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COMMISSION ON HUMAN RIGHTS
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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,
John Dugard, on the situation of human rights in the Palestinian
territories occupied by Israel since 1967****Summary**

Undoubtedly the highlight of the past year, since the Commission requested the Special Rapporteur, in its resolution 2005/7, to report, has been Israel's successful evacuation of settlers and withdrawal of the Israel Defense Forces from Gaza. This constitutes an important step in the direction of the resolution of the conflict in the region. Israel's withdrawal from Gaza does not, however, mean that the occupation of the territory has come to an end. Israel still retains effective control over the territory through its control of airspace, territorial sea and external land boundaries. It has continued to assert military control by means of sonic booms and repeated air strikes into the territory aimed at targeted militants. Inevitably, such strikes have killed and injured innocent bystanders. On 15 November 2005 an agreement was entered into between Israel and the Palestinian Authority aimed at opening the borders of Gaza to allow the free passage of persons and goods in and out of the territory. This agreement has yet to be fully implemented.

Israel continues with its construction of a wall within Palestinian territory in defiance of the 2004 advisory opinion of the International Court of Justice (ICJ). To date, some 275 of the planned 670 kilometres of the wall have been built. The wall causes great hardship to Palestinian communities between the Green Line and the wall and to Palestinians in the vicinity of the wall. The former are denied easy access to family, hospitals and schools in the West Bank while the latter are denied access to their lands beyond the wall. Israel allows Palestinians to cultivate their lands beyond the wall by means of a permit system, which is administered in an arbitrary and humiliating manner. Some 40 per cent of the applications for such permits are refused. To aggravate the situation, gates that allow Palestinians to cross the wall are few and often fail to open at scheduled times. As a consequence, many Palestinians are leaving their homes in the vicinity of the wall and becoming internally displaced persons.

Settlements continue to grow, particularly in the "closed zone" between the Green Line and the wall, which at present accommodates 76 per cent of the settler population in the West Bank. The three major settlement blocs - Gush Etzion, Ma'aleh Adumim and Ariel - will effectively divide Palestinian territory into cantons or Bantustans. Settler violence remains a serious problem, particularly in the centre of Hebron, where settlers terrorize the local population.

The character of East Jerusalem is undergoing a major change as a result of the construction of the wall through Palestinian neighbourhoods. The clear purpose of the wall in the Jerusalem area is to reduce the number of Palestinians in the city by transferring them to the West Bank. This causes major humanitarian problems: families are separated and access to hospitals, schools and the workplace are denied. In November 2005, European Union missions in Jerusalem issued a report in which they accused Israel of embarking on the encirclement of the city by the wall in order to achieve "the completion of the annexation of Jerusalem".

Although Israel has abandoned its plan to build a wall through the Jordan Valley, its policies in that region are designed to drive Palestinians from the area. Settlements are expanding; Palestinian land is being confiscated, homes destroyed, access denied to non-Jordan Valley residents, and access to water and electricity curtailed. In short, life is being made increasingly difficult for residents in the Jordan Valley and neighbouring mountain ridges.

Other human rights violations continue. Some 9,000 prisoners remain in Israeli jails. Movement is seriously restricted by the wall, elaborate terminals through the wall, and checkpoints. Although the number of permanent checkpoints has decreased, "flying" or temporary checkpoints are on the increase. Restrictions on the freedom of movement are in large measure responsible for the prevailing humanitarian crisis in the occupied Palestinian territory. Unemployment is high and over half the population lives below the official poverty line. Health and education services also suffer as a result of restrictions on movement. Women suffer disproportionately from the occupation.

In 2004, the International Court of Justice held that Palestinians should be compensated for damage they had suffered as a result of the construction of the wall. In the same year the General Assembly resolved that a register should be compiled to allow for the registration of claims for compensation. Unfortunately, little progress has been made with this register.

At present, the Quartet, comprising the United Nations, the European Union, the Russian Federation and the United States of America, has primary responsibility for resolving the conflict between Israel and Palestine. The basis for negotiations remains the road map of 2003, which is hopelessly out of date and which envisaged an end to the conflict by the end of 2005. It is suggested that the road map be revised to take account of present realities and the 2004 advisory opinion of ICJ. It is essential that the Quartet be guided more by human rights considerations and the Court's advisory opinion in its handling of negotiations.

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Introduction

1. The five months that have passed since the Special Rapporteur's last visit to the Occupied Palestinian Territory¹ in June and July 2005, pursuant to Commission Resolution 2005/7, have witnessed important changes in the Territory. In August and September 2005 Israel successfully withdrew its settlers and forces from Gaza, thereby ending the colonization of Gaza and providing the people of Gaza with an opportunity to govern themselves without the presence of an occupying army. Since then the Government of Israel and the Palestinian Authority have been embroiled in negotiations relating to the passage of persons and goods in and out of Gaza. An agreement of 15 November, brokered by the Quartet's special envoy to the region, James Wolfensohn, and United States Secretary of State, Condoleezza Rice, provides for such passage, but at the time of writing it has still to be fully implemented. These positive steps do not stand alone. Although violent incursions by Israel Defense Forces into the occupied Palestinian territory continue, and suicide bombers have on occasion managed to penetrate Israel with devastating results, the level of fatalities and injuries among both Palestinians and Israelis has dropped considerably. The Israel Defense Forces continue to observe their decision not

to engage in punitive home demolitions, and the Israeli High Court of Justice has handed down decisions that have reduced the suffering of the Palestinian people. One decision prohibits the Israel Defense Forces from compelling Palestinians to act as human shields for the Israel Defense Forces in their incursions into Palestinian villages, and another holds a section of the wall near to the settlement of Alfei Menashe to be unlawful on the ground that it causes disproportionate suffering to the Palestinian people.

2. The above positive developments are outweighed by the disorder that prevails in Gaza and the uncertainty relating to passage of persons and goods in and out of the territory; by the continued construction of the wall and the expansion of settlements; by the de-Palestinization of Jerusalem; by settler and Israel Defense Forces violence; by the failure to release Palestinian prisoners; by the restriction of free movement caused by checkpoints, both fixed and temporary ("flying checkpoints"); by house demolitions aimed at curtailing the expansion of towns and villages; by poverty and unemployment caused by the occupation; by the emergence of a new wave of internally displaced persons resulting from the seizure of land for the construction of the wall; and by restraints on education and access to medical facilities caused by checkpoints and the wall. Much needs to be done by Israel, therefore, before it can claim to comply with its minimum obligations in the field of human rights and humanitarian law. With an Israeli general election scheduled for March 2006, and no Israeli political party committed to the promotion of the human rights of the Palestinian people, it seems clear that no meaningful improvement in the situation can be expected in the foreseeable future. (A Palestinian general election is scheduled for January 2006. Hopefully it will produce a Government of Palestine committed to the creation of a Palestinian State founded on respect for human rights and the rule of law.)

