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HUMAN RIGHTS SITUATION IN PALESTINE AND OTHER OCCUPIED ARAB TERRITORIES

Report of the high-level fact-finding mission to Beit Hanoun established under Council resolution S-3/1 *

* The present report was submitted late for processing owing to the dates of the mission.

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I. INTRODUCTION

1. At its third special session, held on 15 November 2006, the Human Rights Council adopted resolution S-3/1, in which the Council among other things, called for a high-level fact-finding mission to be established and for the mission to travel to the town of Beit Hanoun in the occupied Palestinian territory of Gaza, following Israeli military operations carried out there around 8 November 2006. The President of the Council appointed Archbishop Desmond Tutu of South Africa to lead the mission, and Professor Christine Chinkin of the United Kingdom of Great Britain and Northern Ireland as the sole other member of the mission. In accordance with the resolution, the Secretary-General and the United Nations High Commissioner for Human Rights provided the administrative, technical and logistical assistance required to enable the mission to fulfil its mandate.

2. The mission has submitted two interim reports to the Council, in which it outlined efforts undertaken to discharge its mandate ([A/HRC/5/20](#)). The present report is the final report of the mission, following its trip to Beit Hanoun in May 2008.

II. BACKGROUND

A. Implementation of the mandate

3. On three occasions, the mission attempted to travel to Beit Hanoun via Israel. Each of these attempts was frustrated by the refusal of the Government of Israel to cooperate with the mission (see A/HRC/5/20). The desire of the mission to travel via Israel was motivated by the experts' desire to meet with and hear the views of Israeli actors (Government, military and non-governmental), including individuals living in areas of southern Israel under the threat of rocket attack from Gaza. In the view of the mission, hearing and taking into account the views of these actors would, among other things, go some way towards redressing any imbalance in resolution S-3/1 perceived by the Government of Israel. In view of the unchanging attitude of the Government of Israel, the mission decided in January 2008 to travel to Beit Hanoun via Egypt.

4. The mission travelled to Beit Hanoun from 27 to 29 May 2008. Security considerations and the impact of the visit on day-to-day United Nations operations in Gaza limited the stay of the mission to two days and two nights in Gaza. The mission agenda, including the names of organizations and individuals with whom the mission met, is attached to the present report (see annex).

B. Mandate

5. The mission's core mandate was to travel to Beit Hanoun to assess the situation of victims; address the needs of survivors; and make recommendations on ways and means to protect Palestinian civilians against any further Israeli assaults. The experts construed this core mandate taking into account:

(a) The context provided by the resolution as a whole, with particular reference to collective punishment; the killing of civilians as a gross violation of human rights law and international humanitarian law; international humanitarian law applicable to medical personnel; and the destruction of homes, property and infrastructure in Beit Hanoun;

(b) The delay of 18 months before the mission could travel to Beit Hanoun and the changes in the physical and political environment in Beit Hanoun and Gaza in this period, most prominently the tightening of the Israeli blockade of Gaza;

(c) The rights-based definition of "victim".

C. Methodology

6. In discharging its mandate, the mission employed a methodology under which it:

- (a) Worked to ensure that its activities remained within its mandate;
- (b) Placed the factual situation under review within a broader context of events in Gaza;
- (c) Adopted an inclusive approach to receiving evidence, information and views from concerned parties;
- (d) Focused on the direct testimony of witnesses and survivors of the shelling as well as inspection of the site;
- (e) Analysed information received from an international law and human rights perspective;
- (f) Sought to respect human rights norms in the execution of its mandate;
- (g) Sought to keep concerned parties informed of developments in efforts to discharge its mandate.

7. The mission regrets that it received no formal input from the Israeli authorities, despite a number of requests. The mission made specific efforts to gather information in the public domain indicating relevant stances of the Government of Israel (including its military) and facts on which its positions are based. Information was also sought and received from Israeli non-governmental organizations.

8. The mission wishes to underline the importance of its travelling to Beit Hanoun to witness first-hand the situation of victims and survivors of the shelling, in particular to comprehend the deep distress of the victims of the shelling and of the population generated by the ongoing blockade. This depth of human suffering is only partially conveyed through the third-party reports on the situation. The mission felt it had to go to Gaza, even if reluctantly through Egypt, to express through its presence the solidarity of the international community with the suffering people, very much like the prophet Ezekiel sitting dumbfounded with his compatriots in their exile in Babylon, or the friends of Job in his suffering.

9. In line with its decision to receive input from all relevant actors, the mission met with senior members of Hamas while in Gaza. The mission also kept the Palestinian Authority apprised of its efforts through the Permanent Mission in Geneva and the office of the President in Ramallah.

D. Applicable law

10. In construing its mandate and the facts presented to it, the mission applied an international law framework, in particular international human rights law and international humanitarian law (Council resolution S-3/1, paras. 4 and 5).

11. Gaza is under the effective control of Israel and is thus occupied by it.¹ This control, including in the period since the disengagement of Israel in September 2005, has been described in a number of reports to the Council and to the General Assembly (see A/HRC/4/17). The mission was able to witness this control first-hand, not least in its own protracted difficulties in gaining access to the territory without Israeli cooperation. The mission also witnessed the constant surveillance of Gaza by Israeli forces, most strikingly from unmanned aerial drones. It was also able to see how Israel effectively controls basic aspects of the daily life of Gazans, notably through the fuel blockade in force when the mission visited the territory. The situation was described to the mission by one resident in the following terms: "Israel decides what Gazans eat for dinner, whether they walk or drive, whether their children go to school or not."

12. As the occupying force, Israel has obligations towards the population in Gaza under both international human rights law and international humanitarian law, both of which are relevant to the shelling of Beit Hanoun. Israel is a party to six of the nine core international human rights instruments.² The long-standing position of United Nations human rights treaty bodies is that, as a State party to international human rights instruments, Israel continues to bear responsibility for implementing its human rights conventional obligations in the occupied Palestinian territory, to the extent that it is in effective control.³ This position is supported by the jurisprudence of the International Court of Justice which, in its advisory opinions on the South West Africa case and the legal consequences of the Construction of a Wall in the Occupied Palestinian Territory case, held that an occupying power remains responsible for fulfilling its obligations under the relevant human rights conventions in occupied territory.

13. In terms of international humanitarian law, Israel, as the occupying power, has responsibilities under, inter alia, the Hague Regulations (accepted as customary international law) and the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War.

