



General Assembly

Distr.  
GENERAL

A/HRC/20/32  
25 May 2012

Original: English

Human Rights Council  
Twentieth session  
Agenda item 7  
Human rights situation in Palestine and  
other occupied Arab territories

**Report of the Special Rapporteur on the situation of human rights  
in the Palestinian territories occupied since 1967, Richard Falk\***

*Summary*

In the present report, while noting the continuing non-cooperation of Israel, the Special Rapporteur underscores the widespread and abusive use of administrative detention procedures by Israel. He calls attention to hunger strikes by Palestinian prisoners in protest against administrative detention. Amid escalating violence by Israel in Gaza, the Special Rapporteur examines Israel's policy and practice of targeted killings.

\* Late submission.

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## I. Introduction

1. As with previous reports,<sup>1</sup> the Special Rapporteur needs to note the continuing non-cooperation of Israel with this mandate. As earlier, the Special Rapporteur, as well as others associated with the Human Rights Council and the Office of the United Nations High Commissioner for Human Rights, has tried unsuccessfully to persuade the Government of Israel to adopt a more constructive posture that accords with its treaty obligations as a State Member of the United Nations. Since the beginning of the Special Rapporteur's tenure in May of 2008, despite repeated efforts, there has not been any alteration of the refusal of Israel to cooperate with this mandate. This has made it impossible for the Special Rapporteur, in his periodic reports, to take into fuller account the official explanations of Israel for the occupation policies and practices that it adopts, especially those that are found to be in violation of international humanitarian law or international human rights law. Despite this non-cooperation, the Special Rapporteur has made every effort to represent the positions of Israel fairly in relation to controversies associated with alleged Israeli violations of human rights relating to its occupation of Palestinian territory since 1967. The recent formal announcement by Israel of a complete refusal to cooperate with the Human Rights Council with respect to the totality of its activities underscores the difficulties confronting this mandate.

2. The Special Rapporteur has attempted in various ways to mitigate the impact of these limitations on his mandate arising from being excluded from the occupied Palestinian territory, and thus unable to meet with Palestinians living under occupation and communicate with Israeli officials administering the territory. Official missions of the mandate in these years have been designed to encourage those with knowledge and experience of the conditions in the occupied Palestinian territory to meet with the Special Rapporteur in neighbouring countries. The Special Rapporteur has relied on well-documented reports and data on various aspects of the occupation from generally reliable sources to identify trends bearing on human rights issues, such as expansion of settlements, settler violence, and house demolitions.

3. In this regard, a mission was undertaken between 10 and 20 February 2012. The principal purpose of the mission was to assess the degree to which conditions of life for refugees residing in neighbouring countries are relevant to the realization of the rights of those subject to the occupation regime within the territory occupied in 1967. This encompasses their efforts to realize the Palestinian right of self-determination. It should be noted that the mission did not investigate whether the refugees were being treated in accordance with international law by their host Governments, as such an inquiry would exceed the geographic scope of the mandate. The Special Rapporteur, especially in the light of the denial of access to the occupied Palestinian territory, believes that it is vitally important to assess to what degree refugee rights are relevant to any negotiated peace arrangement reached between Israel and the designated representatives of the Palestinian people and to any other internationally sanctioned effort to realize Palestinian rights. The intention of the mission was to also visit the Gaza Strip, with an offer of assistance from the Government of Egypt, and also to include visits to refugee camps in Jordan, the Syrian Arab Republic and Lebanon. However, regional conditions gave rise to a number of impediments: security conditions in northern Sinai made travel from Cairo to the Rafah Crossing insecure at the time of the mission, which required the Special Rapporteur to forego the planned visit to Gaza; the civil strife in the Syrian Arab Republic made it impractical to visit Palestinian refugee camps in that embattled country; and the Government of Lebanon rejected the visit to assess the outlook on issues relevant to the mandate among Palestinian refugees in that country.

4. Despite these impediments, the February mission turned out to be very valuable due to the meetings that were held, and the opportunity to focus on some issues that arose during the period of the mission that had not been anticipated. The Special Rapporteur wishes to acknowledge with gratitude the friendly assistance and cooperation he received from the Palestinian Authority, the Governments of Egypt and Jordan, the Arab League, and representatives of Palestinian and Israeli non-governmental organizations (NGOs) that often went to considerable trouble to meet with him, sharing their information and understanding of facts and laws associated with Israeli occupation policies and practices that are relevant to protecting the human rights of the Palestinian people.

5. Several general conclusions emerged from meetings held in the course of the mission, especially those with members of the refugee communities, that have significant implications relating to the protection of the human rights of Palestinians living under occupation:

- (a) Widespread disillusionment with the so-called "peace process" as a path to the realization of Palestinian self-determination;
- (b) Equal disillusionment with the roles played by the Quartet and the United Nations, as well as with the road map to a permanent two-State solution to the Israeli-Palestinian conflict, with respect to the protection of the fundamental human rights of the Palestinian people;
- (c) Rejection of armed resistance as a tool to achieve positive progress toward realization of rights, past armed resistance having led to an intensification of hardships and suffering associated with life under Israeli occupation;
- (d) Widespread support for reliance on various forms of non-violence as the most effective way to move the Palestinian struggle forward and, in this regard, significant support for civil society movements leading such initiatives, including reliance on the BDS campaign (boycott, divestment, and sanctions), pursuit of judicial remedies under universal jurisdiction in relation to alleged international crimes of Israeli political and military leaders, and efforts of humanitarian NGOs to challenge the blockade of Gaza;
- (e) Short-term pessimism about the achievement of Palestinian rights due to Israeli policies, especially expansion of settlements and the purported annexation of East Jerusalem;
- (f) Long-term optimism arising from regional developments, especially the Arab Spring and its demonstration of the transformative potentialities of mobilized popular resistance;
- (g) The importance of including representatives of Palestinian refugee communities in all future moves to reach a sustainable resolution of the core Israel/Palestine conflict;
- (h) Opposition to the "land for peace" formula that over-territorializes the conflict;
- (i) Growing appreciation that the Israeli military occupation that has continued for 45 years requires a special legal regime that takes account of long-term occupation and recognizes the humanitarian need to protect the civilian population by way of a rigorously adhered to rule of law and by the civil governance of institutions, policies and practices;
- (j) Uncertainty pertaining to the future, if any, of the unresolved "statehood bid" by the Palestinian Authority formally presented to the General Assembly on 25 September 2011, followed by admission of Palestine as a member of the United Nations Educational, Scientific and Cultural Organization (UNESCO).

