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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE  
OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE**

**Report of the Special Rapporteur of the Commission on Human  
Rights, John Dugard, on the situation of human rights in the  
Palestinian territories occupied by Israel since 1967, submitted  
in accordance with Commission resolution 1993/2 A**

## Summary

The situation in the Occupied Palestinian Territory (OPT) continues to be a matter of grave concern. Although the road map promoted by the Quartet offers some prospect of peace in the region, it is important to record that the past six months have seen continued violations of human rights and international humanitarian law.

The Government of Israel has justified its actions in the OPT on the grounds of self-defence and portrayed them as anti-terrorism measures. That Israel has legitimate security concerns cannot be denied. On the other hand, some limit must be placed on the violation of human rights in the name of counter-terrorism. A balance must be struck between respect for human rights and the interests of security.

During the past few months the construction of the Wall, separating Israel from the West Bank, has been frenetically pursued. The Wall does not follow the Green Line, which marks the de facto boundary between Israel and Palestine. Instead, it incorporates substantial areas of the West Bank into Israel. Over 210,000 Palestinians will be seriously affected by the Wall. Palestinians living between the Wall and the Green Line will be effectively cut off from their farmlands and workplaces, schools, health clinics and other social services. This is likely to lead to a new generation of refugees or internally displaced persons.

The Wall has all the features of a permanent structure. The fact that it will incorporate half of the settler population in the West Bank and East Jerusalem suggests that it is designed to further entrench the position of the settlers. The evidence strongly suggests that Israel is determined to create facts on the ground amounting to de facto annexation. Annexation of this kind, known as conquest in international law, is prohibited by the Charter of the United Nations and the Fourth Geneva Convention. The Special Rapporteur submits that the time has come to condemn the Wall as an unlawful act of annexation in the same way that Israel's annexation of East Jerusalem and the Golan Heights has been condemned as unlawful. Similarly, no recognition should be given by the international community to Israel's control over Palestinian territory enclosed by the Wall.

The restrictions on freedom of movement continue to create a humanitarian crisis in the OPT. Although curfews have not affected as many people in 2003 as in the previous year, they still disrupt Palestinian life on a broad scale. The number of checkpoints has increased during the past six months. These restraints on the movement of goods and persons give rise to unemployment, poverty, poor health care and interrupted education and, in addition, they result in the humiliation of the Palestinian people.

The death toll in the conflict continues to rise as a result of suicide bombings and military incursions. The Israeli practice of assassinating suspected terrorists has inflicted death and injury not only on those targeted but on a substantial number of innocent civilians in the vicinity of such actions. The legality of such measures is highly questionable.

There are some 6,000 Palestinians in Israeli prisons and detention centres. Although Israel has agreed to release 540 of them, its refusal to release more prisoners constitutes a major obstacle in the way of peace in the region. Sadly, allegations of torture and inhuman and degrading treatment continue to be made. The Special Rapporteur therefore calls for an independent inquiry into such allegations.

The destruction of property in the OPT continues unabated. During the past eight months, Gaza has been particularly affected by military action that has caused large-scale devastation to houses and agricultural land.

Israel's undertaking to curb the growth of settlements has not been implemented. On the contrary, settlements have continued to grow at an unacceptable pace. This phenomenon, together with the construction of the Wall, suggests that territorial expansion remains an essential feature of Israel's policies and practices in the OPT.

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## I. INTRODUCTION

1. The Special Rapporteur visited the Occupied Palestinian Territory (OPT) and Israel from 22 to 29 June 2003. In the course of this mission he visited Gaza, Ramallah, Nablus, Bethlehem, Jericho and Jerusalem. He met with President Arafat, ministers of the Palestinian Authority (PA), members of the Palestinian Legislative Council (PLC) and the Governor of Nablus, who briefed him fully on the situation. He also met with prominent Palestinian and Israeli interlocutors and Palestinian and Israeli non-governmental organizations (NGOs) who informed him about the human rights situation in the OPT. Accompanied by the Commissioner-General of the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA), Peter Hansen, he visited Beit Hanoun in the Gaza Strip, the scene of massive destruction of homes and agricultural lands. In Ramallah he visited the Surda and Kalandiya checkpoints, where he observed the restrictions on freedom of movement imposed on Palestinians. The Wall/Fence/Barrier (hereinafter "the Wall") separating Israel from the West Bank featured prominently in the Special Rapporteur's mission. He observed the construction of the Wall near Jayyous village and Bethlehem.