14. The mission's mandate also encompasses the humanitarian law obligations of other parties to the conflict, the most relevant being militants launching rockets from Gaza into Israel (Council resolution S-3/1, para. 6). Under accepted customary international humanitarian law obligations, armed groups are bound by the obligations of common article 3 of the Geneva Conventions. They must respect and ensure respect of the principles of distinction, proportionality and the obligation to take the necessary precautions to avoid or minimize incidental loss of civilian life, injury to civilians and damage to civilian objects. Aiming rockets at civilian targets is a violation of this obligation, as would be endangering Palestinian civilians by launching rockets from or near civilians (for example in residential areas).

III. THE SHELLING OF BEIT HANOUN ON 8 NOVEMBER 2006 AND ITS CONTEXT

A. Context

15. Beit Hanoun is situated near the north-eastern border of the Gaza Strip, with more than 35,000 inhabitants, of which 70 per cent are

registered refugees. As in the case of other Gazan towns and cities, the population density in the town is very high, with houses and apartment buildings of three to five stories predominating and a high number of inhabitants in each building. During its visit to the town, the mission was able to appreciate its dense urban nature, the surrounding fields, olive groves and greenhouses, as well as its proximity to the armistice line with Israel, which surrounds the town to the north, south and east at a distance of around 1,000 metres. The mission witnessed the widespread destruction of houses and property and the devastation of agricultural land in the border area as a result of Israeli incursions.

16. An accurate assessment of the shelling of Beit Hanoun on 8 November 2006 and its aftermath was impossible without considering the series of events which preceded it. These events to a large extent explain the fragile state in which the town and its residents found themselves on the morning of 8 November, as well as the adequacy of the response to those injured in the attack.

17. Following the elections for the Palestinian Legislative Council at the beginning of 2006, political, economic and social conditions deteriorated sharply across the occupied Palestinian territories, but particularly in Gaza. This situation has been described elsewhere in detail, particularly in the reports of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 (see A/HRC/4/17). Suffice it to say here that ordinary Palestinians are the main victims of this crisis. According to the World Bank, poverty (based on household income) has risen to almost 67 per cent of the population, with about 80 per cent relying on some form of United Nations humanitarian assistance.⁴

18. Over the same period, increased military activity added a climate of fear for an already fragile population. According to the Office for the Coordination of Humanitarian Affairs, from the disengagement until 9 November 2006, the Israeli military fired approximately 15,000 artillery shells and conducted more than 550 air strikes into the Gaza Strip. Israeli military attacks killed approximately 525 Gazans and injured 1,527.⁵ According to Israel, the majority of its military operations in Gaza are aimed at stopping rocket-launching activity.⁶ Over the same period, at least 1,700 Kassam rockets were fired into Israel by Palestinian militants, injuring 41 Israelis.⁷

19. Conflict reached a peak in the summer and autumn of 2006 with Israeli military incursions into Gaza, code-named "Summer Rains" and "Autumn Clouds" respectively, the latter focusing on Beit Hanoun in the week immediately prior to 8 November. From the large amount of information, including testimonies, received by the mission, it is clear that this operation traumatized the population of the town, severely weakened medical service delivery and obstructed freedom of movement, in particular in relation to the evacuation of the injured. During the incursion, the Israeli military fired 239 artillery shells and launched 66 air-to-ground missiles into Gaza.⁸ Israel enforced a curfew confining residents to their homes that was lifted only every second day for three to four hours. Hundreds of male residents aged between 16 and 40 were ordered from their homes and taken to an Israeli holding centre to the north of the town for questioning.⁸ The majority of electricity, water and telephone services in the town were cut; movement, including that of ambulances was restricted to prior authorization of the Israeli military; and Israeli military tanks and bulldozers destroyed scores of homes and other buildings, uprooted orchards and olive groves and dug up roads, water mains and sewage networks. Education services were also disrupted. Schools operated by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) serving nearly 10,500 pupils were shut down for a week. Estimates indicate that damage caused by the operation at over \$23 million, including reconstruction or repair of over 1,000 housing units.⁹

20. Of particular relevance to the shelling on 8 November was the impact of the Autumn Clouds incursion on the health infrastructure of Beit Hanoun. According to the Office for the Coordination of Humanitarian Affairs, the primary health-care system effectively ceased to function during the incursion as staff at the Ministry of Health, UNRWA and local non-governmental organization clinics were unable to reach their places of work.⁹ The hospital in Beit Hanoun was inaugurated barely five weeks before the incursion. According to the World Health Organization, it was not fully operational at the time of the incursion and was designed as a centre for primary care and triage.¹⁰ The mission heard testimony from the hospital Director, a surgeon, a nurse and an ambulance driver. They told of the 24-hour work of the hospital during the incursion in conditions without water, telephone and grid electricity. The already grave situation was compounded as up to 1,500 people sought refuge in the hospital on 3 November, putting excessive demands on hospital staff to provide food and sleeping facilities.¹¹ Access to and from the hospital was restricted by the Israeli military, hampering ambulances from fetching and transferring the injured. Two paramedics were killed during the military operation.¹²

21. During the incursion, Israeli military personnel occupied houses in Beit Hanoun for hours at a time,¹³ including the house of the Al-Athamna family, which was occupied twice; first for four hours, the second time for six. "They knew who slept in each room, they knew it was a family home", reported one witness.

22. Accounts by United Nations relief agencies,¹⁴ international and Palestinian human rights groups¹⁵ put the number of Palestinians killed during the incursion (together with the victims of the 8 November attack) at between 77 and 82, including at least 39 civilians. Around 250 others were reportedly wounded, including at least 67 children and 58 women. One Israeli soldier died during the operation.

23. The mission concludes that the events preceding the shelling on 8 November (in particular the incursion of 1 to 7 November) had a direct and negative impact on the situation of victims and survivors of the shelling. The control exercised by the Israeli military over inhabitants was reaffirmed. Inhabitants of Beit Hanoun lived in a state of constant fear and anxiety and were traumatized by the deaths and injuries they witnessed, the destruction of property and the uncertainty as to what would occur next.

B. The events of 8 November 2006 and immediate aftermath

24. The mission received information about the shelling on 8 November of Beit Hanoun from a number of sources, including the direct testimony of witnesses and survivors, police and hospital staff. From the totality of this information and its corroborative strength, the mission discerned a number of facts, which are set out below. Despite the delay of 18 months, the recollection of witnesses and the depth of their emotion had little diminished. Similarly, the physical evidence of the attack appeared largely intact, as a consequence of both the enormous impact of a 155 mm shell in an urban area and the lack of significant repairs to damaged property. In some ways, the 18-month delay allowed the mission to make a more balanced assessment of the attack. Some victims of the attack who had been hospitalized in Israel or Egypt had returned and were available to meet with the mission. Victims and survivors were able to testify to the impact of the attack on themselves and their families during the 18 months since the shelling. The mission benefited from a number of assessments of the incident made by others, including United Nations agencies in Gaza. The present report cannot recount the stories of all victims and survivors; rather, its purpose is to draw on the accounts given to the mission to bring to the Council as accurate a picture as possible of the shelling and its ongoing impact on victims and survivors.

