

# **The Human Rights of Children and Women in the West Bank and Gaza Strip**

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Here on the slopes of hills, facing the dusk and the cannons of time,  
Close to the gardens for splintered shadows,  
We do what prisoners do,  
And, act as the jobless act,  
We cultivate hope.

Under Seige, Mahmoud Darwish<sup>1</sup>

## **I. Introduction**

Children and women are among the most vulnerable to human rights abuses during armed conflict and occupation. As a people under occupation for over sixty years this is particularly true of Palestinian children and women.

This paper examines Israel's treatment of Palestinian children and women in the West Bank and Gaza Strip. It also describes the international law providing for the rights of Palestinian children and women, using selected examples to illustrate the application of the law. The paper begins by briefly describing the context of the situation in Palestine, especially those aspects of the situation in which Palestinian children and women live that have a bearing on the international laws that are applicable.

## **II. The Context**

The situation of women and children in Palestine is characterized by serious and widespread, reliably attested allegations of violations of fundamental rights. Moreover, many of these violations have lasted over sixty years subjecting generations of Palestinian children and women to inhumane treatment and effectively condemning them to a situation in which they cannot achieve their potential for development. The extended nature of the oppression of the Palestinian people under such terrible conditions is significant evidence that these conditions have been created so as to impose conditions of life on them that are calculated to bring about the physical destruction of the Palestinian people at least in part.

On 30 September 2009, the United Nations General Assembly adopted yet another resolution on the protection of children and women in armed conflict that “demands that all parties to armed conflict immediately take appropriate measures to protect civilians, including women and children,” especially from sexual violence.<sup>2</sup> The same resolution, however expressed concern that so little progress has been made to date in addressing



this problem. No place on earth has perhaps been such a pointed example of the Security Council's concern as Palestine where the situation of women and children is frequently cited as among the most severe due to the more than sixty years of oppressive occupation. The irony of the Security Council's statement is this body's own failure to take effective action that contributes to ending the occupation.

The overriding legal characteristic of the plight of Palestinian children and women is that of a situation of armed conflict and occupation. This situation means that both international human rights law and international humanitarian law apply. This is the starting point for describing the human rights abuses suffered by Palestinian children and women.

### **A. Armed Conflict and Occupation**

The occupation of Palestine is often considered to have begun after the 1967 war. This assumption is based largely on the questionable legality and legitimacy of the United Nations' handling of this situation. The Security Council's decision demanding a ceasefire after the 1967 war<sup>3</sup> and the General Assembly's decision to create two separate states on the territory inhabited by Palestinians twenty years earlier<sup>4</sup> both give the impression that Israel only violated Palestinians' right to self-determination when it occupied the West Bank and Gaza Strip subsequent to the 1967 war. A better legal date for the start of the occupation is 14 May 1948 when Israel declared a Jewish state. This is the date on which Israel legally took Palestinian land and acted in a manner that made it clear it intended to deny the Palestinian people the right to self-determination. It is also since this date that the gravest human rights abuses have taken place.<sup>5</sup>

Whatever the starting date, Palestine has been under occupation for an extended period of time. This means that the ultimate authority responsible for ensuring the rights of Palestinian women and children rests with the occupying power, Israel. But not only is Israel's occupation of Palestine likely illegal under international law from the start, it has also been oppressive to the extent that human rights are widely violated. The violations include the denial of freedom of movement, the right to an adequate standard of living, the right to be free from arbitrary detention, the right to be free from torture and inhumane treatment, the right to appropriate living conditions, the right to work, the right to health, the right to education, and the right to self-determination.

Almost immediately after Israel's unilateral declaration that it was forming a Jewish state on Palestinian territory, the violations of Palestinians' human rights intensified caused by the violence that erupted as well as Israeli policies. Arab nations that had opposed the creation of a Jewish state on territory inhabited by Arab Palestinians objected to Israel's creation and invoked their armed forces to protect the Palestinian



people and their right to self-determination. The Arab forces were however repelled by the Israeli army with its significant western backing. Israel then proceeded to 'secure' its new state by oppressively occupying parts of the territory that the same United Nations General Assembly resolution that suggested an Israeli state, had suggested be the territory of a Palestinian state.

During the violent creation of Israel many Palestinians were uprooted. This 'Nakba' caused an estimated 750,000 Palestinians to flee or be expelled from their own land.<sup>6</sup> Others became second-class citizens in their own homeland. The significance of these initial events that cleansed Palestine of some of its most patriotic and educated citizens can hardly be over estimated. It can almost be compared to the centuries of slavery suffered by Africans.

The dire situation of the Palestinians was quickly recognized by the United Nations that in May 1948 created the 'Office of the Mediator in Palestine' and named Count Folke Bernadotte, the Swedish President of the Red Cross who was respected for his neutrality,<sup>7</sup> as the first mediator. The hope this inspired quickly came to an end when Count Bernadotte was shot and killed while conducting negotiations with the Israeli's in territory controlled by Israel. This opened the way to the naming of an American Mediator.<sup>8</sup> Although the mediator served in his individual capacity under the auspices of the United Nations, this move indirectly extended America's role from a staunch supporter of the Israeli state to a would-be neutral mediator. This problem persist until today and is a major reason why, despite numerous condemnations of Israel's violations of Palestinians fundamental human rights, little effective action has been taken to protect Palestinians.

Specific references in UN documents to the applicability of international humanitarian and human rights law took time. Only after the 1967 armed conflict did the Security Council and General Assembly take steps to encourage respect for this law. In June 1967 the Security Council adopted a resolution calling for all parties to the conflict to respect international humanitarian law.<sup>9</sup> In December 1968, the General Assembly also explicitly recognized the importance of the application of international human rights law to the Palestinians, including the right to return, and created a Special Committee to Investigate Israeli Practices Affecting Human Rights of the Population of the Occupied Territories.<sup>10</sup> In 1975 the General Assembly also created the Committee on Inalienable Rights of the Palestinian People. The two committees have since been joined by the additional UN bodies of the Division for Palestinian Rights,<sup>11</sup> a Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967,<sup>12</sup> and numerous other special mechanisms<sup>13</sup> and non-governmental organizations<sup>14</sup> (NGOs) who have documented more than six decades of human rights abuses.

The Organizations of the Islamic Conference (OIC) and the League of Arab States have also taken action concerning Palestine and condemning the serious and widespread violations of



Palestinians' human rights by Israel. For example, in 2009 the League established a Fact-Finding Committee on Gaza, chaired by former UN Special Rapporteur on Palestine and Professor of Law John Dugard, which duly issued a report a few months later that found Israel to be in violation of a significant number of human rights.<sup>15</sup>

The violations begun in 1948 continue in Palestine today. There are now an estimated three million Palestinians living outside Palestine, many unable to return to their own homeland.<sup>16</sup> These people have not only had their right to self-determination violated with all of the estimated 7 million Palestinians living in Palestine, but also their human right to return to their own country. Other human rights violations persisting until today have been documented by the reports of the UN, League of Arab States, the OIC, and numerous NGOs mentioned above.