2. Unfortunately, the Government of Israel continues to withhold its cooperation from the Special Rapporteur. In part, the Special Rapporteur's failure to hear the Government's response to the issues described in this report was overcome by attendance at the presentation of Israel's second periodic report (CCPR/C/ISR/2001/2) on its compliance with the International Covenant on Civil and Political Rights (ICCPR) before the Human Rights Committee on 24 and 25 July 2003. This two-day dialogue between representatives of the Government and the Human Rights Committee covered many of the issues considered in the present report and provided the Special Rapporteur with a clear understanding of the Israeli position. In the course of its presentation, the Government reiterated its argument that its actions in the OPT are to be measured against the rules of international humanitarian law and not those of international human rights law, contained in ICCPR. The Human Rights Committee confirmed that it was unable to accept this argument and reaffirmed its determination to judge Israel's actions in terms of both these legal regimes. This remains the approach of the Special Rapporteur.

3. The Special Rapporteur left the region shortly before the declaration of a ceasefire by militant groups in the OPT. At the time of writing this report there is relative calm and there is some ground for hoping that the road map, leading to peace between Palestine and Israel and the ultimate creation of a Palestinian State, will succeed. Serious obstacles remain, however, in the way of the successful implementation of the road map. Most of these obstacles have a human rights dimension and are discussed in this report. Peace in the region cannot succeed without a return to the rule of law and respect for human rights and international humanitarian law. It is unfortunate that the road map, like the Oslo Accords, fails to give sufficient weight to this factor.

4. Previous reports have followed an all-too-familiar pattern, describing deaths, detentions, the humanitarian crisis, destruction of property, the suffering of children and settlements. This report will follow a different sequence. After the necessary disclaimer of sympathy for terrorism, the report will focus on two issues that, in the opinion of the Special Rapporteur, most seriously demand the attention of the international community - the unlawful annexation of Palestinian territory and the restrictions on freedom of movement. Thereafter, the report will turn to deaths, detentions, the demolition of property and settlements which, unhappily, continue to characterize the situation.

## II. HUMAN RIGHTS AND TERRORISM

5. At the outset, it is necessary for the Special Rapporteur to reaffirm his opposition to terrorism and his commitment to human rights. Many of the rights contained in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights have been violated by the Israel Defence Forces (IDF) in their actions against the Palestinian people. Many of the obligations of international humanitarian law have likewise been violated. These violations are, however, justified by Israel as action taken in self-defence and legitimate anti-terrorism action. That Israel has legitimate security concerns cannot be denied. That it is entitled to take strong action to prevent suicide bombings and other acts of terror is not disputed. On the other hand, there must be some limit to the extent to which human rights may be violated in the name of counter-terrorism. Even in the present international environment, in which anti-terrorism measures challenge old liberties and freedoms, it is not denied that a balance must be struck between respect for basic human rights and the interests of security. Here the principle of proportionality recognized by international humanitarian law has a key role to play. It is not possible to adopt an armchair attitude in assessing Israel's response to suicide bombings and Palestinian violence. Israel is entitled to a wide margin of appreciation in its response. But, even allowing for this, it is suggested, on the basis of the evidence provided in this report, that Israel's response to terror is disproportionate. On occasion, Israel's action in the OPT is so remote from the interests of security that it assumes the character of punishment, humiliation and conquest.

## III. ANNEXATION AND THE WALL

6. Language is a powerful instrument. This explains why words that accurately describe a particular situation are often avoided out of fear that they will too vividly portray the situation which they seek to depict. In politics euphemism is often preferred to accuracy in language. So it is with the Wall that Israel is presently constructing within the territory of the West Bank. It goes by the name of "Seam Zone", "Security Fence" or "Separation Wall"<sup>1</sup>. The word "annexation" is avoided as it is too accurate a description and too unconcerned about the need to obfuscate the truth in the interests of anti-terrorism measures. However, the fact must be faced that what we are presently witnessing in the West Bank is a visible and clear act of territorial annexation under the guise of security. There may have been no official act of annexation of the Palestinian territory in effect transferred to Israel by the construction of the Wall, but it is impossible to avoid the conclusion that we are here faced with annexation of Palestinian territory.

