictions on movement on the West Bank for the renunciation of armed resistance by the

Palestinian Authority, 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. These 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, the IDF carried out a series of nightly military operations in Nablus, which led to the killing of at least two young Palestinians, the arrest of dozens of men, women, and youngsters, the confiscation and destruction of property, and generated an atmosphere of fear. These military actions have taken place without any explicit charges being made against the residents of Nablus. Among the harm done was 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. These institutions were arbitrarily closed, as was the Nablus Mall, which contained some of the city's oldest and most respected and prosperous commercial businesses. The property of important business entities was requisitioned by Israeli military authorities without due process or any credible security justification. The overall impact of these Israeli activities has been to reduce by some 50% the economic activity of the city, which previously had been regarded as the commercial centre of Palestine. Beyond these 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, is the growing sense of physical isolation produced by the numerous checkpoints and roadblocks that surround the city.

22. The closure of charitable and other civil institutions by the Israeli military in the last several months have taken place in other cities throughout the West Bank. They are illustrative of the deterioration of the conditions of occupation in this part of the Palestinian territory, as well as of the occupying power's double tier violation of Palestinian human rights and of Israeli obligations under Geneva Convention IV. That is, Israel on the first tier fails to fulfil its legal obligations as the occupying power under international humanitarian law, and on the second

tier, obstructs Palestinian efforts to mitigate the impact of these violations on the wellbeing of Palestinians enduring occupation. Because the situation in Gaza is so extreme in the last year, with real fears of societal collapse as well as of 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 47-78 of Geneva Convention IV. 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 of the residents of Nablus. Articles 64-69 provide a legal framework for holding persons in the occupied territory criminally responsible for their alleged wrongdoing, if any, but the Convention unconditionally prohibits with extra-judicial killing, reprisals, and all forms of collective and punitive violence. Noted Israeli journalist, Gideon Levy, writing in *Ha'aretz*, 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.” To similar effect is the moving report prepared by Mairead Maguire, Nobel Peace Prize laureate from Northern Ireland, addressing the closing of the Hebron Orphanages.¹⁰

c. Right to peaceful assembly: demonstrations against the Wall in the West Bank

¹⁰ Report on destruction of Muslim charitable institutions in Hebron, 5 June 2008. For more information, see <http://www.peacepeople.com/>

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 International Court of Justice Advisory Opinion of 2004. 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, which is part of a longer story of land dispossession that has afflicted the Palestinians.

25. It is estimated that as much of 80% of the land belonging to Ni'lin has been incrementally confiscated by Israel ever since 1948. After the 1967 war, the location of Ni'lin near the Green Line led to further land confiscations associated on behalf of West Bank settlements (74 dunams for the settlement of Shalit, then 661 dunams for Mattityahu, 934 dunams for Hashmonaim, 274 dunams for Mod'in Illit, 20 dunams for Menora), which took about 13% of village land. When a further 20% 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, in the period 2003-2004, it was the scene of numerous anti-Wall demonstrations. In recent months there have been a series of protests by people living in the village and supporters from such neighbouring cities as Ramallah and Tulkarem, as well as Israeli peace activists who have come to Ni'lin to join in the non-violent demonstrations seeking to prevent the resumption of wall construction.

26. Israeli military forces, including border police, have used a variety of violent methods to disperse the demonstrators, including rubber coated steel bullets and live ammunition. Two young Palestinians have died from gun shot wounds. Ahmed Mousa, a ten 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, has been quoted as saying "A soldier aimed and shot the child with live ammunition at close range." Those who saw the boy described his face as "shot off." Dr. 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 World Court Advisory Opinion and its overwhelming endorsement by the UN General Assembly.¹¹ In addition, the Israeli use of excessive force, especially as witnessed to be deliberately seeking to kill or maim demonstrators, including children, nullifies any claim that police and military actions taken were necessary for purposes of security and public order. It is an elemental right of people to defend their land against its unlawful seizure, and this right pertains in circumstances of occupation where there exists a legal regime in the form of the Geneva Convention IV purposively 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 occupied Palestinian territory: 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 OPT including East

¹¹ *Legal Consequences of a Wall in the Occupied Palestine Territory*, ICJ Advisory Opinion, 9 July 2004; UN 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.

