

## UNITED NATIONS INTERNATIONAL MEETING ON THE QUESTION OF PALESTINE

*The question of the Palestinian political prisoners in Israeli prisons and detention facilities:  
legal and political implications*

United Nations Office at Geneva, 3 and 4 April 2012

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### Executive summary

The International Meeting on the Question of Palestine focused on the plight of Palestinian political prisoners, who were being held in Israeli prisons and detention facilities in contravention of the Fourth Geneva Convention. Among those incarcerated by the Israeli authorities were members of the Palestinian Legislative Council, women and children, as well as persons with disabilities. The meeting reviewed the legal and humanitarian aspects of the arrest and detention of Palestinians, their status in international law and ways of strengthening the role of the wider international community in promoting a solution to their plight, as well as their reintegration into Palestinian society.

Experts debated possible strategies the Palestinian Authority could adopt with regard to the problem of Palestinian prisoners, raising the possibility of mobilizing Palestinian prisoners across Israeli detention facilities to stage a coordinated mass hunger strike. The aim of such a strike would be to force Israel to change course and treat Palestinian prisoners more humanely. Criticizing the fact that the use of administrative detention had become the rule, rather than the exception, participants called for the situation to be referred to the International Court of Justice. Experts debated thoroughly whether the status of prisoner of war should be accorded to Palestinian political prisoners. They also called for the establishment by the United Nations of a commission of inquiry into the situation of Palestinian political prisoners. The International Committee of the Red Cross was asked to regularly visit Israeli detention centres to ensure that minimum standards were applied. Experts and participants alike called on the

international community to review its cooperation agreements with Israel and freeze them until Israel lived up to its international obligations.

Participants expressed concern about Israel's unabated use of administrative detention, noting that hundreds of Palestinians, including women and children, were held in Israeli jails without having been charged or indicted. Experts added that the Israeli Government was in breach of its international obligations by excessively relying on administrative detention, holding Palestinian prisoners in detention facilities outside the Occupied Palestinian Territory and by subjecting them to inhuman and degrading treatment. Participants called on the High Contracting Parties of the Fourth Geneva Convention to convene a conference in order to establish enforcement mechanisms and ensure compliance with international law by all States parties.

Participants also called on the international community to address the plight of Palestinian prisoners. They demanded that Israel comply with international law, discontinue the use of administrative detention and stop the inhumane treatment of Palestinian prisoners in Israeli detention facilities. Experts also drew parallels to the situation of political prisoners in South Africa and Namibia under apartheid. They pointed out that concerted international action against the apartheid regime contributed decisively to a resolution of the issue. Participants concurred that the issue of Palestinian prisoners needed to be addressed as part of a comprehensive settlement with the ultimate goal of realizing the two-State solution.

## I. Introduction

1. The United Nations International Meeting on the Question of Palestine was held in Geneva on 3 and 4 April 2012, under the auspices of the Committee on the Exercise of the Inalienable Rights of the Palestinian People (the Committee) and in accordance with the provisions of General Assembly resolutions 65/14 and 65/15 of 30 November 2011. The theme of the meeting was "The question of Palestinian political prisoners in Israeli prisons and detention facilities: legal and political implications".

2. The Committee was represented at the meeting by a delegation comprising Abdou Salam Diallo (Senegal), Chair of the Committee; Zahir Tanin (Afghanistan), Vice-Chair; Pedro Núñez Mosquera (Cuba), Vice-Chair; Christopher Grima (Malta), Rapporteur; and Riyad Mansour (Palestine).

3. The meeting consisted of an opening session, three plenary sessions and a closing session. The themes of the plenary sessions were: "The current situation of Palestinian political prisoners in Israeli jails and detention facilities - legal and humanitarian aspects"; "The legal status of Palestinian political prisoners in international law"; "The issue of Palestinian political prisoners and the Israeli-Palestinian political process".

4. At the meeting, presentations were made by 15 speakers, including Palestinian, European and African experts. Representatives of 66 Governments, Palestine, 6 intergovernmental organizations, the International Committee of the Red Cross, 8 United Nations bodies, 15 civil society organizations, 5e media outlets, and special guests and members of the public attended the meeting.

5. The summary of the Chair of the Committee on the Exercise of the Inalienable Rights of the Palestinian People on the outcomes of the meeting (see annex I to the present report) was published shortly after the meeting concluded and is accessible on the website of the Division for Palestinian Rights of the United Nations Secretariat at [www.un.org/depts/dpa/gpa/calendar.htm](http://www.un.org/depts/dpa/gpa/calendar.htm).

## II. Opening session

6. A statement was delivered on behalf of **Ban Ki-moon**, the Secretary-General of the United Nations, by his representative at the Meeting, Maxwell Gaylard, Deputy United Nations Special Coordinator for the Middle East Peace Process and United Nations Coordinator for Humanitarian and Development Activities in the Occupied Palestinian Territory. In his statement, the Secretary-General said that the Middle East Peace Process was at a dangerous stalemate. He referred to issues on the ground that required urgent attention, including the plight of Palestinian prisoners held in Israeli detention facilities, which numbered approximately 4,400 individuals, including 200 minors, and more than 300 prisoners under administrative detention. The Secretary-General also expressed concern over the arrests of elected members of the Palestinian Legislative Council.

7. The Secretary-General stated that administrative detention should only occur in exceptional circumstances, for short periods and without prejudice to the rights guaranteed to prisoners. He called on Israel to respect its international obligations, including the Fourth Geneva Convention. He said that the release of some Palestinian prisoners to the Palestinian Authority would be an important trust-building measure.

8. In conclusion the Secretary-General reiterated his vision of a viable Palestinian State living side by side in peace with a secure Israel. Noting that this vision was long overdue, the Secretary-General stressed that the only way to achieve that fundamental goal was through negotiations that resolved all permanent status issues, including negotiations on borders, security, refugees, water and Jerusalem. Political momentum in the months ahead was essential and all must make serious progress towards peace and create a positive dynamic in Israeli-Palestinian relations, including on the issue of Palestinian prisoners.

9. **Abdou Salam Diallo**, Chair of the Committee, delivered an opening statement on behalf of the Committee. He said the meeting was the second such gathering organized by the Committee devoted exclusively to the issue of Palestinian political prisoners in Israeli prisons and detention facilities. He recalled that the issue of Palestinian prisoners had returned to the headlines as a result of the courage of Palestinian prisoners whose hunger strikes had attracted the attention of the international community. He brought to mind the case of Hana Al-Shalabi, who reached a deal to end her hunger strike in exchange for being exiled to Gaza.

10. He stated that international law must be applied in order to put an end to the violence to which Israel subjected its prisoners, to the arrest of minors and to detention without trial. The Chairman also stressed that the issue of Palestinian political prisoners had attained the importance of a permanent status issue and that ending the practice of administrative detention and releasing the long-term Palestinian prisoners incarcerated before the Oslo Accords would be an important gesture by Israel towards facilitating the resumption of permanent status negotiations. At the same time, Mr. Diallo stressed that nothing could justify attacks on Israeli civilians.

11. **Issa Qaraqe**, the Minister for Prisoners' Affairs of the Palestinian Authority, delivered a statement on behalf of **Mahmoud Abbas**, President of the Palestinian Authority. He noted that the objective of the Authority was to achieve sovereignty for the Palestinian people. However, in

order to achieve this ultimate goal, the suffering of the Palestinian people had to end. This in turn was only possible if international law was applied by all Member States, including Israel.

12. In recent months, a number of peaceful protests had been organized by Palestinian prisoners in order to draw attention to their plight in Israeli prisons and detention facilities. Palestinian prisoners were under immense pressure. Numerous prisoners, who had started hunger strikes, including Hana Al-Shalabi and others, had had to be transferred to Israeli hospitals, due to their deteriorating medical condition.

13. President Abbas urged the international community to rise to the occasion and ensure that international humanitarian law, and international law more generally, was respected by all Member States. The applicability of international humanitarian law was necessary to ensure that the dignity of Palestinian people, especially those languishing in Israeli prisons, was not violated any further.

14. In his keynote presentation, **Issa Qarage** noted that administrative detention, imprisonment without trial, often over lengthy periods, had become a routine part of Israeli policy, rather than a measure of last resort, as clearly envisioned in the Fourth Geneva Convention. Noting that approximately 4,600 Palestinians were currently held in 17 prisons and army camps inside Israel, Mr. Qarage stated that there were currently 330 administrative detainees (up from 309 in 2011). Since 2000 some 21,000 administrative detention orders had been served on Palestinian citizens.

15. Mr. Qarage stressed that Israeli authorities habitually denied Palestinian prisoners their basic human rights. Israel tortured prisoners, sexually harassed children, subjected many to solitary confinement and upon their release often deported them from their respective areas of residence. Armed soldiers with dogs often raided prison cells, in the process often critically injuring inmates. Many prisoners were forced to undergo DNA testing against their will. They were denied adequate medical care, receiving family visits, continuing their education or obtaining books. He called on the United Nations to use its international status to ensure the protection of victims of torture, imprisoned minors, the elderly, detained elected representatives, and disabled and sick prisoners.