7. Israel is presently building a wall between Israel and the West Bank that, when completed, will be some 450 (possibly 650) kilometres in length. At the time of writing some 150 kilometres have already been completed and building constructors are working frenetically to finish it as soon as possible. At times this barrier takes the form of an eight-metre-high wall (near Qalqiliya). Mostly it takes the form of a barrier some 60 to 100 metres wide, which includes buffer zones with trenches and barbed wire, trace paths to register footprints, an electric fence with sensors to warn of any incursion, a two-lane patrol road and fortified guard towers at regular intervals. No-go areas of over 100 metres wide on each side of the barrier will be policed by IDF. Israel has undertaken to install some 27 agricultural crossings and 5 general crossings for traffic and persons through the barrier but as yet little progress has been made on these crossings.

8. Possibly, the Wall will assist in the achievement of the Government's publicly declared goal - to prevent suicide bombers from reaching Israeli territory. Even this, however, is doubted by some who point to the fact that most suicide bombers have passed through checkpoints and that the Wall will not deter persons determined to cross into Israel to commit acts of terrorism. That this is a valid complaint is borne out by the comment of the Israeli State Comptroller in his report of July 2002 that "IDF documents indicate that most of the suicide terrorists and car bombs crossed the seam area into Israel through the checkpoints, where they underwent faulty and even shoddy checks".<sup>2</sup>

9. The Wall does not follow the Green Line, that is the 1967 boundary between Israel and Palestine which is generally accepted as the border between the two entities. Instead, it follows a route that incorporates substantial parts of Palestine within Israel. At present the Wall intrudes six to seven kilometres within Palestine, but there are proposals to penetrate still deeper into Palestinian territory in order to include the settlements of Ariel, Immanuel and Kedumim. In some places the winding route creates a barrier that completely encircles Palestinian villages while at many points it separates Palestinian villages from the rest of the West Bank and converts them into isolated enclaves. Qalqiliya, a city with a population of 40,000, is completely surrounded by the Wall and residents can only enter or leave through a single military checkpoint open from 7 a.m. to 7 p.m. Palestinians between the Wall and the Green Line will effectively be cut off from their land and workplaces, schools, health clinics and other social services. Much of the Palestinian land on the Israeli side of the Wall consists of fertile agricultural land and some of the most important water wells in the region. The Wall is constructed on Palestinian lands expropriated by Israeli military order, justified on grounds of military necessity. Many fruit and olive trees had been destroyed in the course of building the barrier. B'Tselem, a leading Israeli human rights NGO, estimates that the barrier will cause direct harm to at least 210,000 Palestinians living in 67 villages, towns and cities.

10. Palestinians, unconvinced by Israel's assurances that they will be allowed to pass through the crossings to be erected in the Wall, are moving from their homes in the affected areas to the security of what remains of Palestine. It is reported that already some 600 shops and enterprises have closed in Qalqiliya as a result of the construction of the Wall. The Wall will therefore create a new generation of refugees or internally displaced persons.

11. It is impossible to give complete facts about the Wall as its final trajectory is still surrounded in secrecy and uncertainty. The path of the Wall changes regularly in response to demands from settlers and other political interest groups within Israel. There is no transparency surrounding the construction of the Wall and its final course seems to be known only to an inner circle of the military and political establishment within Israel. It is, however, widely expected that, following the completion of the Wall separating Israel from the West Bank on the western side, an eastern wall will be constructed, along the mountain ridge west of the Jordan Valley, which will separate Palestine from the Jordan Valley.

12. The Wall must be seen in the context of settlement activity (discussed later) and the unlawful annexation of East Jerusalem. Settlements in East Jerusalem and the West Bank are the principal beneficiaries of the Wall and it is estimated that approximately half of the 400,000 settler population will be incorporated on the Israeli side of the Wall. Needless to say, it is extraordinary that such action should be taken to incorporate illegal settlements that form the

subject of negotiations between Israel and Palestine. The Wall will be built at great cost to Israel: it is projected that US\$ 1.4 billion will be spent on its construction. This simply confirms the permanent nature of the Wall.

13. The Wall has serious implications for human rights. It further restricts the freedom of movement of Palestinians, restricts access to health and education facilities and results in the unlawful taking of Palestinian property. However, the Wall has more serious implications as it violates two of the most fundamental principles of contemporary international law: the prohibition on the forcible acquisition of territory and the right to self-determination.

