



International Covenant on Civil and Political Rights

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Summary record of the 3116th meeting

Held at the Palais Wilson, Geneva, on Monday, 20 October 2014, at 3 p.m.

Chairperson: Sir Nigel Rodley

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The meeting was called to order at 3 p.m.

Consideration of reports submitted by States parties under article 40 of the Covenant
(continued)

Fourth periodic report of Israel (continued) (CCPR/C/ISR/4; CCPR/C/ISR/Q/4 and Add.1)

1. *At the invitation of the Chairperson, the delegation of Israel took places at the Committee table.*
2. **Mr. Iwasawa** asked whether the Government would consider allowing the communities affected by punitive demolitions of homes to participate in the planning and zoning process. Noting the many adverse effects of the military blockade of the Gaza Strip, he asked whether the Government intended to lift the blockade and what measures it was taking to ameliorate the blockade's harmful effects and to facilitate reconstruction in the Gaza Strip. The delegation should clarify to what extent the recommendations made in the second report of the Turkel Commission had been implemented and whether any progress had been achieved regarding military investigations.
3. He asked the delegation to respond to the allegations that Israeli forces had used excessive force against demonstrators who did not pose any lethal threat to them, resulting in injuries and fatalities, and had also executed Palestinian detainees arrested during the demonstrations. He wished to know whether the State party had launched credible and independent investigations into all such allegations and how many of those investigations had resulted in prosecutions and convictions. He asked what improvements in accountability had been achieved by the new policy to automatically open criminal investigations into incidents involving military forces that resulted in fatalities. He wondered how the independence of investigations could be ensured when initial inquiries were overseen by military unit commanders. He asked what measures had been taken to ensure access to justice for the Palestinians affected by such displays of force, and he repeated the request for information on investigations related to "Operation Cast Lead" and other incidents referred to in the list of issues (CCPR/C/ISR/Q/4).
4. **Mr. Kälin** said that other nations did not share the State party's view regarding the non-applicability of international human rights law in cases where international humanitarian law applied. He asked whether there were procedures in place for border guards to follow when dealing with asylum seekers who arrived at the border. He wished to know how the Government would handle allegations of violent acts against asylum seekers, should any such allegations be made. He sought assurances from the delegation that the new detention regime, which was still being discussed, would comply with the relevant court decisions. He asked whether any special protections were granted to rejected asylum seekers to ensure that the principle of non-refoulement was respected.
5. The Committee had received reports suggesting that the lack of a definition of torture and ill-treatment, the notion of "necessity" as a valid defence and the exemption from the obligation to provide audio or video documentation of interrogations had created a watertight system to protect persons who engaged in abuse or ill-treatment. In the light of the Supreme Court's authorization of the use of "moderate physical pressure", he asked whether the use of specific methods such as the "banana position" were permitted under Israeli law. He wished to know whether cases in which the necessity defence was invoked were still investigated and prosecuted and, if not, who was competent to decide whether or not necessity should apply in each individual case. He asked how many times the necessity defence had been invoked to justify refraining from opening investigations.
6. He wished to know the number of cases in which the transfer of the Inspector for Complaints against the Israel Security Agency (ISA) to the Ministry of Justice had led to

the initiation of criminal investigations and proceedings. He expressed concern that preliminary investigations, if used in cases where the evidence was clear cut, could act as an additional filter to delay or prevent full investigations.

7. Lastly, he asked whether there were any provisions to ensure that robust treatment meted out to adults could not be used against children and whether any practical measures were taken to ensure the best interests of children arrested in a security context.

8. **Mr. Vardzelashvili**, recognizing the need to balance security concerns with respect for democratic principles, asked whether the laws and regulations in place were in line with those principles. He requested statistical data on the number of Palestinians held in administrative detention. While he welcomed the fact that some changes had been made to administrative detention practices, he remained concerned about detainees' access to defence counsel and to their own case files.