16. The Minister presented participants with seven action points, which included:

(a) the formation of an international fact-finding mission to investigate the conditions of Palestinian prisoners in Israeli detention facilities; (b) the adoption of a General Assembly resolution requesting the International Court of Justice to provide an advisory opinion on the legal status of Palestinian detainees and Israel's legal obligations; (c) clarification of the international community's responsibility in addressing Israel's violation of the rights of Palestinian detainees; (d) a call on Member States of the United Nations to review their cultural and trade agreements with Israel on the basis of Israel's refusal to comply with United Nations resolutions and human rights laws; (e) the launch of an international legal and human rights campaign by a coalition of human rights organizations, with a view to ending administrative detention practices; (f) a request to the Depository of the Geneva Conventions to convene a Conference of the States parties to the Conventions with the aim of establishing enforcement mechanisms; and (g) a request to the International Committee of the Red Cross to intensify its contacts with Israeli authorities in order to ensure the rights of Palestinian detainees.

17. Welcoming the convening of the International Conference on the Question of Palestine, the Permanent Representative of **Indonesia** to the United Nations Office at Geneva expressed his Government's concern about the thousands of Palestinians, including many children and women as well as elected members of the Palestinian Legislative Council, who continued to be detained and held in Israeli prisons or detention facilities under harsh conditions. He expressed Indonesia's continuous support to the Committee's efforts to promote the realization of the inalienable rights of the Palestinian people, including their right to self-determination, and support for the Middle East peace process for the achievement of the two-State solution and the just resolution of all final status issues.

18. The Indonesian representative called on Israel to extend its close cooperation to enable the Committee to perform its mandate effectively. Indonesia strongly condemned acts committed by Israeli forces against Palestinian citizens in the Gaza Strip, which had resulted in a number of Palestinian casualties, and called on the international community to continue to urge Israel to lift the continued blockade of Gaza. The Indonesian representative also called on Israel to halt its continuous human rights violations and other punitive measures against the Palestinian people.

19. A representative of the **Organization of Islamic Cooperation** (OIC) in Geneva read out a statement on behalf of the Secretary General of the OIC, Ekmeleddin Ihsanoglu. He highlighted the continuous injustice and oppression that the Palestinian people were suffering as a result of the Israeli occupation. It deprived Palestinians of their rights and violated all related international resolutions, treaties and agreements. The plight of Palestinian prisoners in Israeli prisons, who were deprived of their basic human rights, as guaranteed by international humanitarian law, such as their right to education, medical treatment and communication with the outside world, was of grave concern to the OIC.

20. The OIC representative expressed his Organization's commitment to the cause of Palestinian prisoners and its support for their cause. He called for the internationalization of the question of Palestinian political prisoners and the inclusion thereof in the agendas of the Security Council and the General Assembly. It was equally important to bring the legal, political and humanitarian dimensions of the situation of Palestinian prisoners before competent international bodies, including the International Court of Justice, the Human Rights Council and other entities.

21. The representative of **Lebanon**, who was also speaking on behalf of the **Parliamentary Assembly of the Mediterranean**, said that the situation in the Occupied Palestinian Territory was unsustainable and could not continue. Condemning the situation in the Occupied Palestinian Territory in the strongest terms, the Assembly stressed the importance of respecting the basic rights of individuals. The Assembly would seek to build upon the conclusions of this meeting to create an environment for concrete actions at the parliamentary level.

22. The representative of **Senegal** called on the international community to act now so as to ensure that Palestinian prisoners were released, reunited with their families and reintegrated into society, in line with international conventions and laws. Despite the efforts of the international community to bring the parties back to the negotiating table it was obvious that the Israeli-Palestinian peace process was at an impasse and that the situation was explosive. A satisfactory, fair and just solution to the situation of Palestinian prisoners was key to the peace process.

23. Welcoming the openness of the Committee to hosting Governments, academics and non-governmental organizations, the representative of **Morocco** opined that there would be no solution to the Middle East crisis unless there was a just solution for the Palestinian people. The Moroccan

representative further reiterated Morocco's support for the Palestinian people and condemned Israel's practice of "land-grabbing". Morocco called on the Israeli Government to respect international humanitarian law.

24. The representative of **Tunisia** noted that the Palestinian people had been suffering for nearly six decades, i.e. ever since their struggle for self-determination began. Tunisia condemned all those practices of the occupying power which led to the suffering of the Palestinian people. The situation of Palestinian prisoners was of particular concern to the Tunisian Government. Their maltreatment represented a clear violation of international human rights and humanitarian law.

25. The representative of the **Arab League** stated that the Palestinian people were treated inhumanely by an Israeli Government which flouted its international obligations. The Arab League called on Israeli authorities to release all detained Palestinian children prisoners. Noting that the Arab League was closely following the situation in the Middle East and sought to build a united front against Israel, the representative called on the International Committee of the Red Cross to conduct visits to Israeli detention centres.

26. The representative of **Egypt** noted that Israel was persistently mistreating Palestinian prisoners held in Israeli detention centres. Palestinian political figures, women and children were particularly adversely affected. Expressing the hope that the air raids in the Gaza Strip would stop, the representative of Egypt called on the international community to support the Palestinian cause.

27. The Deputy Permanent Representative of the **Russian Federation** to the United Nations Office at Geneva noted that the question of Palestinian political prisoners in Israeli prisons and detention facilities remained of grave concern. The Russian Government firmly believed that positive steps on the part of Israel, including the release of members of the Palestinian Legislative Council, would contribute to the resumption of the Israeli-Palestinian peace negotiations and the promotion of stability and security in the region on the whole.

28. The Russian Federation regarded the release of Palestinian political prisoners as one of the key "confidence-building measures between Tel-Aviv and Ramallah". Detention of prisoners continued to be a serious impediment to peace, along with the illegal Israeli settlement activity in the West Bank and East Jerusalem, as well as the restrictions on the movement of people and goods.

### III. Plenary sessions

#### A. Plenary I

##### **The current situation of Palestinian political prisoners in Israeli jails and detention facilities - legal and humanitarian aspects**

29. The speakers in Plenary I addressed the following sub-themes: (a) "The situation of imprisoned members of vulnerable groups – women, minors and sick persons – and the urgency of their protection"; (b) "Illegal incarceration of parliamentarians – the need for international action"; and (c) "Reintegration of the Palestinian prisoners released in 2011".

30. **Khaled Quzmar**, legal consultant of the Jerusalem-based non-governmental organization Defence for Children International, noted that Israeli authorities, in contravention of the principles of international law, particularly the United Nations Rules for the Protection of Juveniles Deprived of their Liberty and the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (the Beijing Rules), treated the approximately 700 children (aged 12-17), which it annually detained, as criminals. Palestinian children were often arrested by the Israeli military in the middle of the night. At times, noise grenades and rocks were thrown into the homes they lived in to intimidate its occupants and on other occasions, weapons were fired at the homes. However, Mr. Quzmar explained that the interrogation stage was the most dangerous and difficult experienced by children. The effects were felt by children long after they were eventually released. The practice of torture and abuse of Palestinian children detained in Israeli prisons was a widespread phenomenon.

31. Within the first eight days of the child's detention, the child was often referred to the military courts, which customarily extended his or her arrest, before he or she eventually faced trial. Mr. Quzmar noted that the military trials of these children were neither fair nor transparent. According to statistics of the Palestinian Ministry of Prisoners' Affairs, hundreds of prisoners had died shortly after being released, as a direct consequence of the disease and torture they were subjected to in prison. The Israeli prison authorities refused to provide details on the circumstances of sick detainees in their prisons. Amongst Palestinians currently in Israeli jails, approximately 1,000 prisoners suffered from disease, including 17 prisoners who suffered from cancer, 15 from kidney failure, and a dozen others from diabetes and heart disease.

32. Mr. Quzmar opined that the suffering of female prisoners exceeded that of male prisoners, given the special needs of women and the prevailing culture. In addition to the challenges male inmates faced, female prisoners had to face additional challenges, including the ache of leaving behind their children and/or giving birth in prison. Mr. Quzmar made the following recommendations, which included the following demands: (a) that Palestinian detainees not be imprisoned outside the Occupied Palestinian Territory; (b) an end to the detention and trial of Palestinian children before military courts; (c) an end to the medical neglect of Palestinian prisoners; (d) an end to the Israeli practice of confining Palestinian women with female Israeli criminals; (e) an end to the interrogation of Palestinian children in the absence an attorney chosen by him or her and/or one of his or her family members; (f) that all interviews of minors be video recorded; (g) implementation of an international resolution on prisoners' rights; and (h) an end to the inhumane treatment of Palestinian prisoners.

33. **Ahmed Shreem**, a member of the Palestinian Legislative Council in Ramallah, noted that the Israeli authorities were repressing the Palestinian people by infringing on international humanitarian law and disregarding the legitimate rights of the Palestinian people, including their right to liberty. He stressed that the arrest and detention of members of the Palestinian Legislative Council contravened a plethora of international conventions, in particular the Fourth Geneva Convention of 1949.

34. By imprisoning Palestinian legislators, Israel did not merely contravene international norms but also agreements it had concluded with the Palestinians over the years, such as the Declaration of Principles signed in Washington, D.C. in 1993. For instance, article III of the said Declaration of Principles stated that direct, free and general elections under international observation were necessary in order to ensure that the Palestinian people in the Occupied Territory could govern themselves according to democratic principles. Mr. Shreem noted that elections constituted a significant

interim preparatory step toward the realization of an independent and recognized Palestinian State. That point was confirmed in article III of the Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed on 28 September 1995.

