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**QUESTION OF THE VIOLATION OF HUMAN RIGHTS IN THE
OCCUPIED ARAB TERRITORIES, INCLUDING PALESTINE**

**Report of the Special Rapporteur of the Commission on Human Rights,
John Dugard, on the situation of human rights in the Palestinian
territories occupied by Israel since 1967**

Summary

The present report focuses upon military incursions into the Gaza Strip, the demolition of houses, the violations of human rights and humanitarian law arising from the construction of the Wall and the pervasiveness of restrictions on freedom of movement.

In the past year, the Israel Defence Forces (IDF) have carried out intensified military incursions into the Gaza Strip. This has been interpreted as a show of force on the part of Israel so that it cannot later be said that it had withdrawn unilaterally from the territory in weakness. In the course of these incursions, Israel has engaged in a massive and wanton destruction of property. Bulldozers have destroyed homes in a purposeless manner and have savagely dug up roads, including electricity, sewage and water lines. In Operation Rainbow, from 18 to 24 May 2004, 43 persons were killed and a total of 167 buildings were destroyed or rendered uninhabitable in Rafah. These buildings housed 379 families (2,066 individuals). These demolitions occurred during one of the worst months in Rafah's recent history. During the month of May, 298 buildings housing 710 families (3,800 individuals) were demolished. In October the IDF carried out an assault on the refugee camp of Jabaliya, in response to the killing of two Israeli children in Sderot by Qassam rockets. One hundred and fourteen persons were killed and 431 injured. Many of the victims were civilians and 34 children were killed and 170 wounded. Ninety-one homes were demolished and 101 seriously damaged, affecting 1,500 people. The demolition of houses in Rafah, Jabaliya and other parts of Gaza probably qualify as war crimes in terms of the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention).

Israel has announced that it will withdraw unilaterally from Gaza. Israel intends to portray this as the end of the military occupation of Gaza, with the result that it will no longer be subject to the Fourth Geneva Convention in respect of Gaza. In reality, however, Israel does not plan to relinquish its grasp on the Gaza Strip. It plans to retain ultimate control over Gaza by controlling its borders, territorial sea and airspace. Consequently, it will in law remain an Occupying Power still subject to obligations under the Fourth Geneva Convention.

The Wall that Israel is presently constructing within the Palestinian territory was held to be contrary to international law by the International Court of Justice in its advisory opinion of 9 July 2004. The Court held that Israel is under an obligation to discontinue building the Wall and to dismantle it forthwith. It dismissed a number of legal arguments raised by Israel relating to the applicability of humanitarian law and human rights law. In particular, it held that settlements are unlawful. A week before the International Court of Justice rendered its advisory opinion, the High Court of Israel gave a ruling on a 40-kilometre strip of the Wall in which it held that while Israel as the Occupying Power had the right to construct the Wall to ensure security, substantial sections of the Wall imposed undue hardships on Palestinians and had to be rerouted.

Israel has not complied with the advisory opinion of the International Court of Justice. Instead, it has continued with the construction of the Wall.

Israel claims that the purpose of the Wall is to secure Israel from terrorist attacks and that terrorist attacks inside Israel have dropped by over 80 per cent as a result of the construction of the Wall. There is, however, no compelling evidence that suicide bombers could not have been as effectively prevented from entering Israel if the Wall had been built along the Green Line (the accepted border between Israel and Palestine) or within the Israeli side of the Green Line.

The following are more convincing explanations for the construction of the Wall:

- The incorporation of settlers within Israel;
- The seizure of Palestinian land;
- The encouragement to Palestinians to leave their lands and homes by making life intolerable for them.

The course of the Wall indicates clearly that its purpose is to incorporate as many settlers as possible into Israel. This is borne out by the fact that some 80 per cent of settlers in the West Bank will be included on the Israeli side of the Wall.

Despite the fact that the International Court of Justice has unanimously held that settlements are unlawful, settlement expansion has substantially increased in the past year. This is prohibited by the International Court of Justice and cannot be reconciled with the decision of the Israeli High Court itself.

A further purpose of the Wall is to expand Israel's territory. Rich agricultural land and water resources along the Green Line have been incorporated into Israel. In recent months, Israel has manifested its territorial ambitions in the Jerusalem area. The Wall is currently being built around an expanded East Jerusalem to incorporate some 247,000 settlers in 12 settlements and some 249,000 Palestinians within the boundaries of the Wall. It must be recalled that Israel's 1980 annexation of East Jerusalem is unlawful and has been declared "of no legal validity" by the Security Council in its resolution 476 (1980).

The construction of the Wall in East Jerusalem makes no sense from a security perspective because in many instances it will divide Palestinian communities. Moreover, it will have serious implications for Palestinians living in and near to East Jerusalem. First, it threatens to deprive some 60,000 Palestinians with Jerusalem residence rights of such rights if they happen to find themselves on the West Bank side of the Wall. Secondly, it will make contact between Palestinians and Palestinian institutions situated on different sides of the Wall hazardous and complicated. Thirdly, it will prohibit over 100,000 Palestinians in neighbourhoods in the West Bank who depend on facilities in East Jerusalem, including hospitals, universities, schools, employment and markets for agricultural goods, from entering East Jerusalem.

A third purpose of the Wall is to compel Palestinian residents living between the Wall and the Green Line and adjacent to the Wall, but separated from their land by the Wall, to leave their homes and start a new life elsewhere in the West Bank, by making life intolerable for them. Restrictions on freedom of movement in the "Closed Zone" between the Wall and the Green Line and the separation of farmers from their land will be principally responsible for

forcing Palestinians to move. The Israeli High Court declared that certain sections of the Wall should not be built where they caused substantial hardship to Palestinians. Logically, this ruling is applicable to sections of the Wall that have already been built. However, the Government of Israel has indicated that it will not honour its own High Court's ruling in respect of the 200-kilometre stretch of the Wall that has already been built.

