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**REPORT OF THE SPECIAL RAPPORTEUR ON THE 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 Human Rights Council the report on violations of international humanitarian law and human rights in the Palestinian territories occupied since 1967, submitted by John Dugard, Special Rapporteur, pursuant to Human Rights Council decision 1/106.

The Secretary-General draws the attention of the members of the Human Rights Council to the fact that this report is based on a visit undertaken by the Special Rapporteur from 9 to 17 June 2006, prior to the adoption of the above-mentioned decision by the Council.

* A/HRC/2/1.

Summary

The central feature of this report is the conflict in and the siege of Gaza. On 25 June 2006, following the capture of Corporal Gilad Shalit by Palestinian militants and the continued firing of home-made Qassam rockets into Israel, Israel commenced repeated military incursions into Gaza and regular shelling of Gaza, causing numerous deaths and injuries, destruction of homes, agricultural land and infrastructure and resulting in the large-scale violation of human rights and international humanitarian law. In particular, Israel has violated the prohibition on the indiscriminate use of military power against civilians and civilian objects. The situation in the West Bank has also deteriorated substantially.

The Wall presently under construction in the Palestinian territory is now portrayed by the new Government of Israel as a political measure designed to annex 10 per cent of Palestinian land situated between the Green Line and the Wall, where some 76 per cent of the Israeli settler population lives. When the Wall is completed, an estimated 60,500 West Bank Palestinians living in 42 villages and towns will be enclosed in the closed zone between the Wall and the Green Line. The 500,000 Palestinians living near the Wall require permits to cross it, and it is estimated that 40 per cent of the applications for permits are refused.

Israel continues its policy of the de-Palestinization of Jerusalem. The Wall is constructed in such a way as to place about a quarter of East Jerusalem's Palestinian population of 230,000 in the West Bank. Such persons will in future require permits to access their employment and to visit friends, hospitals and religious sites in Jerusalem.

Settlements continue to expand, in violation of the Fourth Geneva Convention. The settler population in the West Bank and East Jerusalem now numbers over 440,000.

The low wall under construction in south Hebron will make it difficult for Palestinian communities located between the low wall and the Green Line to access their lands, schools and clinics.

The number of checkpoints has increased, from 376 in August 2005 to over 500. Permits for travel between different parts of the West Bank are granted sparingly and require Palestinians to subject themselves to arbitrary bureaucratic procedures. Nablus and Jenin, in particular, have been seriously affected by checkpoints, and are today in effect imprisoned cities. It seems that the main purpose of many checkpoints is to make Palestinians constantly aware of Israeli control of their lives and to humiliate them in the process.

The demolition of houses remains a regular feature of the occupation. It has now become the practice to destroy houses in the course of effecting arrests in policing operations. The destruction of houses for reasons other than military necessity is prohibited by international humanitarian law.

The family life of Palestinians is undermined by a number of Israeli laws and practices. Recently, the Israeli High Court upheld a law which prohibits Israeli Arabs who marry Palestinians from living together with them in Israel. The Wall in Jerusalem has also resulted in the separation of families.

More than 10,000 Palestinians, including women and children, are imprisoned in Israeli jails.

The humanitarian situation in both the West Bank and Gaza is appalling. At least 4 out of 10 Palestinians live under the official poverty line of less than US\$ 2.10 a day and unemployment stands at least 40 per cent. To aggravate matters, the public sector, which accounts for 23 per cent of total employment in the Palestinian territory, is employed but unpaid as a result of the withholding of funds owed to the Palestinian Authority by the Government of Israel, amounting to \$50 to 60 million per month. In addition, the United States and the European Union have cut off funds to the Palestinian Authority on the ground that Hamas, the party elected to Government in January 2006, is listed under their laws as a terrorist organization. Non-governmental organizations working with the Palestinian Authority have likewise been affected by restrictions on funding.

In effect, the Palestinian people have been subjected to economic sanctions - the first time an occupied people have been so treated. This continues, despite the fact that Israel is itself in violation of numerous Security Council and General Assembly resolutions and has failed to implement the advisory opinion of the International Court of Justice of 9 July 2004.

The Quartet itself has no regard for the advisory opinion and fails even to refer to it in its public utterances. This has substantially undermined the reputation of the United Nations in the Occupied Palestinian Territory. Although Palestinians have a high regard for dedicated and committed United Nations workers on the ground, they have serious misgivings about the role of the United Nations in New York and Geneva.

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I. INTRODUCTION

1. I visited the Occupied Palestinian Territory (OPT) and Israel from 9 to 17 June 2006 in order to compile information for my report to the Human Rights Council at its forthcoming session in September 2006. Shortly after I left OPT a serious crisis erupted in Gaza following the capture by Palestinian militants of an Israeli soldier, Corporal Gilad Shalit. The Israeli reaction to this development prompted the convening of a special session of the Council to discuss the situation in OPT. At the special session, held on 5 and 6 July 2006, the Council decided to send a fact-finding mission headed by myself to OPT so that I might report on the most recent developments. In order to carry out this mission it was necessary to obtain the consent of the Government of Israel. The Government, however, declined to agree to a visit by the fact-finding mission. The present report is therefore written to apprise the Council of the situation affecting human rights in the region in the context of my visit and subsequent developments in OPT which gave rise to the request for a fact-finding mission. Inevitably, as I was not able to visit the region in July, information on these developments up to 9 August 2006 has been obtained from secondary sources - press reports, reports of non-governmental organizations (NGOs), United Nations publications, etc.

2. During my mission I visited Jerusalem, Gaza, villages in the vicinity of Jerusalem which have been seriously affected by the construction of the Wall, Ramallah, Hebron and communities in the South Hebron Hills, Bethlehem and the Wall near Rachel's Tomb, the village of Wallaja, where house demolitions have occurred, the Jordan Valley, including Jericho, and communities whose human rights are affected by Israeli policies and practices, Nablus, including the Balata refugee camp, the village of Jaiyous on the perimeter of the Wall and farming communities living close to the Wall, and checkpoints around the city of Nablus and roads in its vicinity.