35. The tactics employed by the Israeli Government to arrest Palestinian legislators, the conditions they are being subjected to in Israeli detention facilities, the duration of their incarceration and the fact that these legislators are being detained outside the Occupied Palestinian Territory also contravened international norms and conventions. Israel's disregard for Palestinian legislators, who were the elected representatives of the Palestinian people, constituted a blow to democracy and a flagrant infringement on their immunity. The purpose of such measures by the Israeli Government was to weaken the Palestinian Authority and the work of the Palestinian Legislative Council and consequently to undermine the entire Palestinian political system.

36. **Jan Borgen**, Deputy Secretary General of the International Commission of Jurists, noted that Israel's violations of international humanitarian law were unacceptable and needed to stop forthwith. The torture of detainees was prohibited by a plethora of conventions, which Israel was bound by and thus had to comply with. It was important for the international community not to provide Israel with a "carte blanche" but to hold Israel accountable for its violations. The international community, including the Commission, had pronounced itself in the past on techniques of torture, such as the sleep deprivation of detainees, declaring them contrary to international legal norms. If Israeli authorities indeed subjected detainees to sleep deprivation and other forms of torture, it was clearly unacceptable and had to stop.

37. In the 1980s even the Israeli Supreme Court had, in a landmark decision, pronounced itself on the use of torture, declaring the practice illegal and unconstitutional. However, despite the Supreme Court's ruling on the matter, it appeared that Israeli authorities continued to torture Palestinian prisoners unabated. The use of administrative detention by the Israeli authorities was also highly questionable, given that this form of detention was meant to be used in exceptional circumstances only. However, the use of administrative detention by Israeli authorities had become common practice.

38. **Mohammad Albatta**, the Director-General of the Rehabilitation Programme within the Ministry of Prisoners' Affairs in Ramallah, noted that Israel's detention policy, i.e. the actual arrest of a child at his/her home in the middle of the night, the treatment of prisoners whilst in detention and their final release, was carefully designed to turn prisoners into invalids, both physically and mentally. The interrogation tactics employed by Israeli authorities often amounted to physical and/or psychological torture. Prisoners were frequently deprived of nourishment and sleep and often even of using the toilet. Deprived of sleep and continuously blindfolded and bound, prisoners were kept in a state of panic and disorientation, unable to distinguish between night and day, often signing false confessions. These practices systematically weakened the prisoners and thus made them more susceptible to contracting diseases. Their deliberate medical neglect exacerbated the medical conditions of Palestinian prisoners and sometimes led to their death.

39. As a result of the aforementioned treatment within Israeli detention facilities, those prisoners that were released frequently suffered from post-traumatic stress and/or depression. A 2006 study carried out by Dr. Fadl Abu Hein, an associate professor of psychology at al-Aqsa University in Gaza, confirmed this. The study found that many torture victims required psychiatric treatment upon their release from detention centres. Against this backdrop, the Ministry of Prisoners' Affairs was working, within the framework of a training programme, to rehabilitate released prisoners and reintegrate them into Palestinian society.

40. The programme entailed a cohesive and integrated curriculum which imparted necessary skills and expertise to ex-detainees, enabling them to become effective and productive individuals within the Palestinian society. The programme contained mechanisms that were specifically tailored to each individual, with a view to fostering effectiveness and efficiency. To date the programme had benefited approximately 20,621 ex-detainees, who were released between 1995, when the programme was established, and the end of 2011. Amongst these prisoners approximately 5,950 obtained a university education.

41. **Lama Odeh Sharif**, a psychosocial supervisor with the rehabilitation programme of the Young Men's Christian Association (YMCA) in East Jerusalem, stated that the Palestinian people have for several decades been suffering under the Israeli occupation, as they have been subjected to various forms of persecution and violence. Whilst Palestinians generally underwent traumatizing experiences in the Occupied Palestinian Territory, such as arrest and detention, Palestinian children, in particular, faced the brunt of the consequences these experiences entailed. Children, who constitute more than 41 per cent of the Palestinian people, were often the primary target of Israeli violence and persecution. On average, 700 children were annually detained, tortured and mistreated in Israeli prisons.

42. Children were the most likely amongst Palestinians to be arrested during the night or in the early hours of the morning, following raids on their homes. Often they were questioned without a defence lawyer and/or their parents being present. The majority of children who were detained were accused of stone-throwing and often presented with flimsy evidence, if there was any evidence at all. Ms. Odeh Sharif noted that Israel's treatment of Palestinian minors constituted a flagrant violation of the Convention on the Rights of the Child, the Fourth Geneva Convention and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. It also violated Israel's own youth law. Regardless of the length of their detention, imprisonment was always a traumatizing experience for children.

43. To mitigate the effects of detention on Palestinian ex-detainees, the rehabilitation programme of the Jerusalem YMCA, in cooperation with Save the Children, had established a programme aimed at rehabilitating children released from detention. The comprehensive programme offered psychosocial counselling to both children and their families. The programme covered all areas of the West Bank, thus allowing it to reach former child detainees across all villages, refugee camps and cities in the Occupied Palestinian Territory. Finally, Ms. Odeh Sharif noted that the programme faced numerous challenges including: (a) the reimprisonment of children, which hindered effective counselling; (b) the lack of commitment on the part of older child detainees, who were often forced to seek employment in order to provide for their families; and (c) the lack of accurate statistics on the number of former child detainees in the West Bank.

44. During the lively discussion that followed, a participant opined that the excessive use of administrative detention, as well as the forcible transfer of arrested persons by Israel, potentially constituted war crimes under the Rome Statute, adding that prosecution constituted the best deterrence against future violations. The participant called on States to adopt internal legislation, ensuring that Palestinian victims could pursue claims in domestic courts. This was particularly important as the International Criminal Court had no jurisdiction over the Occupied Palestinian Territory.

45. Another participant wondered how long it took released detainees to process their experiences. He further noted that it was important to draw the attention of the European Union to the situation of Palestinian prisoners. A participant noted that the experience of incarceration was very traumatic. Such an experience would remain entrenched in the back of the mind, surfacing in the form of flashbacks. A further participant inquired

whether the accounts of detainees were systematically recorded. Keeping such records was important for purposes of accountability, future truth and reconciliation commissions and simply for naming and shaming perpetrators when visiting other countries.

46. Responding, **Jan Borgen** said that it was clear who the Israeli commanders were and who was accountable for crimes committed in Israel and the Occupied Palestinian Territory. However, the problem was that many Member States of the United Nations did not hold visiting Israeli politicians accountable by arresting them. Mr. Borgen regretted that events in other countries had drawn attention away from the situation in Occupied Palestinian Territory.

47. **Lama Odeh Sharif** expressed the hope that the occupation would come to an end soon and that the conference would help facilitate access to Palestinian children detainees, either immediately upon their release or whilst they are still in detention. She noted that all information pertaining to child detainees was collected by the Palestinian Authority and Palestinian non-governmental organizations in accordance with international standards. That information was extremely important for the institutional memory of the Palestinian people and for future trials of war criminals.

48. **Khaled Quzmar** noted that thousands of families had children who were behind bars in Israeli detention facilities. “Their only crime was that they were born under the occupation”. Mr. Quzmar hoped that Israeli leaders would be held accountable for their crimes and prevented from visiting other countries. **Ahmad Shreem** said that there was a need to form a fact-finding committee to reveal the extent of abuse and violations inside Israel’s prisons. With regard to the question pertaining to the rehabilitation of prisoners after their release, **Issa Quarage** said that there was a very real danger that “abnormal would start to be seen as normal”. Whilst it was important to try those within the Israeli establishment that were responsible for human rights violations against the Palestinian people, he noted that it was at times difficult for Palestinians to identify their interrogators.

## **B. Plenary II**

### **The legal status of Palestinian political prisoners in international law**

49. The speakers in Plenary II addressed the following sub-themes: “The status of ‘prisoner of war’ in international law and its application to Palestinian political prisoners”; “The issue of political prisoners at the International Court of Justice – past precedents and options for the case of Palestinian prisoners”; “United Nations procedures and mechanisms to address the issue of political prisoners: the General Assembly, Human Rights Council and treaty bodies”; “Available legal mechanisms to ensure compliance with international humanitarian and human rights laws”

50. **John Dugard**, Professor of International Law at Leiden University in the Netherlands and a former Special Rapporteur on the situation of human rights in the Palestinian territories occupied by Israel since 1967, said that Israel did not recognize those who were engaged in the resistance as combatants or “political” prisoners, as this would confer legitimacy on the cause that motivated them. Instead Israeli authorities termed these protesters ordinary criminals, security prisoners or, most frequently, “terrorists”. South Africa too sought to denigrate its political prisoners in this way. Nelson Mandela and his fellow political prisoners were castigated as criminals and terrorists by the apartheid regime.

51. For similar reasons, Israel was unwilling to classify these prisoners as “prisoners of war”. To confer the status of prisoner of war on them would amount to recognition on the part of the Israeli Government that there was a conflict between Israel and a people exercising their right to self-determination.