Freedom of movement is severely curtailed in the West Bank and Gaza. The inhabitants of Gaza are effectively imprisoned by a combination of wall, fence and sea. Moreover, within Gaza freedom of movement is severely restricted by roadblocks that effectively divide the small territory. The inhabitants of the West Bank are subjected to a system of curfews and checkpoints that deny freedom of movement, and they need permits to travel from one city to another. Permits are arbitrarily withheld and seldom granted for private vehicles. Several hundred military checkpoints control the lives of Palestinians. Palestinians are denied access to many roads that are reserved primarily for the use of settlers. The Wall in the Jerusalem area threatens to become a nightmare, as tens of thousands of Palestinians will be forced to cross at one checkpoint each day, namely at Qalandiya. Finally, as already indicated, a permit system governs the lives of residents between the Wall and the Green Line and those adjacent to the Wall. This permit system is operated in an arbitrary and capricious manner.

The restrictions on freedom of movement imposed by the Israeli authorities on Palestinians resemble the notorious "pass laws" of apartheid South Africa. These pass laws were administered in a humiliating manner, but uniformly. Israel's laws governing freedom of movement are likewise administered in a humiliating manner, but they are characterized by arbitrariness and caprice.

In its advisory opinion, which has been approved by the General Assembly, the International Court of Justice indicated that there are consequences of the Wall for States other than Israel. States are reminded of their obligation not to recognize the illegal situation resulting from the construction of the Wall and not to render aid or assistance in maintaining the situation created by the construction of the Wall. Israel's defiance of international law poses a threat not only to the international legal order but to the international order itself. This is no time for appeasement on the part of the international community.

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Introduction

1. The past year has witnessed the worst violence in the Occupied Palestinian Territory (OPT) since the start of the second intifada in September 2000. Successive incursions of the Israel Defense Forces (IDF) into Gaza have resulted in heavy loss of life and personal injury, and in the wanton and large-scale destruction of homes. In the West Bank, the construction of the Wall (or Barrier, as it is sometimes called) has continued despite a ruling by the International Court of Justice (ICJ) that the Wall is illegal and that Israel is obliged to cease the construction of the Wall and to dismantle it. Neither the advisory opinion of the Court on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* rendered on 9 July 2004 nor the subsequent resolution of the General Assembly approving the advisory opinion (ES/10-15) have succeeded in curbing Israel's illegal actions in the OPT or reviving the road map scheme for peace in the region. The death of the President of the Palestinian Authority, Yasser Arafat, in November 2004 heralded in a period of uncertainty in the OPT. All in all, it has been a bad year for the OPT, with a glimmer of hope provided by the ICJ advisory opinion.

I. DEVELOPMENTS IN INTERNATIONAL LAW

2. In its advisory opinion, ICJ held that the Wall presently being built by Israel in the OPT, including in and around East Jerusalem, is contrary to international law, and that Israel is under an obligation to cease its construction on Palestinian territory and to dismantle it forthwith. It also held that Israel is under an obligation to make reparation for all damage caused by its construction in the OPT. Finally, it held that all States are under an obligation not to recognize the illegal situation resulting from the construction of the Wall and that all States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention) are obliged to ensure that Israel complies with the provisions of that Convention. Finally, the Court held that the United Nations should consider what further action is required to bring to an end the illegal situation resulting from the construction of the Wall.

3. In its reasoning, the Court dismissed a number of legal arguments raised by Israel which have been fundamental to Israeli foreign policy in respect of the OPT. It found that the Fourth Geneva Convention is applicable to the OPT and that Israel is obliged to comply with its provisions in its conduct in the Territory. In making this finding, it stressed that according to article 49, paragraph 6, of the Fourth Geneva Convention, Israeli settlements in the OPT "have been established in breach of international law" (para. 120). The Court also found that the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights and the Convention on the Rights of the Child are binding on Israel in respect of its actions in the OPT. It moreover emphasized that the Wall "severely impedes the exercise by the Palestinian people of its right to self-determination" (para. 122). Finally, the Court was sceptical about Israel's reliance on a state of necessity to justify the construction of the Wall and held that Israel "cannot rely on a right of self-defence or on a state of necessity in order to preclude the wrongfulness of the construction of the wall" (para. 142).

4. On 20 July 2004, the General Assembly adopted resolution ES-10/15, in which it demanded that Israel comply with the legal obligations identified in the advisory opinion. The resolution was adopted by 150 votes in favour, 6 against, and 10 abstentions.

5. Shortly before the ICJ gave its advisory opinion, the High Court of Justice of Israel ruled on the lawfulness of a portion of the Wall.¹ Although the High Court accepted that Israel as the occupying Power had the right to construct the Wall to ensure security, it held that certain sections of it imposed undue hardships on Palestinians and that it had to be rerouted. The Court examined the issue of the Wall largely from the perspective of proportionality, and asked the question whether the Wall's route injured local inhabitants to the extent that there was no proportion between the injury suffered and the security benefit of the Wall. The Court found that some sections of the proposed route caused disproportionate suffering to Palestinian villages as they separated villagers from the agricultural lands upon which their livelihood depended.

6. The unlawfulness of the Wall is now clear under international law as expounded by the International Court of Justice. Moreover, large portions of the Wall would seem to qualify for unlawfulness under Israeli law, as pronounced by the Israeli High Court. The Israeli argument that security considerations provide it with an absolute right to build the Wall in Palestinian territory can no longer stand. Terrorism is a serious threat to Israeli society and it may well be that the Wall prevents suicide bombers from reaching Israel. If this is the case, however, there is no reason why the Wall should not be routed along the Green Line or on the Israeli side of the Green Line. On the relationship between terrorism and the law, one can do no better than refer to the statement of the Israeli High Court in the *Beit Sourik* case:

“We are aware of the killing and destruction wrought by terror against the State and its citizens. As any other Israelis, we too recognize the need to defend the country and its citizens against the wounds inflicted by terror. We are aware that in the short term, this judgement will not make the State's struggle against those rising up against it easier. But we are judges. When we sit in judgement, we are subject to judgement. We act according to our best conscience and understanding. Regarding the State's struggle against the terror that rises up against it, we are convinced that at the end of the day, a struggle according to the law will strengthen her power and her spirit. There is no security without law.” (para. 86).