These continuing violations include that have been reliably reported by credible Palestinian, Israel and international human rights bodies include, among others, the following:

- killing of unarmed civilians;<sup>17</sup>
- denial of due process/fair trial;<sup>18</sup>
- arbitrary arrest and detention;<sup>19</sup>
- torture and ill-treatment;<sup>20</sup>
- lack of remedies for violations of human rights/impunity;<sup>21</sup>
- forced evictions and destructions of property/homes;<sup>22</sup>
- forcible return of refugees/asylum-seekers;<sup>23</sup>
- intentional destruction of residential houses, water wells, water tanks, agricultural land, and greenhouses by the Israeli Military in Gaza;<sup>24</sup>
- inflicting conditions of life that constitute collective punishment;<sup>25</sup>
- denying an estimated 1.5 million people living in Gaza access to basic needs such as adequate of food, medicines, water and electricity supplies.<sup>26</sup>
- preventing the entry of raw construction materials into Gaza for more than two years.<sup>27</sup>
- preventing fuel supplies into Gaza, excluding limited amounts of cooking gas, since 10 December 2008;<sup>28</sup>
- continuing to close the Beit Hanoun (Erez) crossing to Palestinian civilians wishing to travel to the West Bank and Israeli for medical treatment, trade or social visits;<sup>29</sup>
- creating conditions of life that cause poverty and unemployment rates of approximately 80% and 60% respectively in Gaza and the West Bank;<sup>30</sup>
- continuing to prevent the entry of spare parts for water networks and sewage systems to Gaza, with the consequence that losses incurred to this sector are



estimated at US\$ 6 million;<sup>31</sup>

- continuing to impose additional access restrictions on international diplomats, journalists and humanitarian workers seeking to enter the Gaza, including preventing the representatives of several international humanitarian organizations from entering Gaza;<sup>32</sup>
- denying family visits to at least 900 Palestinian prisoners in Israeli jails;<sup>33</sup> and,
- attacking Palestinians fishing along the Gaza coast.<sup>34</sup>

These examples of ongoing violations are not new or ‘one off’, they are similar to those that have been continuing for sixty years.

There are also violations that are especially targeting and/or affecting women and children disproportionately. The actions that constitute these special violations of women and children human rights are described in the following two sections.

## **B. Allegations of Violations against Women**

It is an injustice to describe the extensive nature of the violations of women’s rights in a short contribution such as this when much more comprehensive descriptions have been done by others. Instead, because this contribution focuses on the role of the law in identifying and reacting to violations of women and children’s human rights, only a summary of the violations recorded by numerous inter-governmental organizations that have described the situation of the human rights of women in Palestine. The following are some of the most serious violations of human rights recently documented by various credible reports:

- killing of women;<sup>35</sup>
- detaining women in degrading conditions whereby they are deprived of food, water and access to sanitary conditions;<sup>36</sup>
- intentional placing of women in dangerous proximity to active military weapons in Gaza;<sup>37</sup>
- increased levels of anemia in pregnant women in Gaza (because of the denial of access to adequate nutrition);<sup>38</sup>
- intentional displacement of women in Gaza;<sup>39</sup>
- causing serious mental suffering to women by the disproportional use of force in Gaza;<sup>40</sup>

The above documented actions show the severe affects of the violence perpetrated by Israel against Palestinian women. It is not by coincidence that the international community has agreed to outlaw such actions as violations of international law, nor perhaps that it has for so many years failed to protect Palestinian women.



### **C. Allegations of Violations against Children**

Children often suffer the most during armed conflict and oppressive occupation. Palestine is no exception.

In a recent report on the world's children, UNICEF lists Palestinian children within the occupied territories as experiencing physical and psychological aggression to an extent greater than any other children on earth.<sup>41</sup> And UNDP recently concluded, as concerns Palestinian refugees, that the “Palestinian case, more than any other, illustrates the hardships faced by refugees when conflict is protracted, insecurity is rampant and local economic opportunities are almost non-existent.”<sup>42</sup>

Other violations of children’s human rights include:

- arbitrary killing of children;<sup>43</sup>
- inhuman treatment and torture of children;<sup>44</sup>
- lack of due process/fair trial for children;<sup>45</sup>
- arbitrary violence against children;<sup>46</sup>
- arbitrary arrest of children;<sup>47</sup>
- violations of children’s right to health by creating conditions causing disease;<sup>48</sup>
- denying humanitarian relief to children;<sup>49</sup>
- interfering with children’s ability to learn by the blockade on Gaza and attacks against schools.<sup>50</sup>

The suffering of children as a consequence of violence and war is well documented.<sup>51</sup> The above acts against children indicate a very serious threat to Palestinian children. And again it is not by coincidence that the international community has agreed to outlaw such actions as violations of international law.

### **D. Allegations of Genocide**

The allegations of genocide that have been levied against Israel are often not distinct from the reports of the longstanding serious and widespread violations of human rights already mentioned, but are in fact an accumulation of these violations.

The Goldstone report, for example, found that Israel intentionally deprived Palestinians in Gaza of “their means of sustenance, employment, housing and water,” their “freedom of movement and their right to leave and enter their own country,” limited their “access to courts of law and effective remedies” to such an extent as to amount to persecution.<sup>52</sup> Many of these practices have been proven to have been continuing for more than 60 years. Such continuity in action is legally significant to determining the intention necessary for genocide is present.



Among the actions relevant to a determination of whether genocide is being committed is the extent of the killing of Palestinians. The fact that B'Tselem, an Israeli NGO, reports that the Israeli killing of Palestinians is increasing annually is evidence of conscious action by the Israeli government. So too is evidence of the ongoing or increasing nature of many of the other violations mentioned above.

The fact that many of these violations are supported by Israeli laws also evidences the intention of Israel. For example, the Israeli Law of Return from 1950 and the Israeli Citizenship Law from 1952 both allow Jews to freely immigrate to Israel and gain citizenship, but excludes indigenous Arab Palestinians who were forced to flee their homes since 1947. These laws indicate that Israel is acting with discrimination against Palestinians through a *policy* that has been agreed upon by the Israeli authorities. Such policies provide strong evidence of the intention necessary to prove genocide.

### **III. The Law and Violations of the Human Rights of Women and Children by Israel**

The above situations constitute violations of the human rights of Palestinians, especially children and women, by Israel. Responsibility for these violations may rest both upon the Israeli authorities as well as on the individuals who have actually carried out, ordered, or, in some cases, had knowledge of the violations. The rules for state responsibility are long and well-established in international law. The rules for individual responsibility are newer, but through the jurisprudence of the ad hoc international criminal tribunal and the International Criminal Court, have already become established to the degree that there can be no doubt that individuals who commit violations of international law may be prosecuted.