Jerusalem has long been established by a consensus of international law specialists, and confirmed by formal resolutions of the UN General Assembly and Security Council. This conclusion is most clearly supported by Article 46(9) of Geneva Convention IV, 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, on 14 April 2004. These 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% 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 this 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 without having any discernible effects on behaviour. Sharon indicated an awareness of “the responsibilities facing the State of Israel.” Among these are “limitations on the growth of settlements; removal of unauthorized outposts...” These responsibilities were reaffirmed by the current Israeli government at Annapolis, but again have not been implemented to the slightest extent. 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. This pattern, and the resulting cantonization of Palestinian daily life realities, is increasingly seen as sending a message to the Palestinians that the two-state solution to the conflict is no longer viable despite it remaining the stated policy of the Quartet, the Annapolis Understanding, and most commentary on the goals of the peace process. Among the

disquieting notes in 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." Nothing is acknowledged about 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 territorial scope is difficult to calculate with precision due 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) confiscate 14% of the territory of the West Bank, which is itself only 22% 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 480,000-550,000. The rate of settlement expansion is placed at approximately 4% 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 toward Palestinians, and the violence of Palestinian resistance. The city of Hebron has been a persisting flashpoint, 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 OCHA-oPt) 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% 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). This expansion also furthers the Israeli policy of making East Jerusalem into a place of majority Jewish residence, and is combined with expulsions of Palestinians, as well as overlooking the presence of 250,000 Jews living 'illegally' in East Jerusalem.

V. The Health Crisis in the occupied Palestinian territory

34. There exists a consensus among specialized observers that a persisting health crisis exists in both Gaza and the West Bank. It is multi-dimensional, 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 oPt is characterized by extremely high unemployment and poverty rates, especially in Gaza. According to both UN and World Bank sources, the poverty rate for the West Bank and Gaza combined is currently pegged at 59%, and food insecurity affects at least 38% of the overall population of the oPt.¹² The unemployment level in Gaza is officially listed at 45%, the highest in the world, but even this figure understates the true level for a variety of reasons. It is reported that 95% of the factories in Gaza are now closed due to the siege. The World Bank suggested that this 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% of its fuel needs per week, and is especially given insufficient quantities of cooking oil and diesel fuel. The declaration of “enemy state”, also led Israel to block payment of customs revenue that belonged to the Palestinians and both Europe and the United States suspended their economic assistance to Gaza.
37. Medical supplies and essential equipment are often not available due to 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

¹² Follow on ACT Appeal OPT: Gaza Crisis—MEPL81, Relief Web, <http://www.reliefweb.int/rw/rwb.nsf/db900SID/AMMF-7GNHC9?OpenDocument>

many have died as a result of not receiving timely medical attention. The obstacles confronting ill Palestinians in Gaza needing treatment in Israel is discussed in Paragraph 45. According to the Gaza Community Mental Health Programme, the cumulative effect of these conditions has “serious mental consequences on the Palestinian people, whose majority of civilians are suffering from feelings of anger, anxiety, panic, depression, frustration, and hopelessness as a result of Israeli occupation practices, siege, and poverty.”