9. He welcomed the improvements made to the legal framework regulating the detention of juveniles and hoped that further improvements would be introduced to ensure that all necessary safeguards were in place and were freely available to detained juveniles. He asked whether any measures had been taken in response to allegations that regulations on the use of hand ties were poorly enforced. While he welcomed the raising of the age of majority to 18 years in military courts, the Committee had received information indicating that the change was not applied with respect to sentencing. He requested clarification regarding the requirement to inform juvenile detainees of their right to consult a lawyer, including whether it applied to juveniles detained by military forces. Referring to recent statements made by the Attorney General, he asked whether the Committee could expect further amendments to be made to the legal framework governing the detention of minors, specifically concerning permission for judges to request psychological evaluations of arrested Palestinian minors. He asked the delegation to comment on the shortcomings of the Juvenile Military Court as reported by NGOs.

10. He asked whether any measures had been taken in response to reports that, due to a lack of training, military and police forces were unable to effectively deal with violent acts by Israeli settlers against Palestinians. Lastly, he requested further information about the bill on combating terrorism, as concerns had been raised about some of its provisions.

11. **Mr. Flinterman** said that he regretted the State party's position on the issue of extraterritorial application of the Covenant and reminded the delegation that the Committee would continue to hold Israel responsible for its respect of human rights in all situations where it exercised governmental powers. He asked what political considerations stood in the way of explicitly setting out the principle of equality in Israeli law. He reiterated several of the questions regarding freedom of movement that the Committee had raised in paragraph 20 of the list of issues.

12. Noting the many difficulties Palestinians faced because of the blockade of the Gaza Strip and the construction of the "Seam Zone", he asked why so many permit applications from residents in the West Bank had been rejected, why not all barrier gates were open on a daily basis, what measures were planned to comply with the 2004 Advisory Opinion of the International Court of Justice and to ensure that Palestinians had access to their lands and livelihoods, and whether there were any measures to review the status of long-term residents of the West Bank. He was concerned by the fact that most Palestinian residents of the Occupied Palestinian Territory were deprived of the freedom to choose their place of residence in their own country, including East Jerusalem.

13. Despite the recommendation made in the Committee's previous concluding observations to cease all construction of settlements in the Occupied Palestinian Territory, reports indicated that construction had increased dramatically, and plans to expand the settlements still further had been announced. He was concerned that such settlement

policies violated a number of rights held by the Palestinian people, including the right to liberty and security of person and the right to self-determination, and he asked the delegation to comment on those concerns.

14. He requested data on the impact of the Citizenship and Entry into Israel Law, particularly on women and children. He asked the delegation to explain how the prevention of family reunification on the ground of an automatic security risk could be considered to be proportional and in line with article 23 of the Covenant. He requested statistical information on the number of visits from prisoners' family members that had been prohibited for security reasons. He asked what measures were being taken to facilitate family reunification, and he wished to know the current status of the family visit programme supported by the International Committee of the Red Cross.

15. **Ms. Waterval** asked the delegation to respond to the Committee's concerns that Palestinian men and women under a certain age were denied access to the Al-Aqsa mosque and that, in February 2012, Israeli settlers enjoying the protection of the Israeli police had broken into the mosque, where they had verbally and physically assaulted worshippers.

16. Were applicants given a hearing during the procedure for processing conscientious objectors' applications for exemption from military service? What criteria were used? Did applicants know what those criteria were? How many persons had applied for that exemption in 2013? How many applications had been accepted or denied? How many applications had been granted or refused on appeal? What difference was there between the "reasons of conscience" referred to in paragraph 419 of the State party's report and the "reasons of conscience, due to a pacifistic point of view" mentioned in paragraph 420? The Committee considered that the repeated imprisonment of persons refusing to perform military service was a violation of the principle of *ne bis in idem*.