25. The shelling took place early on the morning of Wednesday, 8 November 2006, some 24 hours after the Israeli military withdrew from the town and concluded operation Autumn Clouds. Residents of Beit Hanoun, including the Al-Athamna family, were returning to normal life after the trauma of the incursion. Those interviewed by the mission spoke of the night of 7 November as being the first time they and their children could again "get a proper night's sleep". Another survivor noted that it was the first night she could bake bread. Another noted that it was the first time he could rise and pray at the mosque rather than at home.

26. At approximately 5.35 a.m., the first 155 mm shell from Israeli artillery hit a house in the heavily populated neighbourhood of al-Madakkha in northern Beit Hanoun. Over the following 30 minutes or so, a total of 12 shells struck an area of approximately 1.5 hectares along the western side of Hamad Street, which lies around 800 metres from the armistice line. The shells struck six houses as well as surrounding areas in Hamad Street and lanes between houses. Six shells fell on an area of 50 metres in diameter. The mission saw the extensive damage caused by the shells, including holes blasted through reinforced concrete walls and floors, and blast damage to surrounding buildings. Amateur video footage obtained by the mission shows the last three shells landing with intervals of around one minute and 15 seconds.

27. The victims of the shelling were either asleep in their homes or, as was the case with a number of the men, returning from morning prayer. Following the first shell, which hit a house killing and injuring people inside, most residents fled to the street. Once in the street, people congregated to assist those who had been injured. More shells then landed in the street and surrounding lanes, killing and injuring dozens more. A number of survivors ran into surrounding fields. Others indicated running towards the nearby Erez crossing, believing that the Israeli installation there would offer safety.

28. The testimony received by the mission paints a horrific scene. Woken by the first shell, families fled their homes and assembled in the street outside, where dead and injured persons already lay. One mother described being faced with one of her children with an open skull wound while trying to help another son as he scooped his intestines back into his abdomen. Another spoke of helping his injured father to the door of the house, only for him to be killed by a direct shell at the door. As people gathered and attempted to provide assistance to the injured, more shells landed in the street. There was, according to one witness,

“no one left standing”. The nature of injuries caused by artillery shells meant the street was “strewn with limbs”. Children were decapitated and a mother worries for her surviving son who “saw his brother cut in half”.

29. Some time after the first shell landed, the injured started to arrive by private vehicle at the Beit Hanoun hospital, most having lost limbs or requiring amputation. Within a short amount of time, 30 to 40 injured people arrived at the hospital. The director of the hospital declared an emergency and called for ambulances from across Gaza to assist. The first ambulance to reach the scene of the shelling itself came under fire, the driver and assistant being forced to abandon the vehicle. Footage obtained by the mission of the scene in Beit Hanoun hospital as casualties from the shelling arrived showed an extremely disturbing scene of a small hospital crowded with medical staff, victims with blast injuries and their families. Medical staff interviewed by the mission described not only the trauma in dealing with the onslaught of casualties, but also of their exhaustion following their efforts during the Autumn Clouds incursion, as described above.

30. The shelling resulted in the immediate death or mortal wounding of 19 civilians, including seven children and six women. All but one of the victims were from a single family group, the Al-Athamna. Over 50 others were wounded during the attack.

31. A number of the more seriously injured required treatment that could not be provided in Gaza. Families of the injured ran directly to the Erez crossing to plead for Israeli approval to transport injured people to Israeli hospitals. According to survivors, approval to move some injured to Israeli hospitals was received only some 12 hours after the shelling. Survivors told how significant obstacles were placed in the way of individuals travelling to Israel for emergency treatment, in particular:

(a) The refusal by Israeli authorities in some cases to allow the injured to be accompanied by family members. This was particularly distressing in the case of the elderly and children who travelled without their closest relatives;

(b) The refusal by Israeli ambulances to transport the injured from Erez crossing to Israeli hospitals without an immediate payment of some thousands of shekels. These fees were later reimbursed by the International Committee of the Red Cross.

32. At least five injured victims of the attack on 8 November were referred to different Israeli hospitals for treatment not available in Gaza; three more were transferred to Cairo via an arduous journey across the Sinai.

33. Reactions to the news of the shelling were swift, with condemnations from the Palestinian Authority, the Secretary-General,¹⁶ the United Nations High Commissioner for Human Rights,¹⁷ and aid agencies operating in Gaza,¹⁸ as well as Member States. In addition to the special session of the Council at which resolution S-3/1 was adopted, on 30 November 2006, the General Assembly adopted resolution ES-10/16, in which it deplored Israeli military assaults on the Gaza Strip, in particular the killing of many Palestinian civilians in Beit Hanoun. The Assembly requested the Secretary-General to establish a fact-finding mission on the attack. The fact-finding mission has never been conducted.

C. The Israeli response and explanations for the shelling

34. Following the shelling, the Prime Minister and Minister for Defense of Israel “expressed their regret over the deaths of Palestinian civilians in Beit Hanoun” and offered “urgent humanitarian assistance and immediate medical care for the wounded”.¹⁹ The Israeli military similarly expressed regret but stressed that “the responsibility for this rests with the terror organizations, which use the Palestinian civilian population as a ‘human shield’, carrying out terror attacks and firing Kassam rockets at Israeli population centres from the shelter of populated areas”.²⁰ The Minister for Foreign Affairs said that “unfortunately, in the course of battle, regrettable incidents such as that which occurred this morning do happen”.²¹

35. On 8 November 2006, Israel announced an inquiry into the shelling of Beit Hanoun earlier that day, intimating that the shells were not fired on civilian areas of Beit Hanoun intentionally but rather as a result of some technical error.²⁰ Use of artillery in Gaza was halted pending the outcome of an investigation. It has been reported to the Mission that artillery has not been used in Gaza since 8 November 2006.

36. The Israeli military appointed an internal investigation committee of military staff headed by a senior officer.²⁰ Some 15 months after the shelling, the committee presented its findings to the Military Advocate General, who then decided that “no legal action is to be taken against any military official regarding this incident”.²² According to a press communiqué issued by the Israeli Ministry of Foreign Affairs, the reasons for this decision were that:

(a) The shelling of civilians was not intentional;

(b) The error was “directly due to a rare and severe failure in the artillery fire-control system operated at the time of the incident” causing “incorrect range findings that lead, unknowingly, to fire at a different target than planned initially”;

(c) The malfunction was so rare that “it is not possible to point to a legal circumstantial connection, between the behaviours of the people involved in the incident and the result of the incident”.²²

37. Neither the report of the committee nor that of the Advocate General has been made public. The mission requested copies of both on a number of occasions, but these requests remain unanswered. The mission finds this lack of transparency for a process that is in effect to date the only means for accountability for the deaths of 19 civilians, highly disturbing.