#### **1. State and Individual Responsibility**

Traditionally international law is invoked by a finding of state responsibility. This means, in the words of the International Law Commission's respected Draft Articles on the Responsibility of States for Internationally Wrongful Acts, that "[e]very internationally wrongful act of a State entails the responsibility of that State."<sup>53</sup> The Draft articles reflect customary international law in so far as they express these long established principles of international law. Thus whenever there is an act attributable to a state that violates an international legal obligation of that state,<sup>54</sup> international law imposes responsibility on that state requiring it to end the violation,<sup>55</sup> not to recognize the situation created as a consequence of the breach,<sup>56</sup> and to restore the *status quo ante* or pay reparations.<sup>57</sup>

The law of state responsibility applies to both international human rights and



humanitarian law. It serves to ensure that there is always an actor responsible for upholding human rights standards, even in cases where private actors are involved. For example, when a state fails to take appropriate action to protect individuals under its jurisdiction from the acts of private actors that violate human rights, the state may be legally responsible for the violation.<sup>58</sup> Thus liability of private actors does not dilute a state's obligation to take all necessary measures to protect, respect and fulfill human rights.<sup>59</sup> In fact, states clearly have a duty to ensure that private actors do not directly violate human rights.<sup>60</sup>

State responsibility is invoked when a state acts contrary to an existing legal obligation. To invoke this traditional form of state responsibility it is necessary to find an act attributable to a state as well as a legal obligation that has been violated. The issue of attributability is one that requires determining whether a state could have acted to prevent the violation. In the case of Palestine, the acts described above that have been committed against children and women are carried out by the Israeli military or by people—for example settlers—whose actions the Israeli government could control and sometimes even encourages.

The international human rights and humanitarian law obligations that create legal obligations for Israel are found in treaties that Israel has consented to or in the corpus of law that has been adopted by the consensus of states, i.e., their *opinio juris* and practice. While the general consequences of a violation of international law have been set out above, some treaties impose specific consequences on the states parties. The fourth Geneva Convention protecting civilians, for example, requires states to “search for person alleged to have committed, or to have ordered to be committed” grave breaches of international humanitarian law and to bring such person to trial before their courts or transfer them to another state that will try them.<sup>61</sup> Grave breaches are defined to include willful killing, torture or inhumane treatment, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfers or unlawful confinement of a protected person, depriving a protected person of fair trial, taking hostages, or the extensive destruction or appropriation of property that is not justified by military necessity and that is carried out unlawfully and wantonly.<sup>62</sup> As indicated above, many of these actions are regularly perpetrated against Palestinian women and children and thus a duty is imposed on Israel to capture and punish the perpetrators. Willfully failing to do so is an additional violation of international law. Finally, it is worth noting that all states that have ratified the Geneva Conventions have an obligation to ensure respect for them.<sup>63</sup>

Equally individuals may be responsible for their violations of international law. This responsibility will usually have to be secured through state laws that implement international law, something that is required by some human rights or humanitarian





treaties.<sup>64</sup> Nevertheless, the international community has sometimes seen it fit to establish international courts or tribunals to try individuals for their violations of international law. This occurred in the early 1990s when the UN Security Council created the two ad hoc tribunals for the former Yugoslavia and for Rwanda.<sup>65</sup> The creation of the International Criminal Court by the adoption of its statute<sup>66</sup> is a consolidation of these developments that solidly entrenches the responsibility of individuals in international law and the possibility that individuals might be tried by international tribunals.

## **2. The duty of cooperation between states**

An often neglected part of international human rights and humanitarian law is the duty of States to cooperate with each other to ensure protection of the rights granted by this law. The highest expression of this duty is found in the Charter of the United Nations, which by virtue of its article 103 is the treaty states are obliged to prioritize over all other treaties.

Article 1 of the UN Charter mentions the four purposes of the United Nations. According to Article 1 (3) the purposes of the United Nations include “[t]o achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.”

The legal duty of the organization is elaborated in Article 55 of the UN Charter that provides in relevant part that:

[w]ith a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote:

c. universal respect for, and observance of, human rights and fundamental freedoms for all....

In addition, Article 56 of the Charter of the United Nations extends this obligation to each member state providing that “[a]ll Members pledge themselves to take joint and separate action in cooperation with the Organization for the achievement of the purposes set forth in Article 55.”

In relation to economic, social and cultural rights, the Committee on Economic, Social and Cultural Rights (CESCR) has confirmed that “in accordance with Articles 55 and 56 of the Charter of the United Nations, with well-established principles of international law, and with the provisions of the Covenant itself, international cooperation for development and thus for the realization of economic, social and cultural rights is an



obligation of all States.”<sup>67</sup>

One of the most significant achievements of international human rights law is that it not only provides normative prescriptions, but often also the mechanisms with authority to interpret the norms. Under several treaty procedures Israel is required to submit reports, which are examined by the relevant treaty monitoring body.<sup>68</sup> Israel has not agreed to any individual complaint procedures.

Israel is also subject to the mechanism of the Human Rights Council that apply to all states. For example, in 2008 Israel was subject to Universal Periodic Review. Moreover, given the widespread, serious and reliably attested nature of Israel's violations of the rights of Palestinian women and children, it is also possible to use the general individual complaint procedure of the UN Human Rights Council to bring human rights violations by Israel to the attention of this body.

Finally, there are numerous special procedures of the Human Rights Council, the two Committees of the UNGA, and the International Committee of the Red Cross that deal with allegations of violations of international humanitarian law.

### **3. The Right to Self-Determination as a Framework**

The most noted human right within the United Nations is perhaps the right to self-determination. This is the only human right specifically referred to in the Charter of the United Nations where articles 1, paragraph 2, 55 and 73 acknowledge it. The right to self-determination is also found in prominent declarations of customary international law such as is the UN General Assembly's Declaration on the Principles of International Law concerning the Friendly Relations and Cooperation among States.<sup>69</sup> The ICCPR and the ICESCR provide for the right to self-determination in their common Article 1, which illustrates that this right is understood to be a prerequisite to the enjoyment of all other human rights.

The right to self-determination has been explicitly recognized as applying to the situation of the Palestinian people by the UN General Assembly for more than thirty years.<sup>70</sup> To this end it has established the Committee on the Exercise of the Inalienable Rights of the Palestinian People in 1975 to work towards the realization of this right.<sup>71</sup>

This right provides all peoples, including the Palestinian people the right to be able to determine their own future. As noted above it is a right that pre-existed any effort by Israel to occupy Palestinian lands. It is a right that all Palestinians are entitled to exercise according to international law from the very beginning of the British mandate created by the UN in the 1920's.<sup>72</sup> It is thus a right that is enjoyed over all of mandate Palestine.