6. It is clear that the views of the refugee communities, while diverging in emphasis from the opinions of Palestinians living in the occupied Palestinian territory, are influential in determining public opinion within the occupied territory, due to the widespread links of close family and community ties. The acceptance or rejection of alternate political approaches or outcomes by Palestinian refugees living outside of the occupied Palestinian territory is one of the key determinants as to whether Palestinians inside the occupied territory are likely to accept or reject a negotiated outcome.

## II. Administrative detention and hunger strikes

7. It was the Special Rapporteur's intention to review the treatment of Palestinians from the occupied Palestinian territory being detained in Israeli prisons as a sequel to the analysis of this dimension of occupation contained in a prior report (A/66/358). What was somewhat unanticipated was the urgency emerging in the occupied Palestinian territory on this issue, requiring the Special Rapporteur to focus even greater attention on the Israeli practice of holding Palestinians under administrative detention during which evidence, if it exists at all, is held in secret, no charges are filed, and no trials held. The number of detainees in administrative detention rose from 286 in September 2011 to 309 in January 2012.<sup>2</sup> What is now called "administrative detention" was formerly known as "internment". Internment was a colonial procedure used to remove individuals from society even if no criminal charges were made. Administrative detention has been relied upon by a large number of countries, especially in recent years, to detain terrorist suspects who are alleged to pose a threat to domestic security, for whom there is either insufficient evidence or the evidence of supposed criminality cannot be made available without exposing sensitive sources of intelligence or illegal practices (such as torture). The practice is highly controversial, and the Working Group on Arbitrary Detention and respected human rights organizations such as Amnesty International allege that the practice is unacceptable from a human rights viewpoint, as it is so often abused to imprison innocent persons who are prisoners of conscience, opponents of policy or organizers of non-violent protests.<sup>3</sup> On the basis of careful examination of high-profile targets of such detention procedures, it seems to be mainly used by Israel against individuals not engaged in violent activities, and hence they are inappropriately held in administrative detention even taking into account the highly questionable rationale of a severe and imminent security threat the nature of which is not disclosed.

8. The current Israeli reliance on administrative detention has become particularly controversial for a series of reasons: frequent use and prolonged confinement of people who seemingly do not pose security threats; exceedingly harsh treatment amounting to cruel and unusual punishment accompanying arrest, interrogation and detention in violation of human rights and international humanitarian law obligations; and conflict with fundamental obligations of an occupying power to uphold the well-being and normalcy of the civilian population living under occupation, as prescribed by the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention).<sup>4</sup> There is another issue generally overlooked in the application of administrative detention, given standard Israeli arrest procedures: the terrifying secondary impact of night-time arrests on family members, especially young children. Psychological studies of Palestinian children 12 and under show a disturbingly high correlation between witnessing a parent beaten or humiliated by Israeli soldiers and the loss by the child of a will to live.

9. In opposition to administrative detention, several Palestinians have highlighted their objections to the practice by engaging in dramatic open-ended hunger strikes that have received widespread international attention from human rights NGOs, public officials, and public opinion, particularly in the region. It should be comprehended that to embark upon a hunger strike of long duration is an extreme form of non-violent protest. It has been used on many past occasions, including famously by Mahatma Gandhi in his struggles against British imperialism and by a group of Irish Republican Army (IRA) political prisoners in the Maze Prison in Northern Ireland, in protest against conditions of their confinement. Ten of these IRA hunger strikers died in prison, with Bobby Sands being the first and most prominent, an event in 1981 that was later credited with leading the British Government to change its approach to the IRA, treating it as a political actor rather than a terrorist organization. This led, a few years later, to the Good Friday Agreement that established an enduring, if fragile, accommodation in Northern Ireland. This background is mentioned to give a political context to the use of hunger strikes as part of the broader Palestinian shift in tactics from armed resistance to an array of non-violent tactics associated with popular resistance.

10. The first of these recent hunger-strike cases involves a Palestinian activist named Khader Adnan, a baker by profession living in a small village near Jenin and spokesperson for the political wing of the Palestinian Islamic Jihad, who had been previously held in administrative detention and was imprisoned by West Bank military authorities on eight separate occasions. Mr. Adnan was arrested at his home at 3 a.m. on 17 December 2011 by a large number of Israeli soldiers, brusquely handled, cuffed and blindfolded in the presence of his pregnant wife and two daughters under the age of 5, and taken off roughly in a military jeep to prison. From the outset of his detention Mr. Adnan commenced a hunger strike, accompanied by a refusal to speak with interrogators until he was released or charged, and similar steps taken to end the practice of administrative detention affecting the hundreds of Palestinians now being held by Israel. Mr. Adnan continued his strike for 66 days, well beyond the time his medical condition was considered to be critical, and despite this visitors reported that Mr. Adnan had both legs and one arm shackled to the bed even while under observation in an Israeli prison hospital. After an appeal to a military tribunal was rejected, on the basis of secret evidence, Mr. Adnan's lawyers appealed to the Israeli Supreme Court, but only minutes before court was scheduled to hear arguments, an agreement was reached in which Mr. Adnan ended his strike and Israel agreed to shorten his period of detention by calculating the duration of his term on the basis of the day of arrest rather than the day that his administrative detention was decreed. He was also given reassurance that his detention would not be extended at the date of expiry absent the surfacing of substantial new evidence against him. Since Mr. Adnan resumed eating, he has had various medical difficulties, reported by Physicians for Human Rights-Israel, including surgery to remove an intestinal blockage that was causing great pain. It is not clear whether Mr. Adnan will recover his full health.