3. During the visit I spoke with a wide range of persons, both Palestinian and Israeli, about violations of human rights and international humanitarian law. I delivered a lecture at the Hebrew University in Jerusalem sponsored by the Minerva Centre for Human Rights and the International Committee of the Red Cross (ICRC). The lecture, which was attended by more than 100 persons, examined controversial questions of humanitarian law relating to the conflict in OPT. Unfortunately, I had no contact with Israeli officials as the Government of Israel does not recognize my mandate. The Government was, however, aware of my visit and placed no obstacles in the way of the visit.

4. The eruption of violence in Gaza following the capture of Corporal Shalit and the arrest of members of the Palestinian Legislative Council and the Palestinian Authority (see paragraph 11 below) was followed by Israel's invasion of Lebanon and large-scale violence in Lebanon, Israel and Gaza. It is not the purpose of this report to comment on events in Lebanon and along Israel's northern borders, as that falls outside my mandate. It will, however, fully examine the situation in Gaza. It should be mentioned that the events in Lebanon to a large extent have overshadowed violence in Gaza and along its borders.

5. In the present report "the Wall" is used instead of "barrier" or "fence". This term was carefully and deliberately used by the International Court of Justice in its 2004 advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* of 9 July 2006. I see no reason to depart from this language.

II. THE QUESTION OF OCCUPATION

6. Before turning to the substance of my report, there is a preliminary matter of concern which I wish to address. This is the question of occupation. The Government of Israel prefers to avoid acknowledging the fact that OPT, that is both the West Bank and Gaza, including East Jerusalem, is occupied territory. Instead, it prefers to speak about the “disputed territories” and to assert that the withdrawal of settlers and the Israel Defence Forces (IDF) from Gaza in August 2005 has terminated the occupation of Gaza. This is a misconception of both law and fact. The International Court of Justice, the Security Council and the High Court of Israel itself have all asserted that OPT is and remains occupied territory and that, as such, it is governed by a special legal regime. According to this regime, Israel is bound to comply with both international humanitarian law and human rights law in its treatment of Palestinians. It is, admittedly, an unusual occupation in that it has continued for almost four decades. The protracted nature of the occupation does not, however, reduce the responsibility of the occupying Power. On the contrary, it increases its responsibility. The length of the occupation has led some to characterize the situation as one of colonialism or apartheid. Although Israel’s conduct at times resembles that of a colonial Power or an apartheid regime, it is more correct to classify Israel as an occupying Power in OPT and to judge its actions in accordance with the international law rules applicable to occupation.

III. THE PRESENT CRISIS IN GAZA

7. The question whether Gaza remains an occupied territory is now of academic interest only. In the course of the cynically named “Operation Summer Rains” IDF has not only asserted its control in Gaza by means of heavy shelling, but has also done so by means of a military presence.

8. In August 2005 Israel withdrew its settlers and armed forces from Gaza. Statements by the Government of Israel that the withdrawal ended the occupation of Gaza are grossly inaccurate. Even before the commencement of “Operation Summer Rains”, Gaza remained under the effective control of Israel. This control was manifested in a number of ways. First, Israel retained control of Gaza’s air space, sea space and external borders. Although a special arrangement was made for the opening of the Rafah crossing to Egypt, to be monitored by European Union personnel, all other crossings remained largely closed. The closure of the Karni crossing for goods for substantial periods had particularly serious consequences for Gaza as it resulted in a denial of access to foodstuffs, medicines and fuel. A proposed scheme which would have allowed Gazans to visit family in the West Bank by means of bus convoys was never implemented. In effect, following Israel’s withdrawal Gaza became a sealed-off, imprisoned society. The effectiveness of Israel’s control was further demonstrated by sonic booms caused by its overflying aircraft, designed to terrorize the population of Gaza, regular shelling of homes and fields along the border and targeted assassinations of militants, which, as in the past, were carried out with little regard for innocent civilian bystanders. In one incident in June 2006, a family of seven was killed by IDF shelling while picnicking on a Gaza beach. The actions of IDF in respect of Gaza have clearly demonstrated that modern technology allows an occupying Power to effectively control a territory even without a military presence.

9. Writing in *Haaretz* on 7 July 2006, the Israeli columnist Gideon Levy summed up the situation in the following language:

“The Israel Defence Forces departure from Gaza ... did almost nothing to change the living conditions for the residents of the Strip. Gaza is still a prison and its inhabitants are still doomed to live in poverty and oppression. Israel closes them off from the sea, the air and land, except for a limited safety valve at the Rafah crossing. They cannot visit their relatives in the West Bank or look for work in Israel, upon which the Gazan economy has been dependent for some forty years. Sometimes goods can be transported, sometimes not. Gaza has no chance of escaping its poverty under these conditions. Nobody will invest in it, nobody can develop it, nobody can feel free in it. Israel left the cage, threw away the keys and left the residents to their bitter fate. Now, less than a year after the disengagement, it is going back, with violence and force.”

10. Even before the start of “Operation Summer Rains” Israel had already tightened its control of Gaza in response to the election of Hamas to the Palestinian Authority in January 2006. I visited Gaza on 11 June 2006. For security reasons, I was not permitted to stay overnight, as had previously been my practice during visits to OPT. I visited the Al-Aqsa Martyrs Hospital in Gaza and spoke with the director of hospital services and senior medical practitioners. It was clear that the hospital services faced a crisis resulting from the non-payment of staff salaries and the restrictions placed on the supply of medicines and vaccines through the Karni crossing. It seemed clear to me that the Government of Israeli had embarked upon a siege in order to bring about regime change. In the process little attention was being paid to human rights, as shelling and sonic booms violated the fundamental rights to life and human dignity, and even less attention was paid to the constraints of international humanitarian law; it was already clear that collective punishment was to be the instrument used to bring about regime change.

11. On 25 June 2006 a group of Palestinian militants attacked a military base near the Israeli-Egyptian border, which left two Palestinians and two IDF soldiers dead. In retreating, they took Corporal Gilad Shalit with them as captive. They demanded the release of the women and children in Israeli jails in return for his release. This act, together with the continued Qassam rocket fire into Israel, unleashed a savage response from the Government of Israeli. In the first place, it arrested 8 Hamas Cabinet ministers and 26 members of the Palestinian Legislative Council in Ramallah. At the time of writing this report, most of them remained in detention. While Israel claims that they are being held because of their support for terrorist activities, it is difficult to resist the notion that they are being held as hostages, in violation of article 34 of the Geneva Convention relative to the Protection of Civilians in Time of War (Fourth Geneva Convention). This impression is confirmed by the debate within the Government over what to do with them. The Shin Bet security service suggested holding them as bargaining chips under the Unlawful Combatants Law. It seems, however, that the Attorney-General, Menachem Mazuz, has insisted that legal proceedings be initiated against them for membership in a terrorist organization (see *Haaretz*, 30 June 2006). The issue of the arrest of members of Hamas has been aggravated by the arrest of Aziz Dweik, Speaker of the Palestinian Legislative Council, on 5 August 2006 and reports that he has been injured in the course of interrogation.

