UNITED
NATIONS

E

Economic and Social
Council

Distr.
GENERAL

E/CN.4/2003/30
17 December 2002

Original: ENGLISH

COMMISSION ON HUMAN RIGHTS
Fifty-ninth session
Item 8 of the provisional agenda

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, Mr. John Dugard, on the situation of human rights in the Palestinian territories occupied by Israel since 1967, submitted in accordance with Commission resolutions 1993/2 A and 2002/8

GE.02-16000 (E) 070103

Executive Summary

In the past year the situation in the occupied Palestinian territory (OPT) has deteriorated substantially from the perspective of human rights. In large measure this is the result of repeated military operations carried out by the Israel Defence Forces (IDF) in the West Bank and Gaza.

The IDF has justified its actions as self-defence and anti-terrorism measures. 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 limits on the extent to which human rights may be violated in the name of anti-terrorism. A balance must be struck between respect for basic human rights and the interests of security. The principal balancing factor - proportionality - is the main focus of this report.

Neither party to the conflict in the region has paid proper respect to civilian life and the death toll has continued to rise. Since the start of the second intifada in September 2000, over 2,000 Palestinians and over 700 Israelis have been killed. Most have been civilians.

The IDF military incursion of March to May, code-named Operation Defensive Shield, caused material devastation in many cities - particularly Jenin and Nablus. This was followed by Operation Determined Path in June which resulted in the reoccupation of seven of the eight major cities in the West Bank. Curfews imposed on Jenin, Qalquiliya, Bethlehem, Nablus, Tulkarem, Ramallah and Hebron have subjected over 700,000 persons to a regime similar to house arrest. The curfews are complemented by a system of roadblocks and checkpoints which have effectively divided the West Bank into some 50 separate “cantons”, between which movement is difficult and dangerous. The reoccupation has affected every feature of Palestinian life. There have been shortages of basic foodstuffs; interference with medical services by the denial of access to doctors and hospitals; interruption of family contacts; and stoppages of education. Unemployment has now reached over 50 per cent and 70 per cent of the population live in poverty. In this situation there is a desperate need for humanitarian assistance. It has, however, been suggested that such assistance in effect means that the international donor community funds the military occupation.

Military operations have led to widespread arrests and detentions.

Children have probably suffered most from the present conflict. Both Palestinian and Israeli children have been exposed to threats to personal safety, while Palestinian children have, in addition, felt the breakdown of family life, health care and education.

Israeli territorial expansion has accelerated in the past year as a result of seizure of Palestinian land to build a security wall and for the continued growth of settlements.

The report concludes that it is difficult to characterize the Israeli response to Palestinian violence as proportional when it results in an excessive use of force that disregards the distinction between civilians and combatants, a humanitarian crisis that threatens the livelihood of a whole people, the killing and inhuman treatment of children, the widespread destruction of property and territorial expansion.

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I. Introduction

1. The Special Rapporteur visited the occupied Palestinian territory (OPT) and Israel twice in 2002. The first visit, in February, laid the foundation for the report to the Commission on Human Rights at its fifty-eighth session (E/CN.4/2002/32), while the second, in late August, provided the basis for the report to the General Assembly (A/57/366 and Add.1). The present report, written four months before its presentation in order to comply with administrative requirements relating to the submission of reports, will be supplemented by an addendum written after a further visit to the region in February 2002.

2. In 2002 the situation in the region deteriorated substantially from the perspective of human rights. Repeated Israeli military operations in the West Bank and Gaza have left physical, economic and social devastation in their wake. This devastation, coupled with the curfews imposed in the major Palestinian cities and the intensification of checkpoints that obstruct mobility between towns and villages have brought about a humanitarian crisis which has added poverty to the woes of the Palestinians. The serious violation of economic, social and cultural rights has been accompanied by the continued violation of civil rights and international humanitarian law. The death toll in both Palestine and Israel has risen sharply, largely as a result of indiscriminate suicide bombings in Israel and the excessive use of force against civilians by the Israel Defence Forces (IDF) in Palestine. Detentions, inhuman treatment and the destruction of property have also multiplied. Meanwhile, Jewish settlements in the West Bank and Gaza continue to grow despite unanimous international condemnation and assurances from the Government of Israel that restrictions have been placed on such growth.

3. Much will happen in the region between the writing of this report and its presentation in March 2003. Elections in Israel and, possibly, Palestine are anticipated early in 2003, and the threat of war in Iraq remains a reality. The effect of events of this kind, and the consequences of the ongoing violence, are impossible to predict with accuracy. One prediction, however, seems sure: the situation will deteriorate further unless, miraculously, serious negotiations between Israelis and Palestinians resume.