11. A second recent case involves a young unmarried Palestinian woman named Hana Shalabi who also lives in a village near Jenin with her family. She had been among those released in the prisoner exchange on 18 October 2011 that traded 1,027 Palestinians for a single Israeli military soldier. In the months subsequent to this release she had been living quietly with her family, gradually recovering from her prison ordeal that had seemed to render her incapable of normal social interaction, much less militant political activity. Ms. Shalabi was rearrested on 17 February 2012 leading to an administrative detention order of six months, which was subsequently reduced to four months. She was also the victim of an abusive arrest that in some respects resembled the experience of Mr. Adnan, but was even more violent, including to Ms. Shalabi's family members who were present: as many as 100 soldiers making the arrest at her place of residence, rough physical handling, blindfolding, and humiliating insults, including of a brother who tried to protect his sister. After being taken to the Salem Detention Center, Ms. Shalabi was reportedly subject to further beatings, humiliating treatment, and other clear and severe violations of her rights. She began her hunger strike at the outset of this new period of administrative detention. The parents of Ms. Shalabi were also on a hunger strike in solidarity with their daughter. After she had gone more than 40 days without food, Ms. Shalabi's physical condition was reported to be life threatening and deteriorating. Respecting her rights to refuse food, medical experts of the Israeli Prison Service formally declined to mandate force-feeding to end the strike. Her appeal was rejected by a military tribunal that refused to shorten her period of administrative detention, citing secret evidence that she constituted a security threat. The Palestinian Authority's Minister of Prisoners' Affairs reported that Israel had offered to release Ms. Shalabi if she could be transferred from her West Bank home to either Gaza or Jordan, in violation of the Fourth Geneva Convention's prohibition against forcible removal of a protected person from the territory under occupation. On 1 April, Ms. Shalabi was indeed transferred to Gaza on this basis, and barred from returning to her home and family in the West Bank for three years. Aspects of Ms. Shalabi's case have the appearance of a being vindictive response by Israel to her strong opposition to the practice of administrative detention.

12. Both of these highly publicized hunger strikes exhibit the extreme dedication to risk life itself to protest against the practice of administrative detention, especially the use of administrative detention absent any proof of a genuine security threat and the unduly harsh and terrifying Israeli arrest procedures. These developments have called attention to other complaints associated with administrative detention as used against a variety of Palestinians with no known connection to violent activism, as well as to 26 members of the Palestinian Legislative Council who have been detained without charges for several years for no apparent reason other than that they were elected in the 2006 elections. These hunger strikes have not only highlighted the violative use by Israel of administrative detention, but also have mobilized others currently held in detention to engage in open-ended hunger strikes and activated Palestinian solidarity initiatives among Palestinians living under occupation and others elsewhere. For instance, there is a large public mural in a public space in Belfast, Northern Ireland with images of Mr. Adnan and Ms. Shalabi and statistics about overall Palestinian imprisonment. So far, Israel has exhibited no disposition to abandon, or even review, its reliance on administrative detention as a regular aspect of occupation, or other contentious aspects of its prison policy, including its unlawful transfer of prisoners outside of the territory held under occupation. Israel did relent slightly at the last hour in relation to Mr. Adnan, reaching an agreement with his lawyer, seemingly to avoid having a hunger striker die and become a martyr for his people, which might possibly have sparked Palestinian resistance activity.

13. It is the judgment of the Special Rapporteur that the use of administrative detention, other than in rare circumstances where a demonstration of extraordinary and imminent security justification supported by evidence is made before a judge in conference with the lawyer of the defendant, who is given an opportunity to contest evidence and charges, constitutes a violation of the rights of a protected person under international law. Several provisions of the Fourth Geneva Convention make unlawful the arrest and detention procedures relied upon by Israel in its treatment of Ms. Shalabi. Article 3, paragraph 1, contains the general directive that all persons held by an occupying authority "shall in all circumstances be treated humanely", which is elaborated upon in article 27 in a manner relevant to Ms. Shalabi's treatment: "Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity." Further, articles 71 to 73 indicate that any kind of prison sentence must be pronounced by a "competent" court in which the

person accused has access to the evidence against them and the opportunity to present evidence with the assistance of legal counsel. Articles 7, 9, and 10 of the International Covenant on Civil and Political Rights are clear in their prohibition of "inhuman and degrading treatment" and of "arbitrary detention" as well of the rights of anyone accused of criminal conduct to have an opportunity to mount a defense in a competent court. For instance, article 9, paragraph 2 declares: "Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of the charges against him."