12. Israel's assault on and siege of Gaza in the course of "Operation Summer Rains" has taken many forms, described in the following paragraphs.

A. Bombardment of public utilities

13. On 28 June 2006 the Israeli Air Force (IAF) destroyed all six transformers of the only domestic power plant in the Gaza Strip. This plant supplied 43 per cent of Gaza's daily electricity. The rest is provided by the Israel Electrical Corporation. Approximately 700,000 Gazans, out of a population of 1.4 million, initially were without electricity. Currently, the Gaza Electrical Distribution Company (GEDCO) is load-sharing the remaining electricity supply from Israel, but the supply of power to households across the Gaza Strip is intermittent. As most of Gaza's water wells are powered through the national electrical grid, which has been destroyed, generators are being used to power wells, and the daily water supply to Gazan households has been reduced. Israel's military operations have also destroyed the main water pipelines and sewerage networks. In addition, the frequent closure of the Nahal Oz pipeline, the only pipeline bringing fuel into the Gaza Strip, has affected the use of backup generators to power regular water supplies.

14. On 19 July IAF bombed power transformers during an attack on the el-Maghazi refugee camp, cutting off power to the whole of the central Gaza Strip.

15. The substantial reduction of the electricity and fuel supply, together with the disruption of water supplies, has impacted severely on the daily life of Palestinians who are without light at night and electricity to do their cooking. Moreover, it is impossible to pump water to the upper levels of multi-storey buildings. The sewers threaten to overflow. Hospitals have been radically affected and are forced to use generators to power life-saving equipment because of power outages.

B. Bombardment of public buildings and facilities

16. Israeli war planes have deliberately targeted public buildings in Gaza. The buildings housing the Ministries of the Interior, Foreign Affairs and the National Economy and the Office of the Prime Minister have all been destroyed. Such action serves no security purpose and can only be construed as an attempt to undermine the institutions of Government. Educational institutions have also been destroyed. Six bridges linking Gaza City with the central Gaza Strip have been destroyed, as have a number of roads. On 28 June IDF occupied Gaza International Airport and destroyed large parts of it.

C. Closure of borders

17. Although the Rafah crossing is not directly controlled by Israel, IDF prevented European observers responsible for staffing the crossing from reaching it. It has, therefore, been closed since 25 June, only opening for two brief periods. The closure of the Rafah crossing for three weeks in July 2006 left more than 3,000 Palestinians stranded on the Egyptian side of the border in harsh conditions, including some 578 people deemed to be "urgent humanitarian cases", who had been referred for medical treatment abroad. Eight Palestinians died as a result of their being denied proper medical treatment, shelter and water at the crossing.

18. The closure of the Rafah crossing has also had serious consequences for Palestinians on the Gaza side, particularly those living abroad who were in Gaza for family visits. Serious questions arise about the role of the EU monitors in this connection. They are in charge of the supervision of the crossing under the terms of an agreement of 15 November 2005 between the Palestinian Authority and Israel, an agreement facilitated by the United States. It is surely incumbent upon the EU monitors to show some courage and compassion in carrying out their supervisory role and not simply to bow to the dictates of the Government of Israel.

19. The Karni commercial crossing has been intermittently closed. The import of some food and medical supplies to Gaza has been permitted but the export of goods has been severely curtailed.

20. Israeli naval vessels have prevented Palestinian fishing along the coast, with the result that fish is no longer available in local markets.

D. Casualties

21. Since 25 June 2006 some 184 Palestinians (at least half of whom were civilians) have been killed, including 42 children. Some 720 people have been seriously wounded, including 168 children and 21 women. One Israeli soldier has been killed and 25 Israelis injured, including 11 injured by home-made rockets fired from Gaza.

E. Military incursions causing death and destruction

22. Since 25 June 2006 IDF has made numerous and repeated incursions into the Gaza Strip, killing civilians and destroying houses. The most serious incursions have been into Beit Hanoun, Beit Lahia, Sajiyeh, Deir el-Balah, the el-Maghazi refugee camp, Rafah and Khan Younis. In the course of these raids, carried out by tanks and bulldozers, houses have been seized and transformed into military bases. These houses have been severely damaged and several hundred houses have been destroyed. Schools run by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) have been attacked and damaged. Olive and citrus trees have been uprooted and farmland destroyed in land-levelling operations. Roads, water pipes and electricity and telephone poles have been damaged. Many families have been compelled to flee their houses, and it is estimated that some 3,400 Palestinians are presently being sheltered by UNRWA as a result of the military action. Despite the prohibition on the use of civilians as human shields imposed by the High Court of Israel, IDF has detained civilians and used them as human shields during bulldozing and detention operations. Military incursions have been accompanied by heavy shelling and the bombing of houses, resulting in the death of many civilians.

23. The attacks on the el-Maghazi refugee camp from 19 to 21 July 2006 and the attack on Rafah at the beginning of August are examples of typical Israeli incursions. In the first, 19 Palestinians were killed, including 4 children and 1 woman, and 125 were injured, most of them unarmed civilians. Four houses were completely destroyed and nine were partially destroyed. In addition, agricultural crops were levelled and the electrical, water and road infrastructure was destroyed. In the second incursion, 16 Palestinians were killed, including 10 civilians, and 39 were injured by shrapnel and suffered burns; 4 children were killed and 13 injured.

24. There has been heavy fighting between Palestinian militants and IDF. IDF has used tanks and bulldozers, supported by helicopters that have fired flares and machine guns to provide cover for ground forces.