14. Like the settlements it seeks to protect, the Wall is manifestly intended to create facts on the ground. It may lack an act of annexation, as occurred in the case of East Jerusalem and the Golan Heights. But its effect is the same: annexation. Annexation of this kind goes by another name in international law - conquest. Conquest, or the acquisition of territory by the use of force, has been outlawed by the prohibition on the use of force contained in the Kellogg-Briand Pact of 1928 and Article 2, paragraph 4, of the Charter of the United Nations. The prohibition on the acquisition of territory by force applies irrespective of whether the territory is acquired as a result of an act of aggression or in self-defence. The Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations (General Assembly resolution 2625 (XXV) of 24 October 1970, annex) declares that "the territory of a State shall not be the object of acquisition by another State resulting from the threat or use of force. No territorial acquisition resulting from the threat or use of force shall be recognized as legal". This prohibition is confirmed by Security Council resolution 242 (1967) and the Oslo Accords, which provide that the status of the West Bank and Gaza shall not be changed pending the outcome of the permanent status negotiations.<sup>3</sup> The Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention) provides that protected persons in an occupied territory shall not be deprived of the benefits of the Convention "by any annexation ... of the occupied territory" (art. 47).

15. The right to self-determination is closely linked to the notion of territorial sovereignty. A people can only exercise the right of self-determination within a territory. The amputation of Palestinian territory by the Wall seriously interferes with the right of self-determination of the Palestinian people as it substantially reduces the size of the self-determination unit (already small) within which that right is to be exercised.

16. The Special Rapporteur submits that the time has come to condemn the Wall as an act of unlawful annexation in the language of Security Council resolutions 478 (1980) and 497 (1981) which declare that Israel's actions aimed at the annexation of East Jerusalem and the Golan Heights are "null and void" and should not be recognized by States. Israel's claim that the Wall is designed entirely as a security measure with no intention to alter political boundaries is simply not supported by the facts.



#### IV. RESTRICTIONS ON FREEDOM OF MOVEMENT AND THE HUMANITARIAN CRISIS

17. Previous reports have described the serious restrictions on freedom of movement imposed on the Palestinian people by the Occupying Power. Checkpoints, closures and curfews are words that fail to capture the full enormity of what is happening today in the West Bank and Gaza. A checkpoint is not simply a military outpost on a highway that checks the documents of pedestrians and traffic that seek to proceed along the road. Every day thousands of Palestinians must pass through these checkpoints in order to travel from home to work, to reach schools and hospitals and to visit friends and family. Every day Palestinians are compelled to waste hours passing through these checkpoints. Frequently, Palestinians are obliged to leave their vehicles at one checkpoint and to walk along dusty roads to another checkpoint to take a taxi to their destination. Accounts of rudeness, humiliation and brutality at the checkpoints are legion. Ambulances are often delayed and women give birth to children at checkpoints. Checkpoints are not so much a security measure for ensuring that would-be suicide bombers do not enter Israel, but rather the institutionalization of the humiliation of the Palestinian people. Similarly, a curfew is not simply a restriction on leaving one's home. It is the imprisonment of the people within their own homes. Unable to go to work, to buy food, to go to school, to visit hospitals or to bury their dead, they are confined within the walls of their own homes while the IDF patrols their streets. Statistics of checkpoints and curfews cannot accurately portray the obscenity of the situation. Unfortunately, Israelis are protected from seeing what their army is doing to their subjugated neighbour by laws that restrict Israelis from seeing what is happening. The acclaimed Palestinian author, Raja Shehadeh, described the situation in his recent book *When the Bulbul Stops Singing: A Diary of Ramallah Under Siege*:<sup>4</sup> "During the first intifada, the movement of both people into the land of the other continued to be possible. ... All sorts of relations developed between the people on the two sides of the divide. None of this has been possible this time. With the exception of a few determined Israeli journalists, it was left to the army to present to the Israeli people the reality of the Occupied Territories. The prohibition against travel by both sides to each other's territories meant that the demonization could continue unchallenged."

18. The task of the Special Rapporteur is to report on facts. Curfews continue, but without the severity of 2002. From November 2002 to April 2003, an average of 390,000 civilians were under curfew compared with 520,000 in the second half of 2002. However, people under curfew in Hebron, Jenin and parts of Gaza were frequently under tighter and more continuous curfew in 2003.