14. It is time, in the judgment of the Special Rapporteur, that the Human Rights Council initiate specific action to condemn the reliance on administrative detention in relation to Palestinian civilians living under prolonged occupation. After 45 years, it is no longer credible to contend that the special security considerations that gave rise to the administrative detention law during the period of British Mandate control of Palestine still should allow military administrators to routinely order administrative detention, often for years. Under these circumstances it would be appropriate for the Council to act on its concerns regarding reliance by Israel upon administrative detention, and possibly its broader concerns regarding Israeli occupation policies, by commissioning a study of the practice of administrative detention in relation to the obligations of an occupying power towards an occupied people. The current series of ongoing hunger strikes, which may well represent only the beginning of a broader trend, are shining a bright light on the malpractice of administrative detention, and more generally on Israeli prison conditions, challenging the United Nations to take action. It should be noted that the practice of administrative detention is now also in use by a number of other Governments in the context of "anti-terrorism" policies; some of those Governments appear to be relying on the Israeli model, thus raising the violations of international law and human rights inherent in administrative detention to the level of an international, not only Israeli, concern.<sup>5</sup>

15. During the mission, the Special Rapporteur met with the Minister of Prisoners' Affairs of the Palestinian Authority, Issa Qaraqe, who provided further information on the current scope of administrative detention, but also discussed the full range of grievances associated with conditions confronting the approximately 4,300 Palestinians currently confined to Israeli prisons. Among the violations that the Minister mentioned were the following: denial of family visits for periods as long as five years; frequent imposition of solitary confinement, sometimes for as long as 10 years, with severe psychological and physical harmful effects; reliance on an "illegal combatant law" to permit continued detention after the term of imprisonment has expired, applied to nine prisoners from Gaza; detention of children for long periods without family access and held far from the place of residence, with reports of torture and coerced confessions; and initial interrogations frequently held at Israeli settlements beyond the reach of the International Committee of the Red Cross, family members and lawyers. The large number of Palestinians languishing in Israeli jails is itself a violation of the Fourth Geneva Convention, article 76, which requires that detention take place within the territory under occupation, and prohibits their transfer to prisons in the territory of the occupying power. It is a tragic display of double standards that so much international attention, even solemn international appeals, were dedicated to a single Israel soldier held in captivity for several years, while no significant effort is made to secure the release of or ensure that international prison standards are being met with regard to thousands of Palestinian prisoners.<sup>6</sup>

### III. Extrajudicial executions in Gaza by Israel

16. The targeted killing of Palestinian individuals amounts to extrajudicial execution or assassination—a de facto form of summary execution of an individual that provides no opportunity for a legal defence or even judicial review, denying the accused any possibility to demonstrate innocence and to receive the comprehensive protection of due process. In the 1990s, Israel strongly rejected accusations that it engaged in targeted killing. The Israel Defense Forces (IDF) issued a statement in response at that time: "There is no policy, and there never will be a policy or a reality, of wilful killings of suspects ... the principle of the sanctity of life is a fundamental principle of the IDF".<sup>7</sup> Despite such an affirmation, Israel has subsequently openly and extensively relied on targeted killing, resulting in an estimated 287 Palestinians being killed, mainly in Area A of the West Bank or in Gaza between 2002 and 2008, 234 of whom were targeted, the others being identified as "collateral damage".<sup>8</sup>

17. Clearly demonstrating the falseness of the purported rejection by the IDF of "wilful killing of suspects," the Israeli Supreme Court set forth four conditions governing what it deemed to be the lawful recourse to targeted killing.<sup>9</sup> The Supreme Court's finding was based on the idea that the targeted person must be "directly participating in hostilities", and rejected the Government's claim that it was permissible to treat suspects as "unlawful combatants" who could be killed regardless of their immediate activity.<sup>10</sup> In subsequent instances of targeted killing, the IDF has not conformed to those Supreme Court guidelines, which themselves still stand in violation of the prohibitions of targeted killing under international law.<sup>11</sup> On the contrary, Israel has relied on this tactic, recently using drone attack aircraft, especially in Gaza. Beyond the overarching illegality of targeted assassination, such attacks often kill or wound others than the identified target, and in any event such intrusions of violence spread terror among the general population.

18. The concern of the Government of Israel regarding the potential danger facing its citizens who live within the range of rocket and/or mortar fire from Gaza is appropriate, but cannot justify provocative actions that are themselves in direct violation of international law in response. It should be noted that one of the most successful examples of the suppression of such rocket fire was enabled by a negotiated ceasefire, namely the one held between Israel and Gaza in 2008, until it was breached by a lethal Israeli bombing attack in Gaza on 5 November 2008. It is also notable and understandable that the world media is attentive to Israeli concerns regarding the reported one million Israelis that live within range of Gaza rocket and mortar fire, a situation which, although rarely resulting in Israeli casualties, definitely spreads acute fear among the general population. What is not reasonable, however, is to ignore the far more insecure, and in fact physically perilous, existence that has been inflicted upon the 1.5 million Gazans who have been living within the confines of a military blockade for more than five years, or to treat as a mere statistic the circumstances of the numerous Palestinians killed or wounded by Israeli military attacks and who die unnecessarily because of restrictions on travel or restrictions on medical services or supplies imposed by Israel. Unlike the Israelis, the Palestinians enduring such vulnerabilities have no "Iron Dome" anti-missile system to offer the population some measure of protection or militarily relevant retaliatory capabilities. The most recent exchange of fire across the Israel/Gaza border shows this vast disparity: 25 Palestinians killed, including several children, with no serious Israeli casualties. What is notably unusual, even gross, is that a sport-like, score-keeping approach has become a popular feature of Israeli media when its military launches attacks against Gaza.<sup>12</sup>

19. The recent upsurge of violence by Israel in Gaza is illustrative of a pattern that has been repeated on several occasions, generating fear and anxiety on both sides of the border. In the above-mentioned instance, relative calm in cross-border relations had existed for several months. It was interrupted from time to time, principally by Israeli border security personnel shooting Palestinians who strayed into the broad buffer zone enforced by Israel on the territory of the Gaza Strip, which restricts the use of approximately 29 per cent of the land mass in Gaza.<sup>13</sup> This calm was broken on 9 March 2012 by the targeted killing of Zohar el-Keisi, Secretary-General of the Popular Resistance Committees in Gaza, who was alleged, although without any show of evidence, to be planning "a terrorist incident". What followed was the predictable escalation: in response to the attack by Israel, approximately one hundred rockets were fired at Israel, many of which were intercepted by the Iron Dome anti-missile system; most others fell harmlessly, except for several rockets that did some damage to a school in the Beer Sheva area and wounded eight Israelis. The Israel Air Force responded with strikes killing 16 Palestinians alleged to be militants and several others. Palestinian groups beyond the direct control of the de facto authorities of Gaza, namely the Popular Resistance Committees and the Islamic Jihad, responded with several hundred more rockets, and this provoked further retaliatory raids by Israel that killed and wounded several dozen Palestinians. Throughout the several days of attacks the de facto authorities in Gaza repeatedly indicated their readiness to restore the ceasefire, which they have consistently maintained, with the exception of seeming to allow retaliation in response to targeted killings by Israel.