F. Shelling and sonic booms

25. Israel has maintained unrelenting shelling of the Gaza Strip since 25 June. Several thousand shells have been fired, an estimated 200-250 each day. IAF had conducted at least 220 aerial bombings as of 3 August and fighter jets have fired air-to-surface missiles. This has been accompanied by F-16s flying low and breaking the sound barrier over Gaza, causing sonic booms that are as loud as the actual bombardments. These sonic booms have caused widespread terror among the population, particularly children. If terrorism has any meaning, then it is surely this. A doctor from Gaza has written about the effects of sonic booms and artillery shelling on her 13-year-old daughter in the following words:

“My daughter is restless, panicked and afraid to go out, yet frustrated because she cannot see her friends. When Israeli fighter planes fly by day and night, the sound is terrifying. My daughter usually jumps into bed with me, shivering with fear. Then both of us end up crouching on the floor. My heart races, yet I try to pacify my daughter, to make her feel safe. But when the bombs sound, I flinch and scream. My daughter feels my fear and knows that we need to pacify each other. I am a doctor, and mature, middle-aged woman, but with sonic booming, I become hysterical” (Dr. Mona El-Farra, *The Boston Globe*, 10 July 2006).

26. Palestinians are not blameless when it comes to shelling. Militants continue to fire Qassam home-made rockets indiscriminately into Israel, injuring Israeli civilians, damaging civilian infrastructure and causing fear among the civilian population living near the Gaza border. It is estimated that eight to nine rockets are fired each day.

G. Targeted assassinations

27. Targeted assassinations have continued, with the inevitable “collateral damage” to civilians.

H. Terrorism by telephone

28. The Israeli military has now resorted to a new method of psychological terror. Palestinians in Gaza are telephoned by Israeli military intelligence agents and warned that their houses will be blown up in less than one hour. This threat is sometimes carried out and sometimes not. This tactic has inevitably caused psychological distress and panic amongst Palestinians. Palestinians forced to leave their homes in this way have become internally displaced persons forced to live in UNRWA school premises.

I. Hospitals and health

29. Israeli forces demolished the outside wall of the new emergency hospital in Beit Hanoun. Nevertheless, the hospital continues to function but is seriously impaired. Generators are being used to operate X-ray departments and operation theatres. Referrals abroad of patients from the

Gaza Strip have been severely affected by the present crisis. As noted above, checkpoints have been closed to patients and permits denied. Particularly serious problems have arisen in respect of the Rafah border crossing to Egypt. Essential drugs are also in short supply. On 27 July the Palestinian Authority Ministry of Health reported that 67 of the 473 items on the list of essential drugs were out of stock.

30. Public health is endangered by lack of safe drinking water and sewage leakage and reported cases of diarrhoea have increased by 163 per cent compared with the same period last year. It is feared that communicable diseases like cholera and poliomyelitis will reappear.

31. Many Palestinians have suffered burns concentrated on the lower body, which has resulted in a high number of amputations. The Palestinian Health Ministry has called for an independent inquiry into this phenomenon.

J. Food and poverty

32. The poverty level in Gaza stands at 75 per cent. This is mainly attributable to the siege. Food insecurity results in part from the absence of purchasing power as few people have sufficient money today to cover their family's basic food needs. Food prices have inflated and supplies have been reduced as a result of the current operation. As noted above, fish is no longer available as a result of the sea blockade. Wheat flour mills, factories producing food and bakeries have been forced to reduce their production owing to power shortages. Furthermore, the loss of capacity to preserve perishable food in the Gaza heat results in high food losses. Supplies of sugar, dairy products and milk are running extremely low as commercial supplies from Israel are limited.

33. As indicated above, water supplies have been seriously affected as a result of the destruction of the Gaza power plant and the bombing of pipelines. Consequently, drinking water is in short supply. UNRWA and ICRC have been compelled to supply water by means of water tankers.

K. Legal assessment of Israeli action

34. Israel's actions must be assessed in terms of both human rights norms and international humanitarian law. According to the International Court of Justice in its advisory opinion cited above, both these regimes are applicable to Israel's conduct in the Occupied Palestinian Territory.

35. Israel has violated a number of rights proclaimed in the International Covenant on Civil and Political Rights, particularly the right to life (art. 6), freedom from torture, inhuman or degrading treatment (art. 7), the freedom from arbitrary arrest and detention (art. 9), freedom of movement (art. 12) and the right of children to protection (art. 24). It has also violated rights contained in the International Covenant on Economic, Social and Cultural Rights, notably "the right of everyone to an adequate standard of living for himself and for his family, including adequate food, clothing and housing", freedom from hunger, and the right to food (art. 11) and the right to health (art. 12).

36. Israel has, in addition, violated the most fundamental rules of international humanitarian law, which constitute war crimes in terms of article 147 of the Fourth Geneva Convention and article 85 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflict (Protocol I). These include direct attacks against civilians and civilian objects and attacks which fail to distinguish between military targets and civilians or civilian objects (arts. 48, 51 (4) and 52 (1) of Protocol I); the excessive use of force arising from disproportionate attacks on civilians and civilian objects (arts. 51 (4) and 51 (5) of Protocol I); the spreading of terror among the civilian population (art. 33 of the Fourth Geneva Convention, and art. 51 (2) of Protocol I) and the destruction of property not justified by military necessity (art. 53 of the Fourth Geneva Convention). Above all, the Government of Israel has violated the prohibition on collective punishment of an occupied people contained in article 33 of the Fourth Geneva Convention. The indiscriminate and excessive use of force against civilians and civilian objects, the destruction of electricity and water supplies, the bombardment of public buildings, the restrictions on freedom of movement and the consequences that these actions have had upon public health, food, family life and the psychological well-being of the Palestinian people constitute a gross form of collective punishment. The capture of Corporal Gilad Shalit and the continued firing of Qassam rockets into Israel cannot be condoned. On the other hand, they cannot justify the drastic punishment of a whole people in the way that Israel has done.

IV. THE WEST BANK

37. Many of Israel's policies and practices in the West Bank seriously impinge upon the human rights of Palestinians. The Wall presently under construction in Palestinian territory, checkpoints and roadblocks, settlements, an arbitrary permit system, the pervasive practice of house demolitions, targeted assassinations, and arrests and imprisonment violate a wide range of civil and political rights. Economic and social rights have also suffered from the humanitarian crisis resulting from the occupation.