I. HUMAN RIGHTS AND TERRORISM

4. Many of the rights contained in the Universal Declaration of Human Rights and the International Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights have been violated by IDF in their actions against the Palestinian people. Many of the obligations of international humanitarian law have likewise been violated. That this is so is not seriously contested by Israel. Loss of life, inhuman and degrading treatment, arbitrary arrest and detention without trial, restrictions on freedom of movement, the arbitrary destruction of property, the denial of the most basic economic, social and educational rights, interference with access to health care, the excessive use of force against civilians and collective punishment are instead justified as 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 limits on the extent to which human rights may be violated in the name of anti-terrorism action. 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.

5. In searching for this balance many factors must be considered, including the causes of the terrorism, the possibility of achieving a peaceful end to terrorism by addressing its causes, and the proportionality of the response taken to the acts of terrorism. The Special Rapporteur remains convinced that Israel's military occupation of the Palestinian territory is a major cause of terrorism and that the ending of the occupation is politically achievable. The Government of Israel has previously condemned these assessments as political judgements falling outside themandate of the Special Rapporteur. Consequently, the principal balancing factor - proportionality - will be the main focus of this report. The violation of human rights and international humanitarian law will be described and the question asked whether the measures taken by Israel to defend itself can legitimately be said to fall within the bounds of proportionality. It is not possible to adopt an armchair attitude in making this assessment. Israel is entitled to a wide margin of appreciation in its response. But, even allowing for this, it may be that Israel's response to terror is so disproportionate, so remote from the interests of security, that it assumes the character of reprisal, punishment and humiliation.

II. LOSS OF LIFE AND THE KILLING OF CIVILIANS

6. For both human rights law and international humanitarian law the protection of human life is the primary goal. Article 6, paragraph 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 an armed conflict will 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 the Additional Protocol I to the Geneva Conventions of 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, para. 2). The principle of proportionality codified in article 51, paragraph 5 (b) prohibits an attack on a military target which may be expected to cause incidental loss of civilian life, injury to civilians and damage to civilian objects which would be excessive in relation to the concrete and direct military advantage anticipated. That these principles apply to both Israelis and Palestinians was confirmed by the High Contracting Parties to the Fourth Geneva Convention when, in a declaration issued on 5 December 2001, they called on both parties to the conflict to:

> "… ensure respect for and protection of the civilian population and civilian objects and to distinguish at all times between the civilian population and combatants and between civilian objects and military objectives. They also call upon the parties to abstain from any measures of brutality and violence against the civilian population whether applied by civilian or military agents and to abstain from exposing the civilian population to military operations.[1]

7. 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 2,000 Palestinians and over 700 Israelis have been killed and 25,000 Palestinians and 4,700 Israelis have been injured. Most have been civilians.

8. Within Israel, most deaths have been caused by suicide bombers who have carried their lethal weapons of destruction onto buses and into busy shopping centres. Israel has been subjected to more than 1,100 terrorist attacks since September 2000. Between March and June 2002, when there was a spate of suicide bombings in Israel, more than 250 Israelis were killed, of whom 164 were civilians and 32 children.[2] Despite condemnation from the Palestinian Authority and prominent Palestinian community leaders - and the international community - this instrument of terror, which shows no regard for either the principle of distinction or that of proportionality, continues to be used by paramilitary Palestinian groups.[3]

9. IDF, well educated in the rules of international humanitarian law, have likewise shown little regard for the principles of distinction or proportionality. Military incursions into the West Bank and the reoccupation of Palestinian towns and cities in 2002 resulted in heavy loss of civilian life. According to Amnesty International, in the four months between 27 February and the end of June 2002 - the period of the two major IDF offensives and the reoccupation of the West Bank - IDF killed nearly 500 Palestinians. Although many Palestinians died during armed confrontations many of these killings by IDF appeared to be unlawful and at least 16 per cent of the victims - more than 70 - were children.[4]

10. Disregard for civilian life was evident in Operation Defensive Shield, in March and April 2002, in which the refugee camp of Jenin and the city of Nablus were subjected to heavy bombardment from air and land before IDF troops entered, employing bulldozers to facilitate their movement and allegedly using Palestinian civilians as human shields against snipers. Of the 80 persons killed in Nablus, 50 were civilians, and of the 52 killed in Jenin, 22 were civilians. Since November 2000, IDF has targeted and killed a number of selected militants in precision bombings. These assassinations have often been carried out, however, with no regard for civilians in the vicinity. Of the 179 persons killed in such actions, at least one third have been civilians. The following incident starkly illustrates the manner in which such attacks have sometimes been made. On 22 July, IDF carried out a late-night air strike aimed at Hamas military leader Salah Shehada while he was in a densely populated residential area of Gaza City; the raid killed 15 persons (including 9 children) and injured over 150 others.

