

ISRAEL'S RECORD OF OCCUPATION: VIOLATIONS OF CIVIL AND POLITICAL RIGHTS

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ABOUT THIS REPORT

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SUMMARY AND RECOMMENDATIONS

On July 15 and 16, 1998 Israel presented its initial report to the United Nations Human Rights Committee, the U.N. body of independent experts responsible for monitoring implementation of the International Covenant on Civil and Political Rights (ICCPR) and its two Optional Protocols. Other U.N. expert bodies have evaluated Israel's fulfillment of its obligations under human rights treaties prohibiting discrimination against women, racial discrimination, and torture, but this review marks the first time Israel has reported on the full range of civil and political rights guaranteed by international law.

Already more than five years overdue, the 369-page report should have included detailed information on the measures Israel had adopted to give effect to the rights recognized in the covenant, and on the progress made in the enjoyment of those rights. Instead, as Human Rights Watch argued in its submission to the Human Rights Committee, Israel's report failed to give sufficient information on the implementation of the covenant in practice, left out any discussion of Israel's implementation of the covenant in the territories it controlled in the West Bank, the Gaza Strip, the Golan Heights, and South Lebanon, and misrepresented Israeli practice on important issues including torture and administrative detention.

In its "Concluding Observations" on Israel's report (CCPR/C/79/Add.98; attached as Appendix 1), the Human Rights Committee confirmed Human Rights Watch's assessment of Israel's serious shortcomings in meeting its obligations under the covenant. Despite its finding that Israel's submission "lacks sufficient information on the implementation of the covenant in practice and on the factors and difficulties impeding its effective implementation," the committee identified twenty-one areas of concern, in some cases recommending specific steps to end violations, and in other cases requesting additional information on Israeli practices believed to be in violation of the covenant.

In each of the three areas addressed in Human Rights Watch's submission, the Human Rights Committee concurred with our position that Israel had not fulfilled its obligations under the covenant, and rejected Israel's justifications for its continued violations. On Israel's reporting obligations, the committee found that in view of the "longstanding presence of Israel in these [occupied] territories, Israel's ambiguous attitude to their future status, as well as the exercise of effective jurisdiction by Israeli security forces therein," the covenant "must be held applicable to the Occupied Territories and those areas of southern Lebanon and West Bekaa where Israel exercises effective control." The committee also expressly requested Israel to include in its second periodic report "information on the implementation of the covenant in all lands over which Israel exercises effective control during the period covered by the report."

Expressing its deep concern over Israeli interrogation practices, the committee urged Israel to cease using the methods of handcuffing in painful positions, violent shaking, and sleep deprivation that are believed to be authorized in Israel's confidential Landau Commission interrogation guidelines, saying "The Committee is of the view that the guidelines can give rise to abuse and that the use of these methods constitutes a violation of article 7 of the covenant in any circumstances. The Committee stresses that article 7 of the covenant is a non-derogable prohibition of torture and all forms of cruel, inhuman or degrading treatment or punishment." In a clear reference to Israel's repeated efforts to pass legislation codifying the Landau guidelines in law, in effect legalizing torture, the committee said "If legislation is to be enacted for the purpose of authorising interrogation techniques, such a law should explicitly prohibit all forms of treatment prohibited by article 7."

The committee also criticized Israel's use of administrative detention. It noted that despite a reduction in the number of administrative detainees, "persons may still be held for long and apparently indefinite periods of time in custody without trial," Palestinians detained in the Occupied Territories "do not have the same rights to judicial review as persons detained in Israel under ordinary law," and some

detainees were held as “bargaining chips” in negotiations with third parties. Saying that it “considers the present application of administrative detention to be incompatible with articles 7 and 16 of the covenant, neither of which allow for derogation in times of public emergency,” the committee stressed that Israel’s derogation from article 9 of the covenant did not absolve it from the requirement of effective judicial review of detention. The committee also recommended that “the application of detention be brought within the strict requirements of the Covenant and that effective judicial review be made mandatory.”