The Wall

38. The Wall that Israel is presently building largely in Palestinian territory is clearly illegal. The International Court of Justice in its advisory opinion 4 asserted that it is contrary to international law and that Israel is under obligation to discontinue construction of the Wall and to dismantle those sections that have already been built forthwith. On 20 July 2004 the General Assembly adopted resolution ES-10/15 by 150 votes in favour, 6 against and 10 abstentions, in which it demanded that Israel comply with its legal obligations identified in the advisory opinion. The Israeli High Court of Justice, in a judgement delivered in September 2005 in *Mara'abe v. the Prime Minister of Israel* (HCJ 7957/04), dismissed the advisory opinion, arguing that the International Court of Justice had failed to have regard to the security considerations that had prompted the construction of the Wall. The basis of this judgement has now been undermined by the admission of the Israeli Government that the Wall is designed to serve a political purpose and not an exclusively security purpose. The admission that the Wall has in part been built to include West Bank settlements within the Wall and under Israel's direct protection has led the High Court to rebuke the Government for misleading it in the *Mara'abe* hearing and other challenges to the legality of the Wall (see *Haaretz*, 14 and

16 June 2006). That the purpose of the Wall is to acquire land surrounding West Bank settlements and to include settlements themselves within Israel can no longer be seriously challenged. The fact that 76 per cent of the West Bank settler population is enclosed within the Wall bears this out. The Government's present policy to unilaterally disengage from the West Bank or to realign Israel's borders is a thin disguise for the annexation by Israel of the territory between the Green Line and the Wall, amounting to some 10 per cent of Palestinian land.

39. On 30 April 2006 the Israeli Government revised the route of the Wall. It will now be 703 km long when completed, rather than 670 km. At present over 50 per cent of the Wall has been completed. When it is finished, an estimated 60,500 West Bank Palestinians living in 42 villages and towns will reside in the closed zone between the Wall and the Green Line. More than 500,000 Palestinians living within 1 km of the Wall live on the eastern side but need to cross it to get to their farms and jobs and to maintain family connections. Eighty per cent of the Wall is built within the Palestinian territory itself and in order to incorporate the Ariel settlement block, it extends some 22 km into the West Bank. At present, there are some 73 gates in the Wall, but only 38 of them are accessible to Palestinians, and only to those with the correct permit.

40. A host of obstacles are placed in the way of obtaining a permit. Bureaucratic procedures for obtaining permits are humiliating and obstructive. Although precise figures are not available, it seems that the number of permits refused may conservatively be estimated at 40 per cent. Reasons given for refusing permits range from security to failure to establish land ownership. The latter ground is now more frequently used by Israeli authorities as it has become clear that Palestinians, whose land ownership dates from a chaotic Ottoman system of land tenure, are frequently unable to prove ownership to the satisfaction of Israeli authorities determined to deny permits. The difficulties and humiliation occasioned by the process of applying for permits furthermore deters many Palestinians from applying. The fact that the opening and closure of gates leading to the closed zone are regulated in a highly arbitrary manner and frequently do not open as scheduled aggravates the situation. Moreover, tractors and farm vehicles are frequently not allowed access to the closed zone, which means that farmers must walk or use donkeys to reach their land and to bring out their produce.

41. Obstacles placed in the way of access to the closed zone have seriously affected farming in this zone. At a time when many Palestinians are returning to the land as a result of the non-payment of salaries to civil servants and the closure of many private businesses in the cities, the permit system seriously impacts upon Palestinian employment and livelihood.

V. JERUSALEM AND THE WALL

42. At the outset of this discussion it is necessary to repeat that East Jerusalem is not part of Israel. It is occupied territory subject to the Fourth Geneva Convention. This obvious truth was noted by the International Court of Justice in its advisory opinion. Israel's illegal attempt at annexation of East Jerusalem must not be allowed to obscure this fact.

43. The 75 km Wall around Jerusalem (of which only 5 km are on the Green Line) is the instrument being used to effect major changes in the city by seeking to ensure that Jerusalem

assumes a predominantly Jewish character, which will undermine Palestinian claims to Jerusalem as the capital of an independent Palestinian State. This is being done by constructing the Wall through Palestinian neighbourhoods in East Jerusalem and classifying neighbourhoods on the eastern side of the Wall as belonging to the West Bank. This has serious implications for the human rights of some 230,000 Palestinians living in Jerusalem.

44. First, while Palestinians living on the west side of the Wall will be allowed to retain their Jerusalem identity documents, which entitle them to certain benefits, particularly in respect of social security, they will find it increasingly difficult to travel to cities in the West Bank such as Ramallah and Bethlehem, where many of them are employed. Moreover, if they elect to reside in the West Bank in order to be nearer to their places of work, they risk losing their Jerusalem identity documents and the right to live in Jerusalem because under Israel's so-called centre of life policy, Palestinians must prove that they currently live in the city of East Jerusalem to maintain their Jerusalem residency rights.

45. Secondly, those relegated to the West Bank as a result of the construction of the Wall, who number about a quarter of the city's population of 230,000, will lose their Jerusalem identity documents and the attendant benefits. They will also require a permit to enter Jerusalem, and will be allowed to enter the city by only 4 of the 12 crossings in the Wall, which will considerably increase their commuting time and impede their access to schools, universities, hospitals, religious sites and places of employment.

46. The construction of the Wall in order to achieve the Judaization of Jerusalem is a cynical exercise in social engineering that imposes severe hardships on all aspects of Palestinian life.

VI. SETTLEMENTS

47. Jewish settlements in the West Bank are illegal. They violate article 49, paragraph 6, of the Fourth Geneva Convention and their illegality has been confirmed by the International Court of Justice in the advisory opinion on the Wall. The Israeli High Court has consistently refused to pronounce on the legality of settlements, which indicates that even Israel's own High Court is unwilling to confer legitimacy on settlements.

48. Despite the illegality of settlements and the unanimous condemnation of settlements by the international community, the Israeli Government persists in allowing settlements to grow. Sometimes settlement expansion occurs openly and with the full approval of the Israeli Government. For instance, in 2006 the Government approved the expansion of the settlements of Givat Ze'ev, Kfar Sava, Maskiyot and Beitar Ilit (see *Haaretz*, 21 May 2006). More frequently, expansion takes place stealthily under the guise of "natural growth", which has resulted in Israeli settlements growing at an average rate of 5.5 per cent compared with the average growth rate in Israeli cities of 1.7 per cent. Sometimes settlements expand unlawfully in terms of Israeli law, but no attempt is made to enforce the law. Outposts are frequently established and threats to remove them are not carried out.