11. No attempt is made to seek an equivalence between civilian deaths caused by suicide bombings carried out by non-State actors, where civilians are deliberately targeted, and civilian deaths that result from “collateral damage” in military action carried out by a State actor with reckless disregard for human life. Terror bombings and military offensives in civilian areas conducted without adequate regard for the safety of civilians serve completely different purposes. But the result is the same: loss of innocent civilian lives. From a moral perspective both are reprehensible: the former, because they deliberately disregard the lives of innocent civilians; the latter because they recklessly disregard human life.

III. THE HUMANITARIAN CRISIS CAUSED BY MILITARY OCCUPATION

12. In the past year Palestinian society has been subjected to a military occupation that has damaged, possibly beyond repair, political institutions, commercial enterprises, public services, hospitals, schools, families and lives. The IDF military incursion of March to May, code-named Operation Defensive Shield, caused material devastation in many cities - particularly Jenin and Nablus. This was followed by Operation Determined Path in June which resulted in the reoccupation of seven of the eight major cities in the West Bank and adjoining refugee camps and villages. Curfews imposed on Jenin, Qalquiliya, Bethlehem, Nablus, Tulkarem, Ramallah and Hebron have subjected over 700,000 persons to a regime similar to house arrest which confines them to their homes, except every third or fourth day when the curfew is lifted for several hours to allow residents to obtain essential supplies. The curfew is strictly enforced by IDF and there have been many incidents of shooting of civilians who failed to observe the curfew. By October 2002 15 civilians, mainly children, had been shot dead by IDF soldiers enforcing curfews. Curfews have been lifted and reimposed according to the security situation. In September 2002, 688,000 Palestinians in 39 towns, villages and refugee camps in the West Bank were confined to their homes under curfew for varying numbers of days.

13. Military action and curfews are not the only instruments of repression. Military checkpoints and roadblocks complement these instruments. There are some 300 roadblocks of which 120 are manned. According to the ex-Minister of Defence, Benjamin Ben-Eliezer, "The directive of the Military Command is to freeze all traffic on West Bank roads, including taxis, buses, private vehicles and others according to security needs."[5] The "freezing" of traffic on the West Bank has resulted in the strangulation of Palestinian society as the West Bank is now effectively divided into some 50 separate "cantons" and movement between them is both difficult and dangerous. Checkpoints are largely manned by young soldiers who are given arbitrary power to allow or refuse vehicles and pedestrians permission to continue their journeys.

14. Humanitarian considerations are often not taken into account by those manning checkpoints. Vehicles carrying humanitarian aid are stopped and searched, with resulting delays. Still worse, ambulances are sometimes denied access to hospitals or delayed unnecessarily, with resulting loss life. In November, IDF first shot United Nations Relief and Works Agency for Palestine Refugees in the Near East official John Hook and then allowed him to bleed to death by denying the ambulance carrying him access to a hospital in time.

15. Equitable access to scarce water resources is a central feature of the Palestine-Israel conflict. According to the Humanitarian Plan of Action 2003 for the Occupied Palestinian Territory compiled by the United Nations Technical Assessment Mission of October 2002:

> "In the West Bank alone, more than 200,000 people who depend on supplies brought in by water tankers are left without adequate water supply for long periods because of curfews and closures. In addition to problems caused by access, a number of water systems (water pipes, pumps and wells) were destroyed by the IDF during 'Operation Defensive Shield' and the ongoing reoccupation of the Palestinian self-rule Areas.

> Furthermore, a sizeable number of wells and reservoirs in rural areas have been damaged, destroyed or made inaccessible because of violence. A number of the West Bank villages adjacent to Israeli settlements have been and are currently suffering from recurrent closures of main valves on their water networks."[6]

16. The reoccupation has affected every feature of Palestinian life. There have been shortages of basic foodstuffs, interference with medical services by the denial of access to doctors and hospitals, interruption of family contacts and stoppages of education. Municipal services, including water, electricity, telephones and sewage removal, have been terminated or interrupted, and IDF has denied permission to repair damaged municipal service supply units. There has also been a near complete cessation of productive activity in manufacturing, construction and commerce as well as private and public services, which has had serious consequences for the livelihood of most of the population.

