



INTERNATIONAL COMMISSION OF JURISTS

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ICJ Intervention on the Human Rights Situation in Palestine and Other Occupied Arab Territories - Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967, John Dugard (A/HRC/7/17)

6 March 2008

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Mr. President,

In its 6th Special Session, the Council demanded that Israel end the siege on Gaza and urged all parties to the conflict to respect human rights law and international humanitarian law and refrain from violence against civilians. Instead, Israel has tightened its grip on Gaza and conducted a number of military incursions there. These offensives, made in response to rocket attacks made by Hamas and other Palestinian groups on civilian targets in southern Israel, which have caused casualties in Sderot and Ashkelon, have resulted in the killing of more than 120 Palestinians - including many civilians.

Neither Israel's duty to ensure the security of its civilian population nor any other legal principle justifies Israel's indiscriminate and disproportionate use of force in violation of international humanitarian law. The direct and wilful targeting of the civilian population, its means of subsistence, and its infrastructure, violate international humanitarian law and may amount to war crimes according to customary international humanitarian law.

Palestinian armed groups' continuous indiscriminate attacks on military and civilians by firing of rockets in southern Israel, create a permanent state of fear among the civilian population and violate international humanitarian law. Such indiscriminate attacks may also constitute war crimes.

Mr. President,

The International Commission of Jurists condemns Israel's siege on Gaza. Israel must respect human rights of civilians and observe international humanitarian law, in particular the 4th Geneva Convention relative to the Protection of Civilian Persons in Time of War. By hindering freedom of movement and preventing access to essential means of subsistence, Israel violates its obligation to protect civilians in occupied areas, and engages in collective punishment prohibited by Art. 33 of the 4th Geneva Convention, and the customary international law.

Mr. President,

The ICJ concluded its most recent mission to Israel and the West Bank today. It observed expanding Israeli settlements, for whose construction Palestinian land is confiscated. The Israeli housing minister's plan for construction of 1,000 new homes for settlers in the Abu Ghneim/Har Homa settlement in East Jerusalem is of serious concern, as its implementation would violate Art. 49 of the 4th Geneva Convention and customary international law, which prohibits Israel transferring parts of its own civilian population into territory it occupies.

The mission condemned grave attacks on the independence of the judiciary and the rule of law in Gaza, including the dismissed Hamas government's suspension of the Attorney General, the formation of a "Higher Justice Council" under the Government's control, and the replacement of judges who refused to cooperate with the Hamas Executive Force.

Impunity for human rights violations compounds the volatile situation. Perpetrators of arbitrary killings of civilians and members of armed groups placed *hors de combat* in the aftermath of June 2007 fighting between Hamas and Fatah in Gaza must be brought to justice.

The mission also determined that the Palestinian General Intelligence Service in the West Bank continues to commit arbitrary detentions and subject detainees to ill treatment and torture. Some detainees have died while in custody.

Of particular concern is the emergence of two different and separate legal systems in the OPTs, one under the control of the dismissed Government of Hamas in Gaza, the other under the control of the emergency Government in the West Bank. This development threatens to accelerate the collapse of the Palestinian legal system, endanger the rights of Palestinians, and seriously harm the establishment of a democratic, viable and independent Palestinian State.

The political resolution of the conflict must also respect the Advisory Opinion of the International Court of Justice on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*.

Mr. President,

Given the extent of the crisis, the International Commission of Jurists recommends that the mandate of the Special Rapporteur be renewed.

I thank you.