49. As a result of this expansion, the settler population in the West Bank numbers some 245,000 persons and that of East Jerusalem nearly 200,000. As indicated above, the Wall is presently being built in both the West Bank and East Jerusalem to ensure that most settlements

will be enclosed within the Wall. Moreover, the three major settlement blocks of Gush Etzion, Ma'aleh Adumim and Ariel will effectively divide Palestinian territory into cantons, thereby destroying the territorial integrity of Palestine.

50. It is clear from statements of the Government of Israel that the major settlement blocks are destined to remain part of Israel. On 3 May 2006 Prime Minister Olmert told the Knesset that "The achievements of the settlement movement in main concentrations will forever be an integral part of the sovereign state of Israel, along with Jerusalem our united capital" (see *Haaretz*, 4 May 2006).

51. The Israeli Government's proposed policy of "unilateral disengagement", "convergence" or "realignment" clearly envisages the unlawful annexation of large portions of Palestinian territory. The euphemisms used to describe this policy should not be allowed to obscure this hard truth.

52. Settler violence continues to be a serious problem. In June 2006 the Palestinian Monitoring Group published the following account of settler violence which is illustrative of the problem:

"Israeli settlers attempted to abduct a female university student in the district of Salfit; beat civilians in the city of Hebron as well as other civilians near the settlement of Ma'on; closed a road in the district of Qalqiliya; threw stones at civilian houses in Tel Rumeida neighbourhood in the city of Hebron, and stole a water pump from a house in Tel Rumeida. They burned two civilian vehicles and one truck in the town of Huwara; set fire to wheat crops and olive trees in the villages of Salim near Nablus and Al Jab'a near Bethlehem; and grazed sheep on cultivated land in the district of Hebron."

VII. SOUTH HEBRON AND THE "MINI-WALL"

53. Plans to build the Wall in south Hebron have been abandoned. Instead, the projected Wall will largely follow the Green Line. In its place Israel is constructing a "mini-wall" running along the northern side of settler bypass roads in the region. This wall is approximately 1 m high and is designed to prevent Palestinian vehicles from crossing onto the main road and to give settlers unrestricted use of bypass roads. These restrictions will allow Jewish settlers to move safely between settlements and further on to Israel without crossing Palestinian land. Twenty-two Palestinian communities and over 1,900 Palestinians will be enclosed between the road barrier or mini-wall and the Wall, at present being constructed along the Green Line. The mini-wall will hinder the access of Palestinian shepherds and their 24,000 head of livestock to grazing areas on the other side. The mini-wall will add to the hardships already experienced by Palestinian communities living in south Hebron, which has inadequate clinics, schools and waste supplies; water must be trucked in when summer begins and rain-fed systems start emptying. The Israeli Government has refused to link Palestinian communities to its water system, which provides water to settlers alone. To aggravate the situation, the Israeli Government refuses permits to build houses.

54. The plight of Palestinian communities in south Hebron is illustrated by the experience of the village of Tuwani, which I have visited on several occasions. This village is denied

electricity, water and sanitary units and is prohibited from building new houses. Moreover, the villagers are subjected to settler violence from nearby Ma'on. Schoolchildren have to be escorted by IDF to school in order to protect them from the settlers. The settlers are also responsible for poisoning the land.

VIII. THE JORDAN VALLEY

55. Israel has abandoned earlier plans to build the Wall along the spine of OPT and to formally appropriate the Jordan Valley in the same way as it has done along the western border of OPT. But it has asserted its control over this region, constituting 25 per cent of the West Bank, in much the same way as it has done over the closed zone between the Wall and the Green Line on Palestine's western border. The intention of Israel to remain permanently in the Jordan Valley is clear from government statements and is further manifested, first, by restrictions imposed on Palestinians and, second, by Israeli control and the increase in the number of settlements in the Jordan Valley.

56. Palestinians living in the Jordan Valley must possess ID cards with a Jordan Valley address. Only such persons may travel within the Jordan Valley without Israeli permits. Other Palestinians, including non-resident landowners and workers, must obtain permits to enter the Jordan Valley and in practice such permits are not valid for overnight stays, thereby necessitating daily commuting and delays at checkpoints connecting the Jordan Valley with the rest of the West Bank. This has led to the isolation of the Jordan Valley. Travel restrictions make it difficult for farmers in the Jordan Valley to access markets in the West Bank as their produce is frequently held up at checkpoints and perishes in the process. Attempts to sell such produce along the roadside have failed as a result of the destruction of agricultural stalls along the road by IDF.

57. Most of the land in the Jordan Valley is controlled by Jewish settlements or used as military zones. Only 4 per cent of the Valley is accessible to 47,000 Palestinians for agricultural and residential use. There are some 8,300 settlers living in the Jordan Valley and their number is growing as a result of the resettlement of settlers from Gaza. Whereas Palestinians are without electricity and water in most villages, settlers are linked to Israel's electricity and water systems. Moreover the 8,300 settlers living in the Jordan Valley consume more water each year than the 47,000 Palestinians living in the region.

IX. HOUSE DEMOLITIONS

58. The demolition of houses is a regular feature of the occupation; and the bulldozer has become a hated symbol of it. Traditionally, the occupying Power has demolished houses for punitive reasons (where a resident of the house has committed a crime against Israel), military necessity, or for failure to obtain a permit to build. In recent times houses have been demolished for additional reasons: first, to make way for the Wall and second, to carry out arrests of wanted persons. It will be recalled that last year the Israeli High Court forbade the use of Palestinian civilians as human shields in arrest operations. Now, if a wanted person is suspected of being in a particular house and refuses to surrender, the house is bulldozed. I myself witnessed the manner in which houses are destroyed in this manner in the Balata refugee camp near Nablus.