17. Unemployment, which stood at 9 per cent in September 2002, has now reached 50 per cent, 60 per cent or 80 per cent in different areas. Poverty, defined as living on less than US$ 2 per day per capita, is at 70 per cent. A total of 1.8 million Palestinians receive food aid or other forms of emergency humanitarian support from a variety of sources, notably UNRWA, the World Food Programme and the International Committee of the Red Cross. (And, sadly, to add to the woes of the Palestinians, settlers have stolen their olive crops in some areas.) Twenty-two per cent of children under the age of five suffer from acute or chronic malnutrition, while 20 per cent suffer from iron-deficiency anaemia. Mental health problems have increased alarmingly among children. Health care has suffered drastically as a result of the unavailability of medication and the inability to reach health centres. As usual, the situation in the refugee camps is particularly bleak, as was evident when the Special Rapporteur visited the Balata refugee camp near Nablus in August.

18. Many provisions of the International Covenant on Civil and Political Rights have been violated by the reoccupation, notably articles 6 (right to life), 7 (freedom from inhuman and degrading treatment), 9 (freedom from arbitrary arrest), 12 (freedom of movement) and 17 and 23 (right to family life). But it is the economic, social and cultural rights of Palestinians that have suffered most as a result of the reoccupation. The right to work and to earn a living (International Covenant on Economic, Social and Cultural Rights, arts. 6 and 7), to adequate food, clothing and housing (art. 11), to physical and mental health (art. 12), and to education (art. 13) are meaningless in a society subject to curfew and closure. How action that causes so much suffering to so many can ever be seen as a proportional response to terrorism is beyond comprehension.

IV. THE DILEMMA OF HUMANITARIAN ASSISTANCE

19. The law governing occupation, reflected in international custom, the Hague Regulations Respecting the Laws and Customs of War on Land of 1907 and the Fourth Geneva Convention, is designed to ensure that, notwithstanding the security needs of the occupying Power, the day-to-day lives of civilians in an occupied territory will continue normally. In today's world, this means that civilians must have adequate food, shelter, electricity and water; that municipal services such as garbage and sewage removal will continue; that the sick will have access to proper medical care; and that education will not be obstructed.

20. The Fourth Geneva Convention elaborates on the responsibility of the occupying Power to ensure that the basic needs of the inhabitants of an occupied territory are provided. It imposes obligations on the occupant to ensure "the food and medical supplies of the population" and to "bring in the necessary foodstuffs, medical stores and other articles if the resources of the occupied territory are inadequate" (art. 55); to ensure and maintain "the medical and hospital establishments and services, public health and hygiene in the occupied territory" (art. 56); and to facilitate "the proper working of all institutions devoted to the care and education of children" (art. 50). Moreover, article 60 provides that "[r]elief consignments shall in no way relieve the Occupying Power of its responsibilities under Articles 55 [and] 56". Obligations to provide postal services, telecommunications and transport and to maintain public welfare institutions may also be inferred from the Fourth Geneva Convention and the Hague Regulations.[7] Together, these provisions amount to an obligation on the occupant to establish an adequate civil administration in an occupied territory.

21. In terms of the Oslo Accords, the responsibility for civil administration in the West Bank and Gaza was transferred to the Palestinian Authority. Today, however, the identity of the authority responsible for the civil administration of the West Bank and Gaza is not so clear. The military operations of 2002 have effectively destroyed much of the infrastructure of the Palestinian Authority. Electricity and water supplies have been cut, municipal services terminated, access to food denied, health care obstructed and education seriously interrupted. Consequently, responsibility for the civil administration of OPT would seem to have shifted to Israel. Israel has, however, made it clear that, although it anticipates a prolonged occupation, it does not intend resuming responsibility for the civil administration of the territory.[8]

22. The current situation is untenable. Israel cannot, in terms of international humanitarian law, deny the Palestinian Authority the capacity to provide an adequate and functioning civil administration, and at the same time refuse to accept any responsibility for such an administration itself. In law, it is obliged either to assume this responsibility or to permit the Palestinian Authority to provide the services that comprise an adequate civil administration. There is a heavy burden on all parties to the Fourth Geneva Convention to take measures to ensure the restoration of a proper civil administration in the Palestinian territory in accordance with their obligation under article 1 of the Convention "to ensure respect" for the Convention "in all circumstances".