52. Israeli courts had also rejected the argument that Palestinian resistance fighters have the status of prisoner of war conferred on them. If Palestinian combatants were given such status, they would be entitled to be released as soon as the conflict between Israel and the Palestinians ended, which could of course take many years. Consequently, the practical implications of prisoner of war status were not significant. However, it was the symbolic or political significance, such a conferral of status implied, that was of importance. Prisoners of war were not treated as criminals, but as worthy opponents in a military conflict, as freedom fighters engaged in a war of self-determination whose rights were recognized and determined by international law.

53. Mr. Dugard noted that those who refused to accept any comparisons between Israel and apartheid South Africa proudly proclaimed that Israel had de facto abolished the death penalty and thus did not execute its opponents as was the case in South Africa. Whilst it was true that apartheid South Africa executed political prisoners after trial before civilian courts applying proper legal procedures, the Israeli State engaged in extrajudicial killings of its opponents. More Palestinians had been killed in targeted assassinations than were judicially executed in South Africa. Consequently, Israel was not an abolitionist State. It was a State that practised capital punishment in an arbitrary and capricious manner without a trial. However cruel and inhuman the conditions of Palestinian prisoners, however unfair their trials and however demeaning their characterization as “criminals” or “terrorists”, “it was important not to forget that Palestinian prisoners were the fortunate ones [as they were still alive]”.

54. **Yaser Amouri**, Professor of International Law at Birzeit University, noted that the rights contained in the Fourth Geneva Convention represented rights that prisoners could not renounce. Consequently, Israel was committing war crimes, punishable under rules of international law and conventions, including the Rome Statute, whenever it abused Palestinian prisoners, endangered their lives or violated their humanity. The basis for the rights that prisoners of war enjoyed under international law and conventions was their humanity, their status as human beings, which they could not lose under any circumstances.

55. The sole aim of detaining opposing combatants was to weaken adversary forces, i.e. by preventing prisoners of war from continuing to take part in the fighting. Accordingly, they had to be released as soon as hostilities ended. They had an inalienable right to be treated with dignity for the duration of their detention and to return to their countries of origin upon release. In light of these facts, it was essential to take immediate action to enlighten the international community about the dangers Israeli practices entailed and to strive to compel Israel to respect and apply the relevant provisions of international law. Mr. Amouri called on the High Contracting Parties to the Fourth Geneva Convention to assume their legal responsibilities pursuant to articles 1, 146 and 147 of the Convention, which require every Contracting Party to search for persons alleged to have committed grave breaches of the Convention and to bring such persons to trial, regardless of their nationality.

56. **Nasser Al Ryyes**, legal advisor at Al-Haq - Law in the Service of Man in Ramallah, noted that Israel’s position concerning the application of

the Fourth Geneva Convention in the Occupied Palestinian Territory had remained unchanged since 1967. Israel was of the view that the Fourth Geneva Convention did not prevail or take priority over Israeli law and/or military orders. Israel was deceiving and misleading the international community into believing that it applied the international humanitarian standards and principles enshrined in the Convention. Yet, Israel was firmly convinced that the Convention did not apply in the Occupied Palestinian Territory. Israel's position with regard to the applicability of the Fourth Geneva Convention in the Occupied Palestinian Territory was untenable and, indeed, without legal force. Israel was a Party to the four Geneva Conventions, having acceded to them on 6 July 1951. It was therefore bound to respect and comply with the principles and rules enshrined therein.

57. The Palestinian resistance drew its legitimacy from the right of peoples to self-determination. Resistance was one method to which the Palestinian people resorted in order to oppose the Israeli occupation, which was an obstacle to the free and effective exercise of the right of the Palestinian people to self-determination. It also drew its legitimacy from the right of the Palestinian people to defend itself against Israeli aggression. Such legitimacy was grounded in the principles of international law and numerous international resolutions. Consequently members of the Palestinian resistance were legal combatants and entitled to be treated in accordance with international norms whilst in captivity.

58. Mr. Al Ryyes noted that thus far no case concerning Palestinian political prisoners had been brought before the International Court of Justice. Palestine was not able to bring any case before the Court because it was not recognized as a State. Consequently, the only way to get the Court to pronounce itself on the issue of Palestinian prisoners was for the General Assembly to request it to issue an advisory opinion. However, even without such an advisory opinion, there were important principles that could already be discerned from international conventions and international rulings of the Court, including the following: (a) the need for States to respect their treaty obligations and to fulfil them in good faith; (b) the need for States to respect the human dignity of combatants; (c) the prohibition of torture and cruel punishment; (d) ensuring a free and fair trial in all circumstances; (e) respect for the right of prisoners; and (f) the legality of self-defence.

59. **Shawqi Al Issa**, Director of the Ensan Center for Democracy and Human Rights in Bethlehem, stressed that the Palestinian people have been facing injustice ever since the State of Israel had been created in 1948. Whilst the Jews had an independent and recognized State, the Palestinians were still fighting for their legitimate aspirations, namely an independent Palestinian State. Ever since Israel had been created, the General Assembly and the Security Council had passed numerous resolutions on the situation in the Middle East, but Israel had chosen to apply the resolutions selectively, thus placing itself above international law.

60. Israel tortured Palestinian prisoners and denied them basic human rights such as prison visits. Hundreds of Palestinians had died in Israeli detention and/or shortly after their release. Mr. Al Issa claimed that Israeli authorities were often reluctant to return the bodies of deceased prisoners to their respective families, given that the bodies bore the marks of torture and/or experiments that these detainees had been subjected to. He called on the Security Council and the General Assembly to act swiftly to end the use of torture by Israel. Other United Nations bodies, such as the World Health Organization, also bore a responsibility to end Israel's constant and unabated violations against the Palestinian people. In that context, Mr. Al Issa welcomed the recent decision by the Human Rights Council to dispatch an independent international fact-finding mission to the region to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem.

61. **Jawad Ammawi**, the General Director of the Legal Unit within the Ministry of Prisoners' Affairs of the Palestinian Authority in Ramallah, stressed that Israel breached international law on a daily basis. For instance, subjecting detainees to forced DNA tests, or sending guard dogs into prison cells was a flagrant breach of international human rights and humanitarian law. The international community ought not to allow Israel to breach international law. He reminded participants of the meeting at which the Palestinian Authority had sought to become a member of the United Nations in September 2011. He called on the General Assembly and the Security Council to take on the said request by the Palestinian Authority and admit Palestine as a member. Membership of the United Nations would allow the State of Palestine to avail itself of mechanisms that were solely available to States.

62. Mr. Ammawi stressed the need to document all the human rights violations that were committed by Israel so that the international community was kept apprised. The violations by Israel were numerous and included the use of administrative detention. The Palestinian Authority sought to address Israel's violations of international law by invoking the four Geneva Conventions, the numerous other international conventions prohibiting torture and conventions protecting the rights of the child, especially in the midst of conflict.

63. Mr. Ammawi criticized Israeli authorities, including the Supreme Court, for their complicity in breaking international law by keeping silent in the face of flagrant Israeli infringements. For instance, in 1986 the Israeli Supreme Court declared torture to be illegal, yet Israeli authorities continued to torture Palestinians prisoners unabated. Prisoners were illegally arrested in the Occupied Palestinian Territory and then taken to detention facilities within Israel, which also constituted a violation of international law. The issue of Palestinian prisoners and their treatment by Israeli authorities was of grave concern to the Palestinian people. The Palestinian Authority was now looking for the International Court of Justice to rule on the status of Palestinian prisoners. The Palestinian Authority had requested the International Criminal Court to pronounce itself on the issue. However, the previous day the Chief Prosecutor of the International Criminal Court had unfortunately declined jurisdiction, noting that only States could refer cases to The Hague.

64. Mr. Ammawi made the following four recommendations. First, it was necessary for the General Assembly to have a debate on the issue of Israeli occupation and pronounce itself on the responsibility of the international community towards the Palestinians. Second, he called on the Swiss Government, as the depositary of the four Geneva Conventions, to convene a conference of the High Contracting Parties to establish effective enforcement mechanisms for States that breached the provisions of the Conventions. Third, he called for the establishment of an international tribunal to investigate crimes committed by Israeli authorities in the Occupied Palestinian Territory. Finally, Mr. Ammawi called on the Palestinian Authority to utilize international mechanisms, such as special courts and tribunals, more frequently to investigate and try cases pertaining to the Israeli occupation.

65. In the ensuing discussion **Mr. Dugard** noted that no immediate material benefit would be obtained if Palestinian prisoners were accorded prisoner of war status, given that Israel would then be entitled to incarcerate them until the end of hostilities. Consequently, the benefit of according prisoner of war status on Palestinian prisoners was merely symbolic. It would recognize that Palestinian prisoners were members of a movement fighting for self-determination. He noted that the main difficulty with the Fourth Geneva Convention was that it applied solely to combatants of States parties. **Shawqi Al Issa** agreed that conferring prisoner of war status on Palestinian prisoners would not solely lead to positive results, as it would

allow Israel to imprison Palestinian prisoners until the end of hostilities. However, for a large number of Palestinian prisoners in Israeli jails who were serving life sentences, the conferral of prisoner of war status would make a real difference. One participant noted that there was a need for the international community to expend more resources on the Office of the United Nations High Commissioner for Human Rights, in order to ensure that more attention was paid to the Palestinian question.