59. For many years Israel has destroyed houses built without permission, arguing that in so doing it is simply applying municipal housing laws in the same way as other developed societies do. Such an argument fails to take account of two factors. First, an occupying Power is constrained from destroying the houses of persons protected by international humanitarian law (see article 23 (g) of the Hague Regulation respecting the Laws and Customs of War on Land annexed to the Hague Convention IV of 1907 and article 53 of the Fourth Geneva Convention). This applies to Palestinian homes in the West Bank, Gaza and East Jerusalem. Second, permits are refused in such an arbitrary manner, and are refused with such great regularity, that it has become virtually impossible for Palestinians to obtain permits to build houses. The permit system for Palestinians in East Jerusalem is administered in a completely different way than it is administered in respect of Israelis. The discriminatory way in which the permit system is implemented in East Jerusalem has recently been highlighted by Meir Margalit in *Discrimination in the Heart of the Holy City* (2006).

X. CHECKPOINTS

60. The number of checkpoints, including roadblocks, earth mounds and trenches, has increased from 376 in August 2005 to over 500. These checkpoints divide the West Bank into four distinct areas: the north (Nablus, Jenin and Tulkarem), the centre (Ramallah), the south (Hebron) and East Jerusalem. Within these areas further enclaves have been created by a system of checkpoints and roadblocks. Cities are cut off from each other as a permit is required to travel from one area to another and, again, permits are difficult to obtain. The rules relating to the granting of permits constantly change, particularly with respect to the age of the persons to whom permits are refused. Moreover, bureaucratic procedures for obtaining permits are arbitrary and obstructive. This has worsened since Hamas came to power as those applying for permits must now apply directly to the Israeli Civil Administration because the Israeli Government refuses to cooperate with any Palestinian governmental authority. The permit system also explains the economic decline of OPT as movement of goods and labour cannot move freely.

61. In June 2006 I visited the city of Nablus, which is now completely surrounded by checkpoints which make entrance into and exit from the city impossible for most residents. In effect, Nablus has become an imprisoned city.

62. Israel justifies checkpoints on security grounds. It is difficult to accept this justification for most checkpoints. After all, the Wall provides an effective security barrier between Israel and OPT and there is a line of checkpoints along the finger of land in which the Ariel settlement block has been established which should adequately ensure the protection of Israelis. Checkpoints in other areas, such as those surrounding Nablus, therefore seem to serve no security purpose. This suggests that the main purpose of many checkpoints is in fact to make Palestinians constantly aware of Israeli control of their lives and to humiliate them in the process.

XI. SEPARATION OF FAMILIES

63. The right to family life is recognized by all human rights conventions. In OPT it is undermined by Israel in a number of ways. First, the Wall running between Jerusalem

neighbourhoods separates Palestinians with Jerusalem identity documents from those with West Bank documents. Where husband and wife have separate documents they often have no choice but to separate in order to allow the Jerusalem ID holder to retain his or her benefits. Eighteen per cent of Palestinian households in Jerusalem are separated from the father and 12 per cent of households are separated from the mother. Secondly, the authorities have recently embarked upon a policy of denying access to Palestinians with foreign passports. In previous years, Palestinians with foreign passports have been allowed to live in the West Bank provided that they renewed their visas every three months. This affects some 50,000 Palestinians living in the West Bank who now face a denial of visas (see *Haaretz*, 10 July 2006). Thirdly, an Israeli law on citizenship prohibits Palestinians who marry Israeli Arabs from living with their spouses in Israel. This law was recently the subject of a controversial decision by the Israeli High Court of Justice which held that the law, which does not apply to Jewish Israelis who marry foreigners, was constitutional on the grounds of security. The Court reasoned that the State was entitled to prevent Palestinians from living with their Israeli spouses in Israel because that might allow Palestinians who threaten the security of Israel to enter the country.

XII. ADMINISTRATION OF JUSTICE

64. Israel clearly does not ascribe to the policy of winning hearts and minds in the process of administering justice; instead, it shows the iron fist, in the process of making arrests, the treatment of arrested persons and the treatment of prisoners. The situation seems to have worsened since Hamas was elected to office.

65. The making of arrests as has been shown, is frequently accompanied by the destruction and trashing of property, beatings, the unleashing of dogs in civilian homes, humiliating strip searches and early morning raids. The interrogation of arrested persons continues to be accompanied by a mix of psychological pressure and physical violence. The number of prisoners continues to rise. There are now over 10,000 Palestinian prisoners in Israeli jails, including women and children. The position of child prisoners is particularly disturbing as they are often compelled to share cells with adult prisoners, denied education and access to family.

XIII. THE HUMANITARIAN CRISIS AND FUNDING OF THE PALESTINIAN AUTHORITY

66. The humanitarian crisis in Gaza is dealt with separately in the section on Gaza above. The appalling humanitarian situation in that part of OPT should not be allowed to distract attention from the serious humanitarian crisis in OPT as a whole. Four out of 10 Palestinians live under the official poverty line of less than \$2.10 a day. Unemployment is difficult to determine. The International Labour Organization has estimated the jobless rate to be over 40 per cent of the Palestinian labour force. This, however, does not take account of the fact that the public sector, which accounts for 23 per cent of total employment in OPT, is employed but unpaid.

67. In large measure the humanitarian crisis is the result of the termination of funding of the Palestinian Authority since Hamas was elected to office. In the first instance the Israeli Government is withholding from the Palestinian Authority VAT duties and customs amounting to \$50-60 million per month that it collects on its behalf on goods imported into OPT. This

constitutes 36 per cent of the monthly budget of PA or 50 per cent of funds actually available to PA. In law Israel has no right to refuse to transfer this money, which belongs to the Palestinian Authority under the 1994 Protocol on Economic Relations between the Government of Israel and the Palestine Liberation Organization (Paris Protocol). Predictably, Israel justifies its action on security grounds. This shortfall in funds for the Palestinian Authority has been accompanied by a drastic reduction in funding on the part of donor countries and agencies. This has had a serious impact on the work of NGOs which have had to suspend or cancel their projects related to the work of PA. The decision of the Government of Canada to suspend aid has had severe consequences in particular for NGOs. As a result of the fact that Hamas is classified as a terrorist organization by both the United States and the European Union, the United States Treasury has decided to prohibit transactions with the Palestinian Authority. This has had a profound effect on banks which are not prepared to transfer funds to the Palestinian Authority, its agencies and its projects and to NGOs engaged in projects with PA. Some projects involving PA continue to be funded (e.g. World Bank projects) and the European Union has set up a Temporary International Mechanism, endorsed by the Quartet, for the relief of Palestinians employed in the health sector, the uninterrupted supply of utilities, including fuel, and the provision of basic allowances to meet the needs of the poorest segment of the population. (This safety net for the poorest will require the establishment of a special infrastructure.) A proposal made by the World Bank in May that an interim funding scheme provide for the payment of salaries to civil servants was, however, rejected by the Quartet.