### **4. International Humanitarian Law**



While the Hague Regulations from 1907<sup>73</sup> provide some general rules concerning the treatment of person in wartime and many of these rules have entered the realm of customary international law, it is the Geneva law from 1949 that is most relevant to Palestine.

The Fourth Geneva Convention<sup>74</sup> obliges states to provide expectant mothers special care,<sup>75</sup> to endeavour to evacuate women and children from besieged areas,<sup>76</sup> to give special care to hospitals<sup>77</sup> and transports with maternity cases,<sup>78</sup> to allow the passage of all consignments of essential food, clothing and medicine destined for children or pregnant mothers,<sup>79</sup> to give special care to children under 15 who have been separated from their families including efforts to reunite them,<sup>80</sup> to allow children and women to exchange news with their families,<sup>81</sup> and to provide special protection to aliens women and children who are not repatriated.<sup>82</sup> Special provisions also apply to occupied territory obliging the occupying power to ensure as far as possible families are able to stay together,<sup>83</sup> to ensure the registration of children and proper institutions of education and care,<sup>84</sup> not to force children below 18 to work,<sup>85</sup> not to apply the death penalty to anyone under 18 years of age at the time that the offense was committed,<sup>86</sup> and to provide special treatment to minors in detention.<sup>87</sup> Internees are also provided special rights. These include the duty of the detaining power to support internees' dependents,<sup>88</sup> to provide adequate and hygienic accommodations,<sup>89</sup> to provide adequate food,<sup>90</sup> to provide adequate medical care,<sup>91</sup> and of special importance to children the detaining power has the obligation to provide adequate education and leisure facilities.<sup>92</sup> In addition any disciplinary action must take into account the age of internees,<sup>93</sup> special care must be taken when transferring maternity cases,<sup>94</sup> and priority must be given to the release and repatriation of children, pregnant women, and mothers with young children.<sup>95</sup> The provisions for establishing a national Information Bureau and Central Information Agency are also of significant value for children and women, especially in the family context. These institutions are tasked with providing information to family members about relatives who are under the authority of another party to the conflict.<sup>96</sup> Additional provisions in the Additional Protocols from 1977 to the four Geneva Conventions, which although not yet ratified by Israel reflect customary international law, oblige states to make children the special object of respect;<sup>97</sup> provide them the care and aid they require in civil wars;<sup>98</sup> allow the passage of all consignments of essential food, clothing and medicine destined for children;<sup>99</sup> to provide special protection or unaccompanied children;<sup>100</sup> to provide preferential treatment when enemy nationals;<sup>101</sup> and to provide preferential treatment regarding the distribution of food, medical care and general protections against the effects of war in occupied territory regards.<sup>102</sup> In all cases, children are defined as those individuals who are under-15 years-of-age.

A general focus of the Geneva law is the reunification of families.<sup>103</sup> This is especially



important for unaccompanied child refugees who may have been separated from their families. The tracing role of the ICRC, including its centralized database of separated families, is of essential importance to reunification.

## **5. International Human Rights Law**

Israel has consented to several relevant human rights treaties, including the International Covenant of Civil and Political Rights (ICCPR),<sup>104</sup> the International Covenant of Economic, Social and Cultural Rights (ICESCR),<sup>105</sup> the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD),<sup>106</sup> the Convention against Torture and Other Cruel, Inhumane or Degrading Treatment or Punishment,<sup>107</sup> and the Convention on the Prevention and Punishment of the Crime of Genocide.<sup>108</sup>

These treaties provides for among other obligations, a prohibition of genocide (discussed separately below), the right to life, the right to humane treatment, the right to freedom of movement including the right to leave and return to one's own country, a right to an adequate standard of living including adequate food, clothing and housing, the right to education, the right to health care, and the right to special protection for children and women. As indicated above in the description of violations of the human rights of Palestinian women and children, many of these rights have been violated.

For example, the right to life is violated when the Israel military arbitrarily kills women and children as was done on a wide scale during its aggression against Gaza. Also for example, the right to health is violated when Israeli soldiers deny Palestinian women and children the right to leave Gaza or the West Bank to get medical care. And the right to security of person is violated when children are detained in the same accommodations with adults.

Additionally, the prohibition on discrimination is violated whenever Palestinians are treated less-favourably than Israelis. Article 1 of the ICERD prohibiting "racial discrimination" is violated whenever there is "any distinction, exclusion, restriction preference based on race, colour, descent, or national or ethnic origin which has the purpose or effect of nullifying or impairing the recognition, enjoyment or exercise, on an equal footing, of human rights and fundamental freedoms in the political, economic, social, cultural or any other field of public life."

Of special relevance to the protection of the human rights of children and women are on the Rights of the Child (CRC)<sup>109</sup> and the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW).<sup>110</sup> Only the Convention on the Rights of the Child has, however, been ratified by Israel.

Neither of these treaties can be suspended during an armed conflict or an occupation.<sup>111</sup> This has been supported in by recommendations of both the Committee on the Rights of the Child<sup>112</sup> and the Committee on the Elimination of All Forms of Discrimination



against Women.<sup>113</sup>

The CRC is one of the most widely ratified treaties in the world—only the United States and Somalia have not ratified it and the latter's President has indicated his country's willingness to do so when political stability makes this possible. It is also one of the most comprehensive treaties in the world with forty articles providing for the human rights of children, including specific articles protecting children in armed conflict<sup>114</sup> as well as an Optional Protocol on the Involvement of Children in Armed Conflict.<sup>115</sup> The CRC is a treaty from which there may be no derogations under any circumstances and no reservations by states when ratifying it. Unfortunately, the CRC is without a human rights mechanism that can make binding legal decisions or entertain individual petitions. Israel is required to submit regular reports to the Committee on the Rights of the Child and has done so several times. The Committee then expresses its views on these reports. It has done so several times, condemning Israel for violations of children's rights.<sup>116</sup>

The CRC has been supplemented by two protocols that are of particular importance to protecting children who are the victims of war. The first of these optional protocols requires that state parties prohibit children from participating in armed conflicts as child soldiers.<sup>117</sup> Unfortunately, this protocol neither provides for means of redress against states who violate its provisions nor does it enjoy as wide spread adherence as the CRC itself. The second of these optional protocols requires that state parties protect children from some of the worst forms of exploitation that are often precipitated by and associated with an armed conflict, namely the sale of children, child prostitution and child pornography.<sup>118</sup>

To the advantage of the protection of children in armed conflicts there exists in the CRC a bridge from international human rights law to international humanitarian law that obliges states “to respect and ensure respect for the rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.”<sup>119</sup> This ‘cooperation’ between international human rights and humanitarian law, has been repeated by the UN Security Council in relation to the protection of children and women.<sup>120</sup>

## **6. The Special Case of Genocide**

Genocide is the killing or creation of conditions of life that are intended to destroy in whole or in part a group that is identified by national or religious characteristics. In the case of Palestine there is no doubt that Israel is acting against Palestinians because of their characteristic as a national group according to the Genocide Convention,<sup>121</sup> which Israel has ratified. Moreover, as indicated by the serious, widespread, systematic, consistent and reliably attested nature of the violations of the human rights of



Palestinians there can be little doubt that Israel has in fact acted to in a way that has created conditions of life that have had the consequence of in fact destroying the Palestinians, in part as a distinct people. This consequence is shown by the number of Palestinians driven out of their indigenous land; the fact that Israel is occupying and annexed much of this land in violation of international law; and the fact that this and the numerous other violations of international human rights law described above have been continuing for decades.