38. The Israeli military appears to be of the view that, if an error is caused by malfunctioning technology, there can be no causal link (and thus no responsibility) on the part of individuals, be they designing, building or operating the technology.²³ The Mission also notes that press reports of the investigation quote military sources as suggesting that “it would be worthwhile to look into whether the artillery battery team could have nonetheless avoided the incident through more proper performance, and careful monitoring of the equipment”. This proposal is strengthened by the reported recommendations of the investigation, one being to require “human tracking of where shells are falling in addition to the radar”.²⁴

39. According to a number of sources, the Israeli military version of events on 8 November 2006 is as follows. On or at some time prior to 8 November, the military received information that rocket launching would take place from a field near Beit Hanoun. “In an effort to disrupt and thwart the launching of rockets at Israeli population centers”, Israeli artillery directed twenty-four 155 mm shells at two targets near Beit Hanoun. In the military’s view, artillery shelling of a site of potential rocket launching is an effective deterrent. The first 12 shells landed in the correct location, however 6 of the second round landed 450 metres away from their intended target and resulted in the civilian casualties.²⁵

40. This view is in conflict with the information received by the mission. Numerous sources show that 12 shells hit the area around Hamad Street, possibly 13. The mission received no evidence of shelling in a field near Beit Hanoun before the shelling, which resulted in casualties. Indeed testimonies indicate that, just before the shelling, the majority of Beit Hanoun residents were sleeping or at prayer, which would have been quite abnormal if heavy artillery fire had been directed just 450 metres away from the residential area. Furthermore, investigations carried out by the explosive ordnance disposal unit of the Palestinian Police and presented to the mission suggest that six 155 mm artillery shells were fired from a location to the east of Beit Hanoun, and another six from a separate location to the south-east, suggesting the attack was not conducted from one single artillery battery, as reported by the Israeli military, but two.

41. Victims and survivors interviewed by the mission are seeking an explanation for the shelling, a common refrain being “why did this happen to us?” Many expressed doubts as to claims that they had been shelled in error. More than one remarked that they “could believe one shell fired in error but not 12”. Others indicated that the level of Israeli monitoring of Beit Hanoun (including by unmanned aerial drones as witnessed by the mission) is such that an error of this magnitude is highly unlikely. Yet another survivor juxtaposed the alleged 450-metre error in the Beit Hanoun shelling with the precision with which the Israeli military carry out targeted assassinations in the occupied Palestinian territories. Others noted that an error of 450 metres would have placed Israeli soldiers at the nearby Erez crossing at risk of shelling, a risk survivors felt the Israeli military would not take.

42. The mission strongly endorses the position put forward by others, particularly human rights organizations, that the use of artillery in urban areas, especially in densely populated urban settings such as Gaza, is wholly inappropriate and likely contrary to international humanitarian and human rights law. The risks of this practice were compounded by the reported reduction by the Israeli military of the “safety zone” for artillery shelling from 300 to 100 metres earlier in 2006. The 155 mm artillery shells fired on Beit Hanoun have an expected lethal radius of 50 to 150 metres and a casualty radius of up to 300 metres. Firing such a shell within 100 metres of civilians appears to the mission almost certain to cause casualties at one time or another. In litigation by human rights groups against the safety-zone reduction, it was reported that Israeli military officers “admitted that the new regulations put Palestinian lives at risk but insisted it would help strike back at Palestinian militants launching rockets at Israeli civilians”.²⁶

IV. VICTIMS AND SURVIVORS

43. The mission's core mandate was to assess the situation of victims and the needs of survivors. While recognizing that all Gazans are victims of the occupation and live with the constant disruptions to life caused by the realities of Israeli control, fear of attack and humiliation, the mission focused on the specific situation of victims of the Beit Hanoun shelling, as required by its mandate. There were many more victims than the 19 killed in the shelling. In identifying victims, the mission was guided by the definition of the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law.²⁷ The victims of the shelling are persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights as a result of the shelling; they include the immediate family or dependants of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. The mission notes that there has been no systematic follow-up of the situation of victims to assess their progress, their ongoing medical or other needs.

44. During its visit to Gaza, the mission met and talked with as many victims and survivors of the shelling as possible, in particular those of the Al-Athamma family. Key elements of the testimony of the victims, survivors, witnesses and non-governmental organizations, together with the mission's own observations, are given below. Following the mission's methodology outlined above, the situation of victims and needs of survivors was addressed from the perspective of international law in general and human rights in particular. The extremely difficult conditions of life facing all Gazans in many instances constitute gross violations of human rights and international humanitarian law. The mission agrees with the Secretary-General (SG/SM/11429), the previous Special Rapporteur (A/HRC/7/17) and the High Commissioner for Human Rights (A/HRC/7/76) that the blockade amounts to collective punishment contrary to international humanitarian law.²⁸

A. The protection of civilians in conflict and the right to life

45. A total of 19 of the Beit Hanoun victims died as a result of the shelling. Two of the greatest needs of the surviving victims are a credible explanation for the attack on the town, and, where appropriate, the holding of individuals to account for the attack. In the mission's view, neither of these needs have been met. As noted by the Israeli Foreign Minister above, "regrettable incidents" do occur in battle; however, such incidents must be assessed in accordance with both the rules regulating recourse to force and international humanitarian law, the applicable *lex specialis*.

46. The mission recognizes that a State has the inherent right to self defence and to protect its citizens from armed attack under Article 51 of the Charter of the United Nations. Israel contends that the shelling of Beit Hanoun, operation Autumn Clouds and indeed the entire blockade of Gaza is in response to the firing of Kassam rockets into its territory by Palestinian militants. While the firing of Kassam rockets constitutes an armed attack against Israel, they are fired by non-State actors. The International Court of Justice in the Wall case concluded that Article 51 was not relevant to that case, noting inter alia that the attacks against which the Wall was being constructed do not emanate from another State.²⁹ However, the opposite view has been expressed by a number of judges. What is clear is that, if the right to self defence applies against armed attacks from non-State actors, it is subject to the requirements of necessity and proportionality.³⁰ This requires a careful examination of all the facts, which, as the mission was not able to visit Israel, it is not in a position to perform. However, the mission saw no evidence of any necessity for the shelling of Beit Hanoun on 8 November and certainly none that the need for such an attack was "instant, overwhelming, leaving no choice of means, and no moment for deliberation". The fact that the Israeli military had been in almost full control of Beit Hanoun in the days prior to the attack only reinforces this argument.