3. In this report the term "wall" is used in preference to the more neutral terms "barrier" or "fence". The term "wall" was carefully and deliberately used by ICJ in its advisory opinion on the "Legal consequences of the construction of a wall in the occupied Palestinian territory". The Special Rapporteur sees no reason to depart from this language.

I. VISIT OF THE SPECIAL RAPPORTEUR

4. The Special Rapporteur visited the occupied Palestinian territory from 3 to 9 December 2005. He visited Gaza for one day only as the present security situation there does not permit visitors to stay overnight. While in Gaza he met Mr. Mohammad Dahlan, Minister of Civil Affairs of the Palestinian Authority, who has played a key role in negotiations relating to the movement of persons and goods in and out of Gaza. He also met with United Nations officials and NGO leaders before proceeding on a brief tour of Gaza which included visits to Palestinian-operated greenhouses in the former settlement of Netzarim, and to the eastern border of Gaza, where he met with farmers prevented by the Israel Defense Forces from accessing their lands adjacent to the border.

5. The Special Rapporteur met with Palestinian Cabinet ministers, Palestinian interlocutors, United Nations officials and Palestinian and Israeli NGOs in Jerusalem and Ramallah. He visited Ramallah, Hebron, Jerusalem and Bethlehem. He traversed the wall in the vicinity of Jerusalem, Bethlehem, Qalandia, Bidia and Bil'in; saw fixed checkpoints (e.g. Hawwara) and flying checkpoints; crossed through terminals at Bethlehem and Qalandia; went on a tour of Jewish settlements in the Old City of Jerusalem; met with communities affected by settlements and the wall in the Jordan Valley (near Tammun and Jiflik), Abu Dis and El Ezariya; and walked through the tense "H2" neighbourhood of Hebron, where settlers terrorize Palestinians and abuse foreign visitors (as the Special Rapporteur experienced).

II. GAZA

6. The situation in Gaza has changed dramatically since the Special Rapporteur's previous visit in June 2005. In August/September, in a highly successful operation, Israel evacuated all of its settlers from Gaza and destroyed all settlements. Shortly thereafter, Israel withdrew its military forces from Gaza. This resulted in the disappearance of a brutal military presence, the removal of checkpoints that had for years thwarted freedom of movement and the conferral of a wide measure of freedom for Gazans.

7. Although Israel exercised strict control over the borders of Gaza following disengagement, on 15 November 2005 an important agreement on borders was entered into between Israel and the Palestinian Authority, facilitated by United States Secretary of State, Condoleezza Rice, and the Quartet's special envoy, James Wolfensohn. This agreement allows Palestinian identity (ID) cardholders to cross to and from Egypt at Rafah at a crossing operated by the Palestinian Authority and Egypt, and provides for the increased export of goods through the Karni crossing and the transit of persons and goods between Gaza and the West Bank by convoys of buses.

8. The withdrawal of the Israel Defense Forces from Gaza has led some to claim that the occupation of Gaza has come to an end. In deciding on this matter regard must be had to whether Israel retains effective control over the territory as this is the test for occupation recognized by international humanitarian law.² While the Special Rapporteur concedes that the absence of a military occupying power in Gaza has removed many of the features of occupation, it is wrong to suggest that the occupation has ended. In the first place, it must be stressed that technological advances since 1949 have changed the whole nature of control. It is no longer necessary for a foreign military power to maintain a permanent physical presence in a territory to exercise control, as Israel has demonstrated since its withdrawal from Gaza. Sonic booms, which terrorize and traumatize the population (and constitute a form of collective punishment) and the targeted assassination of militants (and innocent bystanders) by rockets fired from the skies, serve as a constant reminder to the people of Gaza that they remain occupied. In the three months following Israel's withdrawal from Gaza, 15 Palestinians have been targeted and assassinated, 18 civilians killed and 81 injured in response to Qassam rockets fired by militants from Gaza. Such actions of the Israel Defense Forces must be viewed in conjunction with the fact that Israel retains control over airspace, territorial waters (fishing is allowed only within 10 nautical miles of the coastline) and external borders. While it is true that the Rafah crossing is now open to Palestinian ID cardholders, Israel reserves the right to complain about who crosses at Gaza and has already done so (the crossing is administered by the Palestinian Authority and Egypt, but supervised by European Union inspectors and followed by Israeli officials on TV monitor screens). Karni crossing was largely dysfunctional at the time of writing and allowed passage of only 35 to 40 trucks compared with the 150 trucks promised by the 15 November agreement. This is a serious problem for greenhouse agricultural products harvested in December/January and exported to Israel and the West Bank. The passage of persons between Gaza and the West Bank by bus convoys, scheduled to start on 15 December, has been stopped by Israel, as a result of a suicide bombing in Netanya and Israel's dissatisfaction with the Rafah crossing.³ (One fears that even if such convoys do commence, they will be frequently suspended for security reasons.) Control is also maintained by means of the Gaza population register, which Israel still administers, thereby allowing it to control the issue of identity documents to Gazans - a precondition for control in and out of the territory. Other facts confirm Israel's control of Gaza: first, Israel still holds some 650 Gazan prisoners, despite article 77 of the Fourth Geneva Convention, which provides for the release of prisoners "at the close of occupation"; secondly, Israel maintains military control over a buffer zone ranging between 150 and 300 metres within Gaza along its eastern and northern borders from which all Palestinians are excluded (farmers are thus denied access to their lands in this zone); thirdly, Israel may, and has already threatened, to cut off electricity supplies to Gaza. Finally, Palestine constitutes a single self-determination unit, comprising the West Bank and Gaza. To suggest that Gaza should enjoy a status different from that of the West Bank would violate the territorial integrity of Palestine and the substantive law of self-determination.

9. Undoubtedly, the nature of Israel's occupation has changed. Many of the provisions relating to the treatment of protected persons in the Geneva Convention relative to the Protection of Civilian Persons in Time of War (the Fourth Geneva Convention) are premised upon the physical

presence of the occupying Power - but not all. For instance, article 27, requiring protected persons to “be humanely treated” and to “be protected especially against all acts of violence” and article 33, prohibiting collective penalties and “all measures of intimidation or of terrorism”, continue to apply and appear to have been violated by sonic booms and targeted assassinations that routinely cause collateral loss of life and injury. The silence of the principal protector of the Fourth Geneva Convention, the International Committee of the Red Cross, on the continuation of the occupation tends to confirm that it does indeed continue.

10. Israel’s occupation of both Gaza and the West Bank is unusual. The occupation of a territory for 38 years and the physical withdrawal of the occupying Power from a separate part of the occupied territory were clearly outside the contemplation of the drafters of the Fourth Geneva Convention. But despite the unusual features of the Gaza occupation, it remains occupation as Israel continues to maintain effective control over the territory. It is not a fully liberated part of an occupied territory. Certainly the mood of the people of Gaza confirms this. They perceive themselves to be still subject to occupation as was repeatedly stressed to the Special Rapporteur on his visit to Gaza.

