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Consideration of reports submitted by States parties under article 40 of the Covenant pursuant to the optional reporting procedure
Fourth periodic report of States parties due in 2013
Israel*

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* The present document is being issued without formal editing.

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II. Specific information on the implementation of articles 1 to 27 of the Covenant, including with regard to the Committee's previous recommendations

A. Constitutional and legal framework within which the Covenant is implemented (art. 2)

Question 4

Non-application of the Covenant in the Occupied Palestinian Territory

45. The International Convention on Civil and Political Rights (hereinafter: "ICCPR" or "the Convention") is implemented by the Government throughout the State of Israel. According to the Israeli legal system, international conventions, as opposed to customary international law, do not apply directly in Israel, unless they were formally legislated. Such is the case with the ICCPR which is implemented through a wide range of legal instruments, such as basic laws, laws, orders and regulations, municipal bylaws, and court rulings.
46. The applicability of the Convention to the West Bank has been the subject of considerable debate in recent years. In its Periodic Reports, Israel did not refer to the implementation of the Convention in these areas for several reasons, ranging from legal considerations to the practical reality.
47. The relationship between different legal spheres, primarily the Law of Armed Conflict and Human Rights Law remains a subject of serious academic and practical debate. For its part, Israel recognizes that there is a profound connection between human rights and the Law of Armed Conflict, and that there may well be a convergence between these two bodies-of-law in some respects. However, in the current state of international law and state-practice worldwide, it is Israel's view that these two systems-of-law, which are codified in separate instruments, remain distinct and apply in different circumstances.
48 Moreover, in line with basic principles of treaty interpretation, Israel believes that the Convention, which is territorially bound, does not apply, nor was it intended to apply, to areas beyond a state's national territory.
49. *Jerusalem and the Golan Heights*. In accordance with Section 1 to Basic Law: Jerusalem, Capital of Israel 1980-5740 and Section 1 to the Golan Heights Law 1981- 5742, Israeli law applies to the eastern neighborhoods of Jerusalem and to the Golan Heights, accordingly.

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Question 8 (c)

Participation in Public Life

221. Every Israeli citizen over the age of 18 (with few exceptions), present in the country on the day of elections, has the right to vote, and every Israeli citizen over the age of 21 has the right to establish a political party and run in the elections for the Knesset. Knesset seats are assigned in proportion to each party's percentage of the total national vote.
222. Currently there are 12 Arab Knesset Members of the 120 Knesset Members (10%), including one woman and one Druze MK.
223. MK Ahmad Tibi is currently Deputy Knesset Speaker. Several Arab MKs are members of the Permanent Knesset Committees – MK Ahmad Tibi and MK Bassel Ghattas are members of the House Committee, MK Ahmad Tibi and MK Hamed Amar are members of the Finance Committee, MK Ibrahim Sarsur is a member in the Economic Affairs Committee, Mk Taleb Abu Arar and Mk Hamed Amar are members in the Internal Affairs and Environment Committee, MK Jamal Zahalka is a member in the Constitution, Law and Justice Committee, MK Esawi Frij and MK Masud Ganaim are members of the Education, Culture, and Sports Committee, MK Bassel Ghattas is a member of the State Control Committee, MK Hanin Zoabi is a member of the Committee on the Status of Women.
224. The Law states that indictment against Members of Knesset may be issued only with the authorization of the Attorney General, who operates independently of any other Government or political entity, making decisions purely on the basis of professional judgment.
225. Unfortunately, over the past years a number of indictments were filed against serving Members of Knesset, affiliated to political parties from across the

political spectrum in Israel, holding a wide range of political opinions and points of view.

226. According to the Israeli law, a Member of Knesset has substantive immunity against legal action in regard to any spoken or written expressions of opinion or in regard to any act carried out either within or outside the Knesset, if these actions were carried out in the course of fulfilling his/her duties, or in order to fulfill his/her duties as a Member of Knesset. This Immunity is absolute and cannot be lifted.
227. In regard to actions of an MK that are not in the course of fulfilling his/her duties, he/she may be subject to criminal charges for these actions, with the authorization of the Attorney General. The MK has the right, after receiving a draft of the indictment from the Attorney General, to request that the Knesset shall rule that he/she has immunity from criminal prosecution in regard to charges detailed in the indictment.
228. In addition, note that in accordance with the law, an indicted Member of Knesset, is not required to resign and may continue serving as an MK until the completion of his/her trial. As a rule, during the period that the indictment is pending in court, there are no limitations on the parliamentary activity of the MK, and he/she may continue to serve in parliamentary positions he/she holds. The membership of an MK is only terminated in the event that he/she is definitively convicted of a criminal offence involving moral turpitude.

