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Question of the violation of human rights in the occupied Arab territories, including Palestine

Note by the Secretary-General

The Secretary-General has the honour to transmit to the members of the General Assembly the interim report on violations of international humanitarian law and human rights in the Palestinian territories occupied since 1967, submitted by John Dugard, Special Rapporteur, pursuant to Commission on Human Rights resolutions 1993/2, section A, and 2004/10.

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

Summary

The present report focuses upon the consequences of military incursions into the Gaza Strip, 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 six months, 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 This has been interpreted as a show of force on the part of Israel so that it cannot later be said that it had withdrawn unilaterally from the territory in weakness.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. These buildings housed 379 families (2,066 individuals). These demolitions occurred during one of the worst months in Rafah's recent history. During May, 298 buildings, housing 710 families (3,800 individuals), were demolished.

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 Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (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 on 9 July 2004. The Court held that Israel is under an obligation to discontinue building the Wall and to dismantle it forthwith. In its Advisory Opinion, the Court 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 gave 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 re-routed.

Israel has announced that it will not comply with the Advisory Opinion of the International Court of Justice. It has indicated that it will abide by the ruling of its own High Court in respect of sections of the Wall still to be built but not in respect of completed sections of the Wall.

Israel claims that the purpose of the Wall is to secure Israel from terrorist attacks and claims that terrorist attacks inside Israel have dropped by over 80 per

cent as a result of the construction of the Wall. Two comments may be made on Israel's claims. First, there is 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. Second, the evidence suggests that the following are more convincing explanations for the construction of the Wall:

- The incorporation of settlers within Israel;
- The confiscation 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. Furthermore, Benjamin Netanyahu, Minister of Finance of Israel and a former Prime Minister, openly acknowledged in the *International Herald Tribune* on 14 July 2004 that the purpose of the Wall was to include "as many Jews as possible".

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 as has settler violence towards Palestinians. To aggravate matters, Israel is now proceeding with plans to incorporate the settlement of Ariel, 22 kilometres inside Palestinian territory. This action 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 have been seized along the Green Line and incorporated into Israel. This land seizure has been documented in earlier reports and in the Advisory Opinion of the International Court of Justice. 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 Wall. It must be recalled that Israel's 1980 annexation of East Jerusalem is unlawful and has been declared "of no legal validity" by a resolution of the Security Council.

The seizure of land 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 are dependent upon the facilities of 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 might 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 which 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. West Bankers 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. The Wall in the Jerusalem area threatens to become a nightmare as tens of thousands of Palestinians will be required to cross at one checkpoint each day — the Kalandiya checkpoint. 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 one respect Israel has gone beyond the scope of apartheid law. It has introduced separate roads for settlers. "Road apartheid" was never a feature of the apartheid State.

The International Court of Justice indicated in its Advisory Opinion, which has been approved by the General Assembly, 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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I. Introduction

1. On 9 July 2004 the International Court of Justice held that the Wall presently being built by Israel in the Occupied Palestinian Territory (OPT), including in and around East Jerusalem, is contrary to international law. It held that Israel is under an obligation to cease the building of the Wall 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 the construction of the Wall 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; that all States parties to the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 (Fourth Geneva Convention) are obliged to ensure that Israel complies with the provisions of that Convention; and 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.

2. 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 (6) of the Fourth Geneva Convention, Israeli settlements in the OPT "have been established in breach of international law". 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". 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".

3. Shortly before the International Court of Justice gave its opinion, the High Court of Justice of Israel gave a ruling on a portion of the Wall. Although the Court accepted that Israel as the occupying Power had the right to construct the Wall to ensure security, it held that certain sections of the Wall imposed undue hardships on Palestinians and had to be re-routed. This Court looked at 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.

4. 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:

> "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." (See *Beit Sourik Village Council vs. the Government of Israel* (High Court of Justice 2056/04, para. 86).)