7. In previous reports, the Special Rapporteur has asserted legal positions in the face of Israeli objections. It is no longer necessary to engage in this exercise. The law is clear and it is now possible to focus on the consequences of Israel's illegal actions and to consider ways and means of enforcing compliance with the law. The latter function falls to the United Nations, acting through both the General Assembly and the Security Council, and to individual States. This report will therefore focus upon Israel's actions and the consequences of these actions.

II. FOCUS OF THE PRESENT REPORT

8. The Special Rapporteur visited the OPT from 18 to 25 June 2004. He visited both Gaza (including Rafah) and the West Bank (Jerusalem, Ramallah, Bethlehem, Qalqiliya and surrounding villages, and Hebron and its vicinity). The focus of his attention was upon the consequences of military incursions into the Gaza Strip, particularly the demolition of homes; the violations of human rights and humanitarian law arising from the construction of the Wall; and the pervasiveness of the restrictions on freedom of movement. The present report reflects these concerns. However, the Special Rapporteur wishes to stress that there are many other violations of human rights in the OPT which continue to destroy the fabric of Palestinian society:

- Deaths and injuries. Since September 2000, over 3,850 Palestinians (including over 650 children below the age of 17) and almost 1,000 Israelis have been killed. More than 36,500 Palestinians and 6,300 Israelis have been injured. Most of those killed or injured were civilians;
- Assassinations. Israel continues to assassinate persons suspected of being militants. These assassinations are generally carried out without regard to loss of civilian life. On the contrary, the loss of civilian lives is simply dismissed as collateral damage. Some 340 persons have been killed in targeted assassinations, of which 188 were targeted persons and 152 innocent civilians;
- Incursions. In the past year, the IDF have frequently engaged in military incursions into the West Bank and Gaza with a view to killing Palestinian militants. Frequently, civilians are caught up in indiscriminate gunfire. In October 2004, 165 Palestinians were killed in military incursions, making it the deadliest month for Palestinians since Operation Defensive Shield in April 2002;
- Prisoners. There are some 7,000 Palestinian prisoners in Israeli prisons or detention camps, of whom 380 are children and over 100 are women. Of these prisoners, only some 1,500 have actually been put on trial. Many of those detained report being subjected to torture or inhuman and degrading treatment. In August some 2,500 prisoners embarked on a hunger strike against prison conditions;
- Curfews. Although there has been a decline in the use of curfews as a weapon by the Israelis in the past year, curfews are still imposed and have been resorted to with great frequency in Nablus;
- Humanitarian crisis. Poverty and unemployment are rampant in the OPT. Figures provided by the International Labour Organization (ILO) show that an average of 35 per cent of the Palestinian population is unemployed. 62 per cent of Palestinians live below the poverty line. According to the World Bank, “the Palestinian recession is among the worst in modern history. Average personal incomes have declined by more than a third since September 2000”.²

9. The Special Rapporteur plans to visit the region again in February 2005 and will submit an addendum to this report based on that visit.

III. GAZA STRIP

10. In the past year the IDF has carried out regular military incursions into the Gaza Strip. The worst affected towns have been Rafah, Beit Hanoun, Beit Lahiya, Jabaliya and Khan Yunis. The reasons advanced by Israel for these incursions are, in the case of Rafah, the destruction of tunnels used for smuggling arms and in the case of Beit Hanoun and Jabaliya, the destruction of the capacity to launch Qassam rockets into Israel. However, these incursions must be seen in a broader political perspective. Israel has announced that it is planning to withdraw its settlements and military presence from Gaza. It clearly does not wish to be seen to be withdrawing in

weakness, with the result that it has chosen to demonstrate its power in Gaza before it withdraws. Also, in order to maintain control over the border between Gaza and Egypt, Israel has decided to create a buffer zone of about 400 metres along the “Philadelphi” route, which requires the destruction of homes in Rafah presently in the buffer zone.

11. In pursuance of the above policies, Israel has engaged in a massive destruction of property in Gaza. Sometimes property, the homes of suspected militants, has been destroyed for punitive reasons. Sometimes homes have been destroyed for strategic purposes, as in the case of homes along the Philadelphi route. Often, however, the destruction is wanton. Homes have been destroyed in a purely purposeless manner. Caterpillar bulldozers have savagely dug up roads with a “ripper” attachment, which has enabled them to destroy electricity, sewage and water lines in a brutal display of power. Moreover, there has been a total lack of concern for the people affected. On 12 July 2004, in the course of a raid into Khan Yunis, the IDF destroyed a house in which 75-year-old Mahmoud Halfalla, confined to a wheelchair, was present. Despite appeals to allow him to leave, the house was destroyed above him and he was killed.

12. The Special Rapporteur visited Block “O”, the Brazil Quarter and the Tel es-Sultan neighbourhood of Rafah in the wake of Operation Rainbow carried out by the IDF in May 2004 and met with families that had been rendered homeless in the exercise. In Operation Rainbow, 43 persons were killed, including eight who were killed in a peaceful demonstration on 19 May. From 18 to 24 May, a total of 167 buildings were destroyed or rendered uninhabitable, which had housed 379 families (2,066 individuals). These demolitions occurred during one of the worst months in Rafah’s recent history. During the month of May, 298 buildings housing 710 families (3,800 individuals) were demolished in Rafah. Since the start of the intifada in September 2000, 1,497 buildings have been demolished in Rafah, affecting over 16,000 people - that is, more than 10 per cent of the population of Rafah. According to the Palestinian Central Bureau of Statistics, 393 residents of the Rafah governorate have been killed since September 2000, including 98 children under the age of 18. In the same period, Palestinian armed groups have killed ten Israeli soldiers in Rafah. These figures simply emphasize the disproportionate and excessive nature of Israel’s actions in Rafah.