11. It does not fall within the mandate of the Special Rapporteur to comment on the state of human rights in Gaza under the administration of the Palestinian Authority. However, it is necessary to observe that the present insecurity in Gaza is hardly conducive to human rights. The Palestinian Authority now has the opportunity to recognize civil and political rights, ensure due process of law, advance the rights of women and children and, subject to the restrictions that flow from Israeli control, promote social and economic rights. This opportunity must not be lost.

III. THE WALL

12. In its advisory opinion of 9 July 2004 ICJ held that the wall currently being built by Israel in the occupied Palestinian territory, including in and around East Jerusalem, was contrary to international law; that Israel was under an obligation to cease the building of the wall on Palestinian territory and to dismantle it forthwith; that Israel was under an obligation to make reparation for all damage caused by the construction of the wall in the occupied Palestinian territory; that all States were under an obligation not to recognize the illegal situation resulting from the construction of the wall; that all States parties to the Fourth Geneva Convention were obliged to ensure that Israel complies with the provisions of that Convention; and that the United Nations should consider what further action was required to bring to an end the illegal situation resulting from the construction of the wall. On 20 July 2004 the General Assembly adopted resolution ES/10-15, in which it demanded that Israel comply with the legal obligations identified in the advisory opinion. The resolution was adopted by 150 votes to 6, with 10 abstentions.

13. The Government of Israel refuses to accept the advisory opinion of ICJ. The Government’s decision has been rationalized by the Israeli High Court of Justice in a judgement delivered in September 2005 - *Mara’abe v. The Prime Minister of Israel* H.C.J. 7957/04 - on the lawfulness of the course of the wall in the vicinity of the settlement of Alfei Menashe. Although the Court found that the wall in that area seriously damaged the fabric of life and caused disproportionate suffering to the Palestinian residents of neighbouring villages and recommended that the course of the wall be changed accordingly, it held, in careful, judicious language, that the ICJ advisory opinion was flawed by reason of its failure to have access to the full facts surrounding the wall, particularly the extent to which the wall was a necessary security measure to protect the lives of Israeli civilians within both Israel itself and the settlements of the West Bank (paras. 65, 73 and 74). The judgement of the Israeli High Court is not itself without faults. First, it accepts with little questioning the assurances of the Israeli security establishment that the course of the wall was determined by security considerations (para. 62) - assurances that have subsequently been undermined in a statement by the Israeli Minister of Justice, Tzipi Livni, acknowledging that the wall is a “political” rather than a “security wall”.⁴ Secondly, it refuses to question the lawfulness of settlements (para. 19) and accepts that the wall may be built to protect settlements (paras. 20-21), which suggests that the wall may be built as a *lawful* security measure to protect *unlawful* settlements. The international community should, therefore, have no difficulty in dismissing the rejection by the Israeli High Court of the ICJ advisory opinion as an unconvincing rationalization of the Government’s opposition to the advisory opinion.

14. On 20 February 2005 the Government of Israel marginally modified the planned route of the wall. In terms of this decision the wall, once completed, will be 670-kilometre long compared to 622 kilometres of the prior route.⁵ The new route runs for 145 kilometres on the Green Line compared to 48 kilometres of the prior route. The new route of the wall will follow, or be close to, the Green Line, in the locality of the Hebron hills. It will penetrate more deeply into Palestinian territory further north to include settlements in the Gush Etzion bloc near Bethlehem, housing over 50,000 settlers. It has also been decided to include the settlements of Ma’aleh Adumim and Ariel on the Israeli side of the wall. This will result in some 10 per cent of Palestinian land being included in Israel (the previous route resulted in the seizure of 12.7 per cent of the West Bank). The wall will enclose, on the Israeli side, 170,000 settlers (not including some 190,000 settlers in East Jerusalem), comprising 76 per cent of the West Bank settler population, and 49,000 Palestinians (not including over 200,000 Palestinians living in East Jerusalem).

15. To date, 275 kilometres⁶ of the wall have been built from the northern border of the West Bank near Tubas to roughly Elkana in the centre, plus two segments in Jerusalem. Construction is still under way between Elkana and Jerusalem; around the settlements of Ariel and Immanuel; in and around East Jerusalem; and from Gush Etzion to Metzudat Yehuda on the southern border of the West Bank in the Hebron Governorate. Although construction of the wall has progressed rapidly since the advisory opinion of ICJ, the Israeli Prime Minister, Mr. Ariel Sharon, rebuked the defence establishment on 6 July for “taking too long” in the construction of the wall and instructed it to speed up its construction since there were no financial constraints. Petitions to the High Court against the course of the wall have been largely responsible for delays in the completion of the wall. An injunction restraining the building of the wall around the settlement of Ariel, which will extend the wall 22 kilometres into the West Bank, was lifted on 17 May 2005 and work on the construction of the wall around the eastern border of this “finger” into Palestinian territory has been started.

16. In past years the Special Rapporteur has visited sections of the wall, complete or under construction, in the north (Al-Mutilla, Tulkarm, Jubara, Ar-Ras, Qalqiliya, Jayyus, Habla, Ras-A-Tira, Azzun Atma, Beit Amin, Iskaka), the centre (Beit Surik, Biddu, Qalandia, Ar-Ram, Anata, Abu Dis, Bethlehem, Al-Walaja) and the south (Hebron hills). On this occasion he visited Biddya, Bil’in, Ar-Ram, Qalandiya, Shuafat, Anata, Abu Dis, Al-Eizariya and Bethlehem. The Special Rapporteur has repeatedly expressed the opinion that many sections of the wall appear to have been built for reasons other than security. Observations on the present visit confirmed this view. The wall near Bil’in has clearly been constructed to allow for the expansion of the Modi’in settlement. The construction of the settlement of Matiyahu East in the Modi’in bloc is there for all to see and provides the obvious explanation for the wall. (The Special Rapporteur was tear-gassed by the Israel Defense Forces/Border Police while viewing the wall near Bil’in and a demonstration in the vicinity of the wall.) Even more grotesque is the suggestion that the wall around Abu Dis, Anata, Shuafat and Al-Eizariya is being constructed for security purposes when it separates Palestinian from Palestinian. Here the clear purpose of the wall is to reduce the number of Palestinians in East Jerusalem (discussed below). A recent publication of B’Tselem and Binkom⁷ confirms that the principal purpose of the wall is to protect settlements and to provide for settlement expansion. The Israeli High Court in part acknowledged this in *Mara’abe v. The Prime Minister of Israel* H.C.J. 7957/04 when it held that the wall might legitimately be built to protect settlers.⁸ Further evidence that the wall is not intended as a security measure has come from a statement by the Israeli Minister of Justice, Tzipi Livni, who stated on 30 November 2005 that “one does not have to be a genius to see that the fence will have implications for the future border. This is not the reason for its establishment, but it could have political implications”.⁹ The time has, therefore, come to accept that while the wall may serve a legitimate security purpose when it follows the Green Line, when it enters Palestinian territory it serves different goals, namely, territorial expansion and the protection of settlements.