5. 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

6. 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, 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 3,000 Palestinians (including over 500 children) and almost 1,000 Israelis have been killed. More than 34,300 Palestinians and 6,000 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 have been targeted persons and 152 innocent civilians;
- Incursions. In the past year the Israel Defence Forces (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. On 28 June, for instance, in the course of an incursion

into Nablus, Dr. Khaled Salah, a lecturer at Najah University, and his 16-year-old son were killed at home — the victims of wanton gunfire by the IDF;

- Prisoners. There are some 6,000 Palestinian prisoners in Israeli prisons or detention camps, of whom 350 are children and 75 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;
- 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. International Labour Organization (ILO) figures show that an average of 35 per cent of the Palestinian population is unemployed. Sixty-two per cent of Palestinians are below the poverty line. According to a World Bank report of 23 June 2004, "The Palestinian recession is among the worst in modern history. Average personal incomes have declined by more than a third since September 2000."

III. Gaza Strip

7. In recent months the IDF has carried out regular military incursions into the Gaza Strip. The worst-affected towns have been Rafah and Beit Hanoun. The reasons advanced by Israel for these incursions are, in the case of Rafah, the destruction of tunnels used for smuggling of arms and in the case of Beit Hanoun, 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 along the "Philadelphi" route, which requires the destruction of homes in Rafah presently in the buffer zone. In June 2004 it was announced that Israel planned to build a moat or trench in this buffer zone.

8. 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. Bulldozers have savagely dug up roads, including 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 Younis, 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.

9. 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 8 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. These buildings housed 379 families (2,066 individuals). These demolitions occurred during one of the worst months in Rafah's recent history. During 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 15,000 people. The Special Rapporteur was appalled at the evidence of wanton destruction inflicted upon Rafah. The Special Rapporteur is mindful of article 53 of the Fourth Geneva Convention which provides that any destruction by the occupying Power of personal property is prohibited except when such destruction is rendered absolutely necessary by military operations and that failure to comply with this prohibition constitutes a grave breach in terms of article 147 of the Fourth Geneva Convention requiring prosecution of the offenders. The time has come for the international community to identify those responsible for this savage destruction of property and to take the necessary legal action against them.

10. A report published by the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) in June 2004 stated that nearly 45 million United States dollars will be needed to re-house Palestinians rendered homeless by the Israeli army. 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.

11. In July 2004 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. On 13 July an UNRWA convoy carrying food to Beit Hanoun came under fire from the IDF.

12. The IDF frequently "sweeps" land and houses near settlements and settlement bypass roads, allegedly in the interest of the security of the settlements. The destruction of property in exercises of this kind often seems to exceed the limits of military necessity. The Special Rapporteur had occasion to witness such an excess near a settler bypass road outside Netzarim. Here, the IDF, after years of harassing the families occupying two houses near to a bypass road, piled earth with a bulldozer against the outer walls of the houses up to the height of the first floor. Water and electricity to the house were also cut off and families were ordered not to use first floor rooms facing the bypass road. This is but one example of the kind of military harassment to which Gazans are subjected in order to provide for the security of settlers.

13. The international community has responded positively to Israel's announcement of plans to withdraw unilaterally from Gaza. It has also followed with interest the political conflict within the territory between forces of the Palestinian Authority (PA) and militant groups. There is a danger that events of this kind may distract attention from the suffering of the people of Gaza. The people of Gaza are in fact imprisoned within their territory, subjected to serious restrictions of

movement within their territory, rendered unemployed and poverty-stricken by Israeli practices and, in many cases, made homeless by the IDF. This reality should not be overlooked.

14. Israel sees the political advantages in withdrawing from Gaza. In particular, it claims that it would no longer be categorized as an occupying Power in the territory subject to the Fourth Geneva Convention. In reality, however, Israel does not plan to relinquish its grasp on the Gaza Strip. 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 Israeli disengagement plan of April 2004. This disengagement plan states in respect of Gaza, inter alia, that "The State of Israel will supervise and maintain the external land envelope, have exclusive control of the air space of Gaza and continue to carry out military activity in the Gaza Strip's maritime space. ... The State of Israel will continue to maintain a military presence along the border line between the Gaza Strip and Egypt (the Philadelphi route). This presence is a vital security need. In certain places a physical broadening of the area in which this military activity is carried out may be required." Another means of control that is being contemplated is the installation of high-tech listening devices in major buildings in the Gaza Strip in order to enable the Israeli authorities to monitor communications. This means that Israel will remain an occupying Power under international law. 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, a principle confirmed by the United States Military Tribunal in *In re List and others (The Hostages Case)* of 1948. 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. The Wall

15. 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 (A-Ram, Abu Dis, Kalandiya, Beit Sourik and Biddu), Qalqiliya (Isla and Jayyous villages) and Bethlehem. Previously, the Special Rapporteur has visited villages in the Qalqiliya and Tulkarem region.