47. The primary rule of international humanitarian law is the protection of civilians. Article 43 of the Hague Regulations require the occupier to "take all the measures in his power to restore, and ensure, as far as possible, public order and safety" in the occupied territory. According to Judge Higgins, President of the International Court of Justice, "the protection of civilians remains an intransgressible obligation of humanitarian law, not only for the occupiers but equally for those seeking to liberate themselves from occupation".³¹ Nevertheless, the use of force with an impact on civilians is permissible if it is directed at a legitimate military target and is proportionate to the overall threat faced. The mission received no evidence that the shelled area of Beit Hanoun was a legitimate military target and notes that it had been occupied by Israeli military earlier in the week.

48. Israel has not claimed that the houses around Hamad Street were a military target but that the shelling was caused by technical error. The International Law Commission articles on the responsibility of states for internationally wrongful acts³² are silent on whether such a mistake relieves a State of its international responsibility for the commission of an internationally wrongful act and the requirement of fault in international law is controversial. In a commentary on the articles, Crawford and Olleson consider that "if a State deliberately carries out some specific act, there is less room for it to argue that the harmful consequences were unintended and should be disregarded. Everything depends on the specific context and on the content and interpretation of the obligation said to have been breached".³³

49. The firing of artillery towards Beit Hanoun on the morning of 8 November 2006 was a deliberate act in the context of the long-term occupation of Gaza and of the deaths of civilians and destruction of property in Autumn Clouds. Taken together with further facts (such as the reduction of the safety zone for artillery use referred to above) and the nature of the "intransgressible obligation" to protect civilian life, the mission considers that there is evidence of a disproportionate and reckless disregard for Palestinian civilian life, contrary to the requirements of international humanitarian law and raising legitimate concerns about the possibility of a war crime having been committed.

50. Human rights law is also applicable in armed conflict and occupation.³⁴ The mission considers that this reckless disregard for civilian life also constitutes a violation of the right to life as set out in article 6 of the International Covenant on Civil and Political Rights to which Israel is a party. The right to life includes the negative obligation to respect life and the positive obligation to protect life. The Human Rights Committee has stated that States parties should take measures not only to prevent and punish deprivation by criminal acts, but also to prevent arbitrary killing by their own security forces.³⁵ No exception is made for acts during war.

51. The right to life also includes a procedural component that requires adequate investigation of any alleged violation "promptly, thoroughly and effectively through independent and impartial bodies" for "failure by a State Party to investigate allegations of violations could in and of itself give rise to a separate breach of the Covenant".³⁶ The investigation of the Israeli military referred to above was not independent (it was carried out by a committee comprised of Israeli military personnel) and the lack of transparency makes it impossible to determine whether or not it was rigorous or effective. The failure of Israel to comply with the procedural requirement adds to the frustration and anger felt by survivors, who have received no credible explanation for what occurred. Survivors have come to perceive the rule of law as having no meaning for them.

B. The situation of victims and the needs of survivors

52. The needs of victims and survivors of the shelling include compliance by Israel with other human rights obligations, especially where failure to do so has an adverse impact on their recovery from the events of 8 November 2006. Relevant human rights obligations include the right to physical and mental health and the right to an adequate standard of living, including work, social assistance and shelter. These economic and social rights are contained in the International Covenant on Economic, Social and Cultural Rights. The International Court of Justice explicitly stated in the Wall case that the obligations of Israel under the Covenant apply in the occupied Palestinian territories.

1. The right to physical and mental health

53. Testimony demonstrated a number of violations of the obligation to respect and protect the right to the enjoyment of the highest attainable standard of physical and mental health.³⁷ The Special Rapporteur has described the many ways in which the primary obligation to protect the right to physical and mental health has been severely undermined by the economic situation and the blockade of Gaza (see A/HRC/7/17).

54. The situation in Beit Hanoun before and after the shelling has had a significant detrimental impact on the access of victims and survivors to adequate health care. Before the shelling, the health-care infrastructure of the town had already been overwhelmed during the Autumn Clouds incursion. The director of Beit Hanoun hospital told the mission that they had used all their reserves by 8 November; these included physical reserves of strength of medical staff after the demands caused by the severe injuries presented during Autumn Clouds, as well as of essential supplies, such as blood.

55. In the immediate aftermath of the shelling, access to and the availability of health services appropriate to the levels and type of injury was limited by the continued shelling, which impeded ambulances and medical teams from getting to the scene. Subsequently, there were delays in evacuating severely wounded people to hospitals in Israel and Egypt. Despite the promise by the Israeli Prime Minister and the Defense Minister of urgent humanitarian assistance and immediate medical care,¹⁹ the mission was told that it was not until late in the afternoon of 8 November that evacuations were made, and even then with the significant restrictions described above.

56. The fact that the mission was not able to visit Beit Hanoun until May 2008 allowed its members to witness the long-term health consequences of the shelling. The obligation under the Covenant to respect the right to physical and mental health requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. Survivors told of the various ways in which Israeli authorities had failed to comply with this obligation, for example by refusing permission to return to hospitals in Israel and Egypt for follow-up treatment that had been prescribed by doctors. Testimonies included the following: “Once a month, I have to go to Israel to follow treatment. I spend a month getting my permit. Since the siege I can’t go for follow-up.” Another survivor could not return to Egypt to have shrapnel removed from wounds, nor could a woman whose foot had been blown off during the shelling return to Egypt to receive a prosthetic foot. As one survivor noted, “there were two attacks, the military attack on 8 November and the second a bureaucratic one”. The mayor reported that there was no physiotherapy facility available in the town, and plans with the Catholic Church to build a psychiatric counselling centre had been stalled because of the blockade. The mission was able to witness the effects of the blockade on Al-Shifa hospital, Gaza’s largest medical facility.

57. The survivors do not suffer from physical injury alone; there are also significant mental health problems. In the words of one survivor, “I am physically healed but am having problems dealing with it.”³⁸ The number of children with mental health issues is also increasing. The mission was told by survivors of traumatized children who were afraid to sleep because of the bombs, who had reverted to bed wetting, who ask for their dead parents and who do not want to live in Beit Hanoun. The Committee on Economic, Social and Cultural Rights stated that States parties are obliged to fulfil (provide) a specific right contained in the Covenant when individuals or a group are unable, for reasons beyond their control, to realize that right themselves by the means at their disposal”.³⁹ This is the situation of survivors of the Beit Hanoun shelling and these obligations have not been adequately addressed.