17. What was the reasoning behind the court judgement in the case mentioned in paragraph 431 of the State party's report? She requested examples of the "several exceptions" referred to in that paragraph. What was meant by "near certainty"? Why had there been so many objections to the anti-boycott law? What limitations were placed on human rights defenders' freedom of association under that law? How did the delegation react to reports that the new funding restrictions and reporting requirements imposed on NGOs under the Foreign Funding Law were undermining the defence of human rights? Did that law apply to all foreign-funded organizations?

18. **Mr. Zlătescu** asked whether Israel had any strategy in place to ward off what appeared to be an inevitable humanitarian crisis in the Gaza Strip owing to the dire state of its infrastructure. Was the State party contemplating the transfer of drinking water from Israel to Gaza?

19. **Mr. Salvioli** commented that the Covenant applied to all persons under the jurisdiction of the State party. He therefore hoped that, over the next four years, the State party would bring its position into line with international legal theory and case law on the application of the Covenant. He drew attention to the fact that if both spouses had to consent to divorce only when a woman initiated proceedings, that situation would not be compatible with the principle of non-discrimination embodied in the Covenant.

20. **The Chairperson** asked what legislative provisions prevented the State party's ratification of the Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty.

21. **Mr. Fathalla** reminded the delegation that it had failed to reply to his question regarding the annexation of almost 1,000 acres of Palestinian land and the restrictions placed on Palestinians' access to their natural resources in villages near to Bethlehem.

22. **Mr. Schondorf** (Israel) said that it was to be hoped that the Turkel Commission's comprehensive report would serve as a milestone in the development of investigative standards under the law of armed conflict. Some of the Commission's 18 recommendations requiring complex legislative, regulatory or procedural changes were still being reviewed by the implementation committee, which the Government had set up in January 2014. The recommendations which had been implemented were related to the investigation of allegations of misconduct on the part of the Israeli armed forces. Recommendation No. 5 on a fact-finding assessment mechanism had been implemented in full. Facts were gathered by very senior officers who had not been part of the chain of command over the operation or activity in question. The members of the mechanism, which was permanent, included operational, legal and investigative experts. Some highly experienced foreign investigators and an international law adviser had also been recruited. The teams' work was directed and guided by the Military Advocate General, who could also ask the mechanism to obtain additional information by interviewing soldiers, civilians and the complainants and by gathering factual and material evidence. Very significant resources had been allocated to the mechanism in order that it might complete its work without delay. In 47 of the 99 cases referred to it, the initial assessment of the facts had been completed.

23. Persons seeking asylum could submit an application on arrival at the Israeli border. A migrant in an irregular situation would be placed in provisional detention, whence he or she could also request asylum. Mechanisms existed to handle allegations of brutality or complaints of assault committed by prison staff, members of the Israel Defense Forces (IDF) or the police during that provisional detention. He was unable to predict what new detention arrangements might be introduced for asylum seekers after the Supreme Court's ruling that the Holot detention facility must be closed. Israel was fully committed to the principle of non-refoulement, which had been incorporated into its domestic law. It did not return people to countries where their lives might be in danger. Even if a person's asylum application had been rejected, he or she would be given temporary protection by being allowed to stay in Israel and to work, albeit without an official permit, if repatriation would put his or her life in jeopardy.

24. He completely rejected the suggestion that a system existed to protect members of the Israel Security Agency (ISA) who engaged in human rights violations. The State party's definition of torture was consistent with that under international law. In keeping with the Turkel Commission's recommendation, the implementation committee was, however, giving serious consideration to the possibility of criminalizing torture. He also rejected the allegation that sexual assaults had been committed or threatened by ISA personnel. Although the Turkel Commission had recommended that ISA interrogations should be videotaped, that was a complicated issue and attempts were being made to find a solution which achieved the requisite balance between the various interests and concerns.