23. The international community's response has been to provide humanitarian aid itself, rather than insist on Israel's duty to provide such relief. Undoubtedly this is the only possible response in the present crisis. If the international community does not respond generously by providing humanitarian assistance, the Palestinian people will suffer irremediable harm. The Special Rapporteur therefore endorses, and adds his own voice to, calls for humanitarian assistance from the international community.

24. At the same time, it must be made clear that, by providing aid of this kind, the international donor community relieves Israel of the burden of providing such assistance itself and in this way might be seen to be contributing to the funding of the occupation. This dilemma was considered by the United Nations Technical Assessment Mission in October 2002 which in the *Humanitarian Plan of Action 2003 for the Occupied Palestinian Territory* stated:

> "In presenting its plans, the mission was acutely aware of the central dilemmas before it. At its most fundamental, this is whether to respond to growing needs of the civilian population at all. Many of the Palestinians and donors the mission spoke with argued that, by meeting these needs, the international community would be 'financing the occupation' and enable Israel to continue its current policies. It would de facto relieve Israel of its own responsibilities, as the Occupying Power, to ensure adequate supplies of food, medicines and other basic needs for the population under its occupation. At the same time, not to meet urgent needs of the population when the international community has some capacity to do so, and when Israel is unwilling to do so, would doubly punish the civilian population - and fly in the face of the humanitarian imperative to save lives and protect the victims of conflict. Absent political decisions to address the causes of this humanitarian emergency, the international aid community thus has no choice but to help relieve suffering as the crisis continues to deepen."[9]

V. DESTRUCTION OF PROPERTY

25. It is the Israeli policy and practice of destroying property - residential homes, commercial buildings, Palestinian Authority offices, olive trees and agricultural property - that raise the most serious questions about Israel's willingness to respond proportionately to Palestinian violence.

26. For the first 18 months of the second intifada the Gaza Strip was the main target of Israel's policy of destruction. Hundreds of homes in the refugee camps of Khan Yunis and Rafah were reduced to rubble, buildings in Gaza City were bombed and fertile agricultural land "swept" by bulldozers to create wasteland buffer zones for roads specially reserved for settlers. Commenting on this action B'Tselem (The Israeli Information Center for Human Rights in the Occupied Territories) comments:

> "Examination of the circumstances in which Israel implemented its policy - the extreme magnitude of the house demolitions, the uprooting of trees, the destruction of agricultural fields, the manner in which Israel chose to implement its policy - clearly and unequivocally indicate that these contentions [that the damage caused by IDF was proportional and justified by military necessity] are baseless. The injury to the civilian population was excessive in proportion to the military advantage that Israel ostensibly sought to achieve by implementing this policy. …
>
> "A policy that harms thousands of innocent people and whose consequences are so horrendous and long lasting constitutes collective punishment, which is forbidden by international humanitarian law".[10]

27. In 2002 it was the turn of the cities in the West Bank for destruction of property as IDF launched offensives against Jenin, Nablus and Ramallah following a spate of suicide bombings in Israel. Statistics, reports of non-governmental organizations (NGOs) and the Special Rapporteur's own observations in August strongly suggest that retribution and punishment guided IDF action rather than military necessity and regard for the principle of proportionality.

28. During Operation Defensive Shield, from 29 March to 7 May, 800 dwellings were destroyed in Jenin leaving 4,000 people homeless. Losses were estimated by the World Bank at US$ 83 million. According to Amnesty International much of the destruction of the Jenin refugee camp occurred after 11 April, after the last group of Palestinian fighters had surrendered. In the opinion of its delegate, Major David Holley:

> "There were events post 11 April that were neither militarily justifiable nor had any military necessity: the IDF levelled the final battlefield completely after the cessation of hostilities. It is surmised that the complete destruction of the ruins of battle, therefore, is punishment for its inhabitants."[11]

29. In Nablus 64 buildings in the Old City, including 22 residential buildings, were completely destroyed or badly damaged, and a further 221 buildings partially damaged. Repair costs were estimated by the World Bank at US$ 114 million. According to Amnesty International:

> "A number of religious or historical sites were partially destroyed or severely damaged in what frequently appeared to be wanton destruction without military necessity."[12]

30. Refugees were the hardest hit in the military offensives of 27 February to 17 March and 29 March to 7 May. Over 2,800 refugee housing units were damaged and 878 homes destroyed or demolished, leaving 17,000 persons homeless or in need of shelter rehabilitation. The World Bank estimates that Operation Defensive Shield caused physical damage amounting to US$ 361 million in the West Bank as a whole, compared with the US$ 305 million caused by damage in the first 15 months of the second intifada.[13] Private businesses suffered the most (US$ 97 million), followed by housing (US$ 66 million), roads (US$ 64 million) and cultural heritage sites (US$ 48 million).