16. 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 a similar 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 judgement of the Israeli High Court of Justice in *Beit Sourik Village Council vs. the*

Government of Israel. Here, the Israeli High Court weighed the security justifications for the course of the Wall in Palestinian territory advanced by the Israeli military commander against less intrusive security proposals suggested by the Israeli Council for Peace and Security, an independent body comprising retired Israeli military officers, and in several instances preferred the latter's proposals. The High Court's consideration of competing proposals for the course of the Wall in the context of security and proportionality demonstrates the difficulties inherent in such an exercise and brings into question the military justifications for the course of the Wall.

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

- To incorporate settlers within Israel;
- To confiscate 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

18. 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 which show 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 written by Benjamin Netanyahu, Minister of Finance of Israel and a former Prime Minister, in the *International Herald Tribune* on 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."

19. 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 in the Opinion, stated that he agreed that article 49 (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).

20. 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. New building starts in Israeli settlements increased by 35 per cent in 2003 and in early March 2004 the Israeli Ministry of Housing and Construction was engaged in

discussion with construction contractors for plans to market another 2,414 housing units over the coming year in settlements such as Kiryat Arba, Har Homa, Beitar Illit, Sur Hadar, Ma'aleh Adumim, Givat Zeev and Pisgat Zeev. New settlements are to be established in the Bethlehem area, and the settlement of Kidmat Zion is to be built near Abu Dis and that of Nof Zahav near Jabal Mukhaber. Mr. 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 will be consolidated and expanded. According to a 2004 report of the Director General of the International Labour Organization, "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 to 2002), thereby indicating more than natural demographic growth even allowing for higher fertility among settler families."

21. 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 had been a 20 per cent increase in settler violence. There are also allegations of well poisoning by settlers. 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 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. This despite Israel's legal obligation to cooperate with TIPH.

22. Plans to incorporate more settlements within the Wall are being implemented. Steps are being taken to include the settlement of Ariel on the Israeli side of the Wall. In June 2004, Defence Ministry officials sent Palestinian residents of the town of Salfit, south of Ariel, preliminary appropriation orders for land upon which the Wall is to be built. This action is being taken despite assurances given to the United States that no such construction would be undertaken. 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 Court's 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 defence 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. Confiscation of Palestinian land

23. Another purpose of the Wall is to expand Israel's territorial possessions. Rich agricultural land and water resources have been seized along the Green Line and incorporated into Israel. On this visit, the Special Rapporteur witnessed the seizure of agricultural land in the region of the villages of Jayyous and Isla. The Wall has been built between Jayyous homes and rich Jayyous farmland, thereby separating Jayyous farmers from their land. The Wall separates Jayyous farmers from 120 greenhouses, 15,000 olive trees and 50,000 citrus trees. All seven of the town's water wells are on the Israeli side of the Wall. The same pattern was apparent near the village of Isla.

24. The route of the Wall in the south Hebron hills is also a source of concern. The Special Rapporteur visited the cave-dwellers in the Jimba region who are destined for removal from land they have occupied for generations. It is not clear whether the military have their eyes on this land for military exercises or whether it is intended for settlement expansion.

25. 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 a resolution of the Security Council. 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, pensions and freedom of movement, attach 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.

26. In the last few months a wall has been built along the illegal border of East Jerusalem at places like Abu Dis, A-Ram and Kalandiya. 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 square kilometres 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

27. 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 (paras. 122 and 133).

28. 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, over 13,500 Palestinians live in the Closed Zone, obliged to have permits to live in their own homes (see Order Regarding Security Regulations (Judea and Samaria) (No. 378) 5730/1970). Palestinians living within the West Bank with farms inside the Closed Zone moreover need permits to cross the Wall into this Zone, as do others who wish to visit the Zone for personal, humanitarian or business reasons. A recent study carried out by B'Tselem (the Israeli Information Centre for Human Rights in the Occupied Territories) demonstrates the arbitrary nature of the implementation of the permit system. Permits are to be 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. 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 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. For instance, the gates at Jayyous were opened for only 90 minutes a day (30 minutes each time). The arbitrary regime relating to the opening of gates has caused special problems during harvest time when intensive labour is required. (See *Not All It Seems: Preventing Palestinians' Access to their Lands West of the Separation Barrier in the Tulkarem-Qalqiliya Area*.)