17. The zone between the wall and the Green Line, the internationally accepted border between Israel and the West Bank, is known as the “closed zone” or “seam zone”. Within this zone, some 49,000 Palestinians live. A greater number of Palestinians, however, live on the West Bank side of the wall while their lands are in the closed zone. Both these Palestinian communities are seriously affected by the wall. Those living within the

closed zone have difficulty in accessing family, hospitals, schools, markets and employment within the West Bank. Those living on the West Bank side of the wall require permits to access their own agricultural land. In some quarters it is naively assumed that crossing the wall causes no hardships for Palestinians; that permits are easily and fairly granted; and that gates within the wall facilitate crossing.¹⁰ Nothing could be further from the truth. At least 40 per cent of applications for permits are refused; the process of application is humiliating; gates are few and often do not open as scheduled; and people within the closed zone and its vicinity are slowly leaving in despair. In this way the closed zone is gradually being “cleansed” of Palestinians, where land will in due course be transferred to land-greedy settlers.

18. In 2005 more permits to cross the wall were refused than in 2004. Whereas before 2005, persons wishing to cross the wall to cultivate their lands in the closed zone were mainly refused permits for security reasons, today permits are mainly denied when the owner or user of land is unable to provide convincing evidence of ownership or direct relationship to the land. A landowner applying for a permit to access his own land must submit a land registration certificate or taxation document from the Ottoman era. However, proof of ownership is alien to the traditional Palestinian landownership system and has been resisted by Palestinian landowners over many generations. In part this can be ascribed to the fact that the registration of land under the Ottomans was very slow and little progress was made in respect of land registration during the British Mandate period or during the period of Jordanian rule before 1967. In these circumstances the demand for proof of landownership or title to land is often an insurmountable obstacle. Permits are refused on this ground and because the applicant is unable to prove a sufficiently close relationship to the owner of the land. In the Qalqiliya Governorate some 40 per cent of applications for permits were rejected in July 2005. Whereas 11 per cent of permit rejections related to landownership or a direct relationship to the land in January 2005, by July this figure had risen to 65 per cent. A similar trend is apparent in the Tulkarm Governorate.

19. At present there are 65 gates in the wall. Twenty-seven of these are open to Palestinians with permits and 10 are open on a seasonal basis. Twenty-eight gates are closed to Palestinians. This means that Palestinians often have to travel considerable distances to access a gate to cross to their lands in the closed zone. To aggravate the situation, gates are administered in an arbitrary manner and frequently do not open as scheduled. Moreover, tractors and farm vehicles are frequently not allowed to cross, which means that farmers must walk or use donkeys to reach their land and to bring out their produce.

20. Obstacles placed in the way of accessing land in the closed zone, together with the humiliating manner in which the process is administered, have resulted in many being denied access or refusing to apply for access to land in the closed zone. This has resulted in widespread loss of agricultural livelihoods and increased unemployment and explains why Palestinians are gradually leaving land and homes they have occupied for generations. Figures are uncertain, but it seems that already 15,000 persons have been displaced as a result of the construction of the wall. This new generation of displaced persons creates a new category of Palestinian refugees. The neglect and abandonment of land will allow the Israeli authorities to seize the land on the basis of Ottoman law, which Israel interprets to mean that land not cultivated for three consecutive years can be confiscated and reclassified as State land. In due course, no doubt, this land will be handed over to the settlers.

A. Terminals

21. Passage through the wall to Israel or to unlawfully annexed East Jerusalem is through large terminals resembling immigration/security terminals at international airports. Palestinians and others crossing through such terminals must pass through a maze of barred, revolving doors, metal detectors and turnstiles, and by X-ray machines. At the Bethlehem terminal (through which the Special Rapporteur crossed) passage is restricted to foreigners, Palestinians holding Jerusalem ID cards and Palestinians with West Bank ID cards who possess an Israeli-issued permit to access occupied East Jerusalem and Israel. The terminal at Bethlehem constitutes a threat to economic recovery and religious freedom as it will seriously stifle the economy and hamper access to holy Christian sites. Already, access to Rachel's Tomb near Bethlehem, holy to both Jews and Muslims, has been closed to Palestinians.

B. Settlements and the wall

22. 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 ICJ in its advisory opinion on the wall. There can therefore be no justification for keeping settlements. A fortiori the expansion of settlements must be completely unacceptable to the international community. In *Mara'abe v. The Prime Minister of Israel* the Israeli High Court refused to consider the illegality of settlements (para. 19). This echoes a long line of judicial precedents, but it does undermine the credibility of the Court's decision as the lawfulness of settlements was surely indispensable to a finding that the wall might legitimately be constructed to protect settlements.

23. Most settlers and settlements in the West Bank are to be found on the Israeli side of the wall. Some 170,000 settlers live in 56 settlements in the closed zone, that is, 76 per cent of the settler population in the West Bank. New settlements or the expansion of existing ones are being planned for the closed zone. The Special Rapporteur saw evidence of such an expansion in June near Jayyus where the settlement of Zufin is being expanded to encroach further on the fields of Jayyus farmers in the closed zone. Further evidence of such expansion was provided when the Special Rapporteur visited Bil'in, where the expansion of the settlement of Matityahu East near upper Modi'in behind the wall is under way. Since the Special Rapporteur's visit it has come to light that 750 housing units in this new settlement are being built in violation of Israeli law as no permission has been granted for such construction. This simply illustrates the disrespect for law shown by the settlement enterprise. In order to emphasize the discriminatory nature of Israeli law in respect of building without permits, a caravan has been placed by residents of Bil'in in land adjacent to the settlement. At the time of writing the Israel Defense Forces had threatened to remove the “illegal” caravan, but no such action is contemplated against the illegal settlement.

24. The expansion of settlements is clear to anyone who visits settlement sites. Cranes generally mark the skyline of settlements and there is abundant evidence of building activity. The figures confirm settlement growth and expansion. The settlement population in the West Bank at the end of September 2005 was 242,700, up from 235,100 at the end of December 2004. If nine-month growth continues at the same rate, then the settler population would expand by 4.3 per cent for all of 2005, to 243,100, according to the Israeli Central Bureau of Statistics.¹¹ The determination of the Government of Israel not to curtail settlement expansion is further shown by the rejection of certain fundamental recommendations of the Sasson report. In 2005 Talia Sasson compiled a report on informal settlements or extensions to existing ones known as “outposts”, in which she labelled them as illegal under Israeli law and recommended that they be dismantled. Several of her key recommendations were rejected in November 2005.¹²

25. Three major settlement blocs, the Gush Etzion bloc, the Ma'aleh Adumim bloc and the Ariel bloc - all of which are to be surrounded by the wall - will effectively divide Palestinian territory into cantons or Bantustans. These cantons will be linked by special roads or tunnels. This results in transportation contiguity as opposed to territorial contiguity and this means that Palestinians will be able to access different parts of the West Bank, but the territorial unity essential for the creation of a viable Palestinian State will be absent.