The committee also expressed its concern over a broad range of other Israeli violations, including discrimination against Palestinians living in the Occupied Territories, Arab Israelis, women, and Bedouin; the Israeli security forces’ use of firearms and rubber-coated metal bullets in dispersing demonstrations; the use of prolonged solitary confinement; restrictions on Palestinians’ freedom of movement, and on residency in East Jerusalem; discriminatory practices in funding religious bodies; the practice of demolishing “illegally” constructed Arab homes and demolishing Arab homes as a means of punishment; Israel’s failure to protect victims of trafficking for prostitution; and the lack of provision for civil marriage and burial. Several of the Human Rights Committee’s findings are also relevant to Israel’s implementation of rights guaranteed by the International Covenant on Economic, Social, and Cultural Rights, which is to be reviewed during the Committee on Economic, Social and Cultural Rights’ November 16 to December 4, 1998 session. Israel’s submission to the Committee on Economic, Social and Cultural Rights (E/1990/5/Add.30) is also incomplete, in that it does not report on implementation of that convention in all the territories Israel controls.

Human Rights Watch welcomes the findings and recommendations of the Human Rights Committee, particularly its finding that Israel must report on its implementation of the covenant in all areas where it exercises effective control. Human Rights Watch urges Israel to ensure that all its future reports to the Human Rights Committee, and to all other U.N. treaty monitoring bodies, include complete information on Israel’s implementation of its treaty obligations in all territories under its effective control.

Human Rights Watch also urges Israel to take immediate steps to implement the committee’s recommendations, as well as the earlier recommendations of the U.N. Committee on the Elimination of All Forms of Discrimination against Women, the U.N. Committee Against All Forms of Racial Discrimination, and the U.N. Committee against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Special priority should be given to immediately ending those practices identified by the committee as being in clear violation of the covenant, including interrogation and detention practices in violation of Articles 7 and 16; and discriminatory practices in regulating housing, family reunion, and residency in violation of Articles 12, 17, 23, and 26.

In view of the findings of the committee, Human Rights Watch further calls on Israel to:

- IMMEDIATELY END THE PRACTICE OF TORTURE, AMEND DOMESTIC LAW TO BE CONSISTENT WITH THE COVENANT’S PROHIBITION OF TORTURE, INCLUDING ADOPTING A DEFINITION OF TORTURE CONSISTENT WITH INTERNATIONAL LAW, AND MAKE PUBLIC THE GUIDELINES GOVERNING INTERROGATION PROCEDURES;
- IMMEDIATELY END THE PRACTICE OF HOLDING DETAINEES AS HOSTAGES, BOTH INSIDE ISRAEL AND IN THE TERRITORIES UNDER ITS CONTROL. PERSONS HELD AS “BARGAINING CHIPS” SHOULD BE IMMEDIATELY RELEASED;
- IMMEDIATELY END THE PRACTICE OF ARBITRARY OR PROLONGED ADMINISTRATIVE DETENTION, AND REVISE ITS LAWS TO ENSURE THAT ALL DETAINEES ARE GUARANTEED AT MINIMUM THE RIGHT TO PROMPT AND EFFECTIVE JUDICIAL REVIEW OF THE LAWFULNESS AND CONDITIONS OF THEIR DETENTION; THE RIGHT TO RECEIVE AN EXPLANATION OF ONE’S RIGHTS UPON ARREST IN ONE’S OWN LANGUAGE OR SOON THEREAFTER AND TO BE INFORMED OF THE SPECIFIC, DETAILED, AND PERSONALIZED REASONS FOR THE DEPRIVATION OF LIBERTY; THE RIGHT OF IMMEDIATE ACCESS TO FAMILY, LEGAL COUNSEL, AND A MEDICAL OFFICER; AND THE RIGHT TO BE RELEASED AND SEEK COMPENSATION IF THE DETENTION IS ARBITRARY OR UNLAWFUL.

Israel's second periodic report to the Human Rights Committee on the implementation of the International Covenant on Civil and Political Rights is due by June 2000.