20. This renewed violence has been described by Israeli commentators as "planned escalation" with the intention of testing the new Iron Dome anti-missile system under battlefield conditions, and possibly to thwart some future attack launched by Palestinian militants from across the border in the northern Sinai region of Egypt. Roni Shaked described the "nature of the vicious terror circle" as follows in the largest Israeli daily, *Yedioth Ahronoth*: "targeted killing, retaliatory rocket attack, Israeli response, revenge reprisal, and so on and so forth."<sup>14</sup> Writing in *The Jerusalem Post*, Yaakov Katz, with apparent access to official Israeli sources, called attention to an attack of a few months ago that killed eight Israeli soldiers near the Egyptian border, and claimed that this attack last August was organized by Mr. el-Keisi, and that a new attack of a similar sort was in the planning stages and needed to be avoided by a pre-emptive strike of this nature. Mr. Katz indicated that Israeli authorities anticipated a retaliatory response of 100 rockets per day during the period of the attacks, but concluded that "this was a price the government felt it was capable of paying". The fuller rationale for the sequence was described by Katz in chilling language as being "maintenance work" in Gaza, "to mow the lawn ... with regard to terrorism", and thereby boost deterrence and defer another round of violence.<sup>15</sup>

21. What seems steadfastly overlooked in Israel and elsewhere has been the resolve of the governing authorities in Gaza to renounce violence (except to prevent retaliation). This is a development criticized by more militant groups in Gaza, including the Islamic Jihad, along with the reality often ignored by the international media that the recent flare-ups of violence have resulted from Israel having initiated violent, lethal and unlawful action, including in this instance the targeted killing of Mr. el-Keisi. Such commentary is not meant to minimize the genuine anxiety about the rocket attacks in southern Israel, but it is to take account of the potential to improve security on both sides of the border between Israel and the Gaza Strip through negotiations rather than reliance on extrajudicial killings and other forms of extreme violence.

22. There are several conclusions to be drawn in relation to this continued troubled relationship between Israel, the occupying power, and the occupied Gaza Strip: (a) targeted killing is both a violation of international law and understood to be a provocation leading to further lethal violence; (b) the de facto authorities in Gaza do not themselves engage in retaliation and they seek to maintain an effective ceasefire, but seemingly permit or are unable to prevent some militant factions in Gaza from firing rockets in response to a prior Israeli attack; (c) Israel continues to rely on excessive or disproportionate use of force in Gaza, thereby continuing what was referred to as the Dahiya doctrine in the report of the United Nations Fact-Finding Mission on the Gaza Conflict (A/HRC/12/48), whenever its security interests are engaged—comparative casualty figures bear out this line of reasoning; (d) there are risks of a second massive Israeli attack on the Gaza Strip, likely to be a larger scale Operation Cast Lead, an attack on Gaza from land, sea and air that continued for three weeks, which inflicted heavy civilian casualties and caused extensive damage to civilian properties, especially homes<sup>16</sup>

23. The Special Rapporteur believes that there is renewed urgency for the international community to respond to these developments, as well as to the continuing Israeli rejection of negotiated ceasefire in favour of its pattern of reliance on targeted assassination and other extrajudicial killings. The parallel need for "speaking with one voice", so recently heard in the Security Council's statement of 21 March 2012 regarding the Syrian Arab Republic (S/PRST/2012/6), could be applied to the Gaza crisis as well. Relying on the General Assembly-endorsed principle of the responsibility to protect, the Security Council called on the Government of the Syrian Arab Republic to "immediately cease troop movements towards, and end the use of heavy weapons in, population centres, and begin pullback of military concentrations in and around population centres ... [and] bring about a sustained cessation of armed violence in all its forms by all parties with an effective United Nations supervision mechanism". The statement continued that "similar commitments would be sought ... from the opposition and all relevant elements to stop the fighting ... and to bring about a sustained cessation of armed violence in all its forms by all parties". If the responsibility to protect is to attain legitimacy as an application of international law, it must be applicable everywhere, in particular the situation of prolonged occupation that prevails in the occupied Palestinian territory. Otherwise, the responsibility to protect will be discredited due to selective application.

#### **IV. Settlement expansion**

24. Settlement expansion has accelerated in the course of the last several months. At least 3,500 units were under construction in 2011, and 1,850 buildings were being built for housing units. This does not include Israeli settlement construction in East Jerusalem.

##### **A. Settlement outposts**

25. The most significant development bearing on settlement expansion, and of primary importance to the Israeli settlement project overall, is reflected in a series of moves by the Government of Israel that purport to "legalize" 100 or so settler "outposts". They had been previously regarded as illegal even under Israeli law because they were not constructed on Government-held land in Area C. In this area, approximately 450,000 Israeli settlers live in settlements held to be "legal" under Israeli law while remaining, as are all settlements, illegal under international humanitarian law, under the Fourth Geneva Convention (art. 49, sixth paragraph).