66. **Nasser Al Ryyes** said that the meeting was an excellent opportunity to understand why it was important for the Palestinian people to refer certain issues, such as the status of Palestinian prisoners, combatants and civilians, to the International Court of Justice. It was equally important to identify the international mechanisms that could be utilized to hold Israel accountable for its international crimes. **Shawki Al Issa** noted that Palestinians were not interested in a piecemeal application of international law and/or the sole adoption of those provisions that favoured the Palestinian people. On the contrary, Palestinians were interested in the application of international law in its entirety, regardless of the consequences. **John Dugard** stressed the importance of informing the International Committee of the Red Cross (ICRC) of the conditions in Israeli prisons so as to give the ICRC the opportunity to address the situation.

### C. Plenary III

#### The issue of Palestinian political prisoners and the Israeli-Palestinian political process

67. The speakers in Plenary III addressed the following sub-themes: “The question of Palestinian political prisoners as a permanent status issue”; “Political prisoners in peace processes and peace agreements. The example of Namibia and South Africa”; “The role of civil society in raising awareness about the issue and promoting action towards the release of all Palestinian political prisoners.”

68. **Qadura Fares**, the Chairman of the Palestinian Prisoners Society in Ramallah, noted that Israel had since 1967 imprisoned approximately 800,000 Palestinian citizens. Their only offence had been to exercise their right to resist Israel’s occupation, as guaranteed under international law and numerous conventions. During these years, Israeli had perpetrated numerous crimes against the Palestinian people and prisoners, including collective punishment, murder, child detention, administrative detention and torture. Within its detention centres, which were often unfit for human habitation, Israeli authorities had denied Palestinian prisoners education, adequate food and essential medical care.

69. In Mr. Fares’ view, the question of prisoners deserved considerable attention and should be addressed by the international community. The release of Palestinian prisoners had to be discussed from the very outset, i.e. before any comprehensive peace deal with Israel was signed. Such a prioritization would provide any final agreement with impetus, popular support and credibility. Mr. Fares opined that the question of Palestinian prisoners could be resolved in the following three stages: (a) in order to create a positive political climate reflecting a genuine intention to resume the political process, the Israeli authorities needed to release the 30 or so prisoners who were gravely ill and whose chronic diseases or disabilities required immediate hospitalization, the 124 prisoners who were detained before the Oslo Accords and had spent between 18 and 30 years in prison, all 6 female prisoners, the 220 or so child prisoners, the 320 administrative detainees, who were being held without charge and the political leaders with lengthy sentences, such as Marwan Barghouti; (b) once a framework agreement was signed, the second wave of releases ought to take place, including the 3,340 prisoners with sentences lesser than life imprisonment, who had not caused any human death; (c) once the final agreement was signed, the last group of detainees - the 430 individuals with extremely lengthy sentences - should be released.

70. Mr. Fares noted that Israel should put an end to all repressive measures against prisoners. A committee comprised of representatives of Palestine, Israel and the Quartet should then agree on conditions for detention consistent with humanitarian standards and international law. Israel should commit to implementing the committee’s findings. The peace process would thus secure the support of a large and significant sector of the Palestinian people, as well as that of their families and former detainees. Its legitimacy would be all the greater.

71. **Mahmoud Hassan**, the Director of the Legal Unit of the Addameer Prisoner Support and Human Rights Association in Jerusalem, noted that Israel had to be compelled to abide by international humanitarian law as enshrined in the Geneva Conventions. Unfortunately, the Oslo Accords had not provided for the release of Palestinian political prisoners. As a matter of fact, the issue of political prisoners had not even been addressed by these accords. The Sharm el Sheikh accords, on the other hand, rectified this anomaly somewhat. In 2011, the Israeli soldier Shalit was freed by Hamas in exchange for 1,027 Palestinian prisoners in Israeli jails. He opined that that swap confirmed that the Israeli Government acknowledged the status of Palestinian prisoners as prisoners of war.

72. Whilst Mr. Hassan acknowledged that conferring prisoner of war status on Palestinian prisoners would allow Israeli authorities to hold Palestinian prisoners indefinitely, i.e. until the end of the Israeli-Palestinian conflict, he stressed the importance of conferring such a status on Palestinian prisoners. It would confer legitimacy on the struggle of the Palestinian people and given that many Palestinians had been sentenced to multiple life sentences, conferring prisoner of war status would actually benefit many of these prisoners.

73. Mr. Hassan criticized Israel’s practice of arresting Palestinian parliamentarians, a practice which was in contravention of international law. The sole purpose of arresting these parliamentarians was to disrupt the political process in the Occupied Palestinian Territory. Their arrest had absolutely nothing to do with state security. Mr. Hassan also criticized the use of administrative detention by Israel. Prisoners were held without charge and without being presented with the evidence that Israel had against them. Prisoners had begun to go on hunger strike in response to this injustice. Mr. Hassan called on the Israeli Government to release Palestinian prisoners without delay and without discrimination to their party affiliation. Any peace deal between the Palestinian Authority and Israel had to address the issue of Palestinian political prisoners.

74. **Mutaz M. Qafisheh**, a Professor of International Law at Hebron University, noted that Namibia and Palestine on the one hand and apartheid South Africa and present-day Israel on the other hand, had much in common. Both Namibia and the Palestinian Territory fell under illegal military occupation and suffered from apartheid imposed by foreign regimes. In both cases, the international community took too long to act and bring an end to the suffering of the oppressed peoples. The two situations were brought before the International Court of Justice, the General Assembly and the Security Council. South Africa formed an island of a settler minority of Europeans forcefully dominating a majority of black Africans. Likewise,



Israel had built islands of settlements, mostly comprised of European immigrants (i.e. minority Zionists), who forcefully suppressed Palestinians in the Occupied Palestinian Territory and within Israel.

75. Save for the talking forums, the international community had yet to take meaningful action against the colonizing power in the Occupied Palestinian Territory. That explained why the apartheid regime of Israel was able to continue its practices against the besieged Palestinian civilians. The international community, particularly the United States of America, shared some level of legal responsibility for Israeli practices in the Occupied Palestinian Territory and within the State of Israel, such as the inhumane treatment of Palestinian prisoners in Israeli jails. Palestinians living in the Occupied Palestinian Territory were forced to reside in two big prisons, one prison being the Gaza Strip and the other being the West Bank. They were unable to leave these prisons or to receive visitors from the outside, except with Israeli approval. Palestinians living in the West Bank were even restricted from interacting with Palestinians living in the Gaza Strip and/or those living in East Jerusalem.

76. Mr. Qafisheh further noted that negotiations with South Africa on Namibia dramatically differed from those with Israel on a future Palestinian State. Whilst in the case of Namibia, the international community, represented by the United Nations had fulfilled its obligations under international law and negotiated with South Africa on behalf of the Namibians, the Palestinians were left to fend for themselves. Unlike the case of Namibia, where the Security Council was clear in its actions against South Africa, the Council, if it took any action at all, stopped at the condemnation level when it came to Israel.

77. Providing a historical overview of the situation in South Africa and Namibia in the nineteenth and twentieth centuries, **Hanif Vally**, the current Deputy Director of the Foundation for Human Rights in Johannesburg, noted that the difference between these two countries had been that South Africa had been internationally recognized as an independent sovereign State, whilst Namibia had been in transition from a de facto colonial state to an independent one. Notwithstanding, there were questions about the legitimacy of the South African Government which was based on notions of white supremacy, the disenfranchisement of the indigenous population and the dispossession of 87 per cent of the land by the white settler minority, who constituted approximately 8 per cent of the population.

78. Mr. Vally noted that a number of United Nations resolutions had been passed calling for the withdrawal of the South African administration from Namibia. These resolutions had also called for the release of all political prisoners. However, Mr. Vally stressed that perceptions of South Africa's transition from apartheid to democracy were misguided, as the transition had not been largely peaceful. It was estimated that from the start of negotiations in the mid-1990s to elections in April 1994, 14,000 persons had died and 22,000 had been injured.

79. Mr. Vally noted that Member States of the United Nations always ought to be held accountable for gross violations of human rights. In apartheid South Africa, the State and judicial system had been vicious in its sentencing of political prisoners. (It is estimated that apartheid South Africa was responsible for 70 per cent of all State executions for both common law and political "crimes" in the western world at the time). If a South African was sentenced to life imprisonment for a political crime, there was no possibility of parole or remission of sentence. A life sentence literally meant a life sentence.

80. Mr. Vally stressed that dispossession, torture, summary executions and disappearances would always be morally wrong and gross violations of human rights. However, when Professor Norgaard was tasked to consider what crimes in the Namibian and South African context had been political ones, he had made clear that virtually any other acts of violence, even murder, may be political offences if committed with a political motive within a political context. What counted were the motive and the circumstances in which the crime was committed. Mr Vally stressed the sense of empowerment human rights activists felt from the support of the international community. Today the international community had a responsibility to provide the Palestinians with the same support. "None of us can be free as long as Palestine is in bondage". British courts had recognized that.