13. In a previous report (A/59/256), the Special Rapporteur has questioned the necessity for such wanton destruction of property in the search for, and destruction of, smuggling tunnels. This matter has received the attention of Human Rights Watch, which concludes that:

“the IDF has consistently exaggerated and mischaracterized the threat from smuggling tunnels to justify the demolition of homes ... the IDF has failed to explain why non-destructive means for detecting and neutralizing tunnels employed in places like the Mexico-United States border and the Korean demilitarized zone (DMZ) cannot be used along the Rafah border. Moreover, it has at times dealt with tunnels in a puzzlingly ineffective manner that is inconsistent with the supposed gravity of this longstanding threat”.³

14. Rafah is not the only part of Gaza to have suffered from IDF incursions. In July the IDF, accompanied by the customary bulldozers, invaded Beit Hanoun. Militants were killed and so were civilians. Homes were destroyed and by way of further punishment olive and orange trees were destroyed. At the end of October, 17 Palestinians were killed and 50 injured in the Khan Yunis refugee camp. The most severe IDF military operation, however, occurred in the

Jabaliya refugee camp in October in response to the killing of two Israeli children in Sderot by Qassam rockets. The Jabaliya camp, which accommodates some 120,000 people in an area of less than 2 km², witnessed an IDF offensive reminiscent of the Israeli attack on the Jenin refugee camp in the spring of 2002. One hundred and fourteen persons were killed and 431 injured. Many of the victims were civilians, and 34 children were killed and 170 injured. Ninety-one homes were demolished, rendering 675 Palestinians homeless. In addition 101 houses, home to 833 people, sustained damage. Caterpillar bulldozers ripped up roads and dug trenches, damaging around 12,000 m² of road. Water, sewage and electricity networks were also damaged and acres of farmland destroyed in a scorched earth offensive.

15. On 5 October 2004, the United States of America vetoed a resolution before the Security Council that would have demanded that Israel halt all military operations in northern Gaza.

16. In the past year, IDF incursions have occurred with great frequency in Gaza. Some operations, such as those in Rafah, Beit Hanoun, Beit Lahiya, Jabaliya and Khan Yunis described above, have received international attention. Others, in which only a handful of Palestinians were killed and a few houses destroyed have received little attention. These incursions are, however, part of a war of attrition against the Palestinian people - a war in which civilians, including children, have suffered disproportionately. Indeed one of the most alarming features of these incursions has been the failure of the IDF to curb its fire in the vicinity of schools. As a consequence, on 5 October, a 13-year-old schoolgirl, Imam Al-Hams, was shot and killed by 20 bullets near to her school. In the same period, other schoolgirls were killed by IDF gunfire in schools run by the United Nations Relief and Works Agency for Palestine Refugees (UNRWA).

17. The actions of the IDF in Gaza in the past year must be examined and judged in the context of the rules of humanitarian law held to be applicable to Israel's actions in the OPT in the ICJ advisory opinion on the construction of the Wall. Article 53 of the Fourth Geneva Convention provides that any destruction by the occupying Power of personal property is prohibited except when such destruction is rendered "absolutely necessary by military operations". Failure to comply with this prohibition constitutes a grave breach in terms of article 147 of the Convention requiring prosecution of the offenders. As shown in this report, the IDF has frequently destroyed houses, roads and agricultural land in order to expand the buffer zone at the Rafah border zone or to inflict damage for punitive reasons unconnected with military combat. Moreover, these operations have been conducted without regard for two of the most fundamental principles of international humanitarian law - the principle of distinguishing at all times between civilian objects and military objectives (article 48 of Protocol I to the Geneva Conventions) and the principle of proportionality.

18. UNRWA has embarked on a campaign to raise over US\$ 50 million to re-house Palestinians rendered homeless by the Israeli army in these operations. The Special Rapporteur expresses the hope that the international community will respond positively to the appeal by UNRWA. However, he wishes to emphasize that in terms of the Fourth Geneva Convention, it is the responsibility of the occupying Power to ensure that adequate food and medical supplies are provided for the occupied population and to care for the general welfare of the occupied people. It is a gross violation of the Fourth Geneva Convention for the occupying Power to destroy houses, render the population homeless, create a need for food and medical services and then to refuse to carry out its responsibilities to provide for the concerns of the occupied people.

19. During the course of the year, the Government of Israel announced that it would dismantle Jewish settlements in Gaza and withdraw its armed forces from Gaza. This move is to be welcomed but it must be stressed that such “withdrawal” or “disengagement” will not relieve Israel of its obligations as an occupying Power, as it does not plan to relinquish its grasp on the Gaza Strip. On the contrary, it plans to maintain its authority by controlling Gaza’s borders, territorial sea and airspace. That Israel intends to retain ultimate control over Gaza is clear from the Disengagement Plan of April 2004, as revised in June 2004, which states in respect of Gaza, inter alia, that “the State of Israel will supervise and monitor the external land perimeter of the Gaza Strip, will continue to maintain exclusive authority in Gaza air space, and will continue to exercise security activity in the sea off the Gaza Strip ... The State of Israel will continue to maintain a military presence along the border between the Gaza Strip and Egypt (Philadelphi route). This presence is an essential security requirement. At certain locations, security considerations may require some widening of the area in which the military activity is conducted”. This means that Israel will remain an occupying Power under international law - a conclusion reached by Israeli Government legal experts in a report published on 24 October - as the test for application of the legal regime of occupation is not whether the occupying Power fails to exercise effective control over the territory, but whether it has the ability to exercise such power. This principle was confirmed by the United States Military Tribunal in *The Hostages Trial - Trial of Wilhelm List and Others* of 1948.⁴ It is essential that the international community take cognizance of the nature of Israel’s proposed “withdrawal” and of its continuing obligations under the Fourth Geneva Convention.

IV. HOUSE DEMOLITIONS

20. The demolition of houses - homes - is a central feature of Israel’s policy towards Palestinians. “The human suffering entailed in the process of destroying a family’s home is incalculable. One’s home is much more than simply a physical structure. It is one’s symbolic center, the site of one’s most intimate personal life and an expression of one’s status. It is a refuge, it is the physical representation of the family, it is home”.⁵ The demolition of a home destroys the family unit, causes a decline in standard of living and has a severe psychological impact on the family, particularly children.