29. In some instances, the Wall has been built with due regard to Palestinian homes. However, in some cases houses have been demolished where they are too close to the Wall. This is illustrated by the destruction of 10 homes and shops in the West Bank village of Azzun Atma in August 2004.

30. The main compulsion to leave the Closed Zone and the neighbourhood of the Wall is to be found in the separation of homes from land. All along the Wall, Palestinian homes are separated from their land. This report has above referred to the cases of Jayyous and Isla but they are not isolated examples. Many other villages have been similarly affected.

31. At this stage of the report, it is necessary to refer to the judgement of the High Court of Israel in the *Beit Sourik Village Council* case. In its judgement, the 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 kms. It causes injury to the lives of 35,000 local inhabitants. 4,000 dunams of land 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 land. 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 closing 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
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> " …
>
> "84. The injury caused by the Separation Fence is not restricted to the lands of the inhabitants or to their access to these lands. The injury is of far wider scope. It is the fabric of life of the entire population. In many locations, the Separation Fence passes right by their homes. ...
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> "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."

32. The Government of Israel has indicated that it completely rejects the Advisory Opinion of the International Court of Justice. The Government has, however, made it clear that it will abide by the decision of the Israeli High Court of Justice in respect of sections of the Wall still to be built. Central Command Chief Major-General Moshe Kaplinsky stated on 13 July that the "security establishment has decided that no barrier will be built that separates Palestinian farmers from their fields and, therefore, no gates for agricultural crossings will be built in any of the future sections of the Separation Fence". Government statements indicate that there is no intention to review the 200 kms of the Wall that has already been built.

33. In the first place, 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. This Court, the judicial organ of the United Nations, has pronounced itself almost

unanimously against the legality of the Wall. Israel is therefore in law obliged 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.

V. Freedom of movement

34. 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.

35. 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 of Gaza 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 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. There are also additional temporary and permanent road barriers in the north and south of the Gaza Strip and a number of areas, including Al Mawasi and Al Sayafa, are blocked off from the rest of the Gaza Strip by Israeli military patrols.

36. 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 city within the West Bank is subjected to IDF-controlled checkpoints, some permanent and some temporary. Checkpoints are also erected 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 freedom 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.

37. Travel within both the Gaza Strip and the West Bank is aggravated by the presence of separate bypass roads linking the settlements to each other and settlements to Israel. Palestinians are prohibited from using these roads.

38. 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 find access seriously inconvenient to their places of work, educational institutions and hospitals on the West Bank side of the Wall. Many Palestinians with Jerusalem residence documents are married to West Bank identity document-holders. Whether they will be permitted to live together in Jerusalem remains to be seen. There is also a real fear that Jerusalem identity document-holders forced to live outside the Wall, as a result of the unavailability of property within East Jerusalem, will lose their Jerusalem residence rights. All the region's residents, numbering several hundred thousand, will be forced to pass through one large terminal at Kalandiya. Some of these persons will have West Bank identity documents and some will have Jerusalem residence permits. Although there are no clear estimates of the number of Palestinians who will have to pass through the Kalandiya terminal daily, it is clear that it will reach the tens of thousands. 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.

39. 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. The psychological implications of the Wall have recently been the subject of a study by the Palestinian Counselling Centre dated 29 June 2004. This report shows that persons living close to the Wall, particularly those who are obliged to pass through the gates of the Wall, have manifested severe psychosomatic symptoms from their state of anxiety.

40. The Special Rapporteur is unfortunately compelled to compare the different permit systems that govern the lives of Palestinians 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. "Road apartheid" was unknown in South Africa. By creating separate and unequal roads for settlers and Palestinians, Israel has gone beyond the scope of restraints on freedom of movement imposed by apartheid.

VI. Conclusion

41. **This report has focused on three issues: the destruction of property in Gaza, the consequences of the Wall and restrictions on freedom of movement. The Special Rapporteur has drawn attention to the serious violations of human rights and humanitarian law flowing from these actions of the Government of Israel. Israel is both legally and morally obliged to bring its practices and policies into line with the law. The High Court of Justice of Israel has rightly declared, "There is no security without law" (*Beit Sourik* case, para. 86).**

42. **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.**