26. The Ministry of Justice has established a committee for examining private lands in Judea and Samaria, headed by a former Israeli Supreme Court Chief Justice, Edmond Levy, who spoke out publicly against removing Israeli settlers from Gaza. The Committee also includes in its membership Alan Baker,<sup>17</sup> a prominent international lawyer and former Government official who previously authored a "legal opinion" that found that the settlement outposts should be legalized under Israeli law provided only that Palestinian owners of the land were paid compensation and that the settlement was established in good faith. Given the geographic dispersion of the settlements throughout the West Bank, if the purported legalization takes place as expected, it would make clear beyond any reasonable doubt that a viable and independent Palestinian State will not be established. It would bring to finality the seemingly endless assertions that settlement expansion "is making" or "might make" a two-State solution impossible, and force recognition that the expansion of illegal Israeli settlements has already made the creation of a viable, contiguous Palestinian State, and thus a just, lasting and comprehensive "two-State solution," impossible.

27. Plans exist to convert outposts, usually consisting of temporary house trailers strung together, into settlements consisting of several hundred housing units. If this dynamic of legalization, which has so far mainly flown below the radar of international public perception, is formalized, it is likely to be viewed as a major provocation by Palestinians. It should be noted that in the past several months, the attempts by Israel to enforce its own law regarding these outposts, most prominently the Migron outpost, have perversely generated retaliatory violence against Palestinian persons and property by Israeli settlers, known as "price tag" reprisals. This insulting term refers to the practice of Israeli settlers burning Palestinian olive groves, destroying agricultural land, or attacking Palestinian residents or their buildings, including mosques, in their own towns or villages, and identifying those attacks as the "price tag" for actions taken by the IDF and the Government of Israel against the outposts.

28. In a recent development, the Israeli High Court of Justice issued a judgment requiring the structure on the Migron outpost to be removed by 1 August 2012, thus rejecting the request of the State of Israel to postpone the dismantling of this large and controversial outpost until November 2015. Although Prime Minister Benjamin Netanyahu declared that the Government of Israel operates in accordance with Israeli law, past experience suggests that Israeli authorities back off in the face of settler resistance, which has already been threatened in relation to dismantling Migron. It should be noted that several years ago, Israeli authorities pledged, at the urging of the Quartet, to remove two dozen outposts established after 2001 as a confidence-building gesture in relation to the push for negotiations by those insisting that the Road Map is the only path leading to a peaceful resolution of the conflict, but has never done anything to carry out the pledge.<sup>18</sup>

29. Israeli law has up to now viewed the outposts as illegal because they are on private Palestinian land, but this is changing. On 24 April 2012, the Government of Israel purported to "legalize" three of the older outposts—Bruchin, Roehelin, and Sansana—in what appears to be a trend towards abandoning its formal distinction between legal and illegal settlements. In practice Israel has consistently used its soldiers to protect outpost settlers and has connected the outposts to electricity grids, which signifies a normalization of their existence. If all outposts are taken into account, it is estimated that there are more than 100 spread throughout the West Bank, in addition to the 120 official settlements.

##### **B. Settler violence**

30. The settlements are unlawful, and impede Palestinian hopes for a sustainable peace based on the withdrawal by Israel from the lines that were outlined in Security Council resolution 242 (1967), adopted unanimously in the immediate aftermath of the 1967 war. These settlements have been the cause of serious secondary harm to Palestinians living under occupation. The most obvious harm is associated with the appropriation of land for the construction of settler-only roads linking settlements to each other and to pre-1967 Israel. Equally harmful is the surge of settler violence directed against Palestinian persons and property, which creates a continuing atmosphere of violence and insecurity, if not terror, in several regions of the West Bank, including East Jerusalem. Hebron and its surroundings seem

particularly afflicted by frequent incidents of settler violence and reports of constant high tensions between Israeli settlers and the indigenous population, including young schoolchildren who are often threatened or even assaulted by Israeli settlers on their way to school. What is also troubling is the tendency of the Israeli military forces to protect the settlers during their violent rampages, and to fail to investigate and apprehend Israeli settlers responsible for violent assault and destruction of property. The latest statistics reinforce this unfortunate reality associated with the continuation of prolonged occupation, and are a dramatic example of the consequences of that occupation on Palestinians living for decades in a setting of rightlessness, disempowerment and vulnerability due to the lack of the protection of the rule of law.

### **C. Demolition of homes and other structures**

31. While in Amman, the Special Rapporteur's delegation met with the leaders of the Israeli Committee Against House Demolitions, a widely respected NGO that has opposed these demolitions as unlawful instances of collective punishment and violations of Palestinian property rights. Also participating in the meeting was a Palestinian resident of the West Bank, Salim Shawanreh, who has had his house demolished on five separate occasions on the grounds that he lacked the proper construction permit, which he had dutifully applied for on numerous occasions without gaining Israel's permission to build. His case is illustrative of a common Palestinian complaint that their property rights are indirectly usurped through the denial of formal permits and the subsequent issuance and execution of demolition orders, which are often executed in the middle of the night with no advance notice to the inhabitants. For instance, in the case of Mr. Shawanreh, he was given 15 minutes to remove any family belongings or furniture. The recent statistics show that a total of 262 structures, both residential and non-residential, were demolished in the West Bank from September 2011 through January 2012.<sup>19</sup> In the week of 8–14 February alone, over 40 structures were demolished, which displaced 126 Palestinians, including 62 children. It was the highest number of demolitions reported in a week since June 2011.<sup>20</sup>

32. For Palestinians living under occupation in the occupied Palestinian territory, the consequences of this policy of displacement are severe. According to the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the actions by Israel of dispossession in Occupied East Jerusalem and the West Bank (as well as towards the Palestinian citizens of Israel itself) amount to a "strategy of Judaization".<sup>21</sup> She found that "the Israeli authorities promote a territorial development model that excludes, discriminates against and displaces minorities, particularly affecting Palestinian communities", and that such exclusion exists "side by side with the accelerated development of Jewish settlements".<sup>22</sup> The Special Rapporteur expanded upon her comment, concluding that "as a whole, it is clear that Israeli policies and practices for the Palestinian population in East Jerusalem and the West Bank violate international human rights and humanitarian law".<sup>23</sup>