31. In the past, there has often been a disciplined, retributive approach to the destruction of property. The destruction of property in Operation Defensive Shield, however, had a wanton character that surprised even the harshest critics of IDF. In many houses entered by IDF, soldiers broke holes through the walls in order to reach neighbouring houses. Sometimes, holes were made from one apartment to another where it was possible for soldiers to have entered from a veranda or window. Worse still, there were reports of vandalism, of wanton destruction of televisions and computers in homes, schools and office buildings and of looting.[14]

32. The demolition of the homes of families as punishment for crimes committed against Israel by a family member has long been an Israeli practice. In August, the Israeli High Court denied judicial review in such cases, as had previously been the position, thereby giving military commanders complete discretion to order the demolition of houses. Since then the demolition of the homes of suicide bombers and Palestinian militants has accelerated. In many instances the families of militants had been unaware of their activities, but they were punished nonetheless. Between July and November 61 homes were demolished, leaving more than 500 persons homeless, more than 220 of them children.

33. Collective punishment is a serious violation of international humanitarian law. Article 50 of the Hague Regulations of 1907 contains a prohibition on such conduct as does article 33 of the Fourth Geneva Convention, which provides that "No protected person may be punished for an offence he or she has not personally committed". Moreover, article 147 of the Fourth Geneva Convention criminalizes, as constituting grave breaches under international law, the "extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly".

VI. DETENTIONS

34. The assaults on Palestinian towns in March and April in Operation Defensive Shield and subsequent military operations in the West Bank resulted in widespread arrests and detentions. In the period between 29 March and 5 May alone, some 7,000 Palestinians were arrested. In many towns and refugee camps, all males between the ages of 16 and 45 were arrested. Most were held for several days only. Arrests of this kind constitute a form of collective punishment as in most instances there is no regard for the personal responsibility of those arrested. In many cases, arrested persons were subjected to humiliating and inhuman treatment. They were stripped to their underpants, blindfolded, handcuffed, paraded before television cameras, insulted, kicked, beaten and 1detained in unhygienic conditions. Those not released have been held without trial or access to a lawyer. Some are held in administrative detention; others are held under the terms of Military Order 1500, issued on 5 April to permit lengthy detention of those arrested since 29 March. There have been widespread allegations of torture, consisting of sleep deprivation, severe beating, heavy shaking, painful shackling to a small chair, subjection to loud noise and threats of action against family members.

VII. DEPORTATION/ASSIGNED RESIDENCE

35. On 3 September, the Israeli High Court of Justice issued a ruling allowing the deportation of two Palestinians from their home town of Nablus to the Gaza Strip on the ground that they had allegedly assisted their brother (extrajudicially executed by Israeli forces on 6 August) to commit attacks against Israelis. The Court held that, although every person has a basic right to retain his place of residence, article 78 of the Fourth Geneva Convention recognizes that there are circumstances in which this right may be overridden. Article 78 of the Fourth Geneva Convention provides:

> "If the Occupying Power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at the most, subject them to assigned residence or to internment."

The Court further held that in the circumstances of the case, the preconditions set out in article 78 were fulfilled. The West Bank and the Gaza Strip were to be regarded as one territory subject to a belligerent occupation, and therefore the case did not involve the transfer of a person outside the area subject to the belligerent occupation. For this reason the Court held that article 49 of the Fourth Geneva Convention prohibiting deportation to the territory of the occupying Power or to that of another country was not applicable.

VIII. CHILDREN IN THE CONFLICT

36. Children have probably suffered most from the present conflict. Both Palestinian and Israeli children have been exposed to threats to personal safety; while Palestinian children have, in addition, felt the breakdown of family life, health care and education. In his report to the Commission in March 2002 (E/CN.4/2002/32, paras. 40-53), the Special Rapporteur drew attention to the plight of Palestinian children, particularly those arrested and detained, and appealed to the Israeli authorities to investigate allegations of inhuman treatment. Sadly, there has been no response to this appeal. Since then UNICEF and NGOs such as Defence for Children International[15] and Amnesty International[16] have likewise addressed the suffering of children and appealed to all groups involved in the conflict to protect children. On 15 November 2002 the Third Committee of the General Assembly adopted a draft resolution in which the Committee, concerned that Palestinian children under Israeli occupation remain deprived of many basic rights under the Convention on the Rights of the Child, stressed the urgent need for Palestinian children "to live a normal life free from foreign occupation, destruction and fear, in their own State" and called upon the international community "to provide urgently needed assistance in an effort to alleviate the dire humanitarian crisis being faced by Palestinian children and their families".