21. The second intifada has witnessed the intensification of house demolitions, resulting in the destruction of 4,170 Palestinian homes. Some 60 per cent of the houses demolished have been destroyed as part of “clearing operations” to meet Israel’s military needs. In the previous section, this process was described in respect of Rafah, Jabaliya, Beit Hanoun and Beit Lahiya. Since September 2000, the IDF has demolished 2,540 housing units in which 23,900 Palestinians lived in the course of clearing operations. Some 25 per cent of the houses demolished have been destroyed for having being built without the required permit from the Israeli authorities, which still retain building authorization rights in Area C of the West Bank and East Jerusalem. Israel demolished 768 structures in the West Bank between 2001 and 2003 and 161 structures in East Jerusalem between 2001 and 2004 for having being built without a permit.

22. A third kind of house demolition, accounting for 15 per cent of the houses destroyed, is that of punishment of the family and neighbours of Palestinians who have carried out or are suspected of having carried out attacks against Israelis. Such punitive action is not confined to the family of suicide bombers: indeed, in 40 per cent of the cases involving demolition of houses, no Israelis had been killed in the incidents giving rise to such demolitions. Punitive

home destruction is the subject of a recent disturbing publication by Israel's premier human rights NGO, B'Tselem (Israeli Information Centre for Human Rights in the Occupied Territories).⁶ This study shows that since October 2001, the IDF has demolished 628 housing units, home to 3,983 persons. 47 per cent (295) of the homes demolished were never home to any one suspected of involvement in attacks upon Israelis. As a result, 1,286 persons unconnected with any acts against Israelis have been punished. Figures do not bear out Israeli claims that advance notice is given to owners of houses to be demolished; only in 3 per cent of the cases had proper warning of demolition been given. This disquieting study strongly suggests that house demolitions are carried out in an arbitrary and indiscriminate manner.

23. It is difficult to resist the conclusion that punitive house demolitions constitute serious war crimes. Article 53 of the Fourth Geneva Convention prohibits the occupying State from destroying the property of civilians "except where such destruction is rendered absolutely necessary by military operations". "Military operation", according to the official commentary of the International Committee of the Red Cross, means "the movements, manoeuvres, and actions of any sort, carried out by the armed forces with a view to combat".⁷ House demolitions are not carried out in the context of hostilities "with a view to combat" but as a punishment. They cannot be described as part of a "military operation" and they certainly cannot be considered "absolutely necessary" for action not constituting a military operation. Moreover such demolitions violate the prohibition imposed on collective punishment by article 33 of the Fourth Geneva Convention, which reads:

"No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited."

V. THE WALL

24. The Wall is responsible for much of the suffering of the Palestinian people and, if continued, will be responsible for still greater suffering. As shown by the International Court of Justice, it violates both humanitarian law and human rights law and undermines the right of the Palestinian people to self-determination. For this reason the Wall has been the focus of special attention in two previous reports and remains a major focus of attention in the present report. In order to further his understanding of the consequences of the Wall from the perspective of human rights, the Special Rapporteur visited the Wall in the Jerusalem area (Al-Ram, Abu Dis, Qalandiya, Beit Sourik and Biddu), Qalqiliya (Isla and Jayyous villages) and Bethlehem. Previously, the Special Rapporteur has visited villages in the Qalqiliya and Tulkarem region.

25. Israel claims that the purpose of the Wall is to secure Israel from terrorist attacks. It draws attention to the fact that statistics for the first half of 2004 show that terrorist attacks inside Israel have dropped by no less than 83 per cent compared to the same period in 2003. Two comments may be made on this claim. First, there is no compelling evidence that this could not have been done with equal effect by building the Wall along the Green Line or within the Israeli side of the Green Line. Secondly, the evidence that the course of the Wall within Palestinian territory is required by security considerations is not conclusive. This is shown by the *Beit Sourik Village Council* judgement, which demonstrates the difficulties inherent in ascertaining the security justifications for the course of the Wall and brings into question the military arguments for the chosen course of the Wall.

26. More convincing explanations for the construction of the Wall in the OPT are the following:

- To incorporate settlers within Israel;
- To seize Palestinian land;
- To encourage an exodus of Palestinians by denying them access to their land and water resources and by restricting their freedom of movement.

These explanations are considered below.

A. The incorporation of settlements

27. The course of the Wall indicates clearly that its purpose is to incorporate as many settlers as possible into Israel. This is borne out by the statistics showing that some 80 per cent of settlers in the West Bank will be included on the Israeli side of the Wall. If further proof of this obvious fact is required, it is to be found in an article by Benjamin Netanyahu, Minister of Finance of Israel and former Prime Minister, in the *International Herald Tribune* of 14 July 2004, in which he wrote: “A line that is genuinely based on security would include as many Jews as possible and as few Palestinians as possible within the fence. That is precisely what Israel’s security fence does. By running into less than 12 per cent of the West Bank, the fence will include about 80 per cent of Jews and only 1 per cent of Palestinians who live within the disputed territories.”

28. Settlements are, of course, unlawful under international law. This was the unanimous view of the International Court of Justice in its advisory opinion. The Court found that “the Israeli settlements in the Occupied Palestinian Territory (including East Jerusalem) have been established in breach of international law”, and that “the route chosen for the wall gives expression *in loco* to the illegal measures taken by Israel with regard to Jerusalem and the settlements” (paras. 120 and 122). Moreover, Judge Buergenthal, the sole dissenting judge, stated that he agreed that article 49, paragraph 6, of the Fourth Geneva Convention applied to the Israeli settlements in the West Bank from which it followed “that the segments of the wall being built by Israel to protect the settlements are *ipso facto* in violation of international humanitarian law” (para. 9).