58. The mission notes that the Committee on Economic, Social and Cultural Rights has confirmed that States parties have a minimum core obligation with respect to health-care services, which includes the obligation to ensure the right of access to health facilities, goods and services on a non-discriminatory basis, especially for vulnerable or marginalized groups.⁴⁰ Survivors in Beit Hanoun have been made especially vulnerable by the shelling on 8 November and its aftermath and the mission considers that there has been a failure by Israel to comply with this minimum core obligation.

2. The right to an adequate standard of living

59. The Committee has consistently underlined the interdependence of the right to physical and mental health with other rights, including those to minimum essential food, access to basic housing, sanitation, adequate and safe water, and equitable distribution of health facilities, goods and services. Such conditions also undermine the right to an adequate standard of living.⁴¹

60. The people of Beit Hanoun, together with all people in Gaza, have experienced a severe undermining of these core requirements during the blockade. For the victims of Beit Hanoun, the impact of these violations has been exacerbated by the consequences of the shelling. For example, where there is such high unemployment, a person with the severe physical or mental injuries suffered by many of the survivors of the shelling is unlikely to be employed, a situation confirmed by witnesses. Some survivors have incurred greater financial obligations by having to undertake the care of orphaned children or other dependants, and their desperate financial situation causes them further stress. Many of the survivors are living on relief handouts, from relief agencies or from family members. This condition is both uncertain and humiliating.

61. The Committee emphasized the essential role of international cooperation under the International Covenant on Economic, Social and Cultural Rights in particular States parties’ joint and individual responsibility in providing disaster relief and humanitarian assistance in times of emergency.⁴² The mission observed the appalling humanitarian consequences of the blockade, exacerbated in the case of Beit Hanoun. This humanitarian crisis is the result of deliberate policy choices of States that are incompatible with States’ obligations under the Covenant. All States parties to the Covenant are reminded of their obligations under it.

3. Freedom of movement

62. Freedom of movement is provided for in article 12 of the International Covenant on Civil and Political Rights, including individuals’ freedom to leave any country, including their own. Together with other persons living in Gaza, survivors of the Beit Hanoun shelling have had their movements severely restricted by the occupation and the blockade. More directly, during the Autumn Clouds operation, a curfew was imposed on Beit Hanoun, which was thus isolated. The impact of these restrictions on access to health-care services has been discussed above. Being unable to move freely also contributes to feelings of isolation and can undermine mental health.

4. The situation of women

63. The particular position of women and gender-specific harm may be invisible where a whole society is facing gross violations of human rights and of international humanitarian law, as there is a sense of unity that prevents identification of and focus on women’s situations. Nevertheless, incursions and artillery strikes and their aftermath such as those in Beit Hanoun have engendered consequences that should be addressed.

64. The mission heard testimony from both women survivors of the shelling and women’s groups active in Gaza. Many spoke of the intrusions of the Autumn Clouds incursions on women’s sense of privacy within the home. Where women have a more vulnerable social position and only limited freedom of movement in public, the private space of the home is especially important as a “women’s space”. Intrusion into the home by Israeli military personnel, sometimes for several hours, caused humiliation, loss of dignity, denied privacy and undermined women’s sense of belonging and ownership. One woman was ejected from her house with nothing but the clothes she was wearing. Another said that she had been unable to go to the bathroom while the Israeli soldiers were in the house. Incursions into houses also caused humiliation to men through their being beaten in front of their families.

65. Autumn Clouds and the shelling on 8 November led to the destruction of a number of houses. Female victims told the mission that they destroyed “the only thing in the world” and that “life itself was destroyed” with the house. Possessions of special importance to women were destroyed with their houses; one woman said she had gone to her child’s school to recover some photos of her child as she had lost all she had in the shelling of the house and this was the only way she could get photos of her own child.

66. One woman told the mission that the sufferings of women “could not be divided” but noted that the particular effects and vulnerable social position of women had been worsened by the blockade and effects of the incursion and shelling; women are “the poorest of the poor” and unemployment is especially high among women, including women graduates. The burden of childcare falls on women, which is made more difficult when children are traumatized. Lack of specialized medical services and limited facilities for counselling mean that women receive little expert assistance. Anecdotal evidence was offered indicating an increase in domestic violence in Gaza as a result of the blockade. The mission considers that this is an area that needs addressing. The blockade also hampers initiatives by women’s groups to ameliorate the situation, for example, through law reform and advocacy to support women’s claims.

5. Access to justice and right to an effective remedy

67. One of the major needs of survivors is to secure access to justice and redress.⁴³ The mission was told that survivors “want justice, not sympathy”. In the Basic Principles and Guidelines on the Right to a Remedy, the General Assembly recognized that it is through honouring the victims’ right to benefit from remedies and reparation that the international community keeps faith with the plight of victims and survivors. The survivors of the Beit Hanoun shelling have not been able to have access to justice. Victims have made recourse to the assistance of an Israeli lawyer for compensation from Israel, at this stage through court proceedings; however, they face many obstacles, including restrictions on their travel to Israel and legal costs. A number of people also spoke of their concerns about measures introduced recently into Israeli law that had the effect of limiting the ability of Palestinians harmed by Israeli military action to seek redress in Israeli courts.⁴⁴

68. The Israeli military internal investigation referred to above concluded that there would be no prosecutions of individuals or other disciplinary action arising from the shelling; therefore, no one has been held to account for the injuries suffered. A further recent example involving the killing of a media cameraman and eight youths reinforces the culture of impunity decried by the mission in its previous report.

69. Article 2 (3) of the International Covenant on Civil and Political Rights guarantees the right to an effective remedy for violations of the Covenant. The Basic Principles state that reparation for harm suffered should be “adequate, effective and prompt”, and that victims seeking access to justice should receive proper assistance. These standards were not observed. The mission was told of how the lack of financial resources prevented survivors from seeking further health care and from finding adequate housing where homes had been made uninhabitable. Some family members are living in rented accommodation and others have taken out loans, creating further financial strains. This also means that family members have been separated when they need mutual support.

70. There has been limited monetary assistance offered to some survivors of the Beit Hanoun shelling and immediate humanitarian assistance from UNRWA. The United Arab Emirates and the United Nations have assisted in the rebuilding of houses. To the best of the mission's knowledge, Israel has not paid compensation for the damage and harm caused by its internationally wrongful act. The requirements for reparations for victims of human rights abuses have not been satisfied. Other forms of monetary compensation (for example, for moral damage or lost opportunities) have not been offered.