MK Ahmad Tibi

229. In January 2012, the "Legal Forum for the Land of Israel" approached the Attorney General, asking to open an investigation against MK Ahmad Tibi, following his participation in a convention held in the Palestinian Authority, where he made a speech, that according to the application, contained legitimation and glorification to terrorist acts, incitement against Israel and its existence. After examining the case, the State Attorney decided not to open an investigation against MK Tibi. Following additional such applications, the Attorney General repeated that there is a great doubt in regards to the interpretation of MK Tibi's expressions and whether they can be interpreted as glorification of terrorists or incitement to acts of violence and terrorism. The Attorney general also noted that MK Tibi enjoys substantial immunity in this regard and found no reasons to alter the State Attorney's decision.

MK Mohammed Barakeh

230. Following a police investigation and with the authorization of the Attorney General, an indictment was filed against MK Barakeh, that included charges of insulting a public servant, interference with a policeman in the performance of his duty, failing soldiers in performance of their duties and assault. The indictment was submitted in full conformity to the provisions of the Knesset Members Immunity Law (Rights and Obligation) 5711-1951 (Hereinafter: "Knesset Members Immunity Law").
231. The Attorney General found that in this case the charges against MK Barakeh do not relate to acts carried out in the course of his duties or in order to fulfill his duties as an MK. Mk Barakeh chose not to appeal to the Knesset.
232. In October 2011, the Tel Aviv Magistrate Court ruled that the offences of insulting a public servant and interference with a policeman in the performance of his duty shall be removed from the indictment since these offences are protected under the substantive Immunity granted to MKs.
233. On November 18, 2012, the Court ruled that in regard to the third count of indictment – an act of violence that was allegedly committed against another person and after considering the evidence submitted in the trial, there is no justification to accept this claim that the substantive immunity protects from such charges. The Court also rejected other claims such as the delay of the proceedings and selective enforcement of the law. (C.C. 12318-12-09, *The State of Israel v. Mohammed Barakeh* (18.11.12)).

MK Sa'id Naffaa

234. On January 26, 2010, following a long debate, the Knesset Committee decided to remove MK Naffaa's immunity. In its preliminary response, the defense claimed that the immunity provided to Knesset members applies to this case since MK Naffaa discussed political issues rather than security issues with the persons he met. The case is still pending before the Nazareth District Court (S.Cr.C. 47188/12/11, *The State of Israel v. Sa'id Naffaa*). On December 26, 2011, MK Sa'id Naffaa was indicted for illegal travel abroad to an enemy state, aiding an illegal travel abroad to an enemy state to about 280 persons, and two counts of contact with a foreign agent. MK Naffaa was indicted following his trip to Syria in September 2007, despite a refusal of the Minister of Interior to allow this trip.