### **V. Gaza blockade and current conditions**

33. The Special Rapporteur continues to be concerned about the human rights and humanitarian consequences of the illegal blockade of the Gaza Strip by the occupying power, but remains even more concerned about the denial of the right to self-determination inherent in the continuing Israeli occupation of Gaza. While the Israeli settlers were withdrawn in 2005, and the permanently stationed Israeli soldiers were withdrawn to the borders of the Strip, Gaza remains occupied by Israel. The form of occupation changed, but the occupying power remains in full control of the borders and even buffer zones on the Gaza side of the borders; the entry and exit of all people, goods and services into and out of Gaza and thus the entire economic growth or stagnation of Gaza; and the coastal waters, air space and underground of the territory of Gaza. Of course Israeli military forces also continue to use force against Gaza, frequently in violation of the Geneva Conventions relating to the protection of victims of international armed conflicts. Most of the land borders of the Gaza Strip remain surrounded by an Israeli-controlled wall. The level of the political, economic, social and military control by Israel over a Gaza ensures that Gazans, like their counterparts in the West Bank, have no means of exercising their internationally recognized right of self-determination.

34. Gaza remains fundamentally blockaded, although for the first time since the blockade started in July 2007, there have been some extremely limited and exceptional adjustments to restrictions on the scope of permissible imports and the allowance of a minute amount of exports after months of negotiations. Specifically, 13 truckloads of date bars for school lunches given to Palestinian children living in the West Bank have been allowed to leave Gaza, along with two truckloads per week of overseas exports. But even this small adjustment of restrictions appears to be temporary and limited to the occasion, and has had no discernible effects on the overall Gaza economy, which remains stalled since the Israeli blockade was established.

35. Current figures from the Office for the Coordination of Humanitarian Affairs disclose that 40 per cent of Gazans live below the poverty line, 28 per cent of the labour force is unemployed, and 75 per cent of the population is dependent on regular foreign assistance as dispensed by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA).<sup>24</sup> Furthermore, the majority of the Gaza population continues to be confronted by regular power cuts of 8 to 16 hours per day due to fuel shortages, and from time to time the shutdown of the Gaza power plant creates a 60 per cent electricity deficit, producing loss of power for up to 18 hours per day. In addition to the extreme difficulties of this electricity shortage for the general population, these power cuts have caused acute danger to hospital patients, particularly cardiac and dialysis patients and babies dependent on incubators. There are special difficulties confronting the fishing sector of the Gaza economy, where a 90 per cent poverty level exists, explaining the large number of young children working to maintain subsistence levels for families in this poorest group. Fishermen face frequent attacks from Israeli patrol boats, with 93 such attacks reported in 2011.<sup>25</sup>

### **VI. Housing in Gaza**

36. The restriction on the import of construction materials has prevented or delayed the repair of damage done to Palestinian housing caused by Operation Cast Lead in 2008/09. It has also made Palestinians more dependent on tunnel smuggling and black markets. It is estimated that 10 times more construction materials (especially concrete and steel bars) are imported via the tunnels than are allowed to enter legally at the Kerem Shalom crossing. It has been reported that the blockade prevents international relief efforts from providing safe and adequate housing for the civilian population in Gaza subject to continuous occupation since 1967. The Special Rapporteur on adequate housing visited Gaza on 7 and 8 February 2011, and had this to report on the overall situation:

"I am gravely concerned at information received that only a minority of the projects aimed at improving housing and vital services in Gaza, which have been submitted for approval by the international community, have been approved by the authorities. I have raised these concerns with the Israeli authorities who have informed me of their efforts to address this situation and of upcoming measures. I would like to urge Israel to end the blockade in order to ensure that the minimum needs of the population living in Gaza are met."<sup>26</sup>

### **VII. Right of self-determination**

37. It is beyond controversy that the Palestinian people enjoy an inalienable right of self-determination that is confirmed by article 1 of both the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights, as well as being set forth in the Charter of the United Nations. The General Assembly and the Security Council have both confirmed that the right of self-determination is possessed by the Palestinian people, and should be realized through a sustainable solution to the conflict.<sup>27</sup> The International Court of Justice viewed the construction of the separation wall on occupied Palestinian territory as a violation of the right of self-determination belonging to the Palestinian people.

### **VIII. Recommendations**

38. The Special Rapporteur recommends that:

- (a) In the light of widespread abusive administrative detention procedures and practices, a resolution of censure be adopted by the Human Rights Council, and a special body be tasked with preparing a detailed study of the application of administrative detention as applied by Israel in the occupied Palestinian territory;
- (b) In view of the persistence of occupation for nearly half a century, with no end in sight, the Human Rights Council should commission a study of the adequacy of international humanitarian law to cover the situations caused by prolonged occupation and provide Israel and the international community with appropriate recommendations;
- (c) Support be given for a request to the International Court of Justice for an Advisory Opinion on the Israeli practice of transferring detained Palestinians to prisons in Israel, denying normal visitation rights, possibly joined to a broader request for legal clarification of the special character of prolonged belligerent occupation;
- (d) The Human Rights Council take emergency notice of an Israeli legislative initiative that purports to legalize settlement "outposts", currently unlawful under Israeli law, which would both further increase Israeli settlement land claims and correspondingly undermine Palestinian rights, including with respect to Palestinian self-determination;
- (e) The Human Rights Council should give increased attention to the refusal by Israel to cooperate with the normal functioning of the United Nations by way of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967.

