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Summary record of the 2718th meeting

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Chairperson: Mr. Iwasawa

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The meeting was called to order at 10.20 a.m.

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

Third periodic report of Israel (continued) (CCPR/C/ISR/3; CCPR/C/ISR/Q/3 and Add.1)

1. *At the invitation of the Chairperson, the members of the delegation of Israel resumed their places at the Committee table.*
2. **The Chairperson** invited the Israeli delegation to reply to questions raised by Committee members at the previous meeting.
3. **Mr. Blass** (Israel) said that the principle of equality, although not mentioned specifically in the Basic Law, guided civil servants who drafted legislative proposals within government ministries and legislators who prepared drafts for consideration in the Knesset. The drafters took great care to ensure that new legislation could not be challenged before the Supreme Court on the grounds of violation of the principle of equality. Thus, the principle had a profound impact on the legislative process without being formally reflected in legislation.
4. Arab members of Knesset enjoyed the same advantages as other members of the Israeli parliament with regard to campaign funding.
5. Regarding the fear of residents of Jerusalem that they might lose their right of residence if they moved outside the city's perimeter, he said that resident status was forfeited if a person left Israel for a period of more than seven years or acquired citizenship or right of residence in another country. The procedure was applied to all residents leaving Israel and did not target a specific population. Since 2000, permanent residents of the eastern districts of Jerusalem who lived outside Israel had not been subject to revocation of residence if they had kept an affinity to Israel. Subject to certain conditions, a person who kept an affinity to Israel despite living abroad and had lived in Israel for two consecutive years was entitled to residence.
6. Replying to questions about the mode of processing complaints relating to the Israel Security Agency (ISA), he said that the Inspector for complaints about ISA interrogators was an integral member of the Agency. The Inspector operated independently in conducting comprehensive investigations into allegations, without any interference from other ISA elements. A scrupulous appointment procedure ensured that there was no conflict of interest between past or present positions held by the Inspector and his duties as Inspector. Accordingly, no Inspector had ever previously been an interrogator. Appointing ISA members as Inspectors had various advantages. The office-holder was familiar with the system and the organization's language and culture, and able to handle highly sensitive material properly.
7. The Inspector functioned under the close supervision of a high-ranking prosecutor from the State Attorney's Office. In addition, following a full examination of a complaint, his report was thoroughly reviewed by the above-mentioned prosecutor and, in cases where the issues were sensitive or circumstances so warranted, also by the Attorney General and the State Attorney himself.
8. Israel's position concerning the relationship between the doctrine of necessity and the prohibition of torture under the Covenant had been explained in its response to question 14 of the list of issues. ISA interrogators took account of the doctrine of necessity when interrogating members of terrorist organizations. Internal guidelines prepared by the ISA established the procedure for consultation with high-ranking ISA officials when the circumstances of a specific interrogation gave rise to the necessity requirement.

9. Although no criminal investigations had been opened into some of the complaints submitted to the Inspector in recent years, several interrogation methods had been changed as a result of the investigations carried out, and disciplinary action had been taken against several ISA staff. Investigations were most frequently challenged in cases where criminal charges had been brought against the person interrogated. Regarding the disclosure of ISA interrogation methods or names of interrogators, he said that interrogation methods were an important tool in the fight against terrorist organizations and had to be kept secret in order to ensure their effectiveness. The names of ISA staff were kept secret to guarantee their personal safety. Investigations into security-related offences were not recorded because investigators operated against well-organized terrorist organizations and disclosing recordings of investigations would help those organizations prepare their members for future investigations.

10. Addressing the Committee's questions about the Arabic language, he said that all judgements of Israeli courts, including the Supreme Court, were issued in Hebrew. The 239 Supreme Court judgements that had been translated into English over the years had been landmark judgements attracting international attention. In response to questions about the refusal by the Ministry of Interior to accept documents in Arabic, he said that the relevant guidelines had been reviewed and the Ministry would in future accept documents in Arabic.

11. With regard to issues relating to Arab citizens of Israel travelling abroad, he said that any Israeli citizen wishing to travel to an enemy State such as Lebanon, Syria or Iran was required by law to apply for a permit. Mr. Ala Hlehel had asked to travel to Lebanon in order to receive a literature award for his work but had been refused a permit. He had filed a petition with the Supreme Court, which had ordered the permit to be granted. But to his knowledge, Mr. Hlehel had subsequently been refused entry into Lebanon by the Lebanese authorities.

12. Turning to the question of the state of emergency, he said that the review of legislation dependent on the state of emergency was under way. However, owing to the large volume of relevant legislation, the process was time-consuming and it was difficult to estimate when it would be concluded.

13. Replying to a question about the fact that there had been no investigation into a complaint concerning the failure of Israeli soldiers to abide by the Supreme Court ruling on extrajudicial killings, he said that the Military Advocate General had responded to the complaint in detail and explained why it was unfounded. The Attorney General had examined that response and the analysis of the facts had shown that the actions of the Israeli soldiers had been in compliance with the Supreme Court ruling on targeted killings.

14. **Ms. Rubinstein** (Israel) said that the applicability of the Covenant in the West Bank and the Gaza Strip had been the subject of considerable debate. In the light of Israel's disengagement from Gaza as from August 2005 and the rise of a Hamas-led terrorist administration committed to violence and the destruction of the State of Israel, her Government had no effective control over the territory within the meaning of the Hague Regulations. Israel's governmental authority over the West Bank was also limited and, as a result, it was not in a position to enforce most of the rights established in the Covenant in either of those territories. Israelis entering the West Bank were subject to Israeli military law applicable in the territory and Israeli criminal law.

15. Against that background, her Government considered that the law of armed conflict and human rights law remained distinct and applied in different circumstances. Israel had never made a specific declaration reserving the right to extend the applicability of the Covenant to the West Bank or Gaza. In the absence of such a declaration, the Covenant, which was territorially bound, did not apply to areas outside Israel's national territory.

16. On the question of targeted killings, she said that Israel shared the Committee's concern at the loss of innocent lives and did its utmost to ensure respect for the principles of necessity and proportionality during military operations in response to terrorist threats and attacks. Without prejudice to its position regarding the non-applicability of the Covenant to the armed conflict against Palestinian terrorism, which was governed by the law of armed conflict, Israel did not use targeted killings as a means of deterrence or punishment. In the rare instances where the targeting of terrorists was considered a military necessity, such operations were examined in advance to ensure full compliance with the law of armed conflict. They were carried out only when there was no other feasible way of apprehending the identified terrorist and precautions were taken to minimize incidental damage to innocent persons. In December 2006, the Supreme Court had affirmed the applicability of the law of armed conflict to the conflict between Israel and terrorist groups in Gaza, and had determined that, although terrorists could not be considered "combatants" within the meaning of that law, their direct targeting while they were engaged in terrorist activity was legitimate, taking account of a number of safeguards. The Israeli Defence Forces (IDF) had revised their internal procedures to comply with that ruling.

17. Concerning allegations of ill-treatment of Palestinian detainees in Israeli prisons, she said that on 10 November 2009 a special command investigation, headed by a colonel who had not been directly involved in the incidents in question, had been appointed to conduct an investigation into certain allegations contained in the report of the United Nations Fact-Finding Mission on the Gaza Conflict. The investigation focused on allegations that IDF forces had held the detainees in cruel, inhuman and degrading conditions. On the conclusion of the investigation, the special command investigator would present his findings to the Military Advocate General, who would then determine whether there was any suspicion of a violation of the law of armed conflict that would warrant further investigation.

18. With regard to the use of civilians as human shields, she said that the IDF rules of engagement strictly prohibited that practice. In addition, the Israeli Supreme Court had ruled that the use of civilians in any capacity for the purpose of military operations was unlawful, including the use of civilians to call terrorists hiding in buildings. Following the ruling, that practice had also been proscribed by IDF orders and the IDF was committed to enforcing the prohibition. The orders for Operation Cast Lead in Gaza had clearly stated that civilians should not be compelled to engage in actions that might endanger them or be used as human shields. The IDF had initiated criminal investigations into seven alleged cases of civilians having been used as human shields during the operation. In March 2010, an indictment had been filed against two soldiers accused of asking a nine-year-old Palestinian boy to open bags suspected of containing explosives. Their trial was under way, and the remaining incidents were still being investigated.

19. Replying to specific questions concerning the Operation Cast Lead, she said that Israel's investigation of incidents during the operation had revealed that the principal charges rested on incomplete and often inaccurate information and failed to take account of the devastating impact of Hamas's abuses on the population of Gaza or the principles of the law of armed conflict. Notwithstanding the tragic civilian casualties in Gaza, evidence analysed thus far demonstrated that Israel had taken extensive measures to comply with its obligations under international law and had enacted legal and disciplinary measures against those responsible for violations. Following the operation, Israel had conducted numerous investigations into allegations of misconduct and violations of the law of armed conflict by the IDF. Six special command investigations and several other investigations had been conducted to examine allegations relating to the operation; 46 cases had become criminal investigations, which had resulted in the indictment and trial of 2 IDF soldiers. She gave various examples of disciplinary or criminal proceedings instituted against IDF officers on a range of charges. In other cases, the Military Advocate General had desisted from

initiating criminal charges after concluding that IDF forces had not targeted civilians intentionally and that damage to civilian property had been justified by military necessity. Israel had reported extensively on its investigations and findings. As a result of the investigations, several changes had been made in military operational guidelines.

20. The IDF had issued two new orders designed to protect civilians and civilian property during armed conflicts. The new order regulating the destruction of private property for military purposes addressed the destruction of buildings and agricultural infrastructure for reasons of military necessity, clarifying the applicable legal criteria and limitations and allocating specific command responsibility and decision-making authority.

21. The new doctrine regarding urban warfare emphasized the protection of civilians as an integral part of a commander's mission. It specified ways to prevent unnecessary damage to civilian property and infrastructure and required the integration of civilian considerations into the planning of combat operations. The doctrine further mandated that the humanitarian needs of civilians during military operations must be taken into account and required the assignment of a humanitarian affairs officer to each combat unit.

22. Turning to the question of Israeli action against the Gaza flotilla on 31 May 2010, she said that Israel was currently in a state of armed conflict with the Hamas regime, which had repeatedly attacked civilian targets in Israel with weapons smuggled into Gaza by sea. She explained the legal rationale behind the maritime blockade imposed by Israel and its enforcement with regard to the flotilla, the protesters having expressed their explicit intention of violating the blockade. Prior to undertaking enforcement measures, Israel had warned the captains of the vessels of its intention to enforce the blockade. Its attempts to take control of the vessels peacefully had been met with violence and Israel had acted in self-defence. Several investigations had been conducted into the incident and data were currently being collected in order to prepare the relevant reports.

23. On 12 July 2010, the report of a team of eight experts appointed to examine the incidents of 31 May had been transmitted to the IDF Chief of General Staff. The examination had yielded various lessons at a systemic level that went beyond the operation in question. The team had concluded that not all possible intelligence-gathering methods had been implemented fully, and that coordination between Navy Intelligence and Israeli Defence Intelligence had been insufficient. The team had also determined that on the day of the incident, decision makers had had no option other than full boarding of the flotilla. No country was able to stop a vessel at sea in a non-hostile manner, and statements to the contrary made after the incident were unfounded and irresponsible.

24. The team had established that the preparations made in advance regarding media relations had been good, although the release of press statements and visual material had been delayed owing to the need to maintain reliability, the obligation to notify the families of the critically injured soldiers and the long authorization process at levels above the IDF Spokesperson Unit.

25. The team had found that the location of the commanders and the presence of the commander of the Israeli navy at sea during the operation had been appropriate. It had determined that the navy commandos had operated properly, professionally and bravely, that commanders had made correct decisions and that the use of live ammunition had been justified. The head of the team had commended the cooperation and transparency exhibited by those involved in the examination at all levels. He had further noted that there was a tendency to draw general conclusions based on a single incident; the fact that the IDF examined itself and others did not mean that only the errors of the IDF were publicized.

26. On 14 June 2010, an independent public commission of experts had been set up to address issues pertaining to the incident. The commission was headed by three eminent Israelis; two international observers were participating in the hearings and proceedings. The

mission's mandate also included examining the question whether the mechanism for investigating complaints and claims relating to violations of the law of armed conflict, both in general and with regard to the incident in question, was in conformity with Israel's obligations under international law. All relevant government bodies would make available information and documentation to enable the commission to fulfil its functions. The commission had the power to subpoena witnesses, enforce their appearance in court and compel their testimony.

27. **Mr. Leshno Yaar** (Israel) said that, as it had often stated, his Government supported the Palestinian right to self-determination and was committed to the idea of a Palestinian State to be built alongside Israel, as called for by the international community. However, to achieve that end, the Palestinian leadership must fulfil its responsibilities, starting with the basic obligations to recognize Israel, renounce terror and accept the agreements that had previously been signed between Israel and the Palestinian Authority. The Hamas-led Palestinian administration was undermining its own people's rights by carrying out brutal terror attacks against Israel. He pointed out that, at a time (1948–1967) when no one in Israel had been able to deny the Palestinians' right to self-determination or to establish their own State, the territories having been under occupation by Egypt and Jordan, the Palestinians had made no demands to those ends.

28. The Israeli Prime Minister had recently declared that peace would require a demilitarized Palestinian State to recognize the Jewish State of Israel, and Israel to recognize the Palestinian State as the nation State of the Palestinian people. The Committee should take into account the challenges his Government and people faced, particularly the Hamas-led campaign to delegitimize Israel. Indeed, thorough investigations had revealed that seven of the nine people who had regrettably died during the interception of the flotilla on 31 May 2010 had in fact expressed their desire to die on board the ship.

29. His Government hoped that the resumption of the negotiating process would lead to direct peace talks culminating in a viable and lasting settlement between Israel and Palestine. The settlements had never been an obstacle to peace; Israel had signed peace agreements with Egypt and Jordan and the settlement issue did not prevent peace negotiations. However, in order to create an atmosphere in which steps could be taken towards peace, Israel had taken a number of significant initiatives. They included introducing a 10-month moratorium on new housing construction in Jewish settlements in the West Bank, approved by the Security Cabinet on 25 March 2009. Despite that unprecedented move on Israel's part, the Prime Minister had pointed out that seven months into the moratorium, the Palestinian authorities had still not entered into talks and had argued that the moratorium should be extended.

30. Given that Palestinian terrorism had taken the lives of thousands of Israelis, Israel had built a temporary, non-violent security fence in order to protect civilians' lives. It had not been built for political reasons, and since its construction the number of terrorist attacks had decreased significantly, saving the lives of many Israelis and non-Israelis. It had proved an extremely effective counter-terrorism measure. Israel continued to seek the necessary balance between protecting the lives of its citizens and the humanitarian needs of the Palestinian population. Israeli law provided that all administrative decisions of the State were subject to judicial review by the Supreme Court, which could be petitioned by any affected party, including all Israelis and Palestinians. The Court had received over 200 petitions on that issue, a significant number of which had resulted in changes in the route of the fence and the humanitarian arrangements accompanying its construction.

31. **Ms. Gorni** (Israel), adding to the information provided in the reply to question 4 of the list of issues on the demolition of structures in the West Bank, said that the Military Commander was merely enforcing the planning and building laws that had been in place in the West Bank prior to 1967. Legislation in the West Bank provided that building permits

could only be granted on the basis of plans that had been approved before building began, and stipulated criminal and administrative enforcement measures against illegal construction. The demolition of illegally constructed buildings was therefore lawful and was mainly carried out by the civil administration. All demolitions were conducted in accordance with the guarantees of due process, such as the right to a fair hearing and the opportunity to apply to legitimize an illegal building.

32. The owners of illegal buildings were not entitled to compensation or restitution, unless it was later proved that the demolished structure had not been illegal. Claims for compensation could be brought before the relevant judicial bodies in the West Bank and, if necessary, in Israel. The process was subject to judicial review before the Supreme Court without distinction as to race or ethnic origin.

33. The civil administration had made outline plans for most of the Palestinian villages in area C, making it possible to build in that area as long as a permit was requested. Between 2003 and 2008, the relevant authorities and individuals owning structures in the West Bank settlements had carried out over 750 demolitions. In 2009, 196 demolitions had taken place in settlements, and 76 Palestinian structures had been demolished. From January to April 2010, there had been 67 demolitions in settlements and 53 of Palestinian structures. Fines and penalties for illegal buildings were uniform, regardless of the identity of the builder.

34. In the past, a large proportion of the indictments issued in the West Bank had been translated into Arabic. That had changed owing to the low demand for the translations. Currently, indictments were translated upon receipt of a request from the accused or his or her representative. The military court system attached great importance to the translation of its proceedings and simultaneously translated all charges and hearings into Arabic. Strenuous measures were taken to ensure the quality of the translations. The accused was not required to sign documents in Hebrew as part of the legal proceedings. Arabic translations of all documents relating to legal proceedings were available.

35. The IDF had maintained the policy of investigating all alleged violations of the law of armed conflict, regardless of the source of the allegation, and prosecuting when there was credible evidence of a violation. It was committed to resolving complaints against its personnel in a fair, impartial and effective manner. Investigations generally began with the Military Advocate General reviewing complaints from a variety of sources, referring individual complaints for a command investigation or, when there was an allegation of criminal behaviour, for a criminal investigation. The Military Advocate General reviewed the record and findings of command investigations and other available material to determine whether to recommend disciplinary proceedings and whether there was a suspicion of a criminal act. If there was, the complaint was referred for a criminal investigation.

36. Following a criminal investigation, the Military Advocate General reviewed all the evidence to determine whether or not to file an indictment or to recommend disciplinary proceedings. Any person could file a complaint regarding alleged misconduct by IDF soldiers with the military police at any civilian police station. Gaza residents could file complaints directly in writing (in Hebrew, Arabic or English) through an NGO acting on their behalf, or through military liaison staff who worked directly with the Palestinian civilian population.

37. In addition, the IDF independently identified incidents that warranted further inquiry, including allegations of military misconduct reported in the media and by other sources. The Ministry of Justice also monitored such reports and brought allegations to the attention of the relevant bodies. Regardless of the source, the IDF evaluated each complaint on the basis of the circumstances of the case and the available evidence. The Investigative

Military Police carried out investigations into complaints against soldiers. That unit was subordinate to the IDF Chief of the General Staff, independent of the IDF regional commands, and therefore empowered to handle the investigations under the aegis of the Military Advocate General's Office.

38. In June 2008, the Supreme Court had upheld the constitutionality of the Incarceration of Unlawful Combatants Law, while rejecting an appeal submitted by two detainees. That had been the first time the Court had addressed the substantive legal aspects of the incarceration of unlawful combatants since the enactment of the Law. While reaffirming the legality of the specific incarceration orders, the Supreme Court had held that the Law met the standards of both Israeli constitutional law and international humanitarian law. It had noted that the Law as a whole did not infringe the right to liberty in a disproportionate manner and had found it to be consistent with the administrative detention provisions of the 1949 Geneva Convention relative to the Protection of Civilian Persons in Time of War.

39. In addition, the Supreme Court had interpreted the principal sections of the Law as intending to strike a delicate balance between generally accepted human rights standards and the legitimate security needs the Law had been designed to address. Since the enactment of the Law, some 49 persons had been detained under it, 12 during the second Lebanon war, 30 during Operation Cast Lead and 7 on other occasions. There were currently 7 persons held under the provisions of the Law, all of whom were men aged 18 or over. Such incarcerations were subject to periodic judicial review in a civil district court every six months and the decision could be appealed before the Supreme Court. In the light of the current security situation facing Israel, the use of that method of detention was obligatory and essential in preventing terrorist activity. People detained under the Law had the same rights as any other detainee with regard to filing complaints or appealing to the courts concerning the conditions of their imprisonment.

40. The authority to order the administrative detention of an Israeli citizen was granted to the Minister of Defence through the Emergency Authorities (Detentions) Law of 1979. The Law gave the Minister the authority to issue a six-month order, which could be extended. Where sufficient and admissible evidence existed against an individual, the authorities were required to bring the individual to justice rather than adopt measures such as administrative detention. That measure was therefore used as the exception only when the evidence was clear, specific and reliable but, for reasons of confidentiality and protection of intelligence sources, could not be presented as evidence in ordinary criminal proceedings. In the case of Noam Federman, the Supreme Court had stated that it had been implemented in order to prevent an illegal action and had not been intended as punishment for an act that had already been committed. Given that detainees and their counsels had limited involvement in the process, the president of the district court was expected to thoroughly examine the material available. Such orders were granted when evaluations indicated that it was highly probable that detainees would commit a serious offence that could harm the State or public security. The court was also required to explore other less harmful measures, thus applying the proportionality principle. There were currently no administrative detainees in Israel under Israeli law.

41. In the light of the unprecedented threat facing Israel since 2000, the security forces had sought new effective and lawful countermeasures, including in the form of administrative detention in the West Bank. Administrative detention could be used in the West Bank under the same exceptional circumstances as in Israel. Issuing administrative detention orders against detainees who posed a danger to public security in the West Bank in those cases was recognized by international law and was in full conformity with article 78 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War. Moreover, the relevant legislation required that the orders should be approved by a military

court and granted all persons the right to appeal the decision of the military court to a Justice of the Military Court of Appeal for judicial review. Petitioners could be represented by counsel of their choice at every stage of the proceedings and had the right to examine the unclassified evidence against them. All persons had the right to petition the Israeli Supreme Court for a repeal of the order. The orders were subject to periodic review, as in Israel. There had been a significant decrease in the number of administrative orders issued – about 1,300 in 2009 as opposed to over 2,200 in 2008 and over 3,000 in 2007. There were currently 210 people in administrative detention, including 3 women and 1 minor, who was aged 16.

42. In exceptional cases, military orders concerning security offences allowed the postponement of meetings with legal counsel when that was necessary for the sake of the interrogation and the security of the area. The decision to implement that measure was weighed in the light of the particular circumstances of each case. While the military order allowed a meeting to be postponed for up to 90 days, each postponement was usually for only a few days. The need to prolong the postponement was re-evaluated thereafter, and all such orders could be challenged in a petition to the Supreme Court.

43. As explained in the written reply to question 17 of the list of issues, Israel acknowledged the importance of maintaining family visits to detainees and had striven to overcome many security and administrative difficulties in order to enable those visits to continue. However, on 19 September 2007, her Government had resolved to limit the movement of persons in and out of Gaza, subject to an examination which took account of the humanitarian situation in Gaza. The decision had been based on the serious security situation in Israel and Gaza and the need to ensure that persons entering from Gaza did not endanger public security. That had included family members visiting inmates in prisons in Israel. The Supreme Court had ruled that, as of 4 June 2007, following Hamas' violent takeover in Gaza, the area had turned into a "hostile zone" similar to an enemy State engaged in a war against Israel and its citizens.

44. The Israeli authorities had therefore begun to implement a new policy, under which residents of, and visitors from, Gaza had been forbidden to enter Israel. The Court had found no reason to intervene in the decisions of the relevant authorities, which had formulated a general policy preventing the entry of residents of Gaza into Israel, including for the purpose of family visits. According to the Court, allowing residents of Gaza to enter Israel did not constitute a basic humanitarian need. The Court had rejected claims that the refusal to allow family visits was in breach of international law, and had held that international law could not deny a sovereign State its right to prevent foreign residents, particularly those from a hostile entity, from crossing its borders. However, the competent authorities would allow residents of Gaza to enter Israel in exceptional cases, such as to receive urgent medical treatment or in other humanitarian cases. Inmates could maintain contact with their families through letters, and all prisoners, including those from Gaza, were allowed to receive visits from family members from the West Bank and Israel.

45. **Ms. Tene-Gilad** (Israel), responding to the question about cultural activities in East Jerusalem, said there were no arbitrary restrictions on such activities. However, when the Palestinian Authority planned an event in East Jerusalem, the Minister of Public Security could issue an injunction against it on the basis of the 1994 Law relating to the implementation of the Interim Agreement on the Gaza Strip and Jericho. If Hamas or any other terrorist organization planned an event in East Jerusalem, the Police Commissioner could issue a banning order under the Prevention of Terror Ordinance.

46. As to the "Jerusalem 2000 Plan" for the development of the city, many public entities had been permitted to submit their views, including those seeking provision for the special needs of the residents of East Jerusalem. The Plan took account of the high demand for housing in Jerusalem, and the fact that the eastern neighbourhoods contained large areas

which were not properly used and did not offer a high-quality solution for the needs of the Arab population. The plan provided for the establishment of a municipal department for the planning and development of those neighbourhoods with a view to providing better service for Arab residents, including service in Arabic. It also provided for detailed measures to: resolve the problem of illegally constructed buildings and examine their suitability in the light of the land designation policy; to rehabilitate of the Shuafat and Kalandia refugee camps using national or international funds; and to rehabilitate and develop infrastructure in the eastern neighbourhoods. There were about 38,000 housing units for the Arab population of Jerusalem, but a further 15,000 houses had been built illegally. The plan made provision for the construction of 29,000 extra housing units by 2020.

47. Turning to the question of water and sewage in the Gaza Strip and West Bank, she said that cooperation in the provision of water supplies was laid down in the 1993 Declaration of Principles on Interim Self-Government Arrangements. The Israeli-Palestinian Interim Agreement on the West Bank and the Gaza Strip, signed in Washington in September 1995, required Israel to recognize Palestinian water rights in the West Bank. Specifically, it called for an increase in water supplies over the period of the Agreement by 28.6 million cubic metres a year. Israel had met or exceeded all its water-related obligations under the Agreement, increasing supplies to the Palestinians by about 50 per cent; it also supplied a large quantity of water to Palestinians in the West Bank from its own territory within the "Green Line". In no circumstances did Israel transfer water from the West Bank to areas inside the "Green Line". It had offered the Palestinians the possibility of erecting a seawater desalination plan in the Hadera area, to be built and operated by the donor countries, but the Palestinians were not in a hurry to take up the offer.

48. Under the Interim Agreement, the Palestinians were responsible for treating their own sewage, but no significant progress had been made with respect to Palestinian wastewater treatment plans and proper reuse of effluents for agriculture. The Palestinians apparently preferred to let their wastewater flow into Israeli territory, thus polluting the environment and the common aquifer, with the result that Israel was compelled to treat it, as well as 70 per cent of the wastewater from Israeli communities in the West Bank.

49. With regard to allegations of the illegal use of force by police officers, she explained that investigations of such allegations were conducted by the Department for Investigation of Police Officers, an independent body within the Ministry of Justice, which now had 19 civilian investigators and 25 police investigators. It was always difficult to determine whether the force used by authorized officers in certain situations was excessive, and bogus complaints could be made in an attempt to avoid prosecution following arrest.

50. On the question of the languages used in official documents, she pointed out that following a case brought against the National Insurance Institute (NII) by Defence for Children International, the NII had confirmed that, in compliance with an order by the Supreme Court, it would accept forms submitted in Arabic. A request for letters and notices to be sent in Arabic had been dismissed by the Court because the NII had translators available in its offices.

51. Referring to the question of the Bedouin population, she said that Israel made every effort to address their needs. Representatives of each of the Bedouin towns participated in local and district planning committees.

52. With regard to the role of physicians in the Israeli Prison Service, she said that they were bound by the rules of medical ethics, and neither approved nor took part in any interrogation or punishment of an inmate. Internal procedures in the Prison Service were drafted to ensure full observance of those principles.

53. As to the question of illegal infiltration into the West Bank, there appeared to be some misunderstanding of the legal situation. There had been no change in Israel's policy

and practice in the matter; however, the High Court had introduced additional safeguards, fully in line with international treaties, to prevent unlawful entry and residence. Cases of individuals detained pending repatriation owing to unlawful residence in the West Bank now had to be brought before an oversight committee within eight days, in accordance with Orders Nos. 1,649 and 1,650 issued on 13 October 2009. The phenomenon of illegal infiltration was, however, very limited because 32,000 Palestinians and foreigners unlawfully resident in the West Bank had since 2008 been included in the population register. Eight individuals suspected of involvement in terrorist activities had been brought before the new oversight committee and their cases were under consideration.

54. **Mr. Caspi** (Israel) replied to the question raised about the IDF targeting medical services and ambulances during Operation Cast Lead. During that operation, Hamas had systematically used medical facilities and vehicles, including Red Cross and Red Crescent ambulances, to transport operatives and weaponry and evacuate terrorists from the battlefield, in violation of the law of armed conflict. Hospitals had been used as headquarters and command centres. Ismail Haniyeh, the head of Hamas in Gaza, had located his command centre in Shifa hospital. An entire wing of that hospital had been sealed off and used solely by Hamas operatives, entry to civilians being blocked. Hamas had also taken control of a Red Crescent medical clinic in Khan Younis and converted it into a detention facility. Palestinian gunmen had admitted using Al-Quds hospital in Gaza City for firing at Israeli civilians. Some 500 patients had had to be evacuated from that hospital when it was hit by a shell. According to a witness reported in the newspaper *Corriere della Sera*, members of Hamas had taken refuge in the building and then commandeered the ambulances, forcing the drivers and nurses to take off their uniforms. The same report referred to Hamas occupying Shifah, the largest hospital in the city, and using its basements to interrogate Fatah prisoners. For Hamas operatives, ambulances often served as a means of escape from IDF forces.

55. The *Sydney Morning Herald* had reported an interview in January 2009 with Muhammad Shriteh, an ambulance driver who had evacuated wounded Palestinians from the battle zones. According to him, during the operation he had liaised with the Israelis before picking up patients, to avoid being fired at. However, the more immediate threat came from Hamas, which would lure the ambulances into the heart of a battle in order to transport its fighters to safety. Hamas operatives had made several attempts to hijack the ambulance fleet of Al-Quds hospital.

56. The unlawful use of medical facilities and vehicles by Hamas endangered medical personnel as well as the sick and wounded, while severely undermining the special protections afforded by customary international law to such persons in times of armed conflict. Article 23 (f) of the 1907 Regulations annexed to the Fourth Hague Convention, and also article 44 of the First Geneva Convention, expressly forbade the wrongful use of flags of truce, the distinctive badges of the Geneva Convention and the emblem of the Red Cross.

57. Concerning medical facilities provided by Israel during the operation, the IDF had set up a medical situation room in Gaza to coordinate the evacuation of wounded and trapped civilians from the combat zone, and had responded to 150 requests. The IDF trained its forces to exercise caution in order to avoid harming medical crews and facilities. On many occasions during the operation, IDF forces had suspended their operations against legitimate military objectives when medical vehicles or personnel were in the vicinity, sometimes refraining from attacking even medical vehicles known to be used for military purposes. The IDF had investigated 10 allegations, found to be baseless, of damage caused by its members to medical facilities, vehicles and crews. Other allegations mentioned by NGOs were still under investigation. They included an incident on 10 January 2009 in which a building housing a mother-and-child clinic had been damaged. The presence of the

clinic, on the first floor, had been unknown to the IDF, which had however taken care to plan its operation, aimed at destroying a Hamas weapons storage unit located in the same building, so as to avoid harming civilians; it had issued an early warning to residents and had used precision munitions, calculated to minimize collateral damage. Other incidents involving an IDF attack on the Khan Younis European hospital on 8 January 2009 and damage to infrastructure at Al-Quds hospital were currently under investigation. In other cases, the IDF had fired warning shots, consistent with procedures under the law of armed conflict, at vehicles being driven in a suspicious manner which might have been used for military purposes. The standard against which such actions were judged must be the reasonableness of the decision taken by the commanding officer.

58. Following the violent takeover of Gaza by Hamas, the area had become a “hostile zone” tantamount to an enemy State engaged in war against Israel and its citizens. Thousands of rockets had been fired into Israeli cities, and terror attacks originating in Gaza occurred almost daily. His Government had therefore decided, on 19 September 2007, to restrict the passage of goods and the supply of fuel and electricity to Gaza, and to limit the movement of persons in and out of the area. However, in accordance with article 23 of the Fourth Geneva Convention, it had been decided to permit the entry of consignments of medical and other humanitarian goods, provided they were not diverted from their destination. The compatibility of Israel’s policy in the matter with international law had been confirmed by its Supreme Court in several cases, including that of *Al Bassiouni et al. v. The Prime Minister* (9132/07). Israel had recently liberalized the system for the entry of civilian goods so as to enable the civilian population to engage in routine activity, while preventing the entry of weapons and materiel which could be used by Hamas. All but a limited number of dangerous goods were now permitted. The volume of goods entering Gaza would also increase as a result of the expanded operations of the crossing-points, such as Kerem Shalom, through which an average of 150 trucks were now entering each day. The flow of construction materials into Gaza would also be expanded, as long as they were used for projects authorized by the Palestinian Authority and implemented and supervised by the international community. Forty-five such projects would begin in the coming months in the areas of education, health, water and sewage infrastructure, and later housing. The supervision of entry of goods was a necessity given that Hamas was a terrorist organization dedicated to the destruction of Israel, and was recognized as such by Australia, Canada, the EU, Japan, the United Kingdom and the United States. The new list of controlled items included weapons, munitions and missile equipment, and dual-use materials such as chemicals and fertilizers that could be used to make explosives.

59. As to humanitarian aid, 738,576 tons of humanitarian goods had entered Gaza in 2009, as well as 4,883 tons of medical equipment and medicines. In the same year 22,849 Palestinians had left Gaza, including 10,544 patients and their companions going to Israel for medical treatment. Israeli and Palestinian health officials had met to prepare for a possible swine flu epidemic in Gaza; 3 patients had gone to Israeli hospitals for treatment and 44,500 doses of swine flu vaccine had been sent to Gaza by WHO. Two hospital elevators had been transported into Gaza, and arrangements had been made to bring in mammography equipment and a CT scanner. A total of 21,200 international aid workers and other staff had also entered Gaza.

60. Israel had tried to keep issues pertaining to the humanitarian infrastructure separate from the conflict. It continued to work with the Palestinian Water Authority, sharing knowledge and experience and coordinating the transfer of equipment for Gaza’s water and sewage systems. In 2009 it had continued to supply electricity to Gaza from its Ashkelon power station and 41 truckloads of equipment for the maintenance of the electricity network had been transferred. Maintenance work on Gaza’s power station had been undertaken by Siemens between April and October 2009 and over 100 million litres of diesel had been

delivered to the power station. Forty-five truckloads of equipment for communication systems had been delivered in 2009 in response to requests from the Palestinian Authority.

61. Ninety-five truckloads of equipment for the water and sewage systems and 3,720 tons of chloride for water purification had been transferred in 2009. Significant progress had been made in early 2009 in promoting the North Gaza Wastewater Treatment Plant Project, including the delivery of 48 truckloads of equipment and aggregates. The progress achieved had had a positive impact on the level of wastewater in the Beit Lahiya filling lagoon. In December 2009 Israel, acting in cooperation with UNICEF and the Palestinian Water Authority, had transported into Gaza six desalination units which provided water for 40,000 people.

62. Israel also supported private-sector activities and the banking system in Gaza. Thus, 77 per cent of the trucks that had entered Gaza in 2009 had been coordinated by the private sector and 257 Palestinian businessmen had left Gaza for Israel, the West Bank and destinations abroad. In 2009, more than 1.1 billion new Israeli shekels had been transferred to Gaza to fund salaries and the activities of international organizations.

63. On 13 May 2010, Israel had allowed approximately 39 tons of building material into Gaza to help rebuild Al-Quds hospital. It had ensured that safeguards were in place and had received French assurances that the material would not be diverted for use in building bunkers or similar facilities. According to the United Nations, 120 megawatts of Gaza's electricity supply came from the Israeli grid, compared with only 17 megawatts from Egypt and 30 megawatts from the Gaza City power station. There had been a deterioration in the electricity supply to Gaza since January 2010 because the Hamas regime was unwilling to purchase the fuel required to run that power station.

64. With regard to the quality of life in Gaza, life expectancy in 2010 was 73.68 years, which was higher than, for example, in Estonia, Turkey, Malaysia, Jamaica and Bulgaria. The infant mortality rate was 17.71 per 1,000 births, which was lower than in China, Jordan, Lebanon and Thailand. Some 20 per cent of the Gaza population had personal computers and Internet access, which was higher than the figures recorded for Portugal, Brazil, Saudi Arabia and the Russian Federation. About 70 per cent of Gaza residents had radio, television and satellite access and 81 per cent of households had access to a cellphone.

65. The United Nations Special Coordinator for the Middle East Peace Process had recently commented on attempts by Hamas to take over responsibility for humanitarian aid in Gaza. He had described the targeting of NGOs, including United Nations partner organizations, as a violation of the accepted norms of a free society. As such action harmed the Palestinian people, the Coordinator had urged the de facto authorities to cease such repressive steps and to allow the reopening of civil society institutions without delay.

66. Although Israel was taking dramatic steps to assist the civilian population of Gaza, the abducted Israeli soldier Gilad Shalit was still being held illegally by Hamas. The international community should redouble its efforts to secure his immediate release.

67. **Mr. Thelin** said that while he was very pleased with the delegation's lengthy replies to the Committee's questions, he was disappointed that it had not responded to his enquiry about Israel's legal justification for refusing to recognize the 2004 Advisory Opinion of the International Court of Justice. The old argument concerning the distinction between international human rights law and international humanitarian law was unconvincing. According to the delegation, the Israeli Supreme Court was the major player in the domestic setting when it came to defining international law. One would assume, however, that the opinion on the legal regime in the Occupied Palestinian Territory expressed by the highest court recognized by the international community should be held in even higher

esteem. He therefore reiterated his question: why was Israel unwilling to respect the unanimous legal finding of the International Court of Justice in its Advisory Opinion?

68. He was grateful for the comprehensive answer to his question about the current investigations relating to Operation Cast Lead. However, the Committee would have appreciated receiving the information in advance. He had the highest regard for the Israeli judiciary and its efforts to rein in the military. In some areas, the Supreme Court could stand as a model for interaction between the civilian judicial authority and military forces in applying international humanitarian law. The delegation had also rightly reminded the Committee of Israel's legitimate security concerns. One of the drawbacks of being a democracy committed to the rule of law was that Israel had to fight with one hand tied behind its back. Such restrictions were clearly not applicable to a terrorist organization like Hamas.

69. With regard to the flotilla, the delegation alleged that seven of the nine persons killed in the flotilla operation had been peace activists "in disguise". Few people were so naive as to believe that every peace activist or indeed every organization was what it claimed to be. There were certainly dark forces in existence who used weapons and yet disguised themselves as peace activists. On the other hand, he deplored the Israeli Government's position on the investigation commission because if it was convinced of the legitimacy of its claims, the membership of the commission should be broadened to ensure that it was genuinely independent and international and that its findings were credible.

70. **Ms. Chanet** said she understood that the principle of equality was generally recognized in Israeli law but that its interpretation was left to the discretion of the Supreme Court. The delegation had implied that the administrative authorities stood in fear of the Supreme Court. She wondered, however, whether they had any cause for fear since, according to the written replies, the path to the Supreme Court was arduous. Even when a ruling was obtained, it proved extremely difficult to secure its implementation. For instance, the 2006 decision concerning the *High Follow-Up Committee for Arab Citizens of Israel et al. v. the Prime Minister of Israel* — a highly important decision aimed at remedying discrimination — had still not been implemented. The Court had recently agreed to defer its implementation until the 2012 academic year. Such deferrals could prove highly dissuasive for complainants.

71. With regard to the revocation of rights of residence, she understood how the legal system worked but the Committee required quantitative data to assess the situation. If the delegation was unable to provide them immediately, it should provide a breakdown of the figures for the past five years in writing in due course.

72. She had not fully understood how Military Order No. 1,649 of May 2009 concerning security provisions was applied. Although it had been approved by the Supreme Court, the Committee needed to know whether its provisions were in keeping with the Covenant. She would be grateful if the delegation could provide the text of the Military Order and the conditions governing its application, since it apparently extended the scope of application of the provisions for expulsion, which had previously been applicable only to enemies of the State. She understood that an appeal had been filed and asked whether it would have suspensive effect.

73. With regard to the use of Arabic in criminal proceedings, especially before military courts, the Committee had been informed of a difference in procedure between the notification of the charge and the handing down of the decision. She pointed out that, pursuant to article 14 (3) (a) of the Covenant, accused persons had the right to be informed promptly and in detail in a language that they understood of the nature and cause of the charge against them.

74. The delegation had yet again presented Israel's position on the application of the Covenant to Gaza and the West Bank. The Committee's position on the question was well known and the Advisory Opinion of the International Court of Justice had been ignored. The delegation had drawn a distinction between Gaza and the West Bank. It claimed that nothing whatsoever could be done in Gaza and that only limited action could be taken in the West Bank. That position was inconsistent with article 2 of the Covenant, which required States parties to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized therein. Moreover, the delegation had again referred to the fact that Israel had never made a specific declaration in which it reserved the right to extend the applicability of the Covenant to the West Bank and Gaza. There was nothing in the Vienna Convention on the Law of Treaties which would permit such an interpretation of a human rights treaty.

75. Although the delegation claimed that Israel recognized the Palestinians' right to self-determination, which was guaranteed under article 1 of the Covenant, the International Court of Justice had drawn attention to a number of obstacles that were impeding the enjoyment of that right, such as the construction of the wall, displacement of the Palestinian population and the settlements. Some of the obstacles had been denounced by Israeli NGOs.

76. She had the impression that whenever the Committee or the International Court of Justice presented a legal argument, Israel invariably sought refuge in the Supreme Court's interpretation of international law. When its conduct was criticized, it organized an exclusively internal investigation which could not really be recognized as independent by the international community. That point had also been made by Israeli NGOs. Under such circumstances the Committee found it difficult to engage in a genuine dialogue.

77. **Mr. Fathalla** said that the delegation had replied to many but not all of his questions. For instance, he had asked why construction was not permitted in about 70 per cent of the West Bank and whether WHO water supply standards were respected in the case of the Palestinians.

78. With regard to the flotilla, the delegation had referred to rules of international law applicable to blockades that Israel respected in all cases. He drew attention, however, to the San Remo Manual on International Law Applicable to Armed Conflict at Sea adopted in June 1994, paragraph 103 of which stipulated: "If the civilian population of the blockaded territory is inadequately provided with food and other objects essential for its survival, the blockading party must provide for free passage of such foodstuffs and other essential supplies." He invited the delegation to comment on that principle.

79. **Ms. Keller** thanked the delegation for its detailed replies to the Committee's questions. However, the Committee required disaggregated data on all issues relating to discrimination. Otherwise it would be unable to tell whether discrimination existed between, for example, Israeli and Palestinian children.

80. In response to a question concerning torture, the delegation had referred to guidelines and regulations which could be consulted in order to determine whether the necessity requirement was met by the circumstances of a particular interrogation. Had she correctly understood that the guidelines and regulations were not publicly available?

81. **Mr. Salvioli** said that he had not received replies to certain questions. For instance, he had asked whether the definition of torture used in Israel conformed to international standards, especially those contained in the United Nations Convention against Torture.

82. According to the delegation, revocation of a residence permit depended solely on the location of a person's permanent place of residence. He had been informed, however, that Israel had recently revoked the Jerusalem residence rights of four members of the

Palestinian Legislative Council solely on account of their membership of the Council, which, according to Israel, constituted a breach of their duty of loyalty to the Israeli State. Was that information correct?

83. **Mr. O'Flaherty** said that the delegation's detailed responses had allayed his concerns regarding a number of issues. With regard to the Arabic language, however, his question about the rendering of place names in Hebrew and their Arabic transliteration had not been answered. Was there any possibility of an adjustment of policy in that regard in areas with a predominantly Palestinian population?

84. On the questions of the Bedouin, he would welcome a broader response to the concerns raised by civil society sources, for instance regarding the urbanization of what was historically an agricultural community. He also asked whether Israel was seeking to accommodate traditional nomadic practices.

85. **Mr. Amor** said that the question of the applicability of the Covenant was a very important legal issue that had been discussed at length in 2003. Although Israel's position was well known, he had noted a slight change of approach, namely that the de facto situation was an absolute impediment to the application of the Covenant in Gaza and a partial impediment in the West Bank. Did that mean that Israel recognized the principle of the applicability of the Covenant in Gaza and the West Bank? A clear-cut reply on such a fundamental legal issue was essential.

86. The delegation had provided some information regarding the doctrine of necessity, mentioning directives that could be invoked to justify its application. He wished to know whether there were any limits that could not be transgressed. Could the doctrine be invoked, for example, to undermine fundamental principles such as the prohibition of torture? When he saw settlers attacking Palestinian homes while the army stood idly by, he wondered whether necessity or some other legal pretext could be invoked. The Committee would greatly appreciate any clarification the delegation could provide.

The meeting rose at 1 p.m.