29. Despite this, there is overwhelming evidence of settlement expansion in the West Bank. No longer does the Government of Israel even pay lip service to its claim of several years ago that it would “freeze” settlement expansion. In August, the Government of Israel granted 2,167 permits to settlers to build apartments in Palestine (*International Herald Tribune*, 24 August 2004, p. 5). The Prime Minister Ariel Sharon has furthermore announced that in return for dismantling settlements in the Gaza Strip and four small settlements in the northern West Bank (Ghanim, Khadim, Sa-Nur and Homesh), the remaining settlements in the West Bank would be consolidated and expanded. According to the report of the Director-General of ILO to the 92nd session of the International Labour Conference, “the settler population has continued to increase rapidly, at an annual rate of 5.3 per cent in the West Bank and 4.4 per cent in Gaza since 2000, reaching close to 400,000 persons in the occupied Palestinian territories. This is equivalent to 6 per cent of the Israeli population and 11.5 per cent

of the Palestinian population in 2002. The increase in the settler population has been much faster than population growth in Israel (at 1.4 per cent per year over 2000-02), thereby indicating more than natural demographic growth, even allowing for higher fertility among settler families".⁸

30. Settler expansion has unfortunately been accompanied by settler violence. Numerous incidents have been reported of settler attacks on Palestinians and their land and it is reported that there has been a 20 per cent increase in settler violence. Recently, settlers have prevented Palestinians from harvesting the olive crop. Settler behaviour is particularly disgusting in Hebron where settlers continuously harass Palestinians and damage their property. The Special Rapporteur had first-hand experience of this when the vehicle in which he was travelling with the Temporary International Presence in the City of Hebron (TIPH) was spat upon by settlers and splattered with paint. Obstacles placed in the road by settlers were not removed, despite a request by a TIPH official. On the contrary, members of the IDF laughingly indicated their approval of the action of the settlers and refused to intervene, despite Israel's legal obligation to cooperate with TIPH. As settlers are present in the OPT with the Government's approval and as inadequate steps are taken to curb their actions, the Government of Israel must accept responsibility for their actions.

31. Plans to incorporate more settlements within the Wall are being implemented. Although the High Court of Israel in the *Beit Sourik* case did not rule on the question whether the Wall might be built to include settlements, it seems implicit in its judgement that the building of the Wall to incorporate settlements would be unlawful. This follows from the following passage in the judgement:

"We accept that the military commander cannot order the construction of the separation fence if his reasons are political. The separation fence cannot be motivated by a desire to 'annex' territories to the State of Israel. The purpose of the separation fence cannot be to draw a political border. In [a previous case] this Court discussed whether it is possible to seize land in order to build a Jewish civilian town, when the purpose of the building of the town is not the security needs and defense of the area ... but rather based upon a Zionist perspective of settling the entire land of Israel. This question was answered by this Court in the negative" (para. 27).

B. Seizure of Palestinian land

32. Another purpose of the Wall is to expand Israel's territorial possessions. Rich agricultural land and water resources along the Green Line have been incorporated into Israel. Although Palestinians living on the eastern side of the Wall remain owners of these lands, they are frequently denied access to them or faced with obstacles imposed by the Israeli authorities to the farming of their land. There is thus a real danger that these lands will be abandoned and seized by the voracious settlers.

33. Nowhere are Israel's territorial ambitions clearer than in the case of Jerusalem. East Jerusalem was occupied by Israel in 1967 and illegally annexed to Israel in 1980. This annexation was internationally condemned and declared to be "of no legal validity" by the Security Council in resolution 476 (1980). The territory annexed in this way amounts to 1.2 per cent of the occupied West Bank and has a Palestinian population of 249,000. These Palestinians are forced to have residence cards to live in their own territory. Certain benefits,

particularly relating to health insurance and pensions and freedom of movement, are attached to these residence rights. The land illegally incorporated into the Jerusalem municipality has been used to build illegal Israeli settlements in order to change the demographic make-up of the area. There are now 12 illegal Israeli settlements in this area and the total settler population in eastern Jerusalem amounts to 180,000. As a result of the creation of settlements in East Jerusalem, Palestinians with Jerusalem residence rights have been compelled to build houses outside the municipal limits of East Jerusalem.

34. In the past year a wall has been built along the illegal border of East Jerusalem at places like Abu Dis, Al-Ram and Qalandiya. This wall has a number of serious consequences. First, it gives effect to an illegal annexation and incorporates part of the city of Jerusalem (including the Holy Places) into Israel. Here it must be stressed that the Wall is to expand beyond the limits of the present Jerusalem municipality to incorporate an additional 59 km² of the West Bank in what will be known as “Greater Jerusalem”. The total settler population of “Greater Jerusalem” (247,000) will amount to more than half of the Israeli settlers in the Occupied Palestinian Territory. Second, it separates Palestinians from Palestinians and can in no conceivable way be justified as a security measure. Third, it threatens to deprive some 60,000 Palestinians who were previously resident within the Jerusalem municipal boundary of their residence rights. Fourth, it will divide families, some of whom carry Jerusalem residence documents and some of whom carry West Bank documents. Fifth, it makes contact between Palestinians and Palestinian institutions situated on different sides of the Wall hazardous and complicated. Sixth, it will affect 106,000 Palestinians in neighbourhoods in the West Bank who are dependent upon the facilities of East Jerusalem, including hospitals, universities, schools, employment and markets for agricultural goods. The Special Rapporteur met many Palestinian Jerusalemites who were seriously affected by the construction of the Wall within Jerusalem. Unfortunately, their plight receives little attention, as the international community has grown accustomed to the illegal annexation of Jerusalem. The Special Rapporteur stresses that the Wall incorporating Palestinian neighbourhoods in East Jerusalem into Israel is no different from the Wall in other parts of the West Bank, which incorporates Palestinian land into Israel.

C. Forced exodus

35. A third purpose of the Wall is to compel Palestinian residents in the so-called “Seam Zone” between the Wall and the Green Line and those resident adjacent to the Wall, but separated from their lands by the Wall, to leave their homes and start a new life elsewhere in the West Bank, by making life intolerable for them. This was acknowledged by the International Court in its advisory opinion when it stated that the construction of the Wall is “tending to alter the demographic composition of the Occupied Palestinian Territory” (para. 133).