71. Other forms of reparation provided for under the Basic Principles include rehabilitation comprising appropriate medical and psychological care and social and legal services, verification of the facts and public disclosure of the truth, and commemorations of and tributes to the victims. Appropriate reparation should include the provision of a range of such facilities and measures, but none have been forthcoming.

V. CONCLUSIONS AND RECOMMENDATIONS

72. The mission expresses its sympathy to all victims of the shelling on 8 November 2006 of Beit Hanoun. The attack took lives, inflicted horrendous physical and mental injuries, tore families apart, destroyed homes, took away livelihoods and traumatized a population. Its aftermath compounded those ills. The courage of the victims in the face of continuing hardship deserves our admiration. Their recovery is not aided by continuing incursions into Beit Hanoun including on the night after the mission's visit to the town.

73. The mission again expresses its regret that the Government of Israel decided to withhold any cooperation with the mission. Israel feels that the mandate of the mission is biased against it. That is a matter for the Council. The mission has, however, gone to great lengths to execute its mandate in as balanced a way as possible. The effective ban on its visiting Israel and meeting with Israeli actors (including victims of Kassam rocket attacks in southern Israel) has itself been an obstacle to the balance that Israel seeks. The mission expresses its sympathy to all those affected by the Kassam rocket attacks in southern Israel.

74. The bombing of Beit Hanoun and its aftermath came in the wider context of the conflict in the occupied Palestinian territories and Israel. The occupation remains the root cause of the bleak situation that the mission only briefly sketches in the present report. The cessation of hostilities between Israel and Palestinian militants in June 2008 was a positive development. The mission reiterates that the process towards peace must operate within a framework of international law and be guided by respect for the Charter of the United Nations, international human rights law and international humanitarian law. The mission draws the attention of all parties to the conflict to Security Council resolution 1325 (2000) requiring attention to the special needs of women in the aftermath of conflict and urging women's participation in conflict resolution and sustainable peace.

75. The violence in Gaza and southern Israel has led to countless violations of international human rights and international humanitarian law. This lack of respect on both sides for the rules of conflict not only leads to incidents such as that in Beit Hanoun, but also undermines respect for the laws of war and human rights in other conflicts. The people of Gaza must be afforded protection in compliance with international law and, above all, the Fourth Geneva Convention. The Israeli military must place at the centre of its decision-making and activities in the occupied Palestinian territories the consequences of the use of force on civilians. In the absence of a well-founded explanation from the Israeli military (who is in sole possession of the relevant facts), the mission must conclude that there is a possibility that the shelling of Beit Hanoun constituted a war crime as defined in the Rome Statute of the International Criminal Court. Similarly, as the mission made clear to Hamas at the highest level, the firing of rockets on the civilian population in Israel must stop. Those in positions of authority in Gaza have not only an international humanitarian law obligation to respect international humanitarian law norms relating to the protection of civilians, but also a responsibility to ensure that these norms are respected by others.

76. One victim of the Beit Hanoun shelling was the rule of law. There has been no accountability for an act that killed 19 people and injured many more. The Israeli response of a largely secret internal military investigation is absolutely unacceptable from both legal and moral points of view. The mission notes that Israel has adopted a similar response to other killings by its military, with similar results. The mission repeats its position that, regardless of whether the casualties at Beit Hanoun were caused by a mistake, recklessness, criminal negligence or wilful conduct, those responsible must be held accountable. It is not too late for an independent, impartial and transparent investigation of the shelling to be held; indeed, the mission notes other instances in which the courts have ordered the Israeli military to open investigations into the killings of civilians by the military. The mission welcomes this intervention by the courts. Justice cannot wait for peace to be secured. Rather, no credible, lasting peace can be built upon impunity and injustice.

77. As the mission has repeatedly stressed (including to representatives of Hamas), those firing rockets on Israeli civilians are no less accountable than the Israeli military for their actions (A/HRC/5/20, para. 19).

78. Accountability involves providing a remedy and redress for victims. To date, neither has been forthcoming from Israel, despite its admission of responsibility for the attack. The very clear message from the victims and survivors to the mission and to the Council is that they seek justice before anything else. The present report outlines some of the obstacles put in the way of victims seeking justice. While the mission calls on Israel to remove these obstacles, it is of the view that victims should not be forced to fight for compensation through Israeli courts when all accept that damage was inflicted on individuals by the State. The mission recommends that the State of Israel pay victims adequate compensation without delay. In the light of the magnitude of the attack on a small community, and in addition to compensation to individuals, the mission also recommends that Israel make reparation to the community of Beit Hanoun in the form of a memorial to the victims that constitutes a response to the needs of survivors. Possibilities include a health facility such as a much-needed physiotherapy clinic.

79. The situation of victims and survivors of the shelling, as witnessed by the mission, remains grim. Israel, Hamas and the Palestinian Authority have human rights obligations towards the victims. Most of the ongoing violations, however, are caused by Israeli action or inaction. The mission calls on Israel to honour its obligations to the people of Beit Hanoun, and more generally to the people of occupied Gaza, to respect, protect and fulfil their human rights. A major barrier to the enjoyment of human rights is the ongoing blockade that limits individuals' ability to provide an adequate standard of living for themselves and their families and the capacity of local authorities to provide essential services for the population. A central need of victims is access to health services. Israel must desist from obstructing victims' access to health-care services, be it through restricting the flow of medical goods and personnel into Gaza, or through restricting victims' ability to leave Gaza to seek health care elsewhere.

80. The Council asked the mission to make recommendations on ways and means to protect Palestinian civilians against any further Israeli assaults. Specific recommendations in this regard were made in the mission's previous report, recommendations that the mission reiterates. In the mission's view, one of the most effective and immediate means of protecting Palestinian civilians against any further Israeli assaults is to insist on respect for the rule of law and accountability. We have seen that even the flawed Israeli investigation into the Beit Hanoun shelling resulted in a decision to discontinue use of artillery in Gaza, one of the main causes of civilian death and injury in the territory. The knowledge that their actions will be scrutinized by an independent authority would be a powerful deterrent to members of the Israeli military against taking risks with civilian lives.

81. During a press conference at the conclusion of its visit to Gaza, the mission indicated that the international community is failing to fulfil its role in respect of the suffering of the people of Gaza, in particular in its silence which begets complicity. In its efforts to discharge its mandate, the mission witnessed positions based on political objectives rather than on principle by all relevant parties. Addressing human rights violations suffered by individuals in Israel and in the occupied Palestinian territories must be the prime motivating force for members of the Council and others with influence in the region.

82. Finally, the mission expresses its thanks to all those who facilitated its visit to Beit Hanoun, in particular the Government of Egypt and UNRWA. It also expresses its thanks and deep admiration to those working with the people of Gaza, specifically non-governmental organizations, human rights defenders and the United Nations.