81. In the ensuing discussion a participant stressed the need to keep the issue of prisoners at the heart of any negotiations between the Palestinians and Israelis. The release of prisoners ought to be clearly spelled out in any future agreement. The participant opined that the release of prisoners should occur in stages and in conformity with an agreed timetable. Another speaker noted that positive steps by the Israeli authorities with regard to Palestinian prisoners would create an enabling environment that could contribute to the resumption of direct talks and the promotion of peace and security for the region as a whole. A further participant inquired whether the names of prisoners with special needs were communicated to Palestinians during negotiations with the Israelis. Another participant inquired whether the Committee knew how many Arabs, excluding Palestinians, were held in Israeli prisons as a result of their participation in the struggle against the occupation.

82. **Qadura Fares** noted that the Club of Palestinian Prisoners was being provided with substantial information by its members and that information was made available to those who needed it. Unfortunately, the names of prisoners had never been put on the table during negotiations with the Israelis. In response to the question pertaining to Arab detainees, one of the experts noted that there were prisoners from Arab countries in Israeli prisons. However, their exact numbers were not known. All those Arabs that had been imprisoned as a result of the struggle against the occupation were "brothers" and their release was considered the responsibility of the Palestinian Authority.

83. **Mutaz M. Qafisheh** said that the situation in the Occupied Palestinian Territory was similar to that in apartheid South Africa, given that international law had been flouted by the oppressors in both countries. However, unlike in the Palestinian case, the international community had condemned the actions by the South African regime and eventually toppled it. **Mr. Fares** added that inaction by the international community was equal to giving Israel a green light to continue violating international law. Stressing that Palestinian prisoners were not criminals, **Mr. Hassan** called on the international community not to let them die in Israeli jails.

#### IV. Closing session

84. In closing remarks, **Abdou Salam Diallo**, in his capacity as Chair of the Committee, stressed the link between the right to self-determination and the legitimacy of Palestinian resistance. Speakers described how many mechanisms, such as an advisory opinion from the International Court of Justice or being accorded the status of prisoners of war, might be available to redress the injustices faced by the Palestinian prisoners. During two days participants discussed valuable and practical suggestions and examples from the South African experience on how to translate the principles of international law into reality. What was needed was political will and diplomatic action supported, if not prompted, by civil society action.

85. The issue of Palestinian political prisoners has risen to the rank of the “seventh permanent status issue” and prisoners’ exchanges can no longer be the only way to address this issue. Its relevance, on both the political and humanitarian levels, makes it deserving to be mainstreamed in the political process. The meeting heard suggestions on how this aspect could be incorporated into a negotiated solution. Israel had the right to security and indiscriminate attacks on Israeli civilians had to cease, but that did not provide for an indiscriminate labelling of “terrorist” to justify lengthy administrative detentions of Palestinians. Addressing that issue in a comprehensive negotiated manner might contribute to re-establishing some of the trust that is currently lacking in the stalled peace process. Mr. Diallo pledged that the Committee would continue to work to promote the negotiated settlement of the question of Palestine in all its aspects, based on the mandate given it by the General Assembly.

86. **Riyad Mansour**, Permanent Observer of Palestine to the United Nations, spoke on behalf of Palestine. He noted that the issue of Palestinian prisoners was a painful and complex subject and part of a long journey of the Palestinian people towards freedom and self-determination. It had become clear during the meeting that the intention of the Palestinian leadership was to seek advice from the international community in the determination of the legal status of Palestinian prisoners. For instance, the applicability of prisoner of war status would have to be further analysed on the way ahead. He reiterated that Palestine would not sign any agreement or peace treaty without achieving freedom for Palestinian prisoners. For the time being, Palestinian prisoners should be treated with dignity, in accordance with international humanitarian law and in a manner of civilized societies.

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## Annex I

### Summary of the Chair of the Committee on the Exercise of the Inalienable Rights of the Palestinian People

1. The two-day meeting brought together representatives of Governments and intergovernmental organizations, United Nations organs and agencies, civil society organizations and the media. The meeting reviewed legal and humanitarian aspects of the arrest and detention of Palestinians by Israel, the occupying power; considered the status of Palestinian prisoners in international law; looked at the issue of Palestinian political prisoners in the context of the Israeli-Palestinian political process; and discussed ways of strengthening the role of the wider international community, as well as non-governmental actors, in promoting a solution and reintegration into Palestinian society.

2. The Secretary-General of the United Nations, in a message delivered on his behalf, said that the Middle East Peace Process was at a dangerous stalemate. He referred to issues on the ground that required urgent attention, including the plight of Palestinian prisoners held by Israel, who numbered approximately 4,400, including 200 minors and more than 300 prisoners under administrative detention. The Secretary-General also expressed concern over the arrests of elected members of the Palestinian Legislative Council. He stated that administrative detention should only occur in exceptional circumstances, for short periods and without prejudice to the rights guaranteed to prisoners. He called on Israel to respect its international obligations, including the Fourth Geneva Convention. He said that the release of some Palestinian prisoners to the Palestinian Authority would be an important trust-building measure.

3. The Chair of the Committee on the Exercise of the Inalienable Rights of the Palestinian People said that the issue of Palestinian prisoners had returned to the headlines as a result of the courage of the Palestinian prisoners whose hunger strikes had attracted the attention of the international community. He brought to mind the case of Hana Al-Shalabi, who reached a deal to end her hunger strike in exchange for being exiled to Gaza. He stated that international law must be applied in order to put an end to the violence to which Israel subjected its prisoners, to the arrest of minors and to detention without trial. He also stressed that the issue of Palestinian political prisoners had attained the importance of a permanent status issue and that ending the practice of administrative detention and releasing the long-term Palestinian prisoners incarcerated before the Oslo Accords would be an important gesture by Israel towards facilitating the resumption of permanent status negotiations.

4. In his keynote presentation, the Minister for Prisoners’ Affairs noted that administrative detention had become a routine part of Israeli policy, rather than a measure of last resort and that it was an extremely harsh form of treatment, as clearly stated in the Fourth Geneva Convention. He said that since 2000, some 21,000 administrative detention orders had been served on Palestinian citizens and that there were currently 330 administrative detainees, up from 309 in 2011. The Minister reported that approximately 4,600 Palestinians were held in 17 prisons and army camps inside Israel. He stated that Israel denied the prisoners their national, political and human rights. It was torturing prisoners, sexually harassing children, deporting detainees from the areas where they lived and imposing solitary confinement. Armed soldiers with dogs carried out attacks in prisoners’ cells, critically injuring them. Some prisoners were forced to undergo DNA testing. Many were denied the right to obtain adequate medical care, receive family visits, continue education or obtain books. He insisted that the United Nations must use its international status and influence to protect torture victims, imprisoned minors, the elderly, elected representatives, the disabled and prisoners suffering from cancer. He presented participants with seven action points, which included:

- Formation of an international fact-finding mission to investigate the situation under which the Palestinian detainees live.
- Adoption of a General Assembly resolution requesting the International Court of Justice to give an advisory opinion concerning the legal status of Palestinian detainees and the legal obligations of Israel.
- Clarification of the role and responsibilities of the international community in addressing Israel’s violation of the rights of Palestinian detainees according to international law principles.
- Calling on States to review their cultural, trade and academic agreements with Israel on the grounds of her refusal to comply with United Nations resolutions and human rights laws.
- Formation of a coalition of human rights organizations and launch of an international legal and human rights campaign with a view to ending administrative detention practices.

- Requesting the parties to the Geneva Conventions to hold a conference aimed at obliging Israel to respect the Conventions.
- Asking the International Committee of the Red Cross to intensify its contacts with Israeli authorities in order to ensure the rights of Palestinian detainees.

5. At the outset of the plenary sessions, invited experts spoke about the situation of children detainees and the abuse they endured in Israeli prisons and detention facilities. A legal consultant for Defence for Children International in Jerusalem said that currently 216 children under the age of 18 were detained in Israeli jails and even children below the age of 12 were arrested and exposed to torture and ill-treatment. He said that the Israeli authorities completely ignored the Geneva Conventions and tried children by military courts which often ignored or misinterpreted provisions of the Conventions. Israeli forces carried out arrests during the night and transferred children to prisons inside Israel. A child's parents or legal guardians were not present during the interrogation phase and frightened and disoriented children often made incoherent confessions during those first phases of interrogation. Such actions also contravened the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

6. Over the past five years, large numbers of children and over 2,500 women had been arrested. Many of the children were girls and they were not given the consideration that needed to be accorded to females. An expert noted that 90 per cent of children released from detention suffered from post-traumatic stress disorder. Approximately 700 children were annually detained, tortured and mistreated in Israeli prisons and detention centres. This constituted a threat to society as a whole, because young people accounted for 41 per cent of Palestinian society. A representative of the Ministry of Prisoners' Affairs of the Palestinian Authority said that rehabilitation of former prisoners was one of the greatest challenges for the Palestinian Authority and the society as a whole. Over 40 per cent suffered from depression and many former detainees suffered psychological problems and found it difficult to reintegrate into normal life. The greatest issue was finding and creating jobs for released prisoners, particularly in the shrinking labour market.