HUMAN RIGHTS WATCH SUBMISSION TO THE HUMAN RIGHTS COMMITTEE

13 July 1998

TO: UNITED NATIONS HUMAN RIGHTS COMMITTEE
FR: HUMAN RIGHTS WATCH
RE: ISRAEL'S REPORT TO THE COMMITTEE (CCPR/C/91/Add.13)

WHILE WELCOMING ISRAEL'S SUBMISSION TO THE HUMAN RIGHTS COMMITTEE, HUMAN RIGHTS WATCH WISHES TO DRAW THE COMMITTEE MEMBERS'S ATTENTION TO SEVERAL MAJOR SHORTCOMINGS IN THE REPORT. IN PARTICULAR, ISRAEL'S SUBMISSION FAILS TO REPORT ON ALL THE AREAS UNDER ITS JURISDICTION, LACKS SUFFICIENT DETAIL ON THE RESTRICTIONS IMPOSED BY LAW OR PRACTICE ON THE ENJOYMENT OF THE RIGHTS SPECIFIED IN THE COVENANT, AND AT TIMES MISREPRESENTS ISRAELI PRACTICE. IN LIGHT OF THESE VERY SERIOUS SHORTCOMINGS, HUMAN RIGHTS WATCH BELIEVES THAT ISRAEL'S SUBMISSION FALLS SUFFICIENTLY SHORT OF THE COMMITTEE'S GUIDELINES FOR THE FORM AND CONTENT OF INITIAL REPORTS TO JUSTIFY A REQUEST FOR ISRAEL TO PROVIDE ADDITIONAL INFORMATION PRIOR TO ITS NEXT PERIODIC REPORT.

THE DISCUSSION THAT FOLLOWS IS INTENDED TO BE ILLUSTRATIVE OF THE REPORT'S SHORTCOMINGS, AND DOES NOT PRETEND TO BE A COMPREHENSIVE REBUTTAL OF ISRAEL'S ASSERTIONS. OTHER INTERNATIONAL, PALESTINIAN, AND ISRAELI NONGOVERNMENTAL ORGANIZATIONS ADDRESS EQUALLY IMPORTANT SHORTCOMINGS IN THEIR SUBMISSIONS.

JURISDICTION OVER OCCUPIED TERRITORY

ARTICLE 2(1) OF THE COVENANT REQUIRES A STATE PARTY TO RESPECT AND ENSURE RIGHTS "TO ALL INDIVIDUALS WITHIN ITS TERRITORY AND SUBJECT TO ITS JURISDICTION." NOTWITHSTANDING THE CONJUNCTIVE FORMULATION OF THE STATE'S RESPONSIBILITY, THE HUMAN RIGHTS COMMITTEE HAS INTERPRETED THIS SCOPE CLAUSE DISJUNCTIVELY TO APPLY TO PERSONS EITHER WITHIN THE STATE'S TERRITORY OR OTHERWISE SUBJECT TO ITS JURISDICTION. AMONG THE COMMITTEE'S DECISIONS WITH REGARD TO URUGUAY'S VIOLATIONS OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS (ICCPR) ARE THE DECISION THAT PERSONS WHO HAD FLED ABROAD ARE NOT PREVENTED BY ARTICLE 2(1) FROM SUBMITTING INDIVIDUAL COMMUNICATIONS TO THE COMMITTEE;¹ THE DECISION THAT STATES PARTIES ARE RESPONSIBLE FOR VIOLATIONS BY ITS FOREIGN DIPLOMATIC REPRESENTATIVES;² AND THE DECISION THAT COMMUNICATIONS FROM PERSONS WHO HAD BEEN KIDNAPED BY URUGUAYAN AGENTS OUTSIDE OF URUGUAY WERE ADMISSIBLE, ON THE GROUNDS THAT STATES PARTIES ARE RESPONSIBLE FOR ACTIONS OF THEIR AGENTS ON FOREIGN TERRITORIES.³

¹SEE CARMEN AMENDOLA MASSIOFFI AND GRACIELA BARITUSSIO, COMMUNICATION NO. 25/1979, ADOPTED 26 JULY 1992, PARAS. 7.1-7.2; MIGUEL ANGEL ESTRELLA, COMMUNICATION NO. 74/1990, ADOPTED 29 MARCH 1993, PARA. 4.1; AND ANTONIO VIANA ACOSTA, COMMUNICATION NO.110/1991, ADOPTED 29 MARCH 1994, PARA. 6.

²SEE SOPHIE VIDA MARTINS, COMMUNICATION NO. 57/1979, ADOPTED 23 MARCH 1992, PARA. 7; MABEL PEREIRA MONTEIRO, COMMUNICATION NO. 106/1991, ADOPTED 31 MARCH 1993, PARA. 5; AND SAMUEL LICHTENSZTEJN, COMMUNICATION NO. 77/1990, ADOPTED 31 MARCH 1993, PARA. 6.1.