38. The situation in the West Bank is less dramatically bad so far as conditions of health are concerned, but still far below minimum international standards. Unemployment is listed as 25%, 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 check points, 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. These restrictions also make access to Israel very difficult, and often impossible, for most Palestinians living in the West Bank. It is widely reported that these conditions are producing 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 sub-standard health conditions. With respect to Gaza, it claims to be no longer the occupying power since 12 September 2005 as discussed in Paragraph 6, and thus no longer legally accountable for any adverse consequences experienced by the inhabitants of Gaza. Israel also argues that since the Hamas takeover it pursues a counter-terrorist policy toward 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 Geneva Convention IV in Articles 13-25, which give detailed emphasis to the legal duty of the occupying power to ensure the health of the population subject to occupation.
40. This set of obligations has particular relevance to the oPt 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 wellbeing 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.” This obligation is reinforced by Article 25(1) of the UDHR that declares: “Everyone has the right to a standard of living adequate for the health and wellbeing 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: “The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest standard of physical and mental health.” Article 12(2)(b) & (d) are also relevant: “The steps to be taken by the State 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 this treaty instrument, and 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 is exercised by an occupying power toward a captive population.
43. The whole approach taken toward Gaza by Israel, as well as by the United States and the European Union, since the Hamas electoral victory in January 2006 involves a massive and unlawful systematic violation of Article 33 of Geneva Convention IV that unconditionally prohibits collective punishment: “No protected person may be punished for an offense he or she has not personally committed. Collective penalties and 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 economic 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, the government of Israel’s policies punishing the Palestinian population as a whole are routinely justified as necessary for the security of the occupation, including the settlements, and for Israel itself. These security claims themselves, whatever their validity when independently asserted, have to be weighed in context against the harm caused to the occupied people. This was done by the International Court of Justice in relation to the wall (See Paragraph 3), and the Israeli claim was rejected, especially as it had constructed the wall on occupied Palestinian territory, and used the land confiscated for expansion of settlements, itself an unlawful purpose completely unrelated to legitimate security claims. Mental health 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 check points, roadblocks and closures. Such restrictions seem excessive, and have been frequently observed, combined with a variety of intimidating and humiliating practices the avoidance of which discourages Palestinian movement on the West Bank, which over time, seriously damages the health of inhabitants. This regime of confinement amounts to collective punishment, and violates Article 13(1) of the UNDR: “(1) 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 in relation to children, and 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 when he said, “I am 43 years old, and I have not had a happy day in my entire life.” In this 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 Erez Crossing

46. Since July 2007, the Physicians for Human Rights-Israel (PHR) has received information and issued a report on 4 August 2008 that contains the testimony of 32 Gazan medical patients who were interrogated at Erez Crossing. These individuals were seeking entry to Israel to receive urgent medical treatment unavailable in Gaza for serious, often life-threatening condition, and claimed to have been subject to harsh and improper questioning in intimidating circumstances by members of the Israeli General Security Service (GSS or 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 GSS with requested information and/or collaborate in the future with GSS. PHR-I also reports that a number of Gazans decided to forego medical treatment rather than endure interrogation, despite the likely disastrous health consequences of such a decision. A typical statement from these testimonies: “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.’”
47. The Israeli Government has responded to these allegations contained in the PHR-I report, contending that its behaviour is within its sovereign rights, and its reasonableness reflects dangerous security conditions that include Hamas attacks directed at the Erez Crossing where the interrogations takes place. The main Israeli claim is that it no longer has any responsibility for what takes place in Gaza as it ceased being the occupying power on 12 September 2005, and that it has complete discretion to deny Gazans access to Israel on any ground whatsoever, and that this conclusion has been supported by Israeli judicial authorities.
48. For reasons set forth in Paragraph 5, the Gaza Strip for purposes of international humanitarian law continues to be under Israeli occupation. Accordingly, although not explicitly responsive

to the situation under review, Articles 55 and 56 impose on an occupying power a general legal duty to take all necessary measure to safeguard the health of persons being protected.

49. Depending on how this 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) that prohibits “cruel treatment and torture” as does Article 5 of the Universal Declaration of Human Rights. Perhaps, the most relevant legal text is the Torture Convention that sets forth 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 “mental or physical” in the course of interrogation that seeks information by a variety of forms of intimidation; other provisions of the Torture Convention impose a variety of legal duties on the state, and confer rights on aggrieved individuals.
50. The Special Rapporteur concludes that Israel’s interrogation practices as reported by PHR-I on basis of Gazan testimonies strongly suggest violations of Israel’s legal responsibilities as occupying power. The Israeli responses are not satisfactory because they rested 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 waiting 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:

- 52. The General Assembly should ask the International Court of Justice for legal assessment of the Israeli occupation of Palestine territory from the perspective of the Palestinian right of self-determination;**
- 53. The Security Council assistance should be sought to seek implementation of the 2004 International Court of Justice Advisory Opinion, *Legal Consequences of the Construction of a Wall in Occupied Territory*;**
- 54. In 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 State 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;**
- 55. Serious note should be taken by all relevant agencies of the United Nations of the failure of Israel to fulfill 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;**
- 56. The United Nations should explore its own responsibility with respect to the wellbeing 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;**
- 57. In view of the health crisis in Gaza, members of the international community, as well as the United Nations itself, should resume economic assistance on 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. This is a**

responsibility toward the civilian population of Gaza, and is not dependent on whether Hamas satisfies the political conditions set by Israel or whether the ceasefire holds.