25. The Turkel Commission's recommendation regarding the investigation of complaints against ISA interrogators had been fully implemented, since that function had been transferred to the Ministry of Justice and investigators had been appointed, one of whom was Ms. Modzgvishvily, the former Chief Military Prosecutor. Shortly after her appointment she had initiated contacts with the relevant NGOs and the International Committee of the Red Cross with a view to achieving greater transparency. Although in the past investigations had sometimes been frustrated by complainants' reluctance to testify, cooperation with civil society now meant that an NGO could offer reassurance to the individual whom it was representing by being present during the taking of evidence at the district coordination office on the West Bank. Ms. Modzgvishvily was committed to clearing the backlog of cases which had built up during the transfer of investigations from the ISA complaints mechanism to the Ministry.

26. The issue of ideologically motivated violence was of great concern to the Israeli Government. The resolute steps which it had taken to prevent such violence had led to a substantial reduction in such deplorable actions in 2014. An interministerial team headed by the Deputy State Attorney and comprising representatives of the State Attorney's office, the police and the IDF had been set up to deal with such crimes. It had met six times in 2013 in order to coordinate enforcement activities. The Ministers of Public Security and Justice regularly chaired meetings on the subject. A special regional unit had been established within the police to handle ideologically motivated crimes. It had conducted dozens of overt and covert investigations and was empowered to adopt preventive measures. A special desk within the police regional intelligence department was in charge of obtaining information about offences prompted by ideology, including attacks on Palestinians. The Criminal Code allowed penalties to be doubled in cases of hate crimes.

27. **Mr. Neuman** (Israel) said that the Gaza Strip had not been under Israeli control since the last IDF units had left it on 12 September 2005. The area had turned into a hostile zone similar in almost every aspect to an enemy State engaged in war against Israel. In 2007 the Israeli High Court of Justice had found that, owing to Israeli disengagement and lack of effective control over Gaza, Israel had no general duty to ensure the population's welfare.

28. Humanitarian efforts carried out by Israel included the provision of food aid packages, drinking water, medical supplies and fuel, with more than 122,000 tons of supplies having been transported through the Kerem Shalom border crossing alone. Repairs had been performed on essential infrastructure in the Gaza Strip, and medical treatment had been dispensed to hundreds of Palestinians in Israel and at crossing points. Humanitarian affairs officers had been appointed to advise unit commanders within the Israel Defense Forces (IDF), and steps had been taken to facilitate communication between IDF officials and civilians in the combat zone.

29. The delivery of goods had been hamstrung by incessant rocket and mortar attacks by Hamas, which had refused countless ceasefire offers and violated others. Of the 8,400 consignments authorized by IDF, only 5,600 had reached Gaza. Despite the threat posed by Hamas, Israel continued to implement a flexible policy with regard to the movement of goods and people into and out of Gaza.

30. In order to promote the rehabilitation of the Gaza Strip, a mechanism had been established to enable the transfer of cement and other construction materials in return for assurances that such materials would not be used to conduct terrorist activities, as had been the case in the past. Measures had been taken to allow women in Gaza to visit the West Bank during the holiday season, and elderly Palestinians had been granted access to the Temple Mount so that they could pray. Although Gaza residents, like other foreigners, did not have a legal right to enter the sovereign territory of Israel, the Government had opted to take a calculated risk and permit the entry of persons requiring urgent medical care, representatives of international organizations and businessmen and women whose presence facilitated the transfer of goods. Over the last year, Gaza residents had also been able to leave the region through the Rafah border crossing, which was not under Israeli control. Sources indicated that, in 2012, an average of 40,000 people per month had used the crossing.

31. The water supply into Gaza was regulated by the 1994 Agreement on the Gaza Strip and Jericho. Since the end of the disengagement process in 2005, water and sewage systems had been under exclusive Palestinian control. The unapproved drilling of over 6,000 wells had caused irreversible and ongoing damage to the water supply in Gaza, where the main source was an aquifer in an area over which Israel exerted no influence. To help address the situation, the Government had agreed to supply 5 million cubic metres of water per year at the standard rate plus transportation costs.