³SEE SERGIO RUBEN LOPEZ BURGOS, COMMUNICATION NO. 52/1979, ADOPTED 29 JULY 1991, PARAS. 12.1-12.3; AND LILIAN CELIBERTI DE CASARIEGO, COMMUNICATION 56/1979, ADOPTED 29 JULY 1991, PARAS. 10.1-10.3.

With regard to Lebanon in particular, Israel's obligation to implement the covenant in the territory it occupies is further supported by the committee's previous decisions on Hong Kong. In arguing that Hong Kong's reporting obligations continue after the transfer of sovereignty to the People's Republic of China, the committee said that

in dealing with cases of dismemberment of states parties to the International Covenant on Civil and Political Rights, it had taken the view that human rights treaties devolve with territory, and that states continue to be bound by the obligations under the covenant entered into by the predecessor state. Once the people living in a territory enjoy the protection of the rights under the International Covenant on Civil and Political Rights, such protection cannot be denied to them merely by virtue of dismemberment of that territory or its coming under the sovereignty of another state or of more than one state. (CCPR/C/79/Add.69.)

Although Israel has only occupied, not acquired sovereignty over, southern Lebanon, the principle that the treaty devolves with the territory should apply when another sovereign power is in effective control, particularly when both the occupying power and the sovereign state are parties to the covenant.⁴ As recently as April 1997 the committee acknowledged that Lebanon "is not in a position to ensure that the provisions of the covenant are effectively applied and respected throughout the territory, since the authorities have no access to the southern part of the country, which remains under Israeli occupation." (CCPR/C/79/Add.79, para. 4.) The committee should not leave the population of southern Lebanon, which is entitled to respect of its rights under the covenant, without review of whether those rights are being protected.

Human Rights Watch believes that individuals within all the territories under Israel's occupation are likewise "within...its jurisdiction" and are entitled to the respect of all rights enumerated under the covenant. We note that the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT) has been interpreted by its treaty body to extend to Israel's occupied territories under Article 2 of that instrument, which requires the prevention of torture in "any territory under [the state party's] jurisdiction." During the review of Israel's second periodic report to the Committee against Torture in May 1998 the committee specifically addressed Israel's practice of administrative detention in the occupied territories, and concluded that it "should be reviewed in order to ensure its conformity with article 16." (CAT/C/SR.337; CAT/C/ISR.) The treaty body of the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) has also taken the position that Israel's obligations under that treaty extend to the territories occupied by Israel, saying during its March 1998 review of Israel's combined seventh, eighth, and ninth periodic reports that it "reiterate[d] its opinion of 1991 that the report of Israel 'should encompass the entire population under the jurisdiction of the Government of Israel' (A/46/19 para. 369). Israel is accountable for implementation of the Convention, including the reporting obligation, in all areas over which it exercises effective control." (CERD/C/304/Add. 45 para. 12.) In addition, the General Assembly, the High Commissioner for Human Rights, and many other U.N. bodies and mechanisms have also repeatedly stressed Israel's obligation to implement the Fourth Geneva Convention to the territories it occupied in 1967.

Human Rights Watch believes that Israel's obligations under the ICCPR extend to the territories under its control in the West Bank, the Gaza Strip, the Golan Heights, and South Lebanon. In failing to report to the committee on its implementation of the covenant in those territories Israel seriously misrepresents the degree of its fulfillment of its treaty obligations, as we discuss below.

Accuracy

International, Palestinian, and Israeli nongovernmental organizations (NGOs) have documented a wide range of Israeli violations of the rights guaranteed by the International Covenant on Civil and Political Rights, other international human rights treaties, and international humanitarian law. In the interest of space, Human Rights Watch will focus on only two types of violations, torture and prolonged administrative detention. We will show how Israel's report often misrepresents the extent of its violations of the covenant, both by giving insufficient information about how its laws are applied in practice, and by failing to report on the occupied territories.

⁴ Lebanon became a party to the covenant on November 3, 1972, prior to Israel's occupation of part of its territory.