37. Over 400 Palestinian and 100 Israeli children have been killed since September 2000 and thousands seriously injured. Israeli children have mainly been killed in suicide bombings and attacks on settlements. Palestinian children have often been shot and killed in stone-throwing assaults on IDF but in most cases, particularly in the past year, Palestinian children have been killed when IDF randomly opened fire, shelled or bombarded residential neighbourhoods at times when there was no exchange of fire and in circumstances in which the lives of IDF soldiers were not at risk. Others have been killed in the course of the assassination of Palestinian militants, when vehicles or houses have been subjected to missile attack. The loss of children's lives is often simply dismissed as "collateral damage". The evidence seems to indicate that neither IDF nor Palestinian militant groups have shown concern for children's lives.

38. Over 1,500 Palestinian children under the age of 18 have been arrested and detained since September 2000 in connection with crimes relating to the uprising. Most have been arrested on suspicion of throwing stones at Israeli soldiers. On 28 August, Defence For Children International reported that 350 children were detained by the Israeli authorities, 15 being held in administrative detention. During the period March to May some 700 children were arrested and detained, albeit for short periods. As stated in the report to the Commission (paras. 48-53), there are serious reports of torture and inhuman treatment of juveniles while they await trial or after they have been imprisoned. Whether torture is justified in the case of the "ticking bomb" scenario remains a question of debate within Israel. This debate is, however, irrelevant to the treatment of children arrested for stone-throwing. There can be no justification, legally or morally, for the torture or inhuman treatment of children.

39. Military offensives and curfews severely disrupted the education of Palestinian children during the spring and summer of 2002. After the start of the new school year in September the situation remained serious, although most children had either returned to school or were receiving alternative schooling. UNICEF reported in October that more than 226,000 children and over 9,300 teachers were unable to reach their regular classrooms owing to IDF-imposed

restrictions on movement. Moreover, over 580 schools had been closed because of military curfews and closures. This has resulted in the creation of a substitute schooling system in which children are taught at homes or in mosques. Many parents are unable to send their children to school. According to UNICEF some 317,000 Palestinian schoolchildren are in desperate need of financial assistance.

40. The humanitarian crisis resulting from repeated military incursions, house demolitions, curfews and closures has left its mark on Palestinian children. Thousands have been rendered homeless; two thirds live below the poverty line; 22 per cent under the age of 5 suffer from malnutrition; and most have been psychologically traumatized. Children, who comprise 53 per cent of the Palestinian population, live in a hostile environment resulting from Israel's military occupation in which they are continuously exposed to life-threatening attacks, deprived of a proper family life, adequate nutrition and health care, denied a normal education and, frequently, confined to their homes in time of curfew. Such treatment inevitably engenders hatred of the military occupant which augurs ill for the future.

IX. TERRITORIAL EXPANSION: THE WALL AND SETTLEMENTS

41. The prohibition on the acquisition of territory by the use of force, even where force has been used in self-defence, is an accepted principle of international law (see 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)). This explains why the international community has consistently refused to recognize Israel's annexation of East Jerusalem (Security Council resolution 478 (1980)) and the Golan Heights (Security Council resolution 497 (1981)). When territorial expansion occurs openly, as in the case of the purported annexation of East Jerusalem and the Golan Heights, the response of the international community, speaking through the United Nations, has been clear and firm. The response to Israel's present annexation by stealth has not, however, received the same strong condemnation.

The wall

42. The erection of a security wall between Israel and OPT is widely portrayed as a security measure. Had the wall strictly followed the Green Line marking the 1967 borders between Israel and OPT, it might have been possible to confine the debate over the wall to the question whether a security wall of that kind would achieve its purpose. But when it is intended that the wall encroach deeply upon Palestinian territory, enclosing an estimated 7 per cent of Palestinian land, including fertile agricultural land, water resources and villages, it is difficult to resist the conclusion that it is a case of de facto annexation in which the security situation is employed as a pretext for territorial expansion.