32. The investigation of suspicions against IDF soldiers, which was accorded the utmost attention, was hindered by the fact that many complaints were made anonymously or were not referred to the competent authorities. During Operation Protective Edge, Chief of General Staff Benjamin Gantz had ordered the establishment of a fact-finding assessment mechanism to examine exceptional incidents. The mechanism, whose role was to gather information and liaise with the Military Advocate General, was composed of numerous teams comprising high-ranking IDF reservists and officers with relevant expertise, who had not been in the chain of command for the Operation. In the interest of transparency, the Military Advocate General, which sanctioned appropriate action on the basis of the information collected, published its decisions periodically, including on its website. Such decisions could be challenged and were subject to review by the High Court of Justice.

33. The fact-finding assessment teams had been given the requisite resources and broad-ranging powers to obtain evidence and interview IDF soldiers, who were legally obliged to cooperate. More than 100 exceptional incidents had been referred to the mechanism for assessment, and criminal investigations had already been ordered in two cases. The Military Advocate General had also called for the opening of criminal proceedings into six prima facie cases involving alleged misconduct. It was important to stress that executions in the Gaza Strip had been carried out by Hamas, not IDF troops, who were committed to upholding the rule of law. Collateral damage suffered by civilians did not, in itself, amount to a violation of international law.

34. In 2013, the Military Advocate for Operational Affairs had received 220 complaints regarding IDF activities. Of those, 164 had been related to events in the West Bank, and more than half had prompted criminal investigations. A total of 10 IDF officers of different ranks had been indicted, 8 of them for violent acts against Palestinians. Some IDF officers had also been convicted, notably Lieutenant Colonel Shalom Eisner, who had been sentenced to 2 months' imprisonment for striking a foreign national with the butt of his rifle.

35. As to the protection of minors' rights, a juvenile military court had been established and the age of majority in military courts had been raised from 16 to 18. The nature of the conflict in the West Bank did, however, impose a unique set of demands on the criminal justice system. Hatred of Israel was instilled into Palestinian children as early as preschool, leading to the commission of offences ranging from stone-throwing to violent terrorist activity. Minors often caused as much damage as adults, and some had even been implicated in murders. Despite the challenging situation, great strides had been made in the area of minors' rights.

36. The current policy of Israel was not to evict illegal residents in the West Bank who had moved prior to 12 September 2005, provided that they did not pose a security threat. Moreover, the Government had granted permanent residency to thousands of Gazans as a goodwill gesture to the Palestinian authorities. Muslim men over 55 and women over 45 were generally given access to holy sites and, during the month of Ramadan in 2013, over 1 million Palestinians had been granted entry into Israel. Regrettably, Ramadan had overlapped with Operation Brother's Keeper in 2014, and the security situation on the ground had made it impossible to lift restrictions for a second time.

37. **Ms. Marks** (Israel) said that, for legal purposes, civil society organizations were no different from other organizations and had to comply with applicable laws. In response to questions about the Act on the Prevention of Harming the State of Israel by Boycott and the Act on Obligatory Disclosure for Receiving Support by a Foreign Political Entity, she drew the Committee's attention to paragraphs 48 to 60 of the State party report (CCPR/C/ISR/4). A number of bills regarding non-governmental organizations (NGOs) were under discussion in the Knesset.

38. Druze communities in the Golan Heights were considered to be Israeli citizens in every respect and, as such, were entitled to equal access to land, housing, basic services and natural resources. Visits to the West Bank were approved subject to security clearance and thousands took place each year. The decision to suspend visits to Gaza following the escalation in violence between Israel and Hamas was currently under review.

39. **Mr. Manor** (Israel) said that, historically, Israel had always taken appropriate action with regard to its settlements in disputed territories. In 1979, through the Egypt-Israel Peace Treaty, it had agreed to the complete withdrawal of its armed forces and civilians from the Sinai Peninsula. In 2005, as part of the disengagement plan, it had dismantled all its settlements in the Gaza Strip and many settlements in the West Bank. The future of the remaining settlements lay at the heart of negotiations for a permanent solution between Israel and Palestine.