19. There are some 300 checkpoints or roadblocks, including about 140 checkpoints manned by the military. However, in late July 2003 a number of roadblocks were removed within the context of the implementation of the road map. Checkpoints vary in nature and include permanent checkpoints, mobile checkpoints, unmanned roadblocks, dirt walls, earth mounds, concrete blocks, iron gates and trenches dug around villages and towns. Sometimes tanks or military vehicles are used as roadblocks. These checkpoints or roadblocks, around every town and major road junction, divide the OPT internally. Eight commercial checkpoints divide the West Bank into the separate cantons of Hebron, Bethlehem, Jericho, Ramallah, Nablus, Tulkarem, Qalqiliya and Jenin. Each district has one official commercial entrance. Commercial goods must be unloaded and transferred to another vehicle on the other side of the checkpoint ("back-to-back transport"). Checkpoints for ordinary people likewise sometimes

require back-to-back transfer. These checkpoints divide the West Bank into a patchwork of cantons. Since March 2002, permits have been required to travel from one district to another. Gaza is totally isolated from the rest of Palestine. It too, however, is partitioned into three separate cantons by checkpoints. These measures have not prevented the movement of militants between different towns or regions or between Palestine and Israel. They do not protect settlements which are already well protected by the IDF. Instead, internal checkpoints restrict internal trade within the OPT and restrict the entire population from travelling from village to village or town to town. They must therefore be seen as a form of collective punishment. Writing in *Ha'aretz* on 27 July 2003, the columnist Gideon Levy wrote that the purpose of checkpoints is "to make the lives of the local residents as miserable as possible". Unfortunately, the Israeli representatives appearing before the Human Rights Committee on 24 and 25 July 2003 made no serious attempt to address the issue of checkpoints. Indeed, there seemed to be no appreciation on their part of the hardships and humiliation caused by checkpoints.

20. Checkpoints, closures and curfews have had a major impact on the Palestinian economy. According to a World Bank report of May 2003, "The bulk of Palestinian economic losses stem from closure and curfew."<sup>5</sup> This has resulted in unemployment (which now stands at 40 per cent in the West Bank and Gaza) and poverty (60 per cent of the people live on less than US\$ 2 per day; 2 million live in poverty, dependent on food from international donor agencies). Checkpoints and curfews have also led to a drop in health standards resulting from inability to access hospitals and clinics, the impossibility of carrying out health-care programmes (for example, vaccinations) and the psychological trauma arising from the physical, economic and social consequences of occupation. Checkpoints have also resulted in the failure to acquire nutritious food and sufficient clean water. The obstruction of ambulances at checkpoints remains a serious problem. In the past year, about 60 ambulances per month were held up at checkpoints of which a quarter were denied passage. In March 2003, 15 ambulances were fired upon. Children have suffered dramatically. Schools are closed by curfew and checkpoints make it difficult for both teachers and children to reach schools. Twenty-two per cent of children under the age of 5 suffer from acute or chronic malnutrition while the breakdown of family life has had a severe impact on children.

21. There is a humanitarian crisis in the West Bank and Gaza. It is not the result of a natural disaster. Instead, it is a crisis imposed by a powerful State on its neighbour.

## **V. LOSS OF LIFE AND THE KILLING OF CIVILIANS**

22. For both human rights law and international humanitarian law the protection of human life is a primary goal. Article 6 (1) of the International Covenant on Civil and Political Rights states that "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life." While accepting that combatants engaged in armed conflict would be exposed to life-threatening situations, international humanitarian law seeks to limit harm to civilians by requiring that all parties to a conflict respect the principles of distinction and proportionality. The principle of distinction, codified in article 48 of Protocol I Additional to the Geneva Conventions of 12 August 1949, requires that "the Parties to the conflict shall at all times distinguish between the civilian population and combatants and between civilian objects and military objectives and accordingly shall direct their operations only against military objectives". Acts or threats of violence the primary purpose of which is

to spread terror among the civilian population, are prohibited (art. 51 (2)). The principle of proportionality, codified in article 51 (5) (b), prohibits an attack on a military target “which may be expected to cause incidental loss of civilian life, injury to civilians, [or] damage to civilian objects ... which would be excessive in relation to the concrete and direct military advantage anticipated”. That these principles apply to both Israelis and Palestinians was confirmed by the High Contracting Parties to the Fourth Geneva Convention when, in a declaration issued on 5 December 2001, they called upon both parties to the conflict to:

“... ensure respect for and protection of the civilian population and civilian objects and to distinguish at all times between the civilian population and combatants and between civilian objects and military objectives.”