MK Hanin Zoabi

235. In April 2010, MK Hanin Zoabi left Israel together with five other MKs to meet with Moammar Gaddafi, former President of Libya. Upon their return, an application to revoke their privileges as Member of the Knesset (according to the Knesset Members Immunity Law) was submitted to the Knesset's Committee. This procedure is semi-judicial, and special instructions apply in its regard, in order to assure it fairness and integrity, such as the right to appear and argue before the Knesset, the right to be represented by an attorney, etc.
236. The Supreme Court deliberated on the matter of revoking MKs privileges in several cases, and determined the following principles: The Knesset Committee must take precautions in its decisions in this regard, its decisions are subject to judicial review, the basic condition to revoke a privilege from a MK is the existence of evidentiary basis from which it can be deduced that the MK may use his/her privileges improperly. In addition, the Knesset Committee must be convinced that the MK is going to improperly use his/her privileges and that revoking these privileges will reduce the future risk in the MK behavior. Revoking these privileges is not to be viewed as a punishment but rather as a means to prevent future improper behavior by a MK.
237. With regard to the MKs who traveled to Libya, the first meeting in the Committee was conducted on May 24, 2010. The MKs were asked to present their case before the Committee, but all of them, including MK Zoabi, chose not to do so.
238. Several days later, on May 31, 2010, MK Zoabi took part in the Marmara flotilla during which severe violence was taken against the IDF soldiers, including the use of knifes, bats, metal bars and also firearms.
239. On June 7, the Knesset Committee held its second meeting regarding the travel of the six MKs to Libya, and decided to recommend to the Knesset to revoke MK Zoabi of the following MK privileges: 1. the privilege to leave Israel unconditionally (except in times of war); 2. the right to hold a diplomatic Passport; 3. the right to receive reimbursement of legal expenses from the State, if the expenses are related to a judicial procedure resulting from leaving or entering the country or a foreign territory, or from the commission of offences concerning state security, foreign relations and state secrets.
240. This recommendation was deliberated by the Knesset on July 13, 2010, and the Knesset decided to approve the recommendation and revoke the abovementioned rights. This decision was the subject of two appeals that were filed to the High Court of Justice. The Court issued an order nisi and extended the number of judges in this case. The case is still pending (H.C.J 8148/10, *MK Hanin Zoabi v. The Knesset*).
241. In addition, following MK Zoabi's participation in the flotilla, several complaints were filed to the Knesset's Ethics Committee, stating that the participation of MK Zoabi in the flotilla and her expressions and statements soon after are a violation of the rules of ethics applied to MKs. The Knesset Ethics Committee determined that "The very participation in the flotilla which was meant to break the maritime blockade on the Gaza Strip, that was applied as part of the conflict between Israel and the Hamas, even prior to the harsh consequences were known, and even with no connection between the two, is an act that harms State security, and does not coincide with the legitimate leeway of a MK". The Committee determined that MK Zoabi violated the second rule of ethics, according to which "A MK will observe the respect of the Knesset and its members, shall act in a way that respects his/her status and obligations as a MK and shall avoid improper use of his/her immunities and privileges as a MK." The Committee decided to temporarily remove MK Zoabi from the Knesset and Knesset committees meetings for a period of two weeks, while retaining her voting rights and ability to attend meetings that relate to her personally.
242. MK Zoabi chose not to appeal these decisions.
243. Following her participation in the flotilla, an additional legal process was initiated in the case of MK Zoabi, requesting to revoke her citizenship. Section 11 to the Citizenship Law, determines that the Minister of Interior is authorized to annul the Israeli citizenship of a person, with the consent of the Attorney General, and according to the conditions set by the Law.
244. The Attorney General is well aware of the great importance of the right to citizenship, and even though it is not specifically anchored in Israel's Basic Laws it is considered as a basic right of every person.
245. Following due deliberation regarding this matter, the Attorney General did not approve the revocation of MK Zoabi's citizenship.
246. In addition, In January 2012, the "Legal Forum for the Land of Israel" requested the Attorney General to open an investigation against MK Zoabi in light of her alleged meeting with operatives of the Hamas terrorist organization. After an examination of this case it was decided not to open an investigation against MK Zoabi regarding this matter.
247. Prior to the recent elections of January 2013, several applications were submitted to the Central Elections Committee for the disqualification of MK Zoabi from participating as a candidate. The Committee examined and deliberated on this issue and on December 19, 2012 decided to disqualify MK Zoabi from participating as a candidate. According to Section 7a(a1)(b) to the Basic Law: The Knesset, such a decision by the Central Elections Committee requires the

approval of the Supreme Court. In the frame of this procedure, the Attorney general was requested to provide his opinion regarding the disqualification.

248. In his Opinion, the Attorney General reaffirmed his opinion that: "In accordance to the firm tests that were set in the Supreme Court's ruling on the matter of disqualification of a candidate from participating in the Knesset Elections – and despite that in MK Zoabi's case there is a significant and particularly disturbing accumulation of evidence, which are close to the prohibited line – it seems that the requests themselves do not elaborate a sufficient "critical mass" of evidence in regard to MK Zoabi case, that it alone, in accordance to the relevant court decisions, can cause her personal disqualification from participating as a candidate in the Knesset elections". The Attorney General therefore told the Court that to his opinion, the Court should not approve of the Central Election Committee's decision preventing MK Zoabi from being a candidate to the 19 Knesset.

249. On December 30, 2012, the Supreme Court, residing in a panel of nine judges, unanimously decided not to approve the Central Elections Committee's decision (E.A. 9255/12, *The Central Elections Committee for the 19th Knesset v. MK Haneen Zoabi* (30.12.12)).