26. The construction of the wall, the de-Palestinization of the closed zone and the expansion and construction of settlements in the closed zone make it abundantly clear that the wall is designed to be the border of the State of Israel and that the land of the closed zone will be annexed. Already, members of the Israel Defense Forces inform international representatives visiting the closed zone that it is part of Israeli territory. This is understandable as, after all, Israelis have free access to the closed zone, whereas Palestinians require special permits to enter this zone. There is clear evidence of Israel's intentions in this regard. Addressing a meeting of the Jewish community in Paris on 28 July 2005, Prime

Minister Sharon stated that, thanks to the disengagement from Gaza, “Israel has gained unprecedented political achievements”, including “a guarantee that the major population centres in Judea and Samaria (that is, the West Bank) will remain part of Israel in any final status agreement; and there will be no return to the 1967 borders”. Then, on 30 November 2005, the Justice Minister, Tzipi Livni, acknowledged that the wall is a “political” rather than a “security” wall and that it would serve as “the future border of the State of Israel”.¹³

27. In August 2004 Israel successfully withdrew Jewish settlers from four small settlements in the northern West Bank: Ganim, Kadim, Homesh and Sa-Nur. Israeli Government spokesmen have vehemently denied that any further withdrawal of settlers from the West Bank is contemplated.

28. The successful evacuation of settlers from Gaza and the northern West Bank has weakened the political power of the settlers. In some quarters it is believed that the Government of Israel could dismantle settlements in the West Bank. Unfortunately, evidence does not support this. Settlements continue to grow, the wall is there largely to protect them and checkpoints and closures (see below) largely serve the interests of settlers. Indeed, most violations of human rights in the West Bank, and the humanitarian crisis, are a consequence of policies aimed at the protection of settlers.

IV. SETTLER VIOLENCE, WITH SPECIAL REFERENCE TO HEBRON

29. Settler violence remains a serious problem. Prosecutions of settlers are rare and it seems that settlers are able to terrorize Palestinians and destroy their trees and crops with impunity. Nine hundred olive trees in the West Bank village of Salem, near Nablus, were destroyed in the course of 2005.¹⁴ In the southern Hebron hills, visited by the Special Rapporteur in June 2005, schoolchildren are terrorized on their way to school; wells, fields and sheep have been poisoned; many sheep and goats have been stolen.¹⁵ The worst settler violence is to be found in the city of Hebron, where settlers occupy key buildings within the centre of the old city. From these settlements they terrorize the few Palestinians that have not left the old city and assault and traumatize children on the way to school.¹⁶ Obscene, racist graffiti (for example, “Gas the Arabs”) adorns the walls of the old city of Hebron. The Israel Defense Forces patrol the city, but make little attempt to protect Palestinians from the settlers and fail to remove racist graffiti. In short, the Israel Defense Forces have made themselves a party to the crimes of the settlers. *Ha’aretz* columnist Gideon Levy sums up the situation as follows:

Every day the settlers torment their neighbours here. Every walk to school for a Palestinian child has become a journey of harassment and fear. Every shopping outing by a housewife is a journey of humiliation. Settler children kicking old women carrying baskets, settlers setting their dogs on the elderly, garbage and faeces thrown from the settlers’ balconies into the courtyards of Palestinian homes, junk metal blocking the entrances of their houses, rocks thrown at any Palestinian passer-by - this is the routine of life in the city. Hundreds of soldiers, border policemen and cops witness these actions and stand by idly. ... Israel cannot be considered a State ruled by law, or a democracy, as long as the pogroms continue in Hebron.¹⁷

V. JERUSALEM

30. East Jerusalem is not part of Israel. On the contrary, it is occupied territory, subject to the Fourth Geneva Convention. Unfortunately, Israel’s illegal attempt at annexation of East Jerusalem has obscured this truth. As a consequence, world public opinion tends, incorrectly, to treat Israel’s occupation of East Jerusalem as different from that of the West Bank and Gaza.

31. Israel has embarked upon major changes to the character of Jerusalem. In essence, these changes are designed to reduce the number of Palestinians in the city and to increase the Jewish population of the city, thereby undermining Palestinian claims to East Jerusalem as the capital of an independent Palestinian State. That this is the purpose of the wall in Jerusalem was acknowledged by the Israeli Minister for Jerusalem Affairs, Mr. Haim Ramon, on 10 July 2005 when he stated that the route of the wall would make Jerusalem “more Jewish”. He added “The Government is bringing security to the city and will also make Jerusalem the capital of a Jewish and democratic State of Israel.”

32. There are already some 190,000 Jewish settlers in Israeli-occupied East Jerusalem. Plans are, however, under way to increase the number of settlers and to extend settlements both to encircle Jerusalem and to cut the West Bank in half. Within the Old City of Jerusalem there are some 80 Jewish settler buildings and institutions. Moreover, there is a plan to build a large new Jewish settlement in the Muslim Quarter near Herod’s Gate. Settlement expansion is also evident in neighbourhoods surrounding the Old City such as Silwan. Beyond this lie the more established settlements such as Ramot, French Hill, Har Homa and Gilo. The inner circle of settlements will be encircled by the settlement blocs of Givat Ze’ev to the north, Ma’aleh Adumim to the east, and Gush Etzion to the south. Particularly threatening to a future Palestinian State is Ma’aleh Adumim, which is to be expanded by “E1” (“East 1”), a 53-square-mile area larger than Tel Aviv designated to have 3,500 housing units to accommodate 15,000 to 20,000 new settlers. The expanded Ma’aleh Adumim will effectively cut the West bank in half, separating Ramallah from Bethlehem, with serious economic and political consequences.

33. Conversely, the Palestinian population of East Jerusalem, presently numbering some 230,000, is to be reduced by a number of stratagems. First, by house demolitions. There was a sharp increase in house demolitions in 2004, when 152 homes were destroyed in East Jerusalem. Plans to destroy 88 homes in the Silwan district are presently on hold. Secondly, this population is to be reduced by routing the wall to the west of neighbourhoods previously part of East Jerusalem. Thus areas such as the Shu’afat camp, with a population of some 55,000, and West Anata are excluded from the East Jerusalem municipality and transferred to the West Bank. Thirdly, this will be done by transferring neighbourhoods previously integrated into East Jerusalem into the West Bank by means of the wall. Neighbourhoods such as Abu Dis, Anata and Al-Eizariya fall into this category.