Settlements

43. Settlements may be seen as another part of this strategy. The international community has made it clear that the settling of members of Israel's own civilian population in OPT violates article 49, sixth paragraph, of the Fourth Geneva Convention and has repeatedly called on Israel to "freeze" settlement growth pending a peace settlement which will result in the dismantling of

all settlements. Israel's response that it will limit the expansion of settlements to "natural growth" is now widely seen to be untrue. Indeed, it is the continued growth in the number of settlers (5.6 per cent since January 2001), the expansion of settlements (by the devious method of redrawing the boundaries of existing settlements by establishing outposts on these settlements) and the financial incentives to settle in OPT that brought about the collapse of the Government coalition between Likud and Labour. It is now clear that the Government of Israel is unwilling to dismantle illegal settlements and is determined to encourage new settlers and settlements. In November, following a gun battle between Palestinians and Israelis in Hebron, which left 12 Israeli security officers dead, the Government announced that it would allow the construction of a new settlement to link Kiryat Arba, a settlement near Hebron with a population of about 7,000 residents, with the Jewish enclave in Hebron, accommodating 450 settlers.

44. It will no doubt be argued that comment on territorial expansion by means of the "Great Wall", settlements, and the wide security roads that link settlements with each other and Israel does not fall within the Special Rapporteur's "human rights mandate". This is not so. Territorial expansion is of concern to international humanitarian law and human rights law for three reasons: first, because the settlements violate the Fourth Geneva Convention; second, because Israeli territorial expansion and the territorial fragmentation of OPT by settlements interferes with the right of the Palestinian people to self-determination; third, because actions of this kind raise serious questions about the genuineness of Israel's claim that it conducts a proportional response to Palestinian violence. Territorial expansion, accompanied by the influx of new settlers, can hardly be seen as a proportional response to terror.

X. CONCLUSION: PROPORTIONALITY REVISITED

45. It is not the function of the Special Rapporteur to pronounce judgement on the proportionality of measures taken by Israel in response to Palestine violence. This is a matter for the Commission on Human Rights or the Security Council to decide. The task of the Special Rapporteur is simply to raise the issues that should be considered on this subject.

46. As has already been said, Israel has legitimate security concerns. Its right to respond to terror attacks and to prevent further attacks cannot be disputed. When this response takes the form of life-threatening military action against militants and their bases, few will question the military necessity of such action or the link between attack and response. But when this action results in an excessive use of force that disregards the distinction between civilians and combatants, a humanitarian crisis that threatens the livelihood of a whole people, the killing and inhuman treatment of children, the widespread destruction of property and territorial expansion, serious questions must be asked about the proportionality of Israel's response and the boundaries of military necessity.

Notes

[1] Declaration issued by the participating High Contracting Parties to the reconvened Conference of High Contracting Parties to the Fourth Geneva Convention, 5 December 2001, paragraph 8.

[2] Amnesty International, *Israel and the Occupied Territories and the Palestinian Authority: Without Distinction: Attacks on Civilians by Palestinian Armed Groups* (AI Index: MDE 02/003/2002), July 2002.

[3] See Human Rights Watch, *Erased in a Moment: Suicide Bombing. Attacks against Israeli Citizens* (October 2002), for a full account of the impact of suicide bombings on Israeli society.

[4] Amnesty International, *Israel and the Occupied Territories: Shielded from Scrutiny: IDF Violations in Jenin and Nablus* (AI Index: MDE 15/143/2002), November 2002.

[5] Reported in *Ha'aretz*, 4 November 2002 (Danny Rubinstein, "A Land of Roadblocks and Barriers").

[6] *Humanitarian Plan of Action 2003 for the Occupied Palestinian Territory*, United Nations, New York and Geneva, November 2002, p. 30.

[7] M. Greenspan, *The Modern Law of Land Warfare*, Berkeley, CA, University of California Press, 1959, pp. 230-235. See, too, E. Benvenisti, *The International Law of Occupation*, Princeton, NJ, Princeton University Press, 1993.

[8] See the statements by Mr. Ben-Eliezer, Minister of Defence, and Major General Amos Gilad reported in the *International Herald Tribune*, 24 June 2002.

[9] Op. cit., p. 2.

[10] *Policy of Destruction. House Demolitions and Destruction of Agricultural Land in the Gaza Strip*, February 2002, pp. 32, 35.

[11] Amnesty International, op. cit. at note 4, p. 41.

[12] Ibid., p. 57.

[13] *International Herald Tribune*, 16 May 2002.

[14] Amnesty International, *Israel and the Occupied Territories: The Heavy Price of Israeli Incursions*, 12 April 2002.

[15] *Violations of Children's Rights Stemming from the Israeli Occupation* (August 2002).

[16] *Israel and the Occupied Territories and the Palestinian Authority: Killing the Future. Children in Line of Fire*, MDE 02/005/2002 (October 2002).