7. Participants then discussed the illegal detention of Palestinian parliamentarians as an important aspect of the policies of the occupying power and the application of prisoner of war status. A member of the Palestinian Legislative Council said that the occupying power used administrative detention indiscriminately and on any occasion and that most of the Palestinian parliamentarians were arrested without any reason. It was stated that Israel's use of administrative detention systematically and blatantly violated international law. Administrative detention was inherently problematic; it was not intended to punish a person for an offence already committed, but to prevent a future danger. The manner in which Israel used administrative detention was patently illegal. In addition to the practices of indefinite administrative detention and the use of special enhanced interrogation techniques that violated Israeli's obligations under international law, the rights of Palestinian detainees and prisoners were further undermined by different decisions issued by the Israeli Supreme Court.

8. Some experts opined that Palestinians who took a direct part in hostilities against the occupying power qualified as combatants and should be accorded prisoner of war status. The International Court of Justice had confirmed that the Palestinian people had the right to self-determination. It was clear that they were subject to alien occupation and possibly colonial domination as a result of the presence of some 500,000 settlers in the West Bank and East Jerusalem. But Israel did not recognize Palestinian combatants as political prisoners. Instead, they were labelled as ordinary criminals, security prisoners, or most frequently, terrorists. To confer prisoner of war status would constitute recognition of the fact that there was a conflict between the State of Israel and a people exercising its right to self-determination and statehood. Prisoners of war were not treated as criminals but as worthy opponents in a military conflict, as freedom fighters engaged in a war of self-determination whose rights were recognized by international law. Denial of that right rejected the legitimacy of the struggle of the Palestinian people for self-determination. However, if Palestinian combatants were held as prisoners of war they would be held until the end of the occupation, which could be for many years. They would then be released at the same time as those convicted by Israeli military courts and imprisoned by Israel as criminals. Most combatants were tried by military courts, despite the preference of international humanitarian law for impartial civilian courts. Military courts lacked independence, sat in inaccessible places and applied confidential procedures with little regard for the rules of due process. International humanitarian law governing the imprisonment of Palestinians was further transgressed, as they were held in Israel itself.

9. Some experts agreed that prisoner of war status was extremely important for a person who fell into the power of an enemy State, as defined by The Hague Conventions of 1899 and 1907 and the Geneva Conventions. But the contentious question was to what extent prisoner of war status applied to Palestinian prisoners in the situation of Israeli occupation. Following the 1993 Oslo Accords, a new legal situation had arisen, as the Palestinian Authority became an independent entity and an administrative authority for at least part of the occupied West Bank and the Gaza Strip. Torturing prisoners of war was prohibited and a grave violation of the Fourth Geneva Convention. Israel had continued a policy of torture to obtain information or evidence against detainees and paid no attention to the rules governing the treatment of prisoners. There were many forms of torture committed against Palestinian prisoners in Israeli prisons, including violent beatings, sleep deprivation, humiliation and threats of rape. Rights to protection during captivity, as contained in the Third Geneva Convention, were not subject to derogation; it was essential to take action immediately at the highest international and regional levels to ensure the protection of Palestinian prisoners and to compel Israel to respect and apply the relevant provisions of international law.

10. Participants also discussed what recourse Palestinians had to judicial and human rights mechanisms. It was noted that the question of prisoners of war had not been raised in its entirety at the International Court of Justice, which so far had only considered elements of the status. The Court was open only to Member States of the United Nations; not being a Member State, Palestine had no right to use that mechanism to litigate with the State of Israel vis-à-vis its breaches of international law. The only option open to Palestinians was to ask the Court for its legal opinion on the status of Palestinian prisoners. Some speakers called on the General Assembly to refer the decision on Palestinian prisoner of war status to the Court for an advisory opinion. Waiting was not an option because human beings were at the centre of the issue and were spending their lives in imprisonment. The Human Rights Council could also continue its consideration of the situation of Palestinian prisoners and request a fact-finding mission into conditions in Israeli jails. Even the most basic rights of Palestinian prisoners were violated or denied. The Palestinian Rights Committee was called upon to devise a comprehensive programme of work, with practical steps to be implemented by all relevant United Nations bodies and mechanisms in order to ensure respect for the minimum rights of Palestinian detainees.

11. It was explained that Palestinians were prevented on several grounds from recourse to international mechanisms. Mainly, the Palestinian State was not recognized by most intergovernmental organizations, which was why the Palestinian leadership had requested recognition of Palestine as a Member State of the United Nations, which would enable it to join a number of other international organizations. The admission of Palestine to the United Nations Educational Scientific and Cultural Organization in October 2011 opened the door for Palestine to ratify key human rights instruments. Palestine could become a party to the International Covenant on Economic, Social and Cultural Rights and other international human

rights treaties. In addition, there were a number of human rights mechanisms and mechanisms for recourse to justice that Palestine could use and apply. A number of them were based on the Charter of the United Nations and other legal instruments. It was important to ensure that lawyers and families had greater access to available human rights mechanisms in order to better document and evidence violations. The Human Rights Council had paved the way for the submission of complaints, individual or group, which were filed once all other remedies had been exhausted. It was also important that the complaints about conditions in prisons be brought to the attention of the International Committee of the Red Cross, which at the moment was the only international body with the necessary prerequisites to remedy the situation. One speaker recommended that the General Assembly set up a special tribunal to study crimes committed by Israel. Many participants encouraged Switzerland to continue with efforts to convene a conference of High Contracting Parties to the Fourth Geneva Convention.

12. Participants also discussed a proposal for a time frame for the release of Palestinian prisoners from Israeli prisons as part of the political process. It was noted that when the first negotiations took place with Israel in 1993, the question of prisoners was neglected and the agreement signed had no provisions for them. Today the Palestinian leadership would not put their signature on any agreement that failed to resolve the issue of prisoners. Experiences in South Africa and Northern Ireland provided good examples of how the issue of prisoners could be resolved in the context of a political solution. Finding a solution to the question of prisoners would be a way of increasing public acceptance of any larger agreement. The issue needed to be dealt with as part of the political process and could be initiated with the release of extremely vulnerable prisoners, such as ill persons, women, children, administrative detainees and those arrested prior to the Oslo Accords. Any agreement must include provision for the return of the remains of those who died in detention. A further wave of releases should take place upon signature of a framework agreement, and should see the release of over 3,000 prisoners with sentences lesser than life imprisonment and who had not caused any human death. It was also suggested that a committee be established with representatives of Israel, Palestine and the Quartet that could agree on conditions of detention consistent with humanitarian standards and international law. Israel should commit to complying with that committee's findings. Every six to eight months, Israel would release a small number of prisoners as a gesture of goodwill. It was noted that those currently released by Israel were often those almost at the end of their sentences.

13. One expert recalled the process of releasing political prisoners in Namibia and South Africa in the context of the establishment of Namibia's independence and the abolition of apartheid. As for Namibia, the release of all political prisoners was part of Security Council resolution 435 (1978), the implementation of which had been negotiated with all parties concerned. The issue of the release of political prisoners was assigned to Professor Norgaard of Norway who formulated principles known today as the Norgaard principles. They included issues such as the context of the offence - was it part of a political uprising; the issue of proportionality - whether the act committed related to the political objective aimed at; the legal and actual nature of the offence; and whether the offence was committed on the orders or with the approval of the organization concerned.

14. In South Africa, as a result of international pressure, the apartheid Government had announced in the mid-1980s, it was prepared to release political prisoners who renounced violence. It had also begun informal contacts with members of the liberation movements, both in prison and in exile. A key position of the African National Congress had been that the unconditional release of all political prisoners was central to negotiations. The question of release of political prisoners was of a highly political nature in the negotiations, as both parties needed to send appropriate messages to their constituencies, the international community and to the other party. Prisoner releases were used as bargaining chips and public relations exercises and parties could not agree on the number of political prisoners still in prisons. Based on their experience, many South Africans today were active in boycott and disinvestment campaigns against Israel in solidarity with the struggle of the Palestinian people.

15. Another speaker in Plenary III stated that the Oslo and Taba Accords had addressed the question of Palestinian political prisoners by setting a framework for their release. However, the agreements did not set the numbers to be released. Israel released a lower number of prisoners than it had committed to; it included criminal offenders and those whose sentences were almost at an end. The Oslo Accords fell short with regard to the issue of political prisoners, as it did not call for the release of all prisoners and did not deal with the issue of Palestinians arrested after 1993. Palestinian prisoners should not be divided into groups and categories; they should all receive the same treatment accorded to prisoners of war.

16. In closing, the Permanent Observer of Palestine to the United Nations said that the issue of Palestinian prisoners was a painful and complex subject and part of a long journey of the Palestinian people towards freedom and self-determination. It became clear during the meeting that the intention of the Palestinian leadership was to seek advice from the international community in the determination of the legal status of Palestinian prisoners. For instance, the applicability of prisoner of war status would have to be further analysed on the way ahead. He reiterated that Palestine would not sign any agreement or peace treaty without achieving freedom for Palestinian prisoners. For the time being, Palestinian prisoners should be treated with dignity, in accordance with international humanitarian law and in a manner of civilized societies.

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## **Annex II**

### **List of participants**

#### **Speakers**

Mr. Mohammad Albatta  
Director-General of the Rehabilitation Programme  
Ministry of Prisoners' Affairs, Palestinian Authority  
Ramallah

Mr. Shawqi Al Issa  
Director, Ensan Center for Democracy and Human Rights  
Bethlehem

Mr. Nasser Al Ryyes  
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**Delegation of the Committee on the Exercise  
of the Inalienable Rights of the Palestinian People [[H1]]**

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### **Representative of the Secretary-General**

Mr. Maxwell Gaylard  
United Nations Deputy Special Coordinator for the Middle East Peace Process and United Nations Coordinator for Humanitarian and Development Activities in the Occupied Palestinian Territory

### **Governments**

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Mr. Saeed Sarwar, Second Secretary  
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Mr. Jassim Al-Maawda, Third Secretary  
Permanent Mission to the United Nations Office at Geneva

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Mr. Razvan Rotundu, Counsellor  
Permanent Mission to the United Nations Office at Geneva

Russian Federation

Mr. Mikhail Lebedev, Deputy Permanent Representative to the United Nations Office at Geneva  
Mr. Dmitry Stegiy, Third Secretary  
Permanent Mission to the United Nations Office at Geneva

Saudi Arabia

Mr. Ahmed Alaquil, Minister Plenipotentiary  
Ms. Arwa Al-Munajjed,  
Mr. Yehya Al-Qahtani, First Secretary  
Ms. Maram Al-Sheikh,  
Permanent Mission to the United Nations Office at Geneva

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H.E. Mr. Fodé Seck, Permanent Representative to the United Nations Office at Geneva  
Mr. Abdou Wahab Haidara, Minister Counsellor  
Mr. Mohamed Thiaw, Counsellor  
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H.E. Mr. Tan Yee Woan, Permanent Representative to the United Nations Office at Geneva

Slovenia

Mr. Andrej Žitko, Counsellor  
Permanent Mission to the United Nations Office at Geneva

Sri Lanka

Ms. Anuka Gazara, Assistant to the Deputy Permanent Representative  
Permanent Mission to the United Nations Office at Geneva

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Ms. Barbara Fontana, First Secretary  
Permanent Mission to the United Nations Office at Geneva

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H.E. Mr. Pisanu Chanvitan, Permanent Representative to the United Nations Office at Geneva  
Ms. Eksiri Pintaruchi, Minister Counsellor  
Mr. Netithorn Praditsarn, First Secretary

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Ms. Veska Sotirovska, Minister Counsellor  
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H.E. Mr. Moneef Baati, Permanent Representative to the United Nations Office at Geneva

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H.E. Mr. Oğuz Demiralp, Permanent Representative to the United Nations Office at Geneva  
Mr. Sait Uyanik, Counsellor  
Mr. Onur Katmerci, Second Secretary  
Permanent Mission to the United Nations Office at Geneva

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Ms. Antonina Shliakotina, Second Secretary  
Permanent Mission to the United Nations Office at Geneva

United Arab Emirates  
Mr. Shaikha Al-Zaabi, First Secretary  
Permanent Mission to the United Nations Office at Geneva

Uruguay  
Mr. Patricio Silva, Third Secretary  
Ms. Grisselle Rodriguez, Assistant  
Permanent Mission to the United Nations Office at Geneva

Venezuela (Bolivarian Republic of)  
H.E. Mr. Germán Mundaraín Hernández, Permanent Representative to the United Nations Office at Geneva  
Mr. Felix Peña Ramos, Minister Counsellor  
Mr. Edgardo Toro Carreño, Second Secretary  
Permanent Mission to the United Nations Office at Geneva

Yemen  
H.E. Mr. Ibrahim Al-Adoofi, Permanent Representative to the United Nations Office at Geneva

**Non-member State having received a standing invitation to participate as observer  
in the sessions and the work of the General Assembly and maintaining  
permanent observer mission at Headquarters**

Holy See  
Mgr. Amaury Medira, Second Secretary  
Mr. Ricardo Tello-Pineda, Attaché  
Permanent Observer Mission to the United Nations Office at Geneva

**Entities having received a standing invitation to participate as observers  
in the sessions and the work of the General Assembly and maintaining  
permanent observer missions at Headquarters**

Palestine  
H.E. Mr. Ibrahim Khraishi, Permanent Observer  
Mr. Imad Zuhairi, Deputy Permanent Observer  
Mr. Taissir Al-Adjouri, Counsellor  
Mr. Adel Atieh, Counsellor  
Mr. Lotfi Zaid, Second Secretary  
Permanent Observer Mission to the United Nations Office at Geneva

**Intergovernmental organizations**

African Union  
Mr. Yakdhan El Habib, Political and Legal Officer  
Permanent Mission to the United Nations Office at Geneva

Council of Europe  
Mr. Petru Dumitriu, Permanent Observer  
Permanent Mission to the United Nations Office at Geneva

European Union

Mr. Jérôme Bellion-Jourdan, Attaché  
Ms. Nathalie Reyns, intern  
Permanent Mission to the United Nations Office at Geneva

League of Arab States  
Mr. Mohamed Lahlou, in charge of Prisoners' Affairs  
Section of Palestine and the Occupied Arab Territories  
Cairo

Organization of Islamic Cooperation  
H.E. Mr. Slimane Chikh, Permanent Observer  
Mr. Fuat Canan, First Secretary  
Permanent Mission to the United Nations Office at Geneva

Parliamentary Assembly of the Mediterranean  
H.E. Ms. Najla Riachi Assaker, Permanent Representative  
of Lebanon to the United Nations Office at Geneva

**Other entities having received a standing invitation to participate as observers  
in the sessions and the work of the General Assembly and  
maintaining permanent offices at Headquarters**

International Committee of the Red Cross  
Ms. Marnie Lloyd, Legal Adviser to the Operations  
Legal Division  
Geneva

**United Nations organs, agencies and bodies**

Food and Agriculture Organization of the United Nations  
Mr. Abdessalam Ould Ahmed, Director, FAO Liaison Office  
Mr. Silvano Sofia, External Relations Officer  
Geneva

Office of the United Nations High Commissioner for Human Rights  
Mr. Hanny Megally, Chief, Asia, Pacific, Middle East and North Africa Branch  
Mr. Frej Fenniche, Chief, Middle East and North Africa Section  
Mr. Kevin Turner, Human Rights Officer, Middle East and North Africa Section  
Ms. Chenie Yoon, Associate Human Rights Officer, Middle East and North Africa Section  
Geneva

Office of the United Nations Special Coordinator for the Middle East Peace Process  
Mr. Maxwell Gaylard  
United Nations Deputy Special Coordinator for the Middle East Peace Process and  
United Nations Coordinator for Humanitarian and Development Activities in the Occupied Palestinian Territory  
Mr. Samer Abu Jobara, Political Affairs Officer  
Jerusalem

United Nations Children's Fund  
Mr. Erik Nyman, Child Rights Adviser  
Ms. Karin Rosenberg, Intern  
Geneva

United Nations Conference on Trade and Development  
Mr. Mahmoud Elkhafif, Coordinator, Assistance to the Palestinian People  
Ms. Randa Jamal, Economic Affairs Officer, Assistance to the Palestinian People  
Geneva

United Nations Educational, Scientific and Cultural Organization  
Mr. Franco Pedroni, intern (UNESCO-GLO)  
Ms. Zhao Zhao, intern (UNESCO-GLO)  
Geneva

United Nations Human Settlements Programme  
Mr. George Deikun, Director, Liaison Office  
Geneva

World Food Programme  
Mr. Jean-Yves Lequime, Liaison Officer  
Ms. Irais E. Martínez, intern

Geneva

### **Civil society organizations**

Badil Resource Center for Palestinian Residency and Refugee Rights  
Ms. Rania Almadi, Representative  
United Nations Office at Geneva

Defence for Children International  
Ms. Anna D. Tomasi, Advocacy Assistant  
Ms. Christina Selena Tomasi, intern  
Geneva

HelpAge International  
Mr. Piero Calvi-Parisetti, Humanitarian Policy Advisor  
London

Palestinian Centre for Human Rights, International Unit  
Mr. Davide Tundo, Human Rights Consultant  
Gaza

Palestinians without Frontiers  
Mr. Sarhan B. Abu Kalloub, Executive Director  
Mr. Mahmoud O. Haniya, Media Coordinator  
Gaza

Portuguese Movement for the Rights of the Palestinian People and for Peace in the Middle East  
Mr. Silas Coutinho Cerqueira, Secretary for International Relations  
Lisbon

Women in Black, Melbourne  
Ms. Alexandra Nissen, Founder  
Melbourne

Women's International League for Peace and Freedom  
Ms. Edith Ballantyne, Representative for the United Nations Office at Geneva  
Ms. Krishna Ahoojapatel, Representative for the International Labour Organization  
Geneva

World Federation of Trade Unions  
Ms. Osiris Oviedo de la Torre, Permanent Representative in Geneva

### **Media**

Al Ahram  
Mr. Tarek El Sonoty, head of Diplomatic Department  
Cairo

Al Akhbar  
Mr. Bassam Kantar, journalist  
Beirut

Al Sabah  
Mr. Serri M.H. Arafat, General Director and Chief Editor,  
Gaza

Masrawy.com  
Mr. Haitham Fares, Senior Web Editor  
Cairo

Soat El Arab Radio  
Ms. Amal Mohammed Mohammed Hussie  
Director of Youth  
Cairo

### **Public**

Mr. Tarek Hamam  
Legal Advisor, Negotiations Support Unit  
Ramallah

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