36. Restrictions on freedom of movement in the “Seam Zone” pose particular hardships for Palestinians. Israel has designated the Seam Zone as a “Closed Zone” in which Israelis may travel freely but not Palestinians. Thus, Palestinians living in the Closed Zone are obliged to have permits to live in their own homes.⁹ Palestinians living within the West Bank with farms inside the Closed Zone moreover need permits to cross the Wall into that zone, as do others who wish to visit it for personal, humanitarian or business reasons. A recent study carried out by B’Tselem¹⁰ demonstrates the arbitrary nature of the implementation of the permit system. Permits are granted for varying lengths of time depending on the kind of crop grown by the applicant. For example, olive growers should receive permits for October/November, the

picking season, while owners of hothouses, which require care throughout the year, should be issued permits for a longer period of time. Testimonies given to B'Tselem by farmers in the area indicate that the authorities have constantly ignored the kind of crop being grown on the land. Sometimes olive growers have received permits for a period of three to six months while the owners of hothouses have received permits for shorter periods. In some cases, permits are granted for two weeks only. Moreover, about 25 per cent of the requests for permits to enter the Closed Zone were denied. In Ar Ras only four out of 70 applicants were issued permits. Permits are rejected for failure to prove ownership and, in most cases, for security reasons. No reasons are given for the denial of a permit. Permits are intended to grant access to the Closed Zone through special gates in the Wall. In practice, these gates, of which there are only twenty-one for Palestinians, are not opened as scheduled. Farmers are compelled to wait at the gates for long periods of time until soldiers find it convenient to open the gates. The arbitrary regime relating to the opening of gates has caused special problems during harvest time when intensive labour is required.

37. The hardships to which Palestinians are subjected by the Wall are graphically described in the *Beit Sourik Village Council* case. In its judgement, the High Court commented as follows upon the location of the Wall in the area north-west of Jerusalem near to Beit Sourik:

“82. ... The length of the part of the Separation Fence to which these orders apply is approximately 40 kilometers. It causes injury to the lives of 35,000 local inhabitants. 4,000 dunams of their lands are taken up by the route of the fence itself, and thousands of olive trees growing along the route itself are uprooted. The fence separates the eight villages in which the local inhabitants live from more than 30,000 dunams of their lands. The great majority of these lands are cultivated, and they include tens of thousands of olive trees, fruit trees and other agricultural crops. The licensing regime which the military commander wishes to establish cannot prevent or substantially decrease the extent of the severe injury to the local farmers. Access to the lands depends upon the possibility of crossing the gates, which are very distant from each other and not always open. Security checks, which are likely to prevent the passage of vehicles and which will naturally cause long lines and many hours of waiting, will be performed at the gates. These do not go hand in hand with the farmer's ability to work his land. There will inevitably be areas where the security fence will have to separate the local inhabitants from their lands ...

“ ...

“84. The injury caused by the separation fence is not restricted to the lands of the inhabitants and to their access to these lands. The injury is of far wider a scope. It strikes across the fabric of life of the entire population. In many locations, the Separation Fence passes right by their homes ...

“85. ... [W]e are of the opinion that the balance determined by the military commander is not proportionate. There is no escaping, therefore, a renewed examination of the route of the fence, according to the standards of proportionality that we have set out.”

VI. ISRAEL'S RESPONSE TO THE ADVISORY OPINION OF THE INTERNATIONAL COURT OF JUSTICE ON THE WALL

38. The initial response of the Government of Israel to the ICJ advisory opinion on the Wall was to reject it completely. However, on 19 August the Israeli High Court, in response to a petition by the West Bank village of Shuqba challenging the construction of the Wall, ordered the Government to produce a statement within 30 days assessing the implications of the advisory opinion. To the knowledge of the Special Rapporteur this assessment has not yet been given. The actions of the Government of Israel, however, speak louder than words. It continues to construct the Wall.

39. On 30 June, shortly before the ruling of the International Court, a new map for the Wall was issued by the Israeli Ministry of Defence. This places fewer Palestinians on the western side of the Wall but does not significantly reduce the amount of land from which the Wall separates Palestinian landowners and farmers from their land. The revised route reduces the total length of the Wall by 16 km from 638 km to 622 km. Approximately 85 per cent of the revised planned route of the Wall intrudes into the West Bank.

40. Although the building of the Wall has been suspended in some areas (Salfit, Al Zawiya, Deir Ballut) as a result of an order of the Israeli High Court, in other areas the construction of the Wall continues. Some 70 kilometres of the Wall is currently under construction in the region of Jerusalem (the main road between Qalandiya checkpoint and Ar Ram, Al Aqbat, the area of Al Eizariya, the area between Jaba and Hizma, etc), Ramallah (Budrus, Beituniya), Jenin (Jalbun, Raba), Bethlehem (near the Ayda refugee camp and along the tunnel road) and Hebron (Idhna, Beit Awwa, Surit).

41. The Special Rapporteur calls upon the Government of Israel to honour the advisory opinion of the International Court of Justice, which was approved by the General Assembly by 150 votes in favour on 20 July 2004. The International Court, the judicial organ of the United Nations, has pronounced itself almost unanimously against the legality of the Wall. Israel is therefore in law required to dismantle the Wall and to compensate Palestinians who have suffered as a result of its construction. If the Government of Israel declines to do this, it should at least honour the judgement of its own Supreme Court sitting as the High Court of Justice in the *Beit Sourik Village Council* case. From this judgement, it is clear that substantial portions of the already constructed Wall fail to comply with the principles of proportionality expounded by the High Court. There is no reason why the Wall should not be dismantled where it fails to meet these requirements.

VII. FREEDOM OF MOVEMENT

42. Freedom of movement is a freedom recognized by all international human rights instruments. Article 12 of the International Covenant on Civil and Political Rights provides that everyone shall "have the right to liberty of movement and freedom to choose his residence". Despite this, serious restrictions are imposed on the freedom of movement of all Palestinians, whether in the Gaza Strip or in the West Bank. They are a source of constant humiliation and cause personal suffering and inconvenience to every Palestinian. In addition, these restrictions are primarily responsible for the decline of the Palestinian economy.

43. The inhabitants of Gaza are effectively imprisoned by a combination of wall, fence and sea. Gaza's borders are rigorously patrolled by the IDF and passage in and out of Gaza is strictly controlled. While some Gazans are released to work in Israel when the security situation permits and a handful of officials and other privileged persons are permitted to leave and return to Gaza, the overwhelming majority of the people are confined within its borders. Indeed, it is almost impossible for males between the age of 16 and 35, including medical patients and students, to leave Gaza through the Rafah Terminal, which is the only exit from the Gaza Strip to Egypt. Within Gaza, freedom of movement is restricted by regularly and rigorously imposed roadblocks. The Gaza Strip is effectively divided into two by the checkpoint at Abu Houli on the main north-south road, Salah-Al-Din.

44. The inhabitants of the West Bank suffer from a variety of forms of restriction of movement. Residents of one city may not travel freely to another city in the West Bank: they require permits from the IDF for this purpose - and permits may be arbitrarily withheld. Permits are seldom granted for private vehicles. Anyone embarking upon a journey from one city to another within the West Bank is subjected to IDF-controlled checkpoints, some permanent and some temporary. Checkpoints are also set up within cities and districts. There are several hundred checkpoints throughout the West Bank and Gaza, blocking traffic between villages and towns, between cities or into Israel. The checkpoint is not the sole instrument of restriction of freedom of movement. Although less frequently used than in past years, the curfew remains a regular occurrence, as illustrated by the experience of Nablus. This apparatus of control of movement of people and goods has precipitated the prevailing economic crisis and resulted in widespread unemployment and severe disruption to education, health care services, work, trade, family and political life.

45. Travel within both the Gaza Strip and the West Bank is aggravated by the presence of separate bypass roads linking settlements to each other and the settlements to Israel. Palestinians are prohibited from using these roads. This matter is the subject of a recent study by B'Tselem,¹¹ which shows that 17 roads (totalling 124 km) are completely closed to Palestinian vehicles, 10 roads (totalling 244 km) are closed to all Palestinians without special movement permits, and 14 roads (totalling 364 km) are restricted in the sense that Palestinian vehicles are subjected to vigorous IDF checks and checkpoints. According to B'Tselem, no clear rules govern the closure of these roads to Palestinians and the system is administered in an arbitrary manner which further deters Palestinians from using such roads and compels them to use dirt roads or city roads.

46. The Wall in the Jerusalem area threatens to become a nightmare. Those on the West Bank side of the Wall with West Bank identity documents will be denied access to work, schools, universities, hospitals and places of worship on the Israeli side of the Wall. Similarly, those on the Israeli side of the Wall will be denied access or will find access seriously inconvenient to their places of work, educational institutions and hospitals on the West Bank side of the Wall. All the region's residents, numbering several hundred thousand, will be forced to pass through one large terminal at Qalandiya. Most of those passing through to work or to school will reach the terminal at peak hours and great commotion can be expected. At this stage, it is simply impossible to predict the magnitude of the hardships to which the Palestinians living in and around Jerusalem will be subjected as a result of the Wall.

47. As indicated above, a special permit system applies for persons living or farming along the Seam Zone between the Wall and the Green Line. They require permits to move between home and agricultural land and often these permits are denied or granted for limited periods only. Moreover, the gates giving access to the Closed Zone are frequently not opened at scheduled times. In general, this system is operated in a totally arbitrary manner.

48. The Special Rapporteur is unfortunately compelled to compare the different permit systems that govern the lives of Palestinians within the OPT with the notorious “pass law” system which determined the right of Africans to move and reside in so-called white areas under the apartheid regime of South Africa. The South African pass laws were administered in a humiliating manner, but uniformly. The Israeli laws are likewise administered in a humiliating manner but they are not administered clearly or uniformly. The arbitrary and capricious nature of their implementation imposes a great burden on the Palestinian people. Restrictions on freedom of movement constitute the institutionalized humiliation of the Palestinian people.

VIII. CONCLUSION

49. **This report has drawn attention to the serious violations of human rights and humanitarian law flowing from the actions of the Government of Israel in the OPT. Israel is both legally and morally obliged to bring its practices and policies into line with the law. That Israel has legitimate security concerns cannot be denied. However, these concerns must be addressed within the parameters of the law for, as the High Court of Justice of Israel has rightly declared, “There is no security without law” (*Beit Sourik* case, para. 86).**

50. **As the International Court of Justice indicates in its advisory opinion, approved by the General Assembly, there are consequences of the Wall for States other than Israel. The Special Rapporteur reminds States of their obligation not to recognize the illegal situation resulting from the construction of the Wall and not to render aid or assistance in maintaining the situation created by such construction. In addition, all States parties to the Fourth Geneva Convention are obliged to ensure compliance by Israel with the international humanitarian law embodied in this Convention. Israel’s defiance of international law poses a threat not only to the international legal order but to the international order itself. This is no time for appeasement on the part of the international community.**

Notes

¹ *Beit Sourik Village Council v. the Government of Israel* (High Court of Justice 2056/04).

² “Disengagement, the Palestinian Economy and the Settlements”, World Bank, 23 October 2004, p. 4.

³ *Razing Rafah: Mass Home Demolitions in the Gaza Strip*, Human Rights Watch, October 2004, p. 4; <http://www.hrw.org/reports/2004/rafah1004>.

⁴ United Nations War Crimes Commission, *Law Reports of Trials of War Criminals*, Case No. 47, vol. VIII, 1949, p. 34.

⁵ Jeff Halper, *Obstacles to Peace - A Re-Framing of the Palestinian-Israeli Conflict*, 2nd ed. (2004).

⁶ *Through No Fault of their Own: Punitive Home Demolitions during the al-Aqsa Intifada* (Jerusalem, November 2004).

⁷ J. Pictet, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, Geneva, ICRC (Dordrecht, Martinus Nijhoff, 1987), p. 67.

⁸ “The situation of workers in the occupied Arab territories”, ILO, June 2004, para. 39.

⁹ Order Regarding Security Regulations (Judea and Samaria) (No. 378) 5730/1970.

¹⁰ *Not All it Seems: Preventing Palestinians Access to their Lands West of the Separation Barrier in the Tulkarm-Qalqiliya Area* (Jerusalem, June 2004).

¹¹ *Forbidden Roads: The Discriminatory West Bank Road Regime* (August 2004).