HUMAN RIGHTS WATCH ENCOURAGES THE COMMITTEE TO GIVE CAREFUL CONSIDERATION TO THE DETAILED SUBMISSION ON THESE AND OTHER ISSUES BY ADALAH, AMNESTY INTERNATIONAL, THE ARAB ASSOCIATION FOR HUMAN RIGHTS, ARTICLE 19, THE ASSOCIATION FOR CIVIL RIGHTS IN ISRAEL, B'TSELEM, LAW, THE LAWYERS COMMITTEE FOR HUMAN RIGHTS, AND THE PALESTINIAN CENTER FOR HUMAN RIGHTS, AND TO CONSIDER SOLICITING ADDITIONAL INFORMATION ON ISRAELI VIOLATIONS FROM THE MANY OTHER ORGANIZATIONS WHO WERE UNABLE TO PREPARE SUBMISSIONS TO THE COMMITTEE IN THE FEW WEEKS BETWEEN THE PUBLICATION OF ISRAEL'S REPORT AND COMMITTEE MEETING.

1. Administrative Detention

ISRAEL ASSERTS THAT ITS EMERGENCY REGULATIONS ONLY DENY OR RESTRICT RIGHTS UNDER THE BASIC LAW: HUMAN DIGNITY AND LIBERTY "FOR A PROPER PURPOSE AND FOR A PERIOD AND TO AN EXTENT THAT IS NO GREATER THAN REQUIRED." (CCPR/C/91/Add.13 PARAS. 116-119.) IN FACT, ISRAEL HAS USED PROLONGED ADMINISTRATIVE DETENTION TO HOLD INDIVIDUALS HOSTAGE, AS A MEANS OF PUNISHING NON-VIOLENT POLITICAL EXPRESSION AND ACTIVITY, AND AS A SUBSTITUTE FOR BRINGING SUSPECTS TO TRIAL. ISRAEL'S USE OF ADMINISTRATIVE DETENTION MAY ALSO FACILITATE OTHER SERIOUS ABUSES, INCLUDING TORTURE, ARBITRARY ARREST, AND VIOLATIONS OF THE RIGHT TO FAIR TRIAL. FURTHERMORE, THE "ONGOING JUDICIAL REVIEW" PROVIDED FOR IN THE EMERGENCY POWERS (DETENTION) LAW OF 1979, GOVERNING ISRAEL'S USE OF ADMINISTRATIVE DETENTION INSIDE THE GREEN LINE, IS RENDERED EFFECTIVELY MEANINGLESS BY THE STATUTE'S PROVISIONS THAT REVIEW CONSIDER NOT THE FACTUAL RELIABILITY OF THE EVIDENCE, BUT WHETHER, IF FACTUAL, THE EVIDENCE WOULD BE A SUFFICIENT REASON FOR DETENTION. THE STATUTE ALSO ALLOWS THE PRESIDING JUDGE TO "ACCEPT EVIDENCE WITHOUT THE DETAINEE OR HIS REPRESENTATIVE BEING PRESENT AND WITHOUT DISCLOSING THE EVIDENCE TO THEM." (CCPR/C/91/Add.13 PARAS. 119-122.) ADMINISTRATIVE DETAINEES WHO ARE NOT RESIDENTS OF ISRAEL, THE WEST BANK, OR GAZA, HAVE A FURTHER LIMITATION OF THEIR RIGHT TO REPRESENTATION, AS THE STATUTE ALLOWS THE MINISTER OF JUSTICE TO LIMIT THE ROSTER OF LAWYERS AVAILABLE TO REPRESENT THEM TO THOSE WITH TOP SECURITY CLEARANCE. WHILE MOST ISRAELI JEWISH LAWYERS WHO APPLY ARE GIVEN THIS LEVEL OF CLEARANCE, SOME OF THE LAWYERS MOST ACTIVE IN THE REPRESENTATION OF PALESTINIAN SECURITY DETAINEES, INCLUDING TAMAR PELLEG-SRYCK, ANDRE ROSENTHAL, AND LEA TSELM, HAVE BEEN REFUSED IT, AND ONLY TWO PALESTINIAN LAWYERS HAVE RECEIVED IT.