Notes

<sup>1</sup> See, for example, A/HRC/16/72 and A/HRC/13/53.

<sup>2</sup> B'Tselem, detention statistics, available from [www.btselem.org/administrative\\_detention/statistics](http://www.btselem.org/administrative_detention/statistics).

<sup>3</sup> See, for example, reports of the Working Group on Arbitrary Detention A/HRC/4/40 (para. 41) and A/HRC/10/21 (para. 54). See also Amnesty International's analysis at [www.amnesty.org/en/ai\\_search?keywords=administrative%20detention&op=Search&form\\_id=search\\_theme\\_form&form\\_token=48e71c33a438fc234e25f6718caa142c](http://www.amnesty.org/en/ai_search?keywords=administrative%20detention&op=Search&form_id=search_theme_form&form_token=48e71c33a438fc234e25f6718caa142c).

<sup>4</sup> The basic profile of the use by Israel of administrative detention during the years 2011-2012 has been summarized by B'Tselem and is available from [www.btselem.org/administrative\\_detention/statistics](http://www.btselem.org/administrative_detention/statistics).

<sup>5</sup> For video on administrative detention and hunger strikes, see [http://therealnews.com/t2/index.php?option=com\\_content&task=view&id=31&Itemid=74&jumival=8123](http://therealnews.com/t2/index.php?option=com_content&task=view&id=31&Itemid=74&jumival=8123)

<sup>6</sup> Further information is available at the website of B'Tselem: [www.btselem.org/statistics/detainees\\_and\\_prisoners](http://www.btselem.org/statistics/detainees_and_prisoners).

<sup>7</sup> Cited in Lisa Jajjar, "Lawfare and targeted killing: developments in the Israeli and US contexts", *Jadaliyya*, 15 January 2012. Available from [www.jadaliyya.com/pages/index/4049/lawfare-and-targeted-killing-developments-in-the-i](http://www.jadaliyya.com/pages/index/4049/lawfare-and-targeted-killing-developments-in-the-i).

<sup>8</sup> It is noted that these figures do not include killings that occurred during Israel's war on Gaza, Operation Cast Lead.

<sup>9</sup> See *The Public Committee against Torture in Israel et al. v. The Government of Israel et al.*, judgement of the Israeli Supreme Court, HCJ 769/02, 13 December 2006. Available from [http://elyon1.court.gov.il/Files\\_ENG/02/690/007/a34/02007690.a34.htm](http://elyon1.court.gov.il/Files_ENG/02/690/007/a34/02007690.a34.htm).

<sup>10</sup> *Ibid*.  
<sup>11</sup> For a detailed and wide ranging consideration of the status of targeted killing, see the authoritative study by the Special Rapporteur on extrajudicial, summary or arbitrary executions (A/HRC/14/24/Add.6).

<sup>12</sup> For example, on Channel 10 in Israel, a graphic scoreboard was broadcasted depicting the "score" of killings as 25 Palestinians against zero Israelis.

<sup>13</sup> Information received during the mission in February 2012.

<sup>14</sup> Roni Shaked, "Targeted-killing policy is backfiring on Israel," *Yedioth Ahronoth*, 11 March 2012, translation available from [www.al-monitor.com/pulse/contents/articles/security/01/03/targeted-killings-are-no-longer.html](http://www.al-monitor.com/pulse/contents/articles/security/01/03/targeted-killings-are-no-longer.html).

<sup>15</sup> Yaakov Katz, "Analysis: easy to start, hard to end", *Jerusalem Post*, 10 March 2012. Available from [www.jpost.com/Defense/Article.aspx?id=261274](http://www.jpost.com/Defense/Article.aspx?id=261274).

<sup>16</sup> For influential public advocacy of such an attack, which is often alluded to by Israeli journalists and officials, see Efraim Inbar and Max Singer, "The Opportunity in Gaza," BESA Center Perspectives Paper No. 167 (Begin-Sadat Center for Strategic Studies), 15 March 2012.

<sup>17</sup> Tovah Lazaroff, "Netanyahu names c'tee to examine outpost issue", *Jerusalem Post*, 30 January 2012. Available from [www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=255784](http://www.jpost.com/DiplomacyAndPolitics/Article.aspx?id=255784)

The Association for Civil Rights in Israel, "Attempting to Distinguish Settlements from Outposts Creates a False Distinction," 30 April 2012 [www.acri.org.il/en/2012/04/22/attempting-to-distinguish-settlements-from-outposts-creates-a-false-distinction/](http://www.acri.org.il/en/2012/04/22/attempting-to-distinguish-settlements-from-outposts-creates-a-false-distinction/)

<sup>18</sup> See Security Council resolution 1515 (2003), in which the Council endorsed the Quartet Performance-based Roadmap to a Permanent Two-State Solution to the Israeli-Palestinian Conflict.

<sup>19</sup> Office for the Coordination of Humanitarian Affairs (OCHA), *Monthly Humanitarian Monitor* (January 2012), p. 12.

<sup>20</sup> OCHA, *Protection of Civilians Weekly Report* (8-14 February 2012), p. 2.

<sup>21</sup> Special Rapporteur on adequate housing, "Israel's policies violate right to housing and need urgent revision", press release of 13 February 2012.

<sup>22</sup> *Ibid*.

<sup>23</sup> Preliminary remarks of the Special Rapporteur on adequate housing on her mission to Israel and the occupied Palestinian territory. Available from [www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11815&LangID=E](http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=11815&LangID=E).

<sup>24</sup> Information received during the mission in February 2012.

<sup>25</sup> UNRWA Gaza Field Office, *Gaza Weekly Update* (2-8 January 2012).

<sup>26</sup> Preliminary remarks of the Special Rapporteur on adequate housing (note 23 above).

<sup>27</sup> This was confirmed by the Commission on Human Rights in its resolution 2005/1.