Annex

Schedule of the high-level fact-finding mission to Beit Hanoun
27-29 May 2008
Tuesday 27 May 2008

08:00 Travel from Cairo to Gaza via Rafah
 16:00 Meeting with UNRWA Commissioner-General and Director of Operations in Gaza
 17:00 Meetings with Sabaya project BH, Al Taher Community Centre, Women's Research and Legal Consultation Centre.
 18:00 Meeting with Hamas
 19:00 Meeting with representatives of OCHA, WHO and the United Nations Food and Agricultural Organization (FAO)

Wednesday 28 May 2008

08:00 Site inspection in Beit Hanoun, meeting with victims and survivors on site
 10:00 Meeting with the Mayor of Beit Hanoun
 11:00 Taking testimony from victims and survivors (including medical personnel from Beit Hanoun hospital)
 16:30 Visit to Al-Shifa hospital
 17:30 Meeting with the Palestinian Center for Human Rights (PCHR)
 18:15 Meeting with Al Mezan Center for Human Rights
 19:30 Meeting with Explosive Ordnance Disposal Unit, Palestinian Police
 21:00 Informal meeting with civil society organizations (PCHR, Al Mezan, Ad-Dameer, GCMHP, PICCR, PICESG, PNGO, PARC, Women's Technical Committee)

Thursday 29 May 2008

09:00 Meeting with the United Nations Humanitarian Coordinator/Resident Coordinator and United Nations High Representative for the Alliance of Civilizations
 09:30 Press Conference in Gaza
 10:30 Travel from Gaza to Cairo via Rafah

Endnotes

¹ *Democratic Republic of Congo v. Uganda*, International Court of Justice, 2005, paras. 173-174.

² Israel ratified the International Convention on the Elimination of All Forms of Racial Discrimination on 3 January 1979; and the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of the Child on 3 October 1991.

³ See for example the concluding comments on Israel in the report of the Committee on the Elimination of Discrimination against Women (A/60/38), para. 243.

⁴ World Bank, *West Bank and Gaza: Economic Developments and Prospects*, March 2008.

⁵ Office for the Coordination in Humanitarian Affairs, Gaza Strip situation report, 9 November 2006.

⁶ Israeli Ministry of Foreign Affairs communiqué, "Beit Hanoun: a hub of terrorist activity", 5 November 2006.

⁷ From November 2001 to the end of November 2007, 2,383 rockets hit southern Israel, killing 10 Israeli civilians and wounding 433, the majority being civilians. Intelligence and Terrorism Information Center at the Israel Intelligence Heritage and Commemoration Center.

⁸ Office for the Coordination in Humanitarian Affairs, Gaza Strip situation report, 9 November 2006.

⁹ Ibid., 13 November 2006.

¹⁰ The facility includes 42 beds, 6 emergency beds, 2 operating rooms and a laboratory.

¹¹ UNRWA, *Flash Appeal*.

¹² WHO, *Situation Report*; Palestinian Centre for Human Rights, "Palestinian medical crews under attack", May 2007.

¹³ UNRWA, *Flash Appeal*; Amnesty International, "Israel and the Occupied Territories: road to nowhere", December 2006.

¹⁴ Office for the Coordination in Humanitarian Affairs, Gaza Strip situation report, 13 November 2006; UNRWA, *Flash Appeal*.

¹⁵ "Palestinian human rights groups denounce Beit Hanoun massacre", statement by 11 Palestinian human rights organizations, 8 November 2006.

¹⁶ Statement of the Secretary-General, 8 November 2006.

¹⁷ United Nations press release, "In Gaza Strip, UN human rights chief decries 'massive' violations against civilians", 20 November 2006.

¹⁸ BBC, "Aid agencies condemn Gaza carnage", 9 November 2006.

¹⁹ IMFA communiqué, 8 November 2006, "PM Olmert and DM Peretz express regret at death of Palestinian civilians".

²⁰ Ibid., "Initial reaction to Palestinian claims of civilian casualties in Beit Hanoun".

²¹ Ibid., "Beit Hanoun: statement by FM Livni".

²² Ibid., "Military Advocate General concludes investigation of Beit Hanoun shelling".

²³ The allegedly malfunctioning technology is made by an Israeli manufacturer, which reportedly assisted in the investigation.

²⁴ Haaretz, "Peretz to re-evaluate IDF policy of shelling northern Gaza Strip", 10 November 2006.

²⁵ Haaretz, "IDF panel: Errant shell in Beit Hanoun likely result of human or technical error", 9 November 2006.

²⁶ Haaretz, "IDF accused of 'knowingly risking Palestinian lives'", 17 April 2006. The article quoted an unnamed military officer as saying, "We have no way of ensuring that civilians will not be hurt in the next shelling".

²⁷ General Assembly resolution 60/147, para. 8.

²⁸ See also Hague Regulations, article 50; GC IV, art. 33.

²⁹ ICJ reports 2004, para. 139.

³⁰ Ibid. sep. op., Judge Buergenthal, para. 5.

³¹ Ibid. sep. op., Judge Higgins, para. 19.

³² Annexed to General Assembly resolution 56/83.

³³ J. Crawford and S. Olleson, "The Nature and Forms of International Responsibility", in M. Evans, *International Law* (2003).

³⁴ "The Covenant applies also in situations of armed conflict to which the rules of international humanitarian law are applicable." Human Rights Committee, general comment No. 31 on the nature of the general legal obligation imposed on States parties to the covenant, 2004, para. 11.

³⁵ General comment No. 6, 1982, para. 3.

³⁶ Human Rights Committee, general comment No. 31, para. 15. See also Basic Principles and Guidelines on the Right to a Remedy, para. 3 (b).

³⁷ International Covenant on Economic, Social and Cultural Rights, art. 12; Convention on the Elimination of All Forms of Discrimination against Women, art. 12; Convention on the Rights of the Child, art. 24.

³⁸ In his report (A/HRC/7/17), the Special Rapporteur also argues that the use of sonic booms is among the means through which the Israeli military exerts control over the Gaza Strip.

³⁹ General comment No. 14 on the right to the highest attainable standard of health, 2000, para. 37.

⁴⁰ Ibid., para. 43.

⁴¹ International Covenant on Economic, Social and Cultural Rights, art. 11.

⁴² General comment No. 14, para. 40.

⁴³ General Assembly resolutions 40/34 and 60/147.

⁴⁴ An Israeli law preventing Palestinians from claiming compensation from Israel following military operations was partially struck down by the High Court on 12 December 2006. However, the court left standing a provision that bars compensation to Palestinians harmed in combat operations.