IN A NUMBER OF CASES ISRAEL HAS ADMITTED TO USING THE DETENTION LAW TO HOLD LEBANESE NATIONALS AS "BARGAINING CHIPS" — I.E. HOSTAGES — TO SECURE THE RELEASE OF ISRAELI SERVICEMEN, A PRACTICE HUMAN RIGHTS WATCH DOCUMENTED IN ITS OCTOBER 1997 REPORT, "WITHOUT STATUS OR PROTECTION: LEBANESE DETAINEES IN ISRAEL." THE POLICY OF TAKING HOSTAGES WAS OFFICIALLY JUSTIFIED IN MARCH 1998, WITH THE PUBLICATION OF A FEBRUARY 1996 RULING BY THE SUPREME COURT ON THE RENEWAL OF THE ADMINISTRATIVE DETENTION OF AN UNNAMED GROUP OF AT LEAST TEN LEBANESE NATIONALS. WHILE ADMITTING THAT THEIR DETENTION "ENTAIL[S] A SEVERE VIOLATION OF HUMAN DIGNITY," THE SUPREME COURT EXPLICITLY AUTHORIZED THE HOLDING OF THE PRISONERS AS "BARGAINING CHIPS." (ADMINISTRATIVE DETENTION APPEAL 10/94, PARA.12.) PRESIDING JUSTICE BARAK ARGUED THAT "IT IS SUFFICIENT FOR ME TO SAY THAT THE DETENTION OF THE APPELLANTS, WHEN IT COMES TO ADVANCE AND PROTECT STATE SECURITY — ALTHOUGH THE APPELLANTS THEMSELVES DO NOT POSE SUCH A DANGER — IS LAWFUL DETENTION." (ADMINISTRATIVE DETENTION APPEAL 10/94, PARA. 13.)

THE DETENTION LAW PLACES NO LIMIT ON THE CUMULATIVE LENGTH OF ADMINISTRATIVE DETENTION, AND ISRAELI COURTS CONTINUE TO RENEW THE DETENTION ORDER OF THE TWENTY-ONE LEBANESE ADMINISTRATIVE DETAINEES KNOWN TO BE IN CUSTODY. THE MOST RECENT SIX MONTH RENEWAL TOOK PLACE ON APRIL 20, 1998. ELEVEN OF THE DETAINEES WERE ORIGINALLY TRIED AND SENTENCED IN MILITARY COURTS IN ISRAEL AFTER HAVING BEEN ARRESTED BY SOUTH LEBANESE ARMY AND/OR ISRAELI DEFENSE FORCE (IDF) IN SOUTH LEBANON. THEY HAVE BEEN HELD AS ADMINISTRATIVE DETAINEES BETWEEN FOUR AND TEN YEARS AFTER COMPLETING THEIR SENTENCES. THE OTHER TEN DETAINEES WERE CAPTURED BY IDF OR LEBANESE MILITIA IN 1987, 1989, AND 1994, AND HAVE NEVER BEEN BROUGHT TO TRIAL. TWO OF THESE DETAINEES, MUSTAFA AL-DIRANI AND SHAYKH 'ABD AL-KARIM OBEID, ARE HELD AT A SECRET SITE AND HAVE BEEN DENIED VISITS BY THE INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC). NONE OF THE TWENTY-ONE WERE AMONG THOSE LEBANESE ISRAEL RELEASED ON JUNE 25 AND 26, 1998 IN A DEAL ARRANGED BY THE ICRC. IN THAT EXCHANGE ISRAEL RECEIVED THE REMAINS OF TAMAR ILYA, AN ISRAELI SOLDIER KILLED IN AN ISRAELI RAID ON SOUTH LEBANON IN SEPTEMBER 1997, IN RETURN FOR THE RELEASE OF TEN LEBANESE PRISONERS HELD INSIDE ISRAEL, FIFTY LEBANESE DETAINEES HELD AT THE AL-KHIYAM DETENTION CENTER IN SOUTH LEBANON, AND THE BODIES OF ANOTHER FORTY LEBANESE WHOSE CORPSES HAD BEEN TAKEN TO ISRAEL AFTER THEIR DEATHS IN CLASHES IN SOUTH LEBANON. ONE OF THE DETAINEES CAPTURED IN 1987, GHASSAN AL-DIRANI, WAS ORDERED RELEASED BY AN ISRAELI COURT ON JUNE 28, 1998, BUT EXECUTION OF THE COURT ORDER HAS BEEN DELAYED FOR AN ADDITIONAL THIRTY DAYS TO GIVE THE STATE TIME TO APPEAL. ISRAEL SUCCESSFULLY APPEALED A 1997 COURT ORDER TO RELEASE AL-DIRANI.