23. Sadly, neither party to the conflict in the region has paid proper respect to these principles as the death toll has continued to rise. Since the start of the second intifada in September 2000, over 2,755 Palestinians and over 830 Israelis have been killed and 28,000 Palestinians and 5,600 Israelis have been injured. Most have been civilians. Five hundred and fifty children have been killed, of whom 460 were Palestinians and 90 Israelis. The number of Palestinian children killed, mainly in air and ground attacks, has increased in 2003. Within Israel, most deaths have been caused by suicide bombers.

24. The assassination of Palestinian militants has intensified. From October 2000 to April 2003, the IDF has killed more than 230 Palestinians, including 80 children, women and innocent bystanders, in assassination actions. Over 300 persons have been injured in these actions. In the period 10-14 June 2003, the IDF killed 27 Palestinians and wounded dozens of others in a series of extrajudicial killings carried out by helicopter gunships in the Gaza Strip. These attacks included an unsuccessful assassination attempt on Dr. Abdel Aziz Al-Rantisi, a senior political leader of Hamas. Four people were killed and 35 injured while 29 nearby apartments were damaged. On 12 June 2003, IDF helicopters bombarded the car of Yasser Taha. He was immediately killed, together with his wife and young daughter. In addition, five other civilians were killed in the attack and 36 were wounded, including 10 children.

25. In June 2003, a number of NGOs commenced legal proceedings to stop assassinations. This matter is still before the Israeli High Court of Justice, which has refused a request for a temporary injunction against further assassinations. Judge Antonio Cassese, former President of the International Criminal Tribunal for the Former Yugoslavia, has submitted an expert opinion to the Court in which he asserts that assassinations of this kind could be considered as war crimes. In his opinion, he maintains that the killing of civilians suspected of terror activity, when no direct belligerent operation in which they are involved is taking place, substantively infringes the basic principle that armed forces must distinguish between combatants and civilians. He further argues that suspects should be arrested and tried, which is often possible in the light of Israel's control of the OPT.

26. Israel justifies its policy and practice of assassinations on grounds of self-defence and claims that it is not possible to arrest and try suspects, particularly where they are in areas controlled by the Palestinian Authority. The evidence on this point is inconclusive as there are certainly some instances in which arrests could have been made in the light of Israel's capacity

to exercise its jurisdictional power within the areas controlled in theory by the Palestinian Authority. The failure to attempt such arrests inevitably gives rise to suspicions that Israel lacks evidence to place such persons on trial and therefore prefers to dispose of them arbitrarily.

27. The indiscriminate use of violence is further illustrated by the use of flechette shells in Gaza. The use of such anti-personnel weapons in such a densely populated area as Gaza exposes civilians to great risk and fails to take account of the need to distinguish between civilians and military objectives. On 27 April 2003, the Israeli High Court of Justice refused to intervene in the army's choice of weapons because flechettes are not banned outright under international law.

28. The failure of the IDF to investigate crimes committed by its members in the OPT has long been criticized. In June 2003, this criticism was confirmed when the Judge Advocate General stated that a mere 55 investigations into shooting incidents had been opened since the beginning of the second intifada, resulting in only six indictments.<sup>6</sup>

## VI. PRISONERS

29. At the time of writing this report, there are some 6,000 Palestinians in Israeli prisons and detention centres. Some have been tried, some have not. The number of those detained includes 175 juveniles and 70 women. Approximately 800 persons are held in administrative detention, that is detention by administrative order rather than judicial procedure. The issue of prisoners has become a major obstacle in the implementation of the road map. Israel is reluctant to release more than 540 prisoners while the Palestinian Authority demands that all prisoners be released.

30. There are serious complaints about the treatment of prisoners that are supported in varying degrees by respectable non-governmental organizations such as the Public Committee Against Torture in Israel (PCATI), the World Organization against Torture (OMCT), the Defence for Children International - Palestine Section, LAW - The Palestinian Society for the Protection of Human Rights and the Environment, Al-Haq and the Mandela Institute For Human Rights. These complaints cover all prisons and detention centres and include men, women and children held in imprisonment as well as administrative detainees. On the one hand, these complaints cover allegations of overcrowding, disgusting prison conditions and lack of proper medical care. On the other hand, they include serious allegations of inhuman and degrading treatment, sometimes amounting to torture.