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D. Right to life (art. 6)

Question 13

338. Please see Israel's reply to Question no. 4 above.

Independence of the Turkel Commission for the Examination of the Flotilla Incident

339. As detailed in Israel's Follow-up to the Oral Presentation by the State of Israel before the Committee on Civil and Political Rights of October 2011, following the flotilla incident of May 31, 2010, the Government of Israel established by Government Resolution No. 1796, dated June 14, 2010 (hereinafter: the Government Resolution) an independent public commission headed by (retired) Supreme Court Justice Yaacov Turkel, for the purpose of examining the conformity of the actions taken by Israel in connection with the flotilla incident with the norms and requirements of International Law. As further mentioned in Israel's Follow-up report, in addition to the esteemed members of the Commission, two international observers were appointed to the Commission, as will be detailed further below. As noted by the Turkel Commission itself in its report, the observers were full participants in all aspects of the Commission's work.[7]

340. The establishment of such a Commission, a measure undertaken only in exceptional circumstances, further amplifies Israel's commitment to comprehensively investigate all aspects of the incident, above and beyond the robust mechanisms of investigation and review provided by Israeli law.

341. The Government Resolution determined that the Turkel Commission could request any individual or organization, Israeli or foreign, to testify before it or to relay information in another manner, on topics which it considered relevant to its deliberations, including the Prime Minister and members of the Israeli cabinet. As per military personnel, section 6 of the Government Resolution sets forth that the Turkel Commission may hear testimony from the IDF Chief of Staff and the head of the Expert Military Investigative–Team, General (Res.) Giyora Eiland.

342. With respect to other military personnel, the Commission's mandate created a special procedure for the collection of testimonies. Section 6 of the Government Resolution sets forth that Turkel Commission shall receive all the required documents for its review, and can also request the head of the Expert Military Investigative–Team, to provide it with the summary findings of the operational debriefings (also known as command investigations) conducted after the flotilla incident. Furthermore, if the Turkel Commission was to decide, after examining these documents, that there is a need for further investigation, it had the authority to request the Expert Military Investigative–Team to instruct the team to do so, and provide it with the summary findings collected thereby.

343. In addition, on July 4, 2010, the Commission's jurisdiction was broadened and it was given authorities according to Sections 9-11 and 27(b) of the Commissions of Inquiry Law, subject to the abovementioned limitations, provided in Section 6 of the Government Resolution. These Sections of the Commissions of Inquiry Law allow the chairman of an inquiry commission to subpoena a person to testify before the committee or present documents or other exhibits in his/her possession; to require a witness to testify under oath; to force the appearance of a person who did not present him/herself following the subpoena; to collect testimony abroad; to impose a monetary fine on persons who refused to appear after being subpoenaed; to provide a witness with a warrant for expenses; and more.

344. A petition was submitted to the Supreme Court against the limitation on the ability of the Turkel Commission to directly hear testimonies by IDF personnel who took part in the military efforts to prevent the breach of the maritime blockade during the flotilla incident (H.C.J. 4641/10, *Uri Avneri et al. v. The Prime Minister et al.*).

345. During the deliberations on this petition, the parties agreed (in a decision that was given the status of court decision) to postpone the proceedings, leaving the case as "pending", since it was unknown at the time whether the Commission would need to subpoena soldiers to testify before it. It was agreed that insofar as the Turkel Commission would wish to subpoena soldiers to testify before it regarding the events of the flotilla, it could request the Government to enable it do so, and were the Government to refuse, the matter would be examined on merit by the Court.

346. In practice, the Turkel Commission used the authority granted to it by the Government Resolution to extend and deepen the scope of the investigations into operational aspects of the incident, where the Commission considered it necessary. It was resolved that a representative of the Commission would work opposite IDF personnel, who were appointed for this purpose and were not involved in the flotilla incident. Subsequently, additional debriefings were conducted according to the specific instructions and guidance provided by the Commission's representative. As part of these debriefings, the testimonies of numerous combat soldiers and IDF personnel which were directly involved in the incident were provided to the Commission.[8]

347. Furthermore, it is important to add that many senior officials, from both the political and the military ranks, testified before the Commission at length and in detail, including the Prime Minister, the Minister of Defense, the IDF Chief of Staff, the Military Advocate General and the Coordinator of Government Activities in the Territories (COGAT).