68. Despite limited funding attempts of this kind, it is clear that the Palestinian economy, which has become heavily dependent on donor funding since 1994, has suffered dramatically as a result of the withholding of funds by Israel and the international community since the election of Hamas. This economic strangulation has had a severe impact on the social and economic rights of the Palestinian people. About 1 million of Palestine's 3.5 million people is directly affected by the non-payment of salaries to some 152,000 civil servants (and their families), but the whole population has suffered indirectly. Moreover, as the Palestinian Authority is responsible for over 70 per cent of schools and 60 per cent of health-care services in OPT, both education and health care have suffered substantially.

69. Health care is examined more fully in the section on Gaza. However, it is important to stress that cuts in funding have impacted seriously on health care throughout OPT. The failure to pay the salaries of health-care workers has led to absenteeism because workers are simply unable to pay for transportation to the workplace. Drugs and vaccines are in short supply. Hospitals are unable to provide adequately for cancer and kidney dialysis patients. The transfer of patients to hospitals in other parts of the West Bank, and particularly to Israel and Egypt, has become particularly difficult as a result of closures and the refusal of permits.

70. In effect, the Palestinian people have been subjected to economic sanctions - the first time an occupied people have been so treated. This is difficult to understand. Israel is in violation of major Security Council and General Assembly resolutions dealing with unlawful territorial change and the violation of human rights and has failed to implement the 2004 advisory opinion of the International Court of Justice, yet it escapes the imposition of sanctions. Instead the Palestinian people, rather than the Palestinian Authority, have been subjected to possibly the most rigorous form of international sanctions imposed in modern times.

It is interesting to recall that the Western States refused to impose meaningful economic sanctions on South Africa to compel it to abandon apartheid on the grounds that this would harm the black people of South Africa. No such sympathy is extended to the Palestinian people or their human rights.

XIV. THE ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE AND THE UNITED NATIONS

71. In 2004 the International Court of Justice held that the Wall that Israel is presently building in Palestinian territory is illegal and should be dismantled. In its advisory opinion the Court also found a number of other Israeli practices (such as the establishment of settlements) to be contrary to international law. Two years have passed, and nothing has been done to give effect to the findings of the Court. To aggravate matters, the Wall does not feature in any way whatsoever in the regular utterances of the Quartet. It is as if no opinion had been given.

72. In 2004 the General Assembly, in its resolution ES-10/15 of 20 July 2004, instructed the Secretary-General to establish a register of damages arising from the construction of the Wall. Two years later, this register is still not in existence, raising serious doubts about whether its structure, goals and methods of operation will comply with the advisory opinion.

73. The advisory opinion of the International Court of Justice is an authoritative pronouncement of the judicial organ of the United Nations, which has been endorsed by the General Assembly in resolution ES-10/15. As an advisory opinion, it is not binding upon States. It is, however, a definitive statement of the law as far as the United Nations is concerned, and it must guide the United Nations in the same way as the advisory opinion of 21 June 1971 on the legal consequences for States of the continuing presence of South Africa in Namibia guided the political organs of the United Nations in their handling of the Namibian question. As a member of the Quartet, the United Nations is duty bound to persuade that body to at least make reference to the advisory opinion of the Court in its regular statements. If it fails in this endeavour, it must at least express its dissatisfaction with the failure of the Quartet to be guided by the advisory opinion and to make reference to it.

XV. CONCLUSION

74. **This report does not make pleasant reading. Israel is in violation of important norms of human rights and international humanitarian law. While it is readily conceded that Israel faces a security threat and is entitled to defend itself, it must not be forgotten that the root cause of the security threat is the continued occupation of a people that wishes to exercise its right of self-determination in an independent State. The need to bring this situation to an end is recognized by the international community, which has delegated power to the Quartet, comprising the United Nations, the European Union, the United States of America and the Russian Federation, to facilitate a peaceful settlement in the form of the creation of a Palestinian State. Unfortunately, at present this goal seems to have been lost to view as the Quartet turns to punitive measures designed to compel Hamas to change its ideological stance, or to bring about regime change. This is clear from its statement of 9 May 2006. Whether the United Nations is in law authorized to make itself a party to economic coercion through the Quartet without following its own procedures under the Charter is questionable. In any event, diplomacy has given way to coercion.**

75. **It is pointless for the Special Rapporteur to recommend to the Government of Israel that it show respect for human rights and international humanitarian law. More authoritative bodies, notably the International Court of Justice and the Security Council, have made similar appeals with as little success as have had previous reports of the Special Rapporteur. It also seems pointless for the Special Rapporteur to appeal to the Quartet to strive for the restoration of human rights, as neither respect for human rights nor respect for the rule of law features prominently on the agenda of this body, as reflected in its public utterances. In these circumstances, the Special Rapporteur can only appeal to the wider international community to concern itself with the plight of the Palestinian people.**

76. **The image and reputation of the United Nations has, sadly, suffered in the occupied Palestinian territories. While there is high regard for dedicated and committed United Nations workers on the ground, the same cannot be said for the United Nations in New York and Geneva. Palestinians are sensitive to the failure of high-ranking United Nations officials to meaningfully visit the region and the inability of the Security Council to take action to protect human rights, as recently evidenced by the veto of an even-handed draft Security Council resolution on Gaza on 12 July 2006. The visit of Jan Egeland, Under-Secretary-General for Humanitarian Affairs and United Nations Emergency Relief Coordinator, on 25 July has no doubt done much to restore the image of the United Nations in the region. The concern of the Human Rights Council will also be welcomed, as will the statements by a number of special procedures mandate-holders. The United Nations needs to show more concern for the human rights of Palestinians. Reports such as the present one record the violations of human rights and humanitarian law, but real action on the part of the Organization is essential at this troubled time.**