What has often been disputed is whether Israel intended its actions. It is suggested that this also can hardly be doubted as a matter of evidence in accordance with the contemporary interpretations of international law. There are two reasons for this opinion. First, if one goes back to the creation of Israel, there is little doubt that it was created in violation of international law and in violation of the fundamental right to self-determination of the Palestinian people. The act of creating Israel was conscious and intentional by Israel's own proud admission. That it was done with subsequent UN approval does not justify an illegal act, but merely creates a situation that Israel may be able to plead in mitigation as does the current *de facto* situation of the existence of Israel. Second, and perhaps more importantly in law, the actions of Israel since 1948 have been consistent in their attempt to oppress the Palestinian people. The consistency of these actions indicates intention. This view of how evidence of the intention required for genocide may be acquired was ratified by the International Criminal Tribunal for Rwanda in the Akayesu Case<sup>122</sup> and has been subsequently ratified by its counterpart for the former Yugoslavia, and even the International Court of Justice in a case concerning genocide by a state, and not merely individuals.

Thus whether one objects to the existence of the state of Israel on legal grounds or even if one does not there is sufficient evidence to show that Israel has acted with the intention required to be guilty of genocide.

If the *actus reus* and *mens rea* of genocide are present there is an international obligation for all state parties to the Genocide Convention to take effective action to end the international crime of genocide and to punish the perpetrators if they are individuals and to impose state responsibility on those actors that are states.

## **7. Some Recent Developments**

The protection of women and children has been of heightened concern for the United Nations. During 2009 the Security Council reiterated the necessity of protecting the human rights of children in all circumstances in its resolutions 1820 (2009)<sup>123</sup> and 1888 (2009).<sup>124</sup> The General Assembly for its part, in its Third Committee, on Friday, 16 October 2009 devoted a full day to debate on the promotion and protection of the rights of the child.<sup>125</sup> During the debate, Ms Nadaya Rasheed, speaking for Palestine stressed



the need to make respect for international humanitarian law compulsory for all states, but lamented that in the “Palestine’s case, nearly every provision of international, humanitarian and human rights laws had been violated time and time again by Israel.”<sup>126</sup> The delegates of both Yemen and Egyptian drew attention to the need to protect children living under occupation. Israel did not respond to these allegations, except to claim that it was acting against terrorism, while its closest allies, the United States, did not participate in the debate.<sup>127</sup>

At its 12<sup>th</sup> Special Session, the Human Rights Council considered the “The human rights situation in the Occupied Palestinian Territory and East Jerusalem” focusing on the report of the International Fact-Finding Mission led by Justice Richard Goldstone.<sup>128</sup> States, intergovernmental organizations—such as the Office of the High Commissioner for Human Rights—and civil society, called for the UN to at least take action on this well-documented description of the human rights violations of Palestinians. The report emphasized that it was based on the highest standard of documented fact-finding. It concluded that Israel had acted intentionally in violating some of the provisions of international human rights and humanitarian law.<sup>129</sup> On 4 November 2009 the United Nations General Assembly discussed the Goldstone Report and adopted a resolution endorsing it in full, including its recommendation that the International Criminal Court prosecute individuals who have violated international law.

#### **IV. Concluding Remarks**

The “Question of Palestine” as it is known within United Nations corridors is the longest standing unresolved serious human rights matter on the agenda of the United Nations. In no insignificant part the creditability of the United Nations as a whole and in particular its human rights mechanisms require that effective action must be taken to guarantee the human rights of Palestinians. The human rights of Palestinian women and children are foremost among those that must be guaranteed and they are therefore a priority.

As in many situations of serious human rights violations, the problem is less with the identification of violations than with the effective implementation of the law to end the violations, compensate the victims, and to ensure that the violations to not reoccur in the future.

In the case of Palestine some effective steps have been taken to reiterate the application of international law. These steps include the Advisory Opinion that was asked about the Wall.<sup>130</sup> They include the reporting by numerous NGOs, the Desmond Tutu-led team, and the Goldstone-led team, and they include the regular reports of UN Special Rapporteur for Palestine Professor Richard Falk as well as other UN, OIC, and LOAS



mechanisms. These efforts have amounted to millions of words documenting the plight of Palestinian women and children.

Unfortunately these steps have been inadequate in ensuring action. The failure to achieve more adequate respect for the human rights of women and children in Palestine must squarely fall on the shoulders of the actors with the greatest degree of responsibility. This includes first and foremost the Israel government that continues to oppressively occupy Palestine in violation of international law. However, as is often the case when human rights are violated by a particular government, Israel has not and apparently will not recognize its responsibility without more encouragement from the international community. This encouragement should be levied in a manner that begins from the standpoint that Israel was created in violation of international law. This, of course, is without prejudice to the human rights of all indigenous Jewish people living in the territory of Palestine to be treated with respect for their basic human rights, although this in no way can justify the violations of Palestinians human rights.

As one might note from the manner in which the arguments have been expressed above, the Palestinian representatives, whether in Ramallah, Gaza, New York or Geneva, must be at the forefront of efforts to ensure respect for the human rights of the Palestinian women and children. Of these actors, only the Palestinian officials in Gaza have spoken out forcefully for the strong legal position of the Palestinian people. This may not be surprising as only these representatives enjoy mandates based on the consent of the Palestinian people given in fair and free elections. These representatives, however, do not have access to international forums to an adequate degree so as to raise the arguments relevant to the protection of the human rights of the women and children of Palestine. Moreover, even after they were given their elected mandate not only the international community, but also the Fatah-based PLO and Palestinian Authority worked to undermine their ability to govern.

The Fatah-based PLO and Palestinian Authority have in turn failed to take up the mantle of defending the human rights of the Palestinian women and children. Perhaps the best indication of their failure was the fiasco that surrounded the deferral of the Goldstone report at the 12<sup>th</sup> Regular Session of the Human Rights Council in September 2009. This situation not only exposed an embarrassing lack of commitment to the human rights of all Palestinians and especially women and children, but more importantly the need to unify the Palestinian people and renovate the leadership so that it reflects the will of the Palestinian people.

Despite this pessimistic situation, there is still much that we can do to ensure that international law applies to protect the human rights of Palestinian children and women. The UN General Assembly, for example, can continue to condemn Israel's violations of the human rights of the children and women in Palestine. As Richard Falk has argued





this delegitimizes the political arguments of Israel in relation to its actions against Palestinians. One might also suggest that such numerous violations of human rights draw into question the very legitimacy of Israel as a state.

To encourage the UN General Assembly to act, Palestinians must demand that their representatives make the strongest claims possible and do not commence negotiations with Israel by putting concessions on the table. All Palestinians can demand that those who represent them acknowledge and claim their full right to self-determination as a starting point for any negotiations. No individuals' suffering reflects the need for a negotiating position of integrity as much as the generations of children and their mothers who have suffered for so long from the violations of their human rights.

International law provides the Palestinians the best chance, in the words of Palestine's beloved poet with whom this contribution began, to claim: "We have triumphed over the plan to expel us from history."<sup>131</sup>

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<sup>1</sup> Translation from Arabic by the author.

<sup>2</sup> UNSC Res. 1888 (2009), UN Doc. S/Res/1888 (2009) adopted on 30 September 2009.

<sup>3</sup> See UNSC Res. 242(1967) (22 September 1967).

<sup>4</sup> See UNGA Res. 181(II) (29 November 1947).

<sup>5</sup> *But cf* Shahin, M., *Palestine: A Guide* 18 (2006) stating that the "Palestinian catastrophe" dates back to June 1920 when the French forced Prince Faisal Hussein Ibn Ali to give up his hopes of unifying the Palestinian people with the kingdom of Syria.

<sup>6</sup> See United Nations, *The Question of Palestine* 10, UN Doc. DPI/2499 (April 2008).

<sup>7</sup> See UNGA Res. A/Res/186 (S-2) (14 May 1948).

<sup>8</sup> Mr. Ralph Bunche, the American who replaced Count Bernadotte, was an American diplomat who had been an advisor to the United States government on its strategic interests in colonial Africa and an analyst in the Office of Strategic Services. His prior services indicated as significant attachment to American foreign policy values and little apparent sympathy for the concerns of the Arab people, despite his demonstrated concern for the plight of Black African Americans.

<sup>9</sup> UNSC Res. 237 (14 June 1947).

<sup>10</sup> UNGA Res. 2443 (XXIII) (19 December 1968). By UNGA Resolution 44/48 (8 December 1989) the name was changed to the Special Committee to Investigate Israeli Practices Affecting the Human Rights of Palestinian People and Other Arabs in the Occupied Territories.

<sup>11</sup> Created by UNGA Res. 32/40, UN Doc. A/RES/32/40 (A+B) (2 December 1977). The function of this Division include acting as a secretariat for the 1975 Committee, liaising with NGOs, organizing the annual International Day of Solidarity with the Palestinian People, preparing publications and studies on Palestine, and maintaining the United Nations Information System on the Questions of Palestine, which can be accessed via the internet at <http://unispal.un.org/unispal.nsf>.

<sup>12</sup> UN Commission on Human Rights (now the Human Rights Council) Res. 1993/2 A (19 February 1993).

<sup>13</sup> Almost every thematic special mechanism of the Human Rights Council has dealt with serious violations of human rights in Palestine.

<sup>14</sup> Reporting on human rights violations in Palestine has been done by Palestinian NGOs such as Al-Haq and Badil, the Palestinian Center for Human Rights, Israeli NGOs Adadil and B'Tselem, and international NGOs such as Nord-Sud XXI, Amnesty International and Human Rights Watch.

<sup>15</sup> League of Arab States, Report of the Fact-Finding Committee on Gaza (2009).



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<sup>16</sup> Shahin, *supra*, note 5 at 23.

<sup>17</sup> Amnesty International, Annual Report 2009: Israel and the Occupied Palestinian Territories (Amnesty 2009) accessed at <http://www.amnesty.org/en/region/israel-occupied-territories/report-2009> (12 October 2009). *Also see* Al-Haq Monitoring and Documentation Report Department, Field Report: January – March 2009 (Al-Haq 2009a) at pp. 3 and 7-9 (2009), reporting on targeted assassinations; Human Rights Watch, *White Flag Deaths* (HRW 2009) (13 August 2009), reporting arbitrary killings in Gaza; and B'Tselem, *Human Rights in the Occupied Territories: 2008 Annual Report* (B'Tselem 2008) at p. 4 (2008), reporting and increase in Palestinians killed from 384 in 2007 to 455 in 2008, but not including the violence that erupted in Gaza on 27 December 2008.

<sup>18</sup> *Id.* B'Tselem 2008 at 12, reporting on Palestinians held without adequate access to a court of law, a violation of both fair trial and the prohibition of arbitrary detention.

<sup>19</sup> *Id.* *Also see* Al-Haq 2009a at pp. 2 and 7.

<sup>20</sup> *Id.* *Also see* Al-Haq 2009a at pp. 2 and 7 and B'Tselem 2008 at 6, reporting on the failure of the Israeli State Attorney's Office to adequately investigate allegations of torture.

<sup>21</sup> *Id.*

<sup>22</sup> *Id.* *Also see* Al-Haq 2009a at pp. 6 and 7.

<sup>23</sup> *Id.*

<sup>24</sup> United Nations, Report of the United Nations Fact-Finding Mission on the Gaza Conflict ('Goldstone report'), UN Doc. A/HRC/12/48 (24 September 2009) at p. 26, para. 73.

<sup>25</sup> Goldstone report at p. 26, para. 74.

<sup>26</sup> PCHR, "Weekly Report: On Israeli Human Rights Violations in the Occupied Territories," No. 39/2009 for the week of 1 to 7 October 2009 ('PCHR Report No. 39') available at [http://www.pchrgaza.org/files/W\\_report/English/2008/08-10-2009.htm](http://www.pchrgaza.org/files/W_report/English/2008/08-10-2009.htm) (accessed 12 October 2009).

<sup>27</sup> PCHR Report No. 39.

<sup>28</sup> PCHR Report No. 39.

<sup>29</sup> PCHR Report No. 39.

<sup>30</sup> PCHR Report No. 39.

<sup>31</sup> PCHR Report No. 39.

<sup>32</sup> PCHR Report No. 39.

<sup>33</sup> PCHR Report No. 39.

<sup>34</sup> PCHR Report No. 39.

<sup>35</sup> *See* Al-Haq 2009a at p. 14.

<sup>36</sup> Goldstone report at p. 23, para. 57.

<sup>37</sup> Goldstone report at p. 23, para. 58.

<sup>38</sup> Goldstone report at p. 25, para. 67.

<sup>39</sup> Goldstone report at p. 25, para. 67.

<sup>40</sup> Goldstone report at p. 25 and 26, para. 71.

<sup>41</sup> UN (UNICEF), *Progress for Children: A Report Card on Child Protection* 8 (September 2009).

<sup>42</sup> UN (UNDP), *Human Development Report 2009: Overcoming Barrier: Human mobility and development* 64 (2009).

<sup>43</sup> Al-Haq, for example, reported that 354 children were killed by the excessive use of force by Israel between 27 December 2008 and 17 January 2009. Al-Haq 2009a at 14.

<sup>44</sup> Defence for Children International/Palestine Section, Submission to the United Nations Human Rights Council's Universal Periodic Review of Israel (DCI 2009) at p. 3, para. 3 (July 2008), and including 25 pages of affidavits from children detailing the human rights abuses alleged in the report. *Also see* PCHR Report No. 39, *supra*, note (reporting that during the first week of October 2009 "IOF [Israeli Occupying Forces] troops positioned at the border between the Gaza Strip and Israel to the northwest of Beit Lahia town in the northern Gaza Strip fired at a Palestinian child wounding hi[m] seriously with a bullet to the neck") and Goldstone report at p. 23, para. 57 (reporting ill treatment of children in detention), at p. 23, para. 58 (the use of



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children as human shields for Israeli soldiers), at p. 25, para. 67 (the consequences of the destruction of food facilities such as farmland and greenhouse causing anemia to be prevalent among children);

<sup>45</sup> DCI 2009 at pp. 3 and 4, paras. 4-9. *Also see, generally*, Addameer Prisoner's Support and Human Rights Organization, Submission to the United Nations Universal Periodic Review of Israel (submitted July 2008).

<sup>46</sup> DCI 2009 at pp. 4 and 5, paras. 10-14, reporting on settlers' violence against Palestinian youth that remains unpunished by the Israeli government, and at pp. 5 and 7, paras. 15-19, reporting on the Israeli armed forces use of Palestinians as human shields.

<sup>47</sup> PCHR Report No. 39, *supra*, note . During the first week of October 2009 the PCHR reported that the Israeli military arbitrarily arrested 5 children during its nearly two dozens excursion into Palestinian cities.

<sup>48</sup> Goldstone report, p. 25, paras. 67-69 (including physical and psychological illness and/or injuries).

<sup>49</sup> Goldstone report, p. 26, para. 72., concluding that "Israel has violated its obligation to allow free passage of all consignments of medical and hospital objects, food and clothing (article 23 of the Fourth Geneva Convention)."

<sup>50</sup> Goldstone report, p. 25, para. 70.

<sup>51</sup> *See, for example*, Levitt, L.A., and Fox, N.A., (eds.), *The Psychological Effects of War and Violence on Children* (1993), everyone of the more than thirty contributors to this book agree that war is extremely harmful for children, and Dryregrov, A., and Raundalen, M., "Child Psychology Study," in International Study Team, *Health and Welfare in Iraq after the Gulf Crisis: An In-Depth Assessment* (October 1991), indicating the traumatic effects of war on children.

<sup>52</sup> Goldstone report, p. 26, para. 75.

<sup>53</sup> United Nations International Law Commission, Draft Articles on the Responsibility of States for Internationally Wrongful Acts, adopted at the ILC's 53rd Sess. (2001), UN Doc. A/56/10 (2001), adopted by UN GA Res, 56/83 (12 December 2001), corrected by UN Doc. A/56/49(Vol. I)/Corr.4 at art. 1.

<sup>54</sup> *Id.* at art. 2.

<sup>55</sup> *Id.* at art. 41(1), including the obligation for all states to cooperate to end the violation.

<sup>56</sup> *Id.* at art. 41(2). The duty not to recognize a situation created by an illegal act applies to all states, thus the ICJ has held that the denial by a state of a peoples' legitimate right to self-determination has the consequence that the situation thereby created must not be recognized by other any other state. *See Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, *ICJ Reports* 16 at 56 (1971).

<sup>57</sup> *Factory at Chorzów (Merits)*, *PCIJ Reports*, Ser. A, No. 17 (1928) at p. 48.

<sup>58</sup> *Velásquez Rodríguez v. Honduras*, Inter-American Court of Human Rights, Ser. C, No. 4 (1989) at para. 170, holding the Honduran government responsible for disappearances allegedly caused by private actors because the government failed to take appropriate steps to investigate the acts of the private actors.

<sup>59</sup> *See* De Brabandere, E., "Non-state actors, state centrism and human rights obligations," 22(1) *Leiden Journal of International Law* 191-209 (2009), for a discussion.

<sup>60</sup> Ruggie, J., Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises: Protect, Respect and Remedy: a Framework for Business and Human Rights, UN Doc. A/HRC/8/5 (2008) accessed at <http://www.business-humanrights.org/Documents/RuggieHRC2008> (last accessed 24 May 2009).

<sup>61</sup> Art. 146 of the Fourth Geneva Convention.

<sup>62</sup> Art. 147 of the Fourth Geneva Convention.

<sup>63</sup> Art. 1 of the Fourth Geneva Convention.



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<sup>64</sup> See, e.g., Art. 5 of the Genocide Convention where by the “Contracting Parties undertake to enact, in accordance with their respective Constitutions, the necessary legislation to give effect to the provisions of the present Convention.”

<sup>65</sup> See Statute of the International Tribunal, adopted by UNSC Res. 827, UN SCOR, 48th Sess., 3217th mtg. at 6, UN Doc. S/RES/827 (1993) and Statute of the International Tribunal for Rwanda, adopted by UNSC Res. 955, UN SCOR, 49th Sess., 3453d mtg. at 3, UN Doc. S/RES/955 (1994).

<sup>66</sup> Statute of the International Criminal Court, 2187 UNTS 90, entered into force 1 July 2002.

<sup>67</sup> Para. 14 of the CESCR, General Comment 3: The nature of States parties' obligations (5<sup>th</sup> Sess.), UN Doc. E/1991/23, annex III at p. 86 (1990) *reprinted in* Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies, UN Doc. HRI/GEN/1/Rev.6 at 14 (2003).

<sup>68</sup> See ICESCR, *supra note* 105, at art. 16.

<sup>69</sup> UNGA Res. 2625 (XXV) (24 October 1970). *Also see* UNGA Res. 1514 (XV) (14 December 1960).

<sup>70</sup> See, for example, UNGA Res. 3236 (22 September 1974) and UNGA Res. 3376 (XXX) (10 November 1975).

<sup>71</sup> UNGA Res. 3376 (XXX) (10 November 1975).

<sup>72</sup> The Hashimites exercised this right by forming their own state of Jordan.

<sup>73</sup> Regulations Annexed to the Convention Respecting the Laws and Customs of War on Land (Hague IV), 1 *Bevans* 631, entered into force 26 January 1910 (18 October, 1907).

<sup>74</sup> Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949, 75 UNTS 287-417 (1950).

<sup>75</sup> *Id.* at art. 16.

<sup>76</sup> *Id.* at art. 17.

<sup>77</sup> *Id.* at art. 18.

<sup>78</sup> *Id.* at artt. 21 (ships) and 22 (aircraft).

<sup>79</sup> *Id.* at art. 23.

<sup>80</sup> *Id.* at artt. 24 and 26.

<sup>81</sup> *Id.* at art. 25.

<sup>82</sup> *Id.* at art. 38.

<sup>83</sup> *Id.* at art. 49.

<sup>84</sup> *Id.* at art. 50.

<sup>85</sup> *Id.* at art. 51.

<sup>86</sup> *Id.* at art. 68.

<sup>87</sup> *Id.* at art. 76.

<sup>88</sup> *Id.* at art. 81.

<sup>89</sup> *Id.* at art. 85.

<sup>90</sup> *Id.* at art. 89.

<sup>91</sup> *Id.* at art. 91.

<sup>92</sup> *Id.* at art. 94.

<sup>93</sup> *Id.* at art. 119.

<sup>94</sup> *Id.* at art. 127.

<sup>95</sup> *Id.* at art. 132.

<sup>96</sup> See *id.* at artt. 136-141.

<sup>97</sup> Artt. 77 and 78 of the 1977 Geneva Protocol I Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of International Armed Conflicts, 1125 UNTS 3-608 (1979).

<sup>98</sup> Artt. 4 - 6 of the 1977 Geneva Protocol II Additional to the Geneva Conventions of August 12, 1949, and Relating to the Protection of Victims of Non-International Armed Conflicts, 1125 UNTS 609-699 (1979).

<sup>99</sup> *Id.* at art. 23(1).

<sup>100</sup> *Id.* at art. 24(1).



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- <sup>101</sup> *Id.* at art. 38(5).
- <sup>102</sup> *Id.* at art. 50. *Also see* art. 70(1) of Protocol I, *supra* note .
- <sup>103</sup> *See* artt. 3 and 24 of the Fourth Geneva Convention and artt. 74, 77 and 78 of the 1977 Geneva Protocol I.
- <sup>104</sup> 999 UNTS 171, entered into force for Israel on 3 October 1991.
- <sup>105</sup> 993 UNTS 3, entered into force for Israel on 3 October 1991.
- <sup>106</sup> 660 UNTS 195, entered into force for Israel on 3 January 1979.
- <sup>107</sup> 1465 UNTS 85, entered into force for Israel on 3 October 1991.
- <sup>108</sup> 78 UNTS 277, entered into force for Israel on 9 March 1950.
- <sup>109</sup> 1577 UNTS 3 (1989), entered into force for Israel on 3 October 1991.
- <sup>110</sup> 1249 UNTS 13, entered into force for Israel on 3 October 1991.
- <sup>111</sup> *Legal Consequences of the Construction of the of a Wall in the Occupied Palestinian Territories*, Advisory Opinion, *ICJ Reports 2004* 136 (9 July 2004) at para. 136.
- <sup>112</sup> *See* Recommendation on Children in Armed Conflict adopted at its 19<sup>th</sup> Session in September 1998, UN Doc. CRC/C/80, available at <http://www2.ohchr.org/english/bodies/crc/decisions.htm#1>.
- <sup>113</sup> *See, for example*, Concluding Observations of the Committee on the Elimination of Discrimination against Women on Uganda, UN Doc. A/57/38 at paras. 113-162 (2002) at para. 156, implicitly indicating that the human rights in the CEDAW apply during armed conflicts by calling for the accountability of those who commit violations in armed conflicts and for redress for victims. *Also see*, United Nations, Economic and Social Council, Commission on Human Rights, Report of the Special Rapporteur on Violence against Women, Its Causes and Consequences, Ms Radhika Coomaraswamy, Submitted in Accordance with Commission on Human Rights Resolution 1995/85, UN Doc. E/C.4/1996/53, p. 50 (1996).
- <sup>114</sup> Arts. 38(4) and 39.
- <sup>115</sup> *See* UN Doc. A/RES/54/263 (25 May 2000), entered into force on 12 February 2002. Israel has not ratified this Protocol.
- <sup>116</sup> *See* Concluding observations of the Committee on the Rights of the Child, UN Doc. CRC/C/15/Add.195 and CRC/C/OPAC/ISR/CO/1.
- <sup>117</sup> Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflicts, GA Res. 54/263, Annex I, 54 UN GAOR Supp. (No. 49) at 7, UN Doc. A/54/49, Vol. III (2000), *entered into force* 12 February 2002.
- <sup>118</sup> Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, GA Res. 54/263, Annex II, 54 UN GAOR Supp. (No. 49) at 6, UN Doc. A/54/49, Vol. III (2000), *entered into force* 18 January 2002.
- <sup>119</sup> Art. 38 of the CRC.
- <sup>120</sup> *See, for example*, UNSC Res. 1894 (2009), UN Doc. S/RES/1894 (2009) (11 November 2009).
- <sup>121</sup> 78 UNTS 277, entered into force 12 January 1951.
- <sup>122</sup> ICTR Case No. ICTR-96-4 (1994).
- <sup>123</sup> UNSC Res. 1820 (2008) [on acts of sexual violence against civilians in armed conflicts], 19 June 2008, S/RES/1820 (2008), available at: <http://www.unhcr.org/refworld/docid/485bbca72.html> [accessed 22 October 2009].
- <sup>124</sup> UNSC Res. 1888 (2009) [on acts of sexual violence against civilians in armed conflicts], 30 September 2009, S/RES/1888 (2009), available at: <http://www.unhcr.org/refworld/docid/4ac9aa152.html> [accessed 22 October 2009].
- <sup>125</sup> *See* UN Doc. GA/SHC/3953 providing a summary report of the 17<sup>th</sup> and 18<sup>th</sup> meetings of the Third Committee of the UNGA (16 October 2009).
- <sup>126</sup> *Id.*
- <sup>127</sup> *Id.*
- <sup>128</sup> UN HRC Res. A/HRC/S-12/1, (2009), unedited version of the resolution adopted at 12th special session on 16 October 2009 by a recorded vote of 25 in favour, 6 against and 11 abstentions.



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<sup>129</sup>For the video of the interventions visit the UN webcasts website at <http://www.un.org/webcast/unhrc/> (at archived webcasts).

<sup>130</sup>Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 *ICJ Report* 131.

<sup>131</sup>Mahmoud Darwish quoted in Greenberg, J., "In Jerusalem; Israel Police in a Clash with Arabs," *New York Times* (15 May 1998).