31. In 1999 the Israeli High Court of Justice ruled that various methods of torture employed by the General Security Service (GSS), such as violent shaking, covering the head with a sack, tying to a small tilted chair or position abuse (*shabeh*), sleep deprivation and painful shackling were, when applied cumulatively, illegal. Despite this, there is considerable evidence that these methods are still employed during the interrogation of adults and juveniles. In a publication entitled *Back to a Routine of Torture* covering the period September 2001 to April 2003, PCATI estimated that for the first half of 2003, "each month, hundreds of Palestinians have been subjected to one degree or another of torture or other cruel, inhuman or degrading treatment, at the hands of the GSS and bodies working on its behalf. ... The bodies which are supposed to keep the GSS under scrutiny and ensure that interrogations are conducted lawfully act, instead,

as rubber stamps for decisions by the GSS". These allegations are difficult to reconcile with the assurance given by the representatives of the Israeli Government before the Human Rights Committee on 24 and 25 July 2003 that allegations of this kind had been properly investigated and proved to be unfounded or justified on grounds of necessity.

32. The Special Rapporteur finds himself in an awkward situation when it comes to assessing evidence of this kind. Allegations of torture and inhuman treatment are supported in varying degrees by highly respected NGOs that have taken statements from former prisoners and consulted with lawyers working within the system. Moreover, there are serious doubts about the impartiality of the investigations of these complaints carried out by the Israeli authorities. The Special Rapporteur is denied access to Israeli prisons and detention centres and to government officials who might assist in the task of assessing the validity of allegations on this subject. The Special Rapporteur therefore urgently calls upon the Israeli authorities either to permit an independent international committee to investigate such complaints or to conduct a full-scale independent judicial inquiry into such allegations itself. It has often been said that the degree of civilization of a State can be measured by the way in which it treats prisoners. At present Israel, which prides itself on a high standard of criminal justice within its own borders, runs the risk of forfeiting this reputation by its consistent refusal to respond to criticisms of treatment of prisoners from the OPT.

## VII. DESTRUCTION OF PROPERTY

33. The destruction of property in the OPT continues unabated. Three principal reasons are advanced by Israel for the destruction of homes and agricultural property. First, the interests of security or military necessity may require houses to be destroyed and agricultural land to be cleared ("shaved" or "swept") to prevent such houses or trees from being used to provide cover for militants bent on attacking settlements or IDF positions. This has resulted in the creation of wide buffer zones adjacent to settlements and roads used by settlers. Secondly, the homes of those who have committed crimes against Israel are destroyed by way of punishment (although the Israeli Government prefers to describe this as a form of deterrence). Thirdly, houses built without administrative permission, in a system in which permits are seldom granted, are destroyed to assert respect for Israel's administrative regime. These three reasons have been invoked by the Israeli authorities to destroy thousands of homes and to lay bare vast areas of fertile agricultural land.

34. The situation is particularly acute in Gaza. According to the Commissioner-General of UNRWA, "At the end of May 2003, a total of 1,134 homes [had] been demolished by the Israeli military in the Gaza Strip, making almost 10,000 individuals homeless. Unfortunately, this is not a policy on the wane. During the first two years of the intifada, the average number of homes demolished in Gaza - a statistical category both depressing and surreal - was 32 per month. Since the start of 2003, the average has risen to 72. Disturbingly, the publication of the road map to peace has so far had no impact."<sup>7</sup> The Special Rapporteur had the opportunity to observe the devastation caused in Beit Hanoun at first hand when he visited on 24 June 2003. Parts of this town had been reduced to a wasteland as a result of the destruction of homes and orchards. It appears that this act of large-scale devastation was in part a punitive measure taken against homes and orchards in the neighbourhood of a roadside bomb aimed at an Israeli military vehicle.

35. The collective punishment of Palestinians in the form of destruction of property has had serious consequences for the Palestinian people and the environment of Palestine. According to Jeff Halper, the Director of the Israeli Committee against House Demolitions, "The bulldozer has become as much a symbol of Israeli occupation as the rifle and the tank".

### VIII. SETTLEMENTS

36. The international community is united in its opposition to Israeli settlements in the OPT. It has repeatedly described them as being in violation of the sixth paragraph of article 49 of the Fourth Geneva Convention which prohibits the Occupying Power from transferring parts of its own civilian population into the territory it occupies. The road map makes it clear that the dismantling of settlements is an important issue in the resolution of the Israeli-Palestinian conflict.