THE VAST MAJORITY OF ISRAEL'S ADMINISTRATIVE DETENTION ORDERS ARE NOT REGULATED BY THE DETENTION LAW, BUT ARE CARRIED OUT IN THE WEST BANK UNDER MILITARY ORDER 1229 OF 1988, AND IN GAZA UNDER MILITARY ORDER 941 OF 1988. UNLIKE THE DETENTION LAW, THESE MILITARY ORDERS DO NOT REQUIRE JUDICIAL REVIEW OF AN ADMINISTRATIVE DETENTION ORDER, AND SET NO MINIMUM PERIOD IN WHICH AN APPEAL MUST BE HEARD.

WHEN A DETAINEE DOES APPEAL A DETENTION ORDER, THE REVIEW IS LIMITED TO CHECKING THE LEGALITY OF THE REASONS GIVEN FOR THE DETENTION, AND DETAINEES ARE REGULARLY DENIED ACCESS TO VIRTUALLY ALL THE EVIDENCE AGAINST THEM.

HUMAN RIGHTS WATCH BELIEVES THAT ADMINISTRATIVE DETENTION UNDER THE MILITARY ORDERS IS FREQUENTLY USED TO DETAIN INDIVIDUALS THAT ISRAEL DOES NOT WISH TO BRING TO TRIAL, EITHER BECAUSE THE AVAILABLE EVIDENCE IS BELOW THE THRESHOLD FOR ADMISSION IN COURT, OR BECAUSE IT WOULD REVEAL CONFIDENTIAL SOURCES. THE ISRAELI HUMAN RIGHTS GROUP B'TSELEM, IN ITS JULY 1997 REPORT ON ISRAEL'S ADMINISTRATIVE DETENTION PRACTICES, DOCUMENTED NUMEROUS CASES WHERE ADMINISTRATIVE DETENTION WAS SHOWN TO HAVE BEEN USED TO PUNISH NONVIOLENT POLITICAL ACTIVITY AND THE EXPRESSION OF POLITICAL OPINIONS. DETAINEES WERE ALSO DENIED ACCESS TO THE EVIDENCE AGAINST THEM IN ALMOST ALL THE CASES IT REVIEWED.

PRESSURE BY PALESTINIAN, ISRAELI, AND INTERNATIONAL NGOs AND OTHERS HAS LED TO A DECLINE IN THE NUMBER OF LONG-TERM PALESTINIAN ADMINISTRATIVE DETAINEES, BUT THIS TREND HAS NOT AFFECTED THE LEBANESE DETAINEES HELD AS HOSTAGES, NOR DOES IT SEEM TO HAVE HAD MUCH EFFECT ON SHORTER-TERM DETENTIONS. IN 1997 AT LEAST 1,900 ADMINISTRATIVE DETENTION ORDERS WERE SERVED, AND AS OF JUNE 1999 AN ESTIMATED ONE HUNDRED INDIVIDUALS STILL REMAIN IN CUSTODY. THESE FIGURES DO NOT INCLUDE THE APPROXIMATELY ONE HUNDRED LEBANESE NATIONALS WHO REMAIN IN CUSTODY WITHOUT CHARGE OR TRIAL AT THE AL-KHIYAM DETENTION CENTER IN THE SOUTH LEBANON ZONE UNDER ISRAELI CONTROL. ISRAEL'S EFFECTIVE CONTROL OF SOUTH LEBANON, DETAINEES' ACCOUNTS OF INTERROGATION BY ISRAELI OFFICERS WHILE IN CUSTODY AT AL-KHIYAM, AND THE INCLUSION OF FIFTY AL-KHIYAM DETAINEES IN THE JUNE 25 AND 26, 1999 PRISONER EXCHANGE ALL SUPPORT HUMAN RIGHTS WATCH'S POSITION THAT ISRAEL BEARS RESPONSIBILITY FOR THE SITUATION OF DETAINEES AT AL-KHIYAM.

WHETHER UNDER THE DETENTION LAW OR MILITARY ORDERS, PROLONGED ADMINISTRATIVE DETENTIONS WITHOUT CHARGE OR TRIAL, OFTEN IN HARSH CONDITIONS, CONSTITUