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

The report addresses Israel's compliance with its obligations under international law, in relation to the situation in the Palestinian territories that it has occupied since 1967. Israel's persistent lack of cooperation with the fulfilment of the mandate of the Special Rapporteur, as well as other United Nations human rights mechanisms, is highlighted. The Special Rapporteur focuses attention on concerns regarding the expansion of Israeli settlements, in particular in East Jerusalem, the consequences of the Israeli blockade of the Gaza Strip and the treatment of Palestinian children detained by Israeli authorities.

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I. Introduction

1. Unfortunately, the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 needs to again call to the attention of the membership of the Human Rights Council the continuing refusal of the Government of Israel to allow the Rapporteur to visit the occupied Palestinian territories. Repeated attempts have been made to engage the Government of Israel in discussion with the hope of reversing the policies that led to the detention and expulsion of the Special Rapporteur from Ben-Gurion Airport on 14 December 2008, but so far without any response. Efforts will be made to seek the necessary cooperation of the Government of Israel in relation to the obligation of the Special Rapporteur to discharge official undertakings of the United Nations. Such cooperation should be understood as a fundamental legal obligation incident to membership in the Organization.

2. As repeated efforts to call this situation to the attention of the Human Rights Council and the General Assembly have to date produced no positive results, the Special Rapporteur appeals on the occasion of this report for a more robust attempt to secure the cooperation of the Government of Israel. It should be recalled that Article 104 of the Charter of the United Nations declares that the Organization “shall enjoy in the territory of each of its Members such legal capacity as may be necessary for the exercise of its functions and the fulfilment of its purposes”. Article 105, paragraph 2, specifies that those who represent the

United Nations shall enjoy in the territory of State Members: “such privileges and immunities as are necessary for the independent exercise of their function in connexion with the Organization”. These provisions were elaborated in the Convention on the Privileges and Immunities of the United Nations, adopted by the General Assembly on 13 February 1946, and then implemented via the Agreement between the Swiss Federal Council and the Secretary General of the United Nations, dated 19 April 1946. Article VI, Section 22, thereof, entitled “Experts on Missions for the United Nations”, is particularly relevant, setting forth the rather extensive duties of Members to cooperate with such representatives as special rapporteurs and to avoid interfering with their independence.

3. It should be pointed out that the Government of Israel has also not cooperated with other recent important initiatives of the Human Rights Council relating to the occupied Palestinian territories, including the report of the United Nations Fact-Finding Mission on the Gaza Conflict ([A/HRC/12/48](#)) and the report of the independent international fact-finding mission to investigate violations of international law, including international humanitarian and human rights law, resulting from the Israeli attacks on the flotilla of ships carrying humanitarian assistance ([A/HRC/15/21](#)). This pattern of non-cooperation with official undertakings of the Human Rights Council should produce a concerted attempt by this organ and the Office of the Secretary-General to do what can be done to obtain the future cooperation of the Government of Israel.

4. Closely related to issues associated with non-cooperation are several outstanding matters bearing on non-implementation. The report of the International Fact-Finding Mission on the Gaza Conflict on the basis of its findings of severe and systematic violations of international humanitarian law recommended that several steps be taken to assess the accountability of the perpetrators of criminal acts committed during the Gaza conflict (2008/09). There is currently no sign of any attempt to mobilize effective support for the implementation of these recommendations. Moreover, evidence of an Israeli willingness to impose credible levels of accountability for criminal acts of its soldiers and leaders in accordance with international standards remains absent. These conclusions were reaffirmed by the report of the Committee of independent experts that assessed investigations by Israel and the Palestinian sides into the Gaza conflict ([A/HRC/15/50](#)). In addition, the same conclusions seem to pertain to the report of the independent international fact-finding mission on the incident of the humanitarian flotilla of 31 May 2010.¹ Thus, a strong impression is being formed within the international community that a lack of political will exists with which to implement recommendations based on authoritative findings that Israel has been guilty of flagrant violations of international humanitarian law and international criminal law. This impression of unwillingness to push forward with implementation fosters widespread perceptions of impunity with respect to the conduct of Israel, and in the case of flotilla incident limits and delays the opportunity of flotilla passengers to pursue remedies for harms unlawfully inflicted. This dynamic of evasion and delay weakens overall respect for international law, as well as the credibility of the Human Rights Council in relation to its own initiatives. More substantively, it deprives the Palestinian people living under occupation of their rights to receive the benefits of protection conferred in circumstances of occupation by international law and, specifically, the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) and the First Additional Protocol to the Geneva Conventions of 1949.

5. Given the long duration, the severity and continuing nature of the violations of many fundamental legal obligations of Israel as the occupying Power, these failures of implementation of international humanitarian law are experienced on the ground through various acute forms of abuse and suffering endured on a frequent, often on a daily, basis by the civilian population of the occupied Palestinian territories. Many political leaders have confirmed this assessment in recent months, and yet the organized international community remains silent. For instance, the Foreign Minister of Germany, Guido Westerville, after a recent visit to Gaza declared that the persistence of the blockade was “not acceptable”.²

6. Furthermore, the report of the Independent International Fact-Finding Mission on the incident of the humanitarian flotilla found that the violence used by the Israel Defence Forces when the flotilla was attacked was “not only disproportionate but demonstrated levels of totally unnecessary and incredible violence” as well involving “an unacceptable level of brutality”.³ The report concludes that the Israeli attack resulted in “grave violations” of international human right and humanitarian law, as specified in article 147 of the Fourth Geneva Convention.⁴ It also solicits cooperation from the Government of Israel to identify the perpetrators of this violence, whose identity was hidden by masks worn during the attack on the flotilla. Such information was being sought “with a view to prosecuting the culpable”.⁵ As a result of these findings, the Government of Israel is obliged to end the blockade in all its aspects with a sense of urgency, to cooperate in the identification of perpetrators of the violence and of the leaders responsible for the underlying policies so that effective procedures of accountability can be employed and finally to compensate individuals and surviving family members in appropriate amounts for the unlawful harms suffered. Moreover, civil society actors that engage in such missions for genuine humanitarian purposes should be allowed to carry out their work without interference.

7. The Rapporteur believes that there are important issues of language that arise from the cumulative effects of Israeli violations of international humanitarian law, human rights law and criminal law. It becomes misleading to treat these violations as distinct behavioural instances disconnected from broader consequences that are either designed by intention or the natural outcome of accumulating circumstances (so-called “facts on the ground”). These concerns about language are accentuated because Israel is the stronger party in diplomatic settings and generally enjoys the unconditional support of the United States of America. Indeed, unlawful Israeli behaviour that starts out as “facts” have over time been transformed into “conditions”, or in the words of the American Secretary of State, Hilary Clinton, “subsequent developments” that are treated as essentially irreversible. Such transformation is true of several aspects of the occupation, including at a minimum the settlement blocs and accompanying infrastructure of roads and security zones, as well as the separation wall. To call appropriate attention to the effects and implications of these unambiguously unlawful patterns, and their somewhat perverse expost facto attempted “legalization” and “normalization” requires stronger expository language to better understand the unbridled assault upon Palestinian rights and prospects for meaningful self-determination. It is against this background that this report has decided to employ such terms as “annexation”, “ethnic cleansing”, “apartheid”, “colonialist” and “criminality” as more adequately expressing the actual nature of the situation in the occupied Palestinian territories. Such labels can be perceived as emotive, and admittedly require a finding by a court of law to be legally conclusive. However, such language, in the Special Rapporteur’s view, more accurately describes the realities of the occupation as of the end of 2010 than the more neutral-seeming description of factual developments that disguises the structures of this occupation which has undermined the rights under international law of the Palestinian people for 43 years.

8. Against this background, the Rapporteur deems it appropriate at this time to renew the call of the former Special Rapporteur on the occupied Palestinian territories, John Dugard, for a referral of the situation to the International Court of Justice for an authoritative decision as to whether, “elements of the [Israeli] occupation constitute forms of colonialism and of apartheid”.⁶ It should be emphasized that the crime of apartheid is no longer attached to the racist policies of the South African regime that generated the International Convention on the Suppression and Punishment of the Crime of Apartheid. It is now a crime associated with an “institutionalized regime of systematic oppression ... by one racial group over any other racial group ... committed with the intention of maintaining that regime”.⁷ The crime of apartheid is also treated as “a grave breach” of article 85, paragraph 4 (c), of the First Geneva Protocol, an international treaty with 169 parties, and widely regarded as universally binding because it is declaratory of customary international law. As will be illustrated in the present report, the dual discriminatory structure of settler administration, security, mobility, and law as compared to the Palestinian subjugation seems to qualify the long Israeli occupation of the West Bank as an instance of apartheid. The referral to the International Court of Justice should also seek clarification as to whether the pattern of continuing unlawful settlement, manipulation of residence credentials, expulsions in East Jerusalem qualify as “ethnic cleansing” and, if so, how this behaviour should be viewed from the perspective of the international law of belligerent occupation.

9. It is also important to underscore what should be self-evident, namely, that Israel has State responsibility for all violations of international humanitarian law in the territories under occupation, above all, for the settlements. State responsibility cannot be evaded by delegation or failure to deal with violations of Palestinian rights in the occupied territories arising from the behaviour of municipal or private sector actors, as in connection especially with claims of unlawful settlement building and ethnic cleansing allegations in East Jerusalem.

II. Reviving the direct peace talks

10. At present, there has been a pause in the peace negotiations between Israel and the Palestinian Authority and feverish diplomatic efforts are being made to continue discussions between the parties. These efforts are relevant to the Rapporteur, as the generally accepted route to the fulfilment of the right of self-determination for the Palestinian people living under occupation has been to achieve an Israeli withdrawal in accordance with Security Council resolution 242 (1967) or on the basis of an agreement between the parties. Whether such negotiations can be effective and legitimate is itself a much contested question that will not be considered here, nor will the presumed outcome of establishing an independent Palestinian state in the occupied territories be assessed from the perspective as to whether the accumulation of facts on the ground has made such an outcome unattainable as a practical matter. In a recent report to the General Assembly (A/65/331), the Special Rapporteur put forth the argument that the developments in the West Bank and East Jerusalem have transformed a *de jure* framework of occupation into a *de facto* condition of annexation. The Rapporteur remains convinced that Israeli settlements, including related infrastructure roads, buffer zones and the separation wall, continue to be the single most important obstacle to resuming the peace talks, assuming that such talks can make constructive contributions to the realization of Palestinian rights, which is far from self-evident. The Palestinian Authority has repeatedly said that it would not resume negotiations without an unqualified freeze on settlement expansion, including East Jerusalem. President Mahmoud Abbas stated: "We want a complete cessation of settlement construction. We don't want to be deceived with another moratorium or a half moratorium or a quarter moratorium. If they want us to talk to the direct talks, the settlements must stop completely".⁸ The chief Palestinian negotiator, Saeb Erekat, made the same avowal: "There are no compromises over settlement construction ... The Israeli government must choose between peace and settlements, because it can't combine the two together".⁹

11. Further, the Rapporteur believes that there are grounds for concern with respect to maintaining the rights of the Palestinian people in relation to the inducements offered to Israel to extend the partial moratorium on settlement expansion. Since this question is one of principle, it remains relevant despite the announcement of the Government of the United States that it will no longer press the Government of Israel to freeze settlement expansion. It is important to bear in mind that the unlawfulness of the settlements has been confirmed over and over again by reference to the textual language of article 49(6), of the Fourth Geneva Convention, by decisions and resolutions of the General Assembly and the Security Council and by numerous statements on the part of respected world leaders. Therefore, providing Israel with substantive benefits for temporarily and partially halting an unlawful activity that infringes on Palestinian prospects for self-determination raises disturbing issues of principle and precedent. The former American Ambassador to Israel, Daniel Kurtzer, has referred to such an effort by the United States to renew the negotiations as designed "to reward Israel for its bad behavior" in the past and present.¹⁰ It is also widely reported that, if Israel accepts the offer, it will never again be asked to impose a moratorium on settlement expansion in either the West Bank or East Jerusalem. What is most relevant here is the disregard of the legal rights of the Palestinians living under occupation. If a pattern of repeated violation of rights, as here, is to be treated as a new platform of legality, then a terrible precedent is being established for these parties and generally. There can be no positive significance to a negotiating process that incorporates an acceptance and legitimization of Israeli settlements and their infrastructure of roads, which constitute a fundamentally unlawful dimension of the prolonged Israeli occupation of the West Bank and East Jerusalem. In this respect, only a permanent commitment to freeze settlement growth would signal the minimal good faith required to support the belief that peace talks are a viable path at this stage to reach the essential goals of Palestinian self-determination and a sustainable peace with security for both peoples.

12. On the matter of Palestinian self-determination, the most basic right whose exercise is precluded by the continuation of the occupation, Palestinian Authority has stated that if the talks fail it will establish a Palestinian state on its own even in the face of the occupation. President Abbas expressed this view as follows: "If we fail in [the negotiations], we want to go to the United Nations Security Council to ask the world to recognize the Palestinian state".¹¹ This is consistent with the frequently discussed plans for Palestinian statehood articulated by the Palestinian Authority Prime Minister, Salam Fayyad. Mr. Fayyad has announced plans for constructing in the West Bank the institutional components of Palestinian statehood, and his efforts have been viewed as credible and impressive in many independent quarters.¹² In Mr. Fayyad's recent words, "I firmly believe [Palestinian statehood] can happen. We need to build up a sense of inevitability about this. I think it will happen next year".¹³ A report issued by the World Bank in October 2010 also encouraged these expectations, suggesting that if the Palestinian Authority maintains "its performance in institution-building and delivery of public services ... , it is well-positioned for the establishment of a Palestinian state at any point in the near future".¹⁴ Nevertheless, it needs to be understood that such a Palestinian state could be viewed as falling far short of realizing the minimum content of an acceptable enactment of self-determination, lacking in resolution of outstanding core issues such as refugees, Jerusalem, borders, water and settlements. In a notable recent development, with many legal and political implications, Brazil and Argentina formally recognized Palestine as a state within its 1967 borders, which in effect, seems to be the territorial vision of Palestinian self-determination contained in Security Council resolution 242 (1967) (subject to minor border adjustments, but not sufficient to allow annexation of the settlement blocs in "exchange" for largely arid land abutting Gaza, or to transfer Arab villages currently behind the green line) and encompassing the crucial non-territorial issue of refugees.

13. Another matter of concern for the Rapporteur during the reporting period is the passage of an Israeli law that would subject any agreement reached in intergovernmental negotiations to be made subject to a national referendum unless approved by 80 or more members of the Knesset.¹⁵ If an agreement were to be reached that embodied the rights and duties of the respective governmental actors, adding internal requirements of approval by either a parliamentary super-majority or a national referendum would only unnecessarily burden that process. Saeb Erekat has gone a step further and stated that the new legislation "is making a mockery of international law".¹⁶ States do customarily require some form of legislative endorsement of international treaty obligations. In this instance, the public validation by Israel of any agreement reached might add to its political legitimacy and the likelihood of future respect and, if it failed to gain sufficient Israeli support, could signal the unsustainability of the agreement. Thus, this new constraint on the finality of a negotiated settlement can at best be viewed as ambivalent, and not itself unlawful, although it might be imprudent, if the objective is to end the conflict through a negotiated agreement, a position that is increasingly confronted by doubts.

III. Continuing expansion of settlements in the occupied Palestinian territories

14. Given the centrality that has been accorded by both sides to the settlement phenomenon, the Rapporteur believes that more detailed attention to the facts and legal implications of recent settlement expansion seems appropriate. The Israeli 10-month self-delimited "moratorium" on settlement expansion in the West Bank expired on 26 September 2010, leading to the breakdown of the briefly resumed peace process and giving rise to lengthy negotiations aimed at re-establishing the moratorium that have now been abandoned. However, several points must be noted. First, the 10-month moratorium did not stop settlement construction but only slowed the pace of expansion in some parts of the West Bank;¹⁷ it did not purport to freeze settlement construction in occupied East Jerusalem, contending, contrary to the international legal and political consensus, that the whole of Jerusalem, as expanded by Israeli law since 1967, is unoccupied, and that the whole city is the capital of Israel, leaving no part of the city to be available as the capital of a future Palestinian state. In the West Bank, settler construction of public facilities such as schools and community centres as well as thousands of housing units already under construction continued unabated during the moratorium. Second, according to the movement Peace Now, a surge of settlement building took place in the first six weeks following the end of the moratorium on 26 September.¹⁸ Further, the settlers managed to start to build 1,629 housing units, and to dig the foundations for 1,116 of them. Work started in 63 settlements, 46 of them east of the separation wall and 17 on the western side of it. In all of 2009, according to the Israeli Central Bureau of Statistics data, work on 1,888 new housing units have started. Had the construction continued at the same speed without the moratorium, there would have been 1,574 units during the 10-month period. In the six weeks following the end of the freeze, the settlers managed to start a similar number of units attesting to the reality that the settlement freeze was no more than a 10-month delay in the construction.¹⁹ In fact, the rate of settlement construction quadrupled compared to what it had been during the two years before the moratorium.²⁰ Third, and perhaps most importantly, the underlying premises of the moratorium were never drawn into question, namely, that it was a matter of Israeli discretion to initiate or terminate a settlement freeze. Official diplomacy never considered the relevance of the continuing violation arising from the presence of the settlements or the questionable status of the 500,000 Israeli settlers who now reside in the West Bank and East Jerusalem and benefit from a preferential legal and administrative structure, which contributes to the impression of apartheid (as a result of its discriminatory, coercive and ethnically specified characteristics). In this respect, the magnitude of the settlement phenomenon, combined with its persistence and character, also warrant concern that the occupation

is a form of colonialist annexation that has been established with a clear intention of permanence.

A. The de facto annexation of East Jerusalem

15. The Israeli insistence on excluding East Jerusalem from the partial moratorium and its overall attitude toward its status is of further concern to the Rapporteur. Prime Minister Binyamin Netanyahu, along with other Israeli leaders, has repeatedly confirmed continuing rejection by Israel of United Nations resolutions and other relevant aspects of international law recognizing that the occupied Palestinian territory includes East Jerusalem. Mr. Netanyahu dramatized this point when he recently stated that “Jerusalem is not a settlement – Jerusalem is the capital of the State of Israel. Israel has never restricted itself regarding any kind of building in the city, which is home to some 800,000 people – including during the 10-month construction moratorium in the West Bank. Israel sees no connection between the peace process and the planning and building policy in Jerusalem, something that hasn’t changed for the past 40 years”.²¹ Although such an assertion amounts to defiance of international law, it is a significant expression of Israeli diplomatic posture, casting further doubt on what could be expected to emerge from a negotiating process that attempts to foreclose a fundamental Palestinian right to have the part of historic Jerusalem occupied by Israeli in 1967 as its national capital. Again, it is disturbing to note the absence of formal objection by the international community and interested Governments to such an Israeli posture taken in advance of negotiations.

16. The Rapporteur finds that by December 2010, the pace of settlement expansion in East Jerusalem had in fact escalated. On 4 November 2010, the Government of Israel issued tenders for 238 new housing units in the East Jerusalem settlements of Pisgat Zeev and Ramot²² and the following day announced plans for construction of 1,352 new housing units elsewhere in East Jerusalem. Continued construction in addition to settlers’ forcibly taking over Palestinian homes in East Jerusalem has resulted in the expulsion of Palestinian residents from their homes. Palestinian families, some of whom have lived in their homes for generations, have been expelled by Israeli police and settlers. In July 2010, a large Palestinian family that had lived in their home in the Old City for more than 70 years was expelled by police-backed settlers who then took over the house.²³ In November 2010, settler organizations took control of two houses in Palestinian neighbourhoods of Jabal al-Mukabber and al-Tur in East Jerusalem resulting in forcible eviction of several Palestinian families from their homes.²⁴ The Sheikh Jarrah neighbourhood has also been the subject of persistent attempts by Israeli settler groups to take over land and property in order to establish new settlements in the area. As a result, over 60 Palestinians have lost their homes and another 500 remain at risk of forced eviction, dispossession and displacement in the near future.²⁵ In Silwan neighbourhood of East Jerusalem, Israeli families have forcibly taken over Palestinian homes, turning them into guarded settlement compounds flying Israeli flags.²⁶ Many of the settler organizations are backed by private donors from abroad,²⁷ raising the issue of international complicity, as well as Israeli State responsibility, with these continuing violations of international law. Moreover, The Government of Israel and the Jerusalem Municipality support the settlers’ actions in Palestinian neighbourhoods in East Jerusalem and the Old City by allocating private security guards, paid for by taxes, to protect the compounds; sending security forces to accompany takeover of Palestinian houses; funding and promoting building and development projects in the compounds; and transferring Government assets to the control of the organizations.²⁸ This support further illustrates the institutional and systematic discrimination against the Palestinian residents of Jerusalem by Israel, as well as ongoing Israeli efforts to create what are euphemistically called “facts on the ground” for the annexation of East Jerusalem.

B. Expulsions from East Jerusalem as a means to annexation

17. The Special Rapporteur believes that the expulsions from East Jerusalem go beyond those linked to house seizures or demolitions – and beyond the immediate dire consequences to individuals and families facing the loss of their homes – and form part of the broader picture of annexation, not as an Israeli legal claim but enacted increasingly as evidence of an Israeli political project. Israel carries out new punishments against Palestinians in Jerusalem, including threats of the revocation of Jerusalem residency rights of Palestinians living legally in Jerusalem.

18. In one of the most egregious examples, in July 2010, four Palestinian citizens of Israel, who were elected members of the Palestinian Legislative Council, including one former Council minister, were given notice that their right to Jerusalem residency was being revoked, after the four politicians refused to renounce their ties to Hamas.²⁹ Efforts to expel these parliamentarians were resumed in the summer of 2010 and finally, on 8 December 2010, one of these individuals was deported from Jerusalem.³⁰ The expulsion of the Council’s members from Jerusalem is a violation of the article 49(6) of the Fourth Geneva Convention, which explicitly prohibits the forcible transfer of protected persons. It also sets a particularly dangerous precedent for the removal of more than 270,000 Palestinians living in East Jerusalem.³¹ As the Special Rapporteur has noted before, it is particularly worrying that Israel appears ready to forcibly transfer these individuals based on their supposed lack of allegiance to the state of Israel.³² Israel, as an occupying Power, is prohibited from transferring civilian persons from East Jerusalem and from forcing Palestinians to swear allegiance or otherwise affirm their loyalty to the State of Israel. The revocation of residency permits, home demolitions and evictions, settlement construction, the separation of East Jerusalem from the rest of the West Bank and its annexation to Israel, and other Israeli measures to push Palestinian residents out of the city will cumulatively make the creation of a viable Palestinian state, with its capital as East Jerusalem, impossible.³³

19. The evidence mounts that from a longer vantage point, the overall pattern combining forced expulsions of Palestinians outwards and of Government-supported voluntary transfers of Israeli settlers inwards reflects a systematic policy of Israel to set the stage for an overall dispossession of Palestinians and the establishment of permanent control over territories occupied since 1967. According to a United Nations report, forced population transfer, or ethnic cleansing, is defined as the “systematic, coercive and deliberate ... movement of population into or out of an area ... with the effect or purpose of altering the demographic composition of a territory ... particularly when that ideology or policy asserts the dominance of a certain group over another”.³⁴ There is no question that, with its policy of Palestinian expulsion and dispossession in Jerusalem, Israel continues to be responsible for a gradual, incremental, yet cumulatively devastating policy designed to achieve the ethnic cleansing of Palestinians.

IV. West Bank roads and international complicity in perpetuating the occupation

20. The Rapporteur strongly believes that the wider infrastructure of occupation and in particular the dual system of roads represents a growing violation by Israel, the occupying Power, of the International Convention on the Suppression and Punishment of the Crime of Apartheid and, more pertinently, of apartheid as an instance of a crime against humanity as specified in the statute governing the operations of the International Criminal Court. The dual system of roads, as correlated with legal regimes, creates two domains in the West Bank: one for privileged Israeli settlers and the other for subjugated Palestinians living under an occupation. This is particularly visible in the Government and international funding of a network of alternative roads designed to facilitate Palestinian travel, while institutionalizing Israeli military control over the existing main roads, which are then accessible only to Israeli settlers. Many of these roads are also being constructed or upgraded in Area C – the approximately 62 per cent of the West Bank, which according to the 1995 Oslo agreement remains under Israeli administrative and military control, and where the material conditions of the Palestinians living in Area C compares extremely unfavorably with conditions in areas A and B, and even with the wretched conditions under blockade in Gaza. In those cases, the roads remain under control of the occupying Power and thus largely inaccessible to Palestinians (except those very few who obtain a permit), while the international aid and money used to pay for the roads is money – diverted from funding streams ostensibly aimed at improving the lives of Palestinians living under occupation – instead benefits the occupying Power.

21. The Office for the Coordination of Humanitarian Affairs has reported that Israeli authorities continue to implement measures to restrict Palestinian movement and access and, at the same time, to facilitate the movement of Israeli settlers.³⁵ These measures include, namely, the expansion of the alternative (“fabric of life”) road network; checkpoints (including partial checkpoints); and the unstaffed obstacles, including roadblocks, earthmounds, earth walls, road gates, road barriers and trenches.³⁶ These measures exact a price from Palestinians. For example, the “fabric of life” roads, which often require the seizure of private Palestinian lands, reconnect a few of the Palestinian communities that were disconnected due to the restricted access of Palestinians to a main road or due to the obstruction of a road by the separation wall. They, however, continue to reinforce the exclusion of Palestinians from the primary road network and undermine the territorial contiguity between different areas.³⁷

22. Whether inadvertently or not, the role of the international donor community has led to a consolidation of Israeli control in the West Bank through the two-tiered system of roads. The United States Agency for International Development (USAID) has acknowledged that all its West Bank projects in Area

C, including road construction, must be carried out through prior coordination with the Government of Israel.³⁸ In other words, USAID and American taxpayers are financing, and thereby further entrenching, the Israeli de facto annexation of the West Bank.³⁹ In one specific example, USAID announced in June 2010 that United States taxpayers had paid for road construction in the West Bank, boasting that “after completion of a road project in the southern West Bank, trade between Dahriyeh and the neighboring city of Beer Sheva (approximately 100,000 residents total) increased dramatically”.⁴⁰ The West Bank area between Dahriyeh and Beer Sheva lies largely within Area C, thus aid funds designated for Palestinian residents is instead helping Israel finance the occupation. In another example in a nearby area, Nidal Hatim, a resident of Battir village near Bethlehem, described his inability to use Route 60, the main road from Bethlehem to his home village and the principal north-south traffic artery through the West Bank; “To go on the highway, we have to go through the checkpoint and turn around. I have a West Bank Palestinian ID, so I can’t go through the checkpoint”.⁴¹ Instead, he takes a side road that is currently being built by the Palestinian Authority with USAID support. The side road, still under construction, weaves around and under the four-lane Route 60, which is now used mostly by Israeli settlers. Upon completion, this “fabric of life” road is expected to be the sole access point connecting the villages in the western section of Bethlehem governorate with the urban area of Bethlehem.⁴² According to the Israeli human rights organization B’Tselem, “the dual road system in the West Bank will in the long run cement Israeli control. The tunnel that connects with Battir can be controlled by one army jeep”.⁴³ The Palestinian Authority grants approval for some of the roads. However, that does not change the legal consequence of an outside-Government funding infrastructure that consolidates the process of de facto annexation already under way in the occupied Palestinian territory. Such funding could arguably result in the outside Government supplying the funds being deemed complicit in the illegal occupation.

V. Continuation of the Gaza blockade

23. It is important to underscore at the outset the conclusions drawn by the report of the independent international fact-finding mission on the incident of the humanitarian flotilla. The report reached a series of conclusions that are likely to become authoritative so far as the international assessment is concerned and have some wider policy implications with regard to the continuing blockade and occupation of Gaza. Perhaps, the most important of these implications, as of 31 May 2010, is “the firm conclusion that a humanitarian crisis existed” at the time in Gaza on the basis of a “preponderance of evidence from impeccable sources” that “is too overwhelming to come to a contrary opinion”.⁴⁴ The report of the Mission further concludes that the existence of a humanitarian crisis is enough by itself to make the blockade “unlawful”⁴⁵ and, by extension, to regard the interception of the flotilla in international waters as a violation of international law.⁴⁶ It should be noted that the core unlawfulness of the blockade, quite independent of its overall humanitarian effects, is that it constitutes a clear, systematic and sustained instance of collective punishment imposed on an entire civilian population in direct violation of article 33 of the Fourth Geneva Convention. One dramatic further finding is “that a deplorable situation exists in Gaza”, such that action by humanitarian organizations to break an unlawful and cruel blockade of this sort is fully justified.⁴⁷ This is especially so when, as here, “the international community is unwilling for whatever reason to take positive action”.⁴⁸ Such an interpretation of the situation confronting the people of Gaza, and having persisted and worsened ever since Israeli sanctions were imposed in 2006 and dramatically escalated by the blockade established in 2007, is a powerful vindication of the humanitarian rationale for the flotilla offered by its organizers and denied by Israeli officials, who repeatedly refute that any humanitarian crisis exists in Gaza.

24. The Rapporteur has found that the situation of the civilian population in Gaza continues to be of critical concern. In 2010, Israeli uses of force resulted in 58 Palestinians killed in Gaza (including 22 civilians) plus 233 Palestinians injured (including 208 civilians).⁴⁹ Israel has declared a buffer zone that extends for 1,500 metres into Gaza from the border fence (comprising 17 per cent of Gaza), and Israeli military personnel fire at farmers and children who are pursuing normal peaceful activities close to the border.⁵⁰ Israeli naval forces also restrict Gaza fishing boats to three nautical miles from shore and fire warning shots should these boats go beyond this limit.⁵¹ These characteristics of the ongoing Israeli relationship to Gaza are strongly confirmatory of the legal and factual assessment that Gaza remains an occupied territory.

25. Despite the announced easing of the blockade after the flotilla incident of 31 May 2010, the dire humanitarian situation persists in Gaza.⁵² Unfortunately, despite some selective easing of the blockade, its essential features persist with continuing hardship and hazard for the entire civilian population of Gaza.⁵³ The most recent statistics available, for instance, suggest that an average of 780 truckloads per week of humanitarian goods had entered Gaza in late November 2010 (as compared to 944 truckloads after the reported easing of the blockade on 20 June 2010) and this total was only 28 per cent of the weekly average before the blockade was imposed in June 2007.⁵⁴ According to a recent report by 25 non-governmental organizations, Gaza requires 670,000 truckloads of construction material to rebuild after the Israeli assault in January 2009. However, the Israeli authorities have only permitted an average of 715 truckloads per month since the “easing” of restrictions in June 2010.⁵⁵ At this rate it will take 78 years to rebuild Gaza, with a completion date in 2088. It is also notable that 53 per cent of the total import was for food items as compared to 20 per cent prior to the blockade, suggesting the decline of the nonfood requirement for civilian normalcy. There has also been no increase in industrial fuel since the beginning of 2010. As a result, total available electricity is 40 per cent below the estimated daily demand of 280 MW.⁵⁶ Daily power cuts of up to 12 hours negatively affect such essential services as water supply, sewage treatment and removal, and health facilities.⁵⁷ Twenty per cent of Gazans have access to water only for one day out of five (and then for 6–8 hours), fifty per cent have access only one day in four; and a further thirty per cent every second day.⁵⁸ In September 2010, the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) reported that, owing to the continuing blockade, it cannot meet the enrolment needs of 40,000 Gazan school children.⁵⁹ These facts demonstrate the persistence and unlawful character of the blockade, being both a form of unlawful collective punishment amounting to a crime against humanity and a denial of material necessities to a civilian population living under occupation in violation of international humanitarian law.

VI. Abuse of children by Israeli authorities in the occupied territories

26. In 2010, there were several reports of the abuse of Palestinian children in the West Bank including East Jerusalem. It is recalled that children are treated as entitled to high standards of protection in situations of arrest or when enduring occupation. Article 37(b) of the Convention on the Rights of the Child provides: “The arrest or imprisonment of a child shall be used only as a measure of last resort and for the shortest appropriate period of time”. Article 76 of the Fourth Geneva Convention specifies that “Proper regard shall be paid to the special treatment due to minors”. Further, Article 77, paragraph 1, of the First Additional Protocol to the Geneva Conventions reinforces this legal obligation as follows: “Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of age or for any other reason”. The treatment by Israeli authorities of Palestinian children living under occupation does not at all comply with these provisions.

27. The Rapporteur utterly deplores and strongly condemns the fact that, since 2000, 1,335 Palestinian children (including 6 children in 2010) have been killed as a result of Israeli military and settler presence in the occupied Palestinian territories.⁶⁰ The arbitrary opening of fire by Israeli military against Palestinian children is particularly appalling. Since March 2010, Israeli soldiers along the border with Gaza have shot 17 children while they collected building gravel in the Gaza buffer zone to support their families. The children were shot whilst working between 50 and 800 metres from the border. Adults and children continue to do this dangerous work as Israeli authorities refuse to allow the entry of construction material into the Gaza Strip and there are few job opportunities available.⁶¹

28. The Rapporteur is further dismayed at the continual arrests and detention of Palestinian children by Israeli authorities. In 2010, Israeli authorities arrested children at checkpoints, off the street or, most commonly, from the family home. In the case of house arrests, large numbers of Israeli soldiers typically surrounded the family home in the middle of the night. Children were beaten or kicked at the time of arrest and put at the back of a military vehicle where they were subject to further physical and psychological abuse on the way to the interrogation and detention centre. Upon arrest, children and their families were seldom informed of the charges against them.⁶² Children were often subject to abuse during interrogation.⁶³ At the end of October 2010, 256 children remained in Israeli detention, including 34 between the ages of 12–15 years.⁶⁴ As of August 2010, 42.5 per cent of Palestinian children in Israeli prisons were not held in facilities separate from adults.⁶⁵

29. The continued reports of inhumane and degrading treatment, including sexual assault, of children in detention is further deplorable. In Silwan neighbourhood of East Jerusalem, at least 81 minors from Silwan have been arrested or detained for questioning (mostly in the middle of the night), the vast majority on suspicion of stone-throwing following confrontations between Palestinians and settlers in the neighbourhood, where there is tension resulting from

settlers' taking control of houses and archeological sites.⁶⁶ Some of those arrested were under the age of 12. An increasing number of testimonies by children and their families pointed to gross violations of the rights of children during interrogation.⁶⁷ In the Ariel settlement in the occupied West Bank, children reported that they had been given electric shocks by Israeli interrogators in the settlement.⁶⁸ The children, one as young as 14 years of age, were each accused of throwing stones at a settler bypass road in the occupied West Bank. Following the electric shocks, the boys provided their interrogators with confessions, although they maintained their innocence.⁶⁹ In May 2010, a 14-year-old boy reported that his interrogator in the Israeli settlement block of Gush Etzion, in the occupied West Bank, attached car battery jump leads to the boy's genitals and threatened to electrify the cable. After further abuse, the boy confessed to throwing stones, although he maintains his innocence.⁷⁰

30. Each year, approximately 700 Palestinian children (under 18) from the West Bank are prosecuted in Israeli military courts after being arrested, interrogated and detained by the Israeli army.⁷¹ Observers have been shocked by the disparities between the special regard for children imposed by international legal norms and the actual practices of Israeli military and security forces. A recent visit by a British Parliamentary group is illustrative: Sandra Osborne, after visiting a military court used to prosecute children at Camp Ofer, near Ramallah, remarked during a Parliamentary debate on the subject, "it was a visit to a military court that shocked us to the core".⁷² Among the shocking features were the following: the child defendants – 13 and 14 years of age – were brought into the courtroom with their legs shackled in changes and handcuffed, usually behind their backs; their jail sentences were lengthened by as much as three times unless they pleaded guilty; the judge had no interaction with the child defendants and was reported never even to look at them; proceedings and signed confessions were in Hebrew, a language most of these children did not know.⁷³ The scene being described resembles the administration of justice in the South Africa of apartheid that the Special Rapporteur visited on a formal mission on behalf of the International Commission of Jurists in 1968.

31. The apartheid dimension of this abusive atmosphere is also accentuated by the dual legal system that is operative in the occupied territories, with settler children – who are rarely apprehended in any event for their violent act – being prosecuted in Israeli civilian courts, while Palestinian children are brought before the military court system. Among the discriminatory features of the two systems is the imposition of higher degrees of accountability at lower ages, Palestinians being held responsible as adults at the age of 16, while the Israeli age is 18. The failure to uphold minimum standards in relation to the treatment of Palestinian children detained and imprisoned is an extreme violation of Israeli obligation to do all that is possible, subject to reasonable security measures, to respect the status of protected persons as mandated by the Fourth Geneva Convention. Such an assessment is rendered more disturbing when account is taken that almost all of these arrests of children are generated by their resistance to unlawful patterns of Israeli settlement building and expansion, along with related ethnic-cleansing measures being applied at an accelerating rate in East Jerusalem.

VII. Recommendations

32. The Special Rapporteur recommends that:

- (a) Intensified efforts be made to induce Israel to cooperate with the proper discharge of this mandate, including allowing access to the occupied Palestinian territories by the Special Rapporteur;
- (b) Efforts be undertaken to have the International Court of Justice assess allegations that the prolonged occupation of the West Bank and East Jerusalem possess elements of "colonialism", "apartheid" and "ethnic cleansing" inconsistent with international humanitarian law in circumstances of belligerent occupation and unlawful abridgements of the right of self-determination of the Palestinian people;
- (c) Intensified efforts be made to attach legal consequences to the failure by Israel to end the blockade of the Gaza Strip in all of its dimensions;
- (d) The Human Rights Council organize an inquiry, possibly jointly with the International Committee of the Red Cross or the Government of Switzerland, into the legal, moral and political consequences of prolonged occupation, including prolonged refugee status, with an eye toward convening Governments to negotiating further protocols to the Geneva Conventions of 1949;
- (e) Steps be taken by the Human Rights Council to implement the recommendations of the report of the United Nations Fact-Finding Mission on the Gaza Conflict in the light of the failure of Israel to address allegations in a manner that accords with international standards as well as the conclusions of the Independent International Fact-Finding Mission into the incident of the humanitarian flotilla;
- (f) Measures are taken to ensure that no Palestinian child is detained inside Israel or in the occupied Palestinian territories in contravention of article 76 of the Fourth Geneva Convention; children are not brought before military courts; cases of mistreatment and abuse of children are thoroughly and impartially investigated; and all evidence against children obtained through ill-treatment or torture be rejected by the courts.

Notes

¹ At the time of the submission of this report, there is still outstanding the report and recommendations of the Panel of Inquiry into the flotilla incident established by the Secretary-General and the Turkel Commission formed by the Government of Israel.

² Ma'an News Agency, "German minister calls on Israel to lift Gaza blockade," 8 November 2010.

³ A/HRC/15/21, para. 264.

⁴ Ibid., para. 265.

⁵ Ibid., para. 267.

⁶ A/HRC/4/17, summary, tenth paragraph.

⁷ See Rome Statute of the International Criminal Court, article 7, para. 2 (h).

⁸ Khaled Abu Toameh, "Abbas: Israel seeking to 'close door to right of return'", *The Jerusalem Post*, 8 November 2011.

⁹ Ibid.

¹⁰ "With settlement deal, U.S. will be rewarding Israel's bad behavior", *Washington Post*, 21 November 2010. Robert Fisk has phrased an objection in even harsher language: "The current American bribe to Israel, and the latter's reluctance to accept it, in return for even a temporary end to the theft of somebody else's property would be [normally] regarded as preposterous". "An American bribe that stinks of appeasement", *The Independent*, 20 November 2010.

¹¹ "Abbas: Israel seeking to 'close door to right of return'".

¹² See e.g. Roberterry, "Is the two-state solution fading?", 27 April 2010, speech at Truman Institute, Hebrew University.

¹³ Reuters, "Palestinians demand immediate statehood to counter Israeli 'unilateralism'", 9 November 2010.

¹⁴ World Bank, "A Palestinian State in Two Years: Institutions for Economic Revival" (September 2009), para. 3.

¹⁵ See Chaim Levinson, "Knesset mandates referendum to withdraw from annexed land", *Haaretz*, 23 November 2010.

¹⁶ "Erekat on referendum: Israel making a mockery of int'l law", *The Jerusalem Post*, 23 November 2010.

¹⁷ See Peace Now, "Eight Months into the Settlement Freeze", 2 August 2010.

¹⁸ See Peace Now, "In 6 weeks the settlers almost made up for the 10 months Settlement Freeze", 13 November 2010.

¹⁹ Ibid.

²⁰ See International Middle East Media Center, "Rate Of Israeli Settlement Construction Quadrupled In Last Month", 21 October 2010.

²¹ Attila Somfalvi, "PM responds to Obama: Jerusalem not a settlement", *Yediot Aharonot*, 10 November 2010.

²² Amnesty International UK, "East Jerusalem: Israel's 238 housing units plan threatens Palestinian human rights", 15 October 2010.

²³ Harriet Sherwood, "Israeli settlers evict Palestinian family from their home of 70 years", *The Guardian*, 29 July 2010.

²⁴ B'Tselem, "New settler enclaves in East Jerusalem", 2 December 2010.

²⁵ Office for the Coordination of Humanitarian Affairs – occupied Palestinian territory (OCHA-OPT), "Fact sheet: The Case of Sheikh Jarrah", October 2010.

²⁶ See e.g. Wadi Hilweh Information Center Silwan, "Settlers took over a house in Al-Farouq neighborhood in Silwan", 23 November 2010.

²⁷ See "New settler enclaves in East Jerusalem".

²⁸ Ibid.

²⁹ See B'Tselem, "In dangerous precedent, Israel revokes residency of four Palestinians affiliated with Hamas from East Jerusalem and acts to forcibly transfer them", 18 July 2010.

³⁰ Associated Press, "Israel expels Hamas MP jailed over Jerusalem status", 9 December 2010.

³¹ "In dangerous precedent, Israel revokes residency".

³² Statement of the Special Rapporteur, "Israel must avoid further violations of international law in East Jerusalem," 29 June 2010.

³³ Carter Center, “Carter Center Calls for End to East Jerusalem Deportations, Respect for International Law” (22 July 2010). Available from www.cartercenter.org/news/pr/palestine-072210.html.

³⁴ The Human Rights Dimensions of Population Transfer, including the Implantation of Settlers, Preliminary Report prepared by A. S. al-Khawasneh and R. Hatano (E/CN.4/Sub.2/1993/17), paras. 15 and 17.

³⁵ OCHA-OPT, “West Bank Movement and Access Update” (June 2010).

³⁶ Ibid.

³⁷ Ibid.

³⁸ Letter from USAID dated 9 June 2010. Available from www.usaid.gov/wbg/misc/2010-WBG-11.pdf.

³⁹ See further Akiva Eldar, “US taxpayers are paying for Israel’s West Bank occupation”, *Haaretz*, 16 November 2010: “The roads are one of the initiatives of the United States Agency for International Development for building infrastructure in underdeveloped countries. Israel has already proudly left the club of developing countries and is not among the clients of USAID. Nevertheless, it appears the Smith family of Illinois is making the occupation a little less expensive for the Cohen family of Petah Tikva.”

⁴⁰ USAID, “Fact Sheet: Water Resources and Infrastructure”, (June 2010). Available from www.usaid.gov/wbg/misc/WRI%20-%20INP%20Fact%20Sheet.pdf.

⁴¹ Nadia Hijab and Jesse Rosenfeld, “Palestinian Roads: Cementing Statehood, or Israeli Annexation?”, *The Nation*, 30 April 2010.

⁴² “West Bank Movement and Access Update”.

⁴³ “Palestinian Roads”. See also Badil, “The implications of losing access to route 60”. Available from www.badil.org/en/documents/category/33-ongoing-displacement.

⁴⁴ A/HRC/15/21, paras. 261 and 263.

⁴⁵ Ibid., para. 261.

⁴⁶ Ibid., para. 262.

⁴⁷ Ibid., para. 275.

⁴⁸ Ibid., para. 276.

⁴⁹ OCHA-OPT, “Protection of Civilians Weekly Report”, 10–23 November 2010.

⁵⁰ See OCHA-OPT, *Between the Fence and a Hard Place*, (2010). See the next chapter for further on this topic.

⁵¹ Ibid.

⁵² See Prime Minister Netanyahu’s Office’s statement following the Israeli Security Cabinet meeting, 20 June 2010. Available from www.mfa.gov.il/MFA/Government/Communiques/2010/Prime_Minister_Office_statement_20-Jun_2010.htm.

⁵³ See generally Amnesty International UK et al, “Dashed Hopes: Continuation of the Gaza blockade”, 30 November 2010. See also Gisha, “Unraveling the closure of Gaza: what has changed and what hasn’t since the Cabinet decision and what are the implications?”, July 2010. Available from www.gisha.org/UserFiles/File/publications/UnravelingTheClosureEng.pdf. For further update, see also Gisha, “Facts Behind MFA Report on ‘Easing’ of Gaza Closure”. Available from www.gisha.org/index.php?intLanguage=2&intItemId=1890&intSiteSN=119.

⁵⁴ “Protection of Civilians”. ⁵⁵ “Dashed Hopes: Continuation of the Gaza blockade”. ⁵⁶ Ibid. ⁵⁷ Ibid. See also OCHA-OPT, “Gaza’s electricity crisis: the impact of electricity cuts on humanitarian situation”, May 2010.

⁵⁸ Ibid.

⁵⁹ UNRWA, “40,000 students turned away from UNRWA schools due to Gaza closure”, 15 September 2010.

⁶⁰ See Defence for Children International/Palestine Section (DCI-Palestine), “Detention Bulletin: November 2010”.

⁶¹ Ibid.

⁶² DCI-Palestine, “Submission to European Parliament Sub-Committee on Human Rights: Hearing on Situation in Prisons in Israel and Palestine”, 25 October 2010. Available from www.dci-pal.org/english/doc/press/Prison_Conditions_EU_Parliament_25_Oct_2010.pdf.

⁶³ Ibid.

⁶⁴ DCI-Palestine, “Detention Bulletin: October 2010”.

⁶⁵ “Submission to European Parliament Sub-Committee on Human Rights” (citing figures provided by the Israeli Prison Service). See also B’Tselem and Hamoked, “Kept in the Dark: Treatment of Palestinian Detainees in the Petah Tikva Interrogation Facility of the Israel Security Agency”, October 2010, p. 33.

⁶⁶ See generally B’Tselem, “Caution: Children Ahead - The Illegal Behavior of the Police toward Minors in Silwan Suspected of Stone Throwing”, December 2010. See also, Wadi Hilweh Information Center, “Silwanian Children at the Frontline”, 12 May 2010. Available from <http://silwanic.net/?p=2966>.

⁶⁷ See, “Child protection laws broken during Silwan interrogations”, *The Jerusalem Post*, 25 November 2010.

⁶⁸ DCI-Palestine, “Detention Bulletin, September 2010”.

⁶⁹ Ibid.

⁷⁰ Ibid. DCI-Palestine and PCATI have submitted complaints against the Israeli army and police interrogators and demanded an investigation into reports that an Israeli interrogator in the settlement of Gush Etzion attached car battery jump lead to the genitals of a 14-year-old boy in order to obtain a confession to stone throwing.

⁷¹ “Submission to European Parliament Sub-Committee on Human Rights”.

⁷² *Haaretz*, “Otherwise Occupied/Labour is concerned”, 13 December 2010.

⁷³ Ibid.