34. The exclusion of large neighbourhoods from East Jerusalem and their transfer to the West Bank will cause great suffering to thousands of Palestinians and personal tragedies to many. A sharp distinction is made between Palestinians with blue Jerusalem ID cards and those with green West Bank ID cards living in East Jerusalem neighbourhoods. West Bank ID cardholders, and in due course Jerusalem ID cardholders living to the east of the wall, will no longer be able to access hospitals and schools in Jerusalem or to work in Jerusalem without special permits to enter Jerusalem. The differences in ID cards will also have a profound effect on family life, as many spouses hold different ID cards. They will be forced to live separately on different sides of the wall under Israeli law, which prohibits family unification. If one spouse elects to move east of the wall, he or she will lose his or her rights (such as medical insurance and social security) attached to the Jerusalem ID. In this way Israel hopes to further reduce the Palestinian population of East Jerusalem by compelling spouses to move to the West Bank side of the wall. The Special Rapporteur visited two of the neighbourhoods most affected by the wall - Abu Dis and Al-Eizariya. There he met husbands separated from their wives and persons separated from their livelihoods, schools and hospitals in Jerusalem. Words cannot convey the hardships to which Palestinians are subjected in the interests of the Judaization of Jerusalem.

35. In November 2005 the heads of 25 European Union missions stationed in East Jerusalem prepared a report on Israel’s plans to change the character of East Jerusalem. The report condemned the construction of the wall and settlements, the demolition of Palestinian homes, the separation of Palestinian residents and families, and the discriminatory practices employed by Israel. It concluded:

Jerusalem is already one of the trickiest issues on the road to reaching a final status agreement between Israel and the Palestinians. But several interlinked Israeli policies are reducing the possibility of reaching a final status agreement on Jerusalem that any Palestinian could

accept. We judge that this is a deliberate Israeli policy - the completion of the annexation of East Jerusalem. Israeli measures also risk radicalizing the hitherto relatively quiescent Palestinian population of East Jerusalem.

VI. THE JORDAN VALLEY

36. Israel's plans for the Jordan Valley or Eastern Strip, comprising the territory along the Jordan Valley and the eastern slopes of the neighbouring mountain ridges, with a population of 53,000 Palestinians and 8,800 settlers in 27 settlements, are not clear. Several years ago there were plans to build a wall along the mountain range above the Jordan Valley which would have resulted in the de facto annexation of the region. Although that plan has been dropped there are signs that Israel intends to assert its authority over an area that is thinly populated and easily controlled in order to achieve a regime not very different from that of the closed zone along the western border of the West Bank. First, there is a concerted move to expand settlements and in June 2005 it was reported in the Israeli press that the Israeli Minister of Agriculture, Yisrael Katz, has launched an initiative to double the number of settlers living in the Jordan Valley over the next two years.¹⁸ Secondly, the conduct of Israel towards the Palestinian residents of the region suggests that Israel plans to reduce their number by making life as difficult as possible for them. Agricultural land has recently been seized by the military near the settlement of Beka'ot and an order issued for the destruction of houses and greenhouses. In Jiftlik, which is nearer to the Jordan Valley, with a population of 4,500, Israel demolishes houses and food stalls, places obstacles in the way of schools and clinics, denies permission to the village to be linked to running water and electricity systems and makes the export of produce hazardous by means of a restrictive permit system. A strict permit system operates throughout the region. Non-Jordan Valley ID holders, including those who own land in the valley, are denied access to the region without a permit, and workers with no Jordan Valley IDs are required to have permits to enter the region, which are increasingly denied.

37. There is a serious humanitarian crisis in the region resulting from restrictions on movement and the denial of the most basic social and economic rights. The denial of water to Palestinians and the high water consumption by settlers is another serious problem. Villages are denied access to the Israeli water system that supplies settlers. For instance, neither Tammun nor Jiftlik, visited by the Special Rapporteur, have running water. On the other hand, according to B'Tselem, "the water consumption of the population of Jewish settlements in the Jordan Valley ... is equivalent to 75 per cent of the water consumption of the entire Palestinian population of the West Bank (approximately 2 million people) for domestic and urban uses".¹⁹ It is difficult to reconcile such blatant discrimination in respect of access to water resources with Israel's obligations under international humanitarian law.

38. On 4 April 2004 the Israeli socio-economic Cabinet approved a policy document on reform of the encouragement of capital investment law, which declares the Jordan Valley to be one of the national priority regions "in Israel". This confirms the intention of Israel to incorporate the Jordan Valley into Israel without the construction of a wall.

VII. THE WALL, SETTLEMENTS AND SELF-DETERMINATION

39. In its advisory opinion ICJ stressed the right of the Palestinian people to self-determination. This right was affirmed once again in a resolution adopted by the General Assembly on 16 December 2005 by 170 votes to 5, with 1 abstention. In recent times politicians of all persuasions have given support to a two-State solution, with the States of Israel and Palestine living side by side in peace and security. This vision is unattainable without a viable Palestinian territory. The construction of the wall, the expansion of settlements, the de-Palestinization of Jerusalem and the gradual incorporation of the Jordan Valley are incompatible with the two-State solution. Interlocutors within both Israel and the occupied Palestinian territory warned the Special Rapporteur that with the two-State solution becoming increasingly difficult, if not impossible, consideration should be given to the establishment of a binational State.²⁰

40. In its advisory opinion ICJ noted "the assurance given by Israel that the construction of the wall does not amount to annexation and that the wall is of a temporary nature". The Court, however, considered that "the construction of the wall and its associated regime create a 'fait accompli' on the ground that could well become permanent, in which case and notwithstanding the formal characterization of the wall by Israel, it would be tantamount to de facto annexation" (para. 121). It is highly arguable that this stage has now been reached. The prohibition of the annexation of territory by force is, of course, one of the most fundamental principles of international law.

VIII. OTHER HUMAN RIGHTS VIOLATIONS

41. The Special Rapporteur has focused in the present report on what he considers to be the principal violations of human rights. The wall and settlements seriously undermine the fundamental right of the Palestinian people to self-determination upon which all other rights depend. In large measure, the wall and settlements are a consequence of occupation. The regime of occupation by definition results in a violation of human rights. A prolonged occupation of the kind to which the Palestinian people have been subjected for 38 years inevitably poses a threat to the most basic human rights. This is confirmed by the Palestinian experience.

A. Freedom of person

42. In the past year Israel has released some 900 Palestinian prisoners. In the same period over 1,000 new prisoners have been taken. Consequently, there are still over 9,000 prisoners in Israeli jails, including 300 children. Over 600 of those imprisoned are in administrative detention, that is, they are being held without trial. Family visits remain a serious problem. As prisons are held in Israel and many Palestinians are denied admission to Israel, a majority of prisoners receive no family visits. Prison conditions are harsh: prisoners live in overcrowded and poorly ventilated cells which they generally leave for only two hours a day. Allegations of torture and inhuman treatment of detainees and prisoners continue. Such treatment includes beatings, shackling in painful positions, kicking, prolonged blindfolding, denial of access to medical care, exposure to extreme temperatures and inadequate provision of food and water.