40. **Ms. Kremer** (Israel) said that the West Bank barrier was a temporary, defensive, non-violent security fence built to protect Israeli citizens from a wave of attacks launched in September 2000. The legality of every segment of the fence, which had in no way altered political boundaries, had been subjected to scrutiny by legal advisers appointed by the High Court of Justice. To minimize the need for land seizures, the fence had been constructed on State-owned land to the extent permitted by the topography of the area. Passageways and agricultural gates had been put in place to help farmers access their land; funding had been supplied to enable pupils to attend school, and there were plans to build 14 roads to improve connections between Palestinian villages. Landowners who suffered economically as a result of the fence had a right to compensation. The inescapable conclusion was that the fence had played a major role in reducing loss of life on both sides of the conflict.

41. Since construction of the fence had begun in 2002, the High Court of Justice had received and dealt with around 170 petitions. In some cases, it had ordered changes to the route of the fence. In others, it had called for special arrangements such as humanitarian routes and the offering of alternative land. The High Court had also ruled on the advisory opinion rendered by the International Court of Justice, finding that the latter had relied on an inaccurate, incomplete and unbalanced representation of the facts, that it had reviewed the fence as a whole, rather than conducting a more appropriate segment-by-segment analysis, and that it had failed to give adequate, if any, consideration to the terrorist threat faced by Israel. Moreover, the High Court had held that Israel was entitled to employ means of self-defence in the face of armed attacks, and that, under article 43 of the Convention respecting the Laws and Customs of War on Land, military commanders were obliged to take the steps necessary to ensure public order and safety.

42. **Ms. Tene-Gilad** (Israel) said that the Fight against Terrorism Bill was under review by the Knesset Constitution, Law and Justice Committee, a process that would take several months to complete. The Government felt that further legislative amendments were necessary before it could take any action with regard to the Second Optional Protocol to the Covenant or the United Nations moratorium on the death penalty.

43. In reference to a question on marital law, she said that divorce was granted on the basis of consent from both husband and wife, regardless of which party initiated proceedings.

44. **Mr. Manor** (Israel) said that Israel placed great importance on respect for human rights and had achieved significant progress in law and in practice. The many challenges faced by the country had strained the delicate balance between the steps necessary to overcome security threats and the basic obligation of a democratic State to protect the safety and well-being of its citizens. Israel remained committed to peace and was willing to make historic and painful compromises in order to coexist side by side with a demilitarized

Palestinian State. A lasting solution was possible only through bilateral negotiations and work built on a foundation of truth, mutual recognition and security.

45. **The Chairperson** said that the lack of time devoted to certain topics was attributable in no small measure to the fact that the delegation's written responses had failed to address many of the key concerns expressed in the list of issues prior to reporting (CCPR/C/ISR/Q/4). He recalled that the Covenant was not a matter of auto-interpretation by every State party, and that Israel was alone in arguing that the Covenant was not applicable in armed conflict. When considered in the context of various articles of the Covenant, the issue of the legality of Israeli settlements could not be ignored. The State party's recourse to the notion of defence of necessity in relation to torture invited scepticism about the treatment of victims. Moreover, there was no interpretation of international humanitarian law that authorized punitive house demolitions.

46. It was encouraging to hear of the possible implementation of recommendations issued by the Turkel Commission, and by the fact-finding assessment teams in connection with Operation Protective Edge. The Committee had not, however, received information on whether any of the individuals responsible for the interrogation of security detainees by the Israel Security Agency had ever been prosecuted. The 15-day period of incommunicado detention permissible in Israel was exorbitant and created the potential for very serious abuse. The fact that reports continued to come in from NGOs made it difficult to believe that violations were not happening, or that they were somehow justified by the defence of necessity. Concerns had also been expressed regarding apparent attempts by Israel to restrict civil space.

47. He reminded the delegation that they could submit additional responses in writing within 48 hours, and said he hoped that some of the reviews under way in the State party would result in substantial reassurances being given to the Committee by the time of the next report.

The meeting rose at 6.05 p.m.