37. There are at present some 200 settlements in the OPT containing a total population of over 400,000. In the West Bank there are more than 120 settlements with over 230,000 settlers, while in the Gaza Strip there are 16 settlements with some 7,000 settlers. About 180,000 settlers live in the neighbourhoods of East Jerusalem. Settlements often comprise fully developed towns and villages. For instance, Ma'aleh Adumim has a population 28,000 settlers. Roads constructed to link settlements with each other and to allow access to Israel have also resulted in the taking of Palestinian land.

38. Israel has given an equivocal undertaking to restrict the growth of settlements to "natural growth" and to dismantle "unauthorized settlements", that is outposts and extensions to existing settlements not authorized under Israeli law. Despite this, new settlements are being built, as the Special Rapporteur saw on several occasions, and existing settlements continue to grow. The population growth in the settlements is three times that of Israel itself. In 2002, the population in the Israeli settlements in the West Bank grew by 5.7 per cent compared with 1.9 per cent in Israel.<sup>8</sup> The Israeli Government continues to offer financial inducements to Israelis to settle in the OPT and in 2003 Israel budgeted 1.9 billion new Israeli shekels for settlements. Further evidence of the determination of the Israeli Government to entrench the settlements is provided by the erection of the Wall (discussed in chap. III above), the continued clearing of Palestinian land within the proximity of settlements for security purposes and the allocation of heavy military resources to protect settlements. (For example, the 532 settlers who live in the centre of Hebron are protected by some 100 Israeli soldiers.)

39. Settlements fragment Palestinian territory and seriously undermine the prospects for Palestinian self-determination within a viable territorial unit. A recent study carried out by B'Tselem estimates that 41.9 per cent of the total land area of the West Bank is effectively under the control of settlements, including developed areas, non-developed municipal areas and land reserves.

40. The harsh truth is that there is no "freeze" on the construction or growth of settlements. Moreover, the Israeli Government is taking no steps to reverse this pattern of growth. A poll conducted by the Israeli group "Peace Now" in July 2003 has shown that 74 per cent of the settlers in the OPT would leave their homes in return for compensation. If the Israeli

Government were serious about its undertaking to halt the growth of settlements, it might give serious attention to budgeting funds for the repatriation of settlers and their compensation rather than allocating such substantial funding to the settlements and to the building of the Wall.

## IX. CONCLUSION

41. The occupation of the OPT continues to result in widespread violations of human rights, affecting both civil and socio-economic rights, and of international humanitarian law. Israel's justification for these actions is that they are necessary in the interests of its own national security. As indicated at the beginning of this report, the lawfulness of Israel's response is to be measured in accordance with the principle of proportionality. The Special Rapporteur finds it difficult to accept that the excessive use of force that disregards the distinction between civilians and combatants, the creation of a humanitarian crisis by restrictions on the mobility of goods and people, the killing and inhuman treatment of children, the widespread destruction of property and, now, territorial expansion can be justified as a proportionate response to the violence and threats of violence to which Israel is subjected. As stressed in this report, the construction of the Wall within the West Bank and the continued expansion of settlements, which, on the face of it, have more to do with territorial expansion, de facto annexation or conquest, raise serious doubts about the good faith of Israel's justifications in the name of security.

### Notes

<sup>1</sup> In Palestine, the term "Apartheid Wall" is frequently used to describe the Wall. Strictly speaking, this historical metaphor is inaccurate as no wall of this kind was erected between Black and White in apartheid South Africa.

<sup>2</sup> State Comptroller, *Audit Report on the Seam Area*, p. 35.

<sup>3</sup> Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, 28 September 1995, chap. 5, art. XXXI, para. 7.

<sup>4</sup> Also published as *When the Birds Stopped Singing: Life in Ramallah Under Seige*.

<sup>5</sup> *Twenty-Seven Months - Intifada, Closures and Palestinian Economic Crisis: An Assessment*, The World Bank West Bank and Gaza Office, Jerusalem, chap. 2, para. 2.5.

<sup>6</sup> *B'Tselem Newspaper*, 29 June 2003.

<sup>7</sup> *International Herald Tribune*, 23 June 2003.

<sup>8</sup> *The Jerusalem Post*, 28 July 2003.

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