348. Given the extensive powers given to the Turkel Commission to hear witnesses and receive documents, and the procedure established in the Commission's mandate and employed vigorously by the Commission in order to present to it testimony of IDF personnel, the Turkel Commission was able to receive all of the necessary information it required from the military authorities.[9] As noted above, in the course of proceedings before Israel's High Court of Justice, the Court ruled that in the event that the Commission was interested in hearing direct testimony of military personnel and was unable to do so, the matter would be adjudicated by the Court. However, under the circumstances described above, the Turkel Commission did not find it necessary to directly subpoena soldiers to testify before it. This was because its members were satisfied that the powers granted to the Commission, the information submitted to it and the extensive testimonies provided, including that of the IDF Chief of Staff which testified before it twice, were sufficient.

349. A significant indication as to the independence of the Commission can be found in the statements of the distinguished international observers, Nobel Peace Prize laureate Lord William David Trimble from Northern Ireland (UK), and former Canadian Judge Advocate General of the Canadian Forces, Brigadier General (ret.) Kenneth Watkin QC. In a letter attached to the first part of the Turkel Report, the two observers note that "[t]he Commission made enormous efforts, to get as much information as possible. This involved going back to the IDF for additional information, obtaining further staff to examine all the video material (hundreds of hours) including the CCTV downloaded from the Mavi Marmara and to collate the material so that it has been able to examine each use of force by the IDF. […] We have no doubt that the Commission is independent. This part of the report is evidence of its rigor."[10]

350. Finally, the Turkel Commission published the first part of the report in January 2011. Many of the determinations made by the Commission, based on the extensive information that was made available to the Commission, including its conclusion that the imposition and enforcement of the naval blockade on the Gaza Strip was lawful and complied with the rules of International Law, were also adopted by the UN-appointed Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident (the Palmer Report[11]).

351. In February 2013, the Commission concluded its work on the second part of its report pursuant to Section 5[12] of its mandate, in which the Commission reviewed the examination and investigation mechanisms in Israel for complaints and claims of violations of the laws of armed conflict and their compliance with Israel's obligations under international law[13]

352. Additional support to the Commission's independence can be found in the statements of the distinguished international observers accompanying the second part of its report. For example, Lord Trimble stated, inter alia: "[i]t is my observation that the members of the Commission and the international observers were free to deliberate and to recommend as we saw fit without interference from, and independently of, the Government of Israel". Brigadier General (ret.) Watkin QC had retired due to a previous commitment prior to the conclusion of the second part of the report; however, in his letter to the Commission he noted, inter alia, that: "since the completion of the last report the Commission has continued to independently and rigorously investigate the significant issues with which it has been entrusted".

353. Finally, Professor Timothy McCormack, a Professor of Law at Melbourne University and Special Adviser on International Humanitarian Law to the Prosecutor of the International Criminal Court in The Hague, who replaced Brigadier General (ret.) Watkin QC, wrote: "[a]ny reader of this report will see that it is comprehensive and rigorous. It is independent. It reveals, that taken as a whole, Israeli law and practice will stand comparison with the best in the world". All of these statements are an additional and unmistakable indication as to the independence of the Turkel Commission.

354. In regard to the Report of the UN Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, please see Israel's Follow-up response to the Oral Presentation by the State of Israel before The Committee on Civil and Political Rights of October 2011 (Page 9).

Notes

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[7]The Report of the Public Commission to Examine the Maritime Incident of 31 May 2010 – Part 1 (hereinafter: The Turkel Report), published on January 23, 2011, pg. 17.

[8]The Turkel Report, pg. 20-21.

[9]Note that while the abovementioned petition has not been erased, to date, the petitioners did not approach the court requesting it to deliberate.

[10]The Turkel Report, pg. 11.

[11]In regard to the Report of the UN Secretary-General's Panel of Inquiry on the 31 May 2010 Flotilla Incident, please see Israel's Follow-up response to the Oral Presentation by the State of Israel before The Committee on Civil and Political Rights of October 2011 (Page 9).

[12]Section 5 of Government Resolution No. 1796 of June 14, 2010: "In addition the Commission will examine the question whether the examination and investigation mechanism in regard to complaints and claims concerning violations the laws of armed conflict in Israel in general, and the way it is implemented in regard to the present incident are compatible with the State of Israel obligations under international law".

[13]The second part of the Report is available online at the Turkel Commission's website – http://turkel-committee.com/content-107.html.

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