43. In October 2005 a bill to allow prolonged incommunicado detention passed its first reading in the Israeli Knesset. The bill empowers the General Security Service to delay bringing non-residents of Israel suspected of committing security offences before a judge for a period of 96 hours. The existing Detention Law requires that a suspect be brought before a judge within 24 hours and within 48 hours in special cases when urgent interrogation is required. In addition, the bill enables the State to prevent a suspect from meeting with an attorney for a cumulative period of 50 days (an initial 21 days, which can then be extended for periods of 7 days), upon approval of a Supreme Court justice. Under the Detention Law, such a meeting can be prevented, with court approval, for no more than 21 days.

B. Freedom of movement

44. Checkpoints and closures in the West Bank continue to seriously impair freedom of movement. The closure system comprises a series of checkpoints and physical obstacles placed by the Israel Defense Forces to control and restrict Palestinian pedestrian and vehicle traffic. The types of obstacles include permanently and temporarily manned checkpoints, roadblocks (consisting of rows of 1-metre concrete blocks), metal gates, earth mounds, earth walls (a long series of earth mounds) and trenches. The number of closure obstacles has dropped substantially in the course of the year: from 605 in February to 376 in August 2005. The decline has occurred in respect of unmanned physical obstacles and the number of manned checkpoints remains unchanged - 52 permanently manned and 7 partially manned. The decrease in the number of unmanned physical obstacles is, however, offset by the increase in the number of "flying checkpoints" - that is, checkpoints manned by soldiers set up at random on some section of a road on a temporary basis. According to the Palestinian Monitoring Group, over 400 such checkpoints are set up each month. The

frequency and unpredictability of such checkpoints make it impossible to plan travel in the West Bank.

45. It is difficult to overestimate the harm done to Israeli-Palestinian relations by checkpoints. They are arbitrary, humiliating and intimidating.²¹ They are the primary cause of poverty and economic depression in the West Bank. And they are installed not for the security of Israel itself but to protect the hated settlers on Palestinian territory.

C. Discrimination against women

46. Occupation and the wall unevenly violate women's rights. Palestinian women are routinely harassed, intimidated and abused by Israeli soldiers at checkpoints and gates. They are humiliated in front of their families and subjected to sexual violence by both soldiers and settlers. Restriction of movement due to the occupation severely impedes Palestinian women's access to education and health. Restrictions on movement limit opportunities for independence and reduce the number of women seeking formal education or employment as the culture of the region requires women to study and work from home. Women's health has suffered as a result of their inability to reach health centres. Pregnant women are vulnerable to long waits at checkpoints. A number of unsafe deliveries in which both mothers and infants have died have occurred at checkpoints. Unemployment and poverty resulting from the occupation have been shown to produce divorce and domestic violence. The Israeli Nationality and Entry into Israel Law of 2003 aims to stop family reunification when one spouse is a resident of the occupied Palestinian territory. The result of this law is that thousands of affected families live separately from each other with no legal means available to reunify the family. The only way to maintain the unity of the family is to reside illegally in Israel, in permanent fear of investigation and expulsion. This places an immense burden on the psychological state of Palestinian women. The law, which does not apply to Israeli settlers living in the occupied Palestinian territory or to Israeli Jews marrying aliens, institutes a discriminatory system based on national origin and is directed exclusively against Palestinians.

D. Humanitarian crisis

47. The occupied Palestinian territory has a population of 3.8 million (2.4 million in the West Bank and 1.4 million in the Gaza Strip). Approximately 42 per cent of the population (1.6 million) are registered refugees. There is a natural increase of 3.5 per cent.

48. Previous reports have drawn attention to the humanitarian crisis in the occupied Palestinian territory resulting from the occupation and the construction of the wall. Unemployment reached 28 per cent (35 per cent in Gaza and 25 per cent in the West Bank) in 2005. Loss of access to jobs in Israel is a major cause of unemployment. Approximately half of the population, or 1.8 million, live below the official poverty line of US\$ 2.10 per day. Subsistence poverty, that is the inability to afford basic survival, is estimated at 16 per cent. Poverty is higher in Gaza (65 per cent) than in the West Bank (38 per cent). Poverty is the result of growing unemployment, closures, the wall, the loss of property caused by house demolitions, land requisitions and the levelling of land. Agricultural incomes have dropped considerably as a result of the destruction of agricultural areas and the isolation of land and wells behind the wall.

49. Closures have limited the ability to access health and education services. The provision of health services has dropped remarkably as a result of restrictions on access. The quality of education has deteriorated as a result of the wall and the occupation. The wall has obliged schools to shorten teaching hours as a result of the erratic wall gate opening times. And the occupation continues to intimidate teachers and scholars alike. For instance, in the months of September and October the Israeli army shelled one school, injuring 10 civilians; arrested 23 school students, 9 schoolteachers, and 3 school principals; raided two schools; detained school students and teachers on six separate occasions; beat one teacher in front of students, and prohibited the construction of one school.²²

50. Although the Israel Defense Forces have discontinued punitive house demolitions and the past year has not witnessed major house demolitions in the interests of the so-called military necessity, there is a substantial shortage of housing caused by house demolitions in previous years. In Gaza many thousands are still homeless. Houses continue to be demolished for failure to obtain a building permit in the West Bank, and in 2005 over 250 structures were demolished. This form of house destruction known as "administrative" demolitions is still widely practised, particularly in Jerusalem. As it is virtually impossible for Palestinians to obtain building permits, many houses are therefore built without permits. The occupants of such houses run the risk of arbitrary demolition.

IX. THE DEATH PENALTY AND THE PALESTINIAN AUTHORITY

51. The Special Rapporteur's mandate does not extend to human rights violations committed by the Palestinian Authority. It would, however, be irresponsible for a human rights special rapporteur to allow the execution of Palestinian prisoners to go unnoticed. Since 2002, the Palestinian Authority has refrained from carrying out the death penalty. In 2005, however, five Palestinian prisoners have been executed. The level of civilization of a society can be measured by its attitude towards the death penalty. The Special Rapporteur expresses the hope that these executions were aberrations and that the Palestinian Authority will in future refrain from this form of punishment.

X. REGISTER OF DAMAGE

52. In its advisory opinion ICJ held that Israel was under an obligation to make reparation for all damage caused by the construction of the wall in the occupied Palestinian territory, including in and around East Jerusalem (para. 153). In pursuance of this finding the General Assembly in resolution ES-10/15 requested the Secretary-General to establish a register of damage caused to all natural or legal persons who have suffered as a result of the construction of the wall. On 11 January 2005 the Secretary-General wrote to the President of the General Assembly setting out the legal and institutional framework for such a register (A/ES-10/294). According to this letter, which gives effect to the Court's advisory opinion, both natural and legal persons who have sustained any form of material damage, including the destruction and requisition of properties, seizure or confiscation of land, destruction of orchards, citrus groves, olive groves and wells, and the impeded access to the workplace, health services, educational institutions and water sources, are eligible for compensation. The process has, however, to date made little progress, probably because the register cannot be established without the cooperation of Israel. This is unfortunate, as the International Court attached great importance to Israel's obligation to pay compensation for the destruction of homes, orchards, olive groves and land caused by the construction of the wall.

XI. THE ROLE OF THE SPECIAL RAPPORTEUR IN REPORTING TO THE COMMISSION ON HUMAN RIGHTS IN PARTICULAR AND TO THE UNITED NATIONS IN GENERAL

53. The Special Rapporteur is required to report on violations of human rights and international humanitarian law to the Commission on Human Rights. Implicit in his mandate is the task of alerting the Commission, and through it the international community, to a situation that may require the protection of the population concerned by the United Nations. The importance of providing protection to threatened populations was recently stressed by the General Assembly in its resolution 60/1 of 24 October 2005 on the World Summit Outcome.

54. In reporting to the Commission and appealing to the United Nations to provide protection to the Palestinian people, the Special Rapporteur is aware of the fact that the organs of the United Nations are divided over the approach to be adopted to the occupied Palestinian territory. On the one hand, the Commission, the General Assembly and ICJ are concerned about the violation of human rights and international humanitarian law in the territory, as manifested in numerous resolutions and in the 2004 advisory opinion of ICJ. On the other hand, the Security Council and the United Nations as a participant in the Quartet are engaged in a strategy of political appeasement, in which respect for human rights,

international humanitarian law and the rule of law have less importance. The Security Council has yet to approve the International Court's advisory opinion and studiously avoids any reference to it.²³ The Quartet, comprising the United Nations, the European Union, the Russian Federation and the United States of America, to which primary responsibility for dealing with the Palestinian issue has been delegated, likewise studiously avoids any reference to the advisory opinion and, while making reference to the consequences of the wall, settlements and restrictions on movement, carefully refrains from recognizing the serious violations of human rights to which Palestinians are subjected or to the de-Palestinization of Jerusalem.²⁴ The main explanation for the anodyne declarations made by the Security Council and the Quartet is to be found in the refusal of the United States to accept the advisory opinion of ICJ or to acknowledge the full suffering of the Palestinian people. Another explanation is to be found in the continued adherence of the Security Council and the Quartet to the road map. The road map²⁵ is a "performance-based and goal-driven road map" drawn up in 2003. Today it is hopelessly out of date. First, it is premised on the attainment of a "final and comprehensive permanent status agreement that ends the Israeli-Palestinian conflict in 2005" and such an agreement is not even in sight at the end of 2005. Secondly, it largely predates the construction of the wall, which has come to symbolize Israeli territorial expansion and oppression in the occupied Palestinian territory. Thirdly, it takes no account of the advisory opinion of ICJ, handed down in July 2004, which today constitutes the authoritative statement on the law governing the Israel-Palestine conflict and which has been recognized as such by three of the members of the Quartet. Fourthly, both Israel and the Palestinian Authority have failed to comply with the essential requirements of the road map. In these circumstances, it is suggested that there is a need for a new road map which takes account of present political realities and is anchored in respect for human rights and the rule of law in the resolution of the conflict.

55. In the prevailing circumstances the Special Rapporteur can do no more than:

- (a) Alert the Commission and the United Nations to the serious situation in the occupied Palestinian territory resulting from the continuing violation of human rights and humanitarian law;
- (b) Appeal to the Commission and the United Nations to extend protection to the Palestinian people;
- (c) Suggest to the Quartet that in future it adopt a position on the Israel-Palestine conflict that takes more account of human rights violations in the occupied Palestinian territory and the refusal of Israel to comply with the advisory opinion of ICJ; and that it revise the road map in accordance with these considerations.

Notes

¹ See A/60/271, report on "Israeli practices affecting the human rights of the Palestinian people in the Occupied Palestinian Territory, including Jerusalem", of 18 August 2005.

² Article 42 of the Hague Regulations of 1907; *In re List and Others (Hostages Trial)*, 15 Annual Digest of Public International Law, Cases 632, 638.

³ *Ha'aretz*, 8 December 2005.

⁴ *Idem*, 1 December 2005.

⁵ According to the Israeli High Court the projected length of the wall is 763 km: *Mara'abe v. The Prime Minister of Israel* H.C.J. 7957/04, para. 3.

⁶ *Ha'aretz*, 8 December 2005, p. 3.

⁷ B'Tselem and Bimkom, "Under the guise of security: routing the separation barrier to enable the expansion of Israeli settlements in the West Bank", December 2005.

⁸ Paras. 20-21.

⁹ *Ha'aretz*, 1 December 2005.

¹⁰ The Israeli High Court itself seems to believe that access to the "closed zone" creates little problem: see *Mara'abe v. The Prime Minister of Israel* H.C.J. 7957/04, paras. 67 and 70. This is a further flaw in the Court's judgement.

¹¹ *Ha'aretz*, 1 December 2005.

¹² *Idem*, 23 November 2005.

¹³ *Idem*, 1 December 2005.

¹⁴ *Idem*, 27 and 30 November 2005.

¹⁵ See B'Tselem, "Means of Expulsion: Violence, Harassment and Lawlessness against Palestinians in the Southern Hebron Hills", July 2005.

¹⁶ The Palestinian girls school of Qurtuba, in particular, has suffered from settler violence.

¹⁷ "The real uprooting is taking place in Hebron", *Ha'aretz*, 11 September 2005.

¹⁸ Peace Now Settlement Report: Eastern Strip of the West Bank, September 2005 (20/10/2005).

¹⁹ B'Tselem, "Land Grab: Israel's Settlement Policy in the West Bank", May 2002, p. 79.

²⁰ See Virginia Tilley, *The One-State Solution*, University of Michigan Press, Ann Arbor, 2005.

²¹ See Machsom Watch, "A Counterinterview: Checkpoints 2004".

²² Palestinian Monitoring Group, "Trend Analysis: Education Under Occupation" (30 October 2005).

²³ See, for instance, its statement of 26 July 2005 contained in the Secretary-General's report (A/60/539-S/2005/701 of 7 November 2005) on Peaceful settlement of the Palestinian question.

²⁴ See the statement of the Quartet on 20 September 2005 contained in the annex to news release SC/8510 of 23 September 2005.

²⁵ The full title of this document is "A performance-based road map to a permanent two-State solution to the Israeli-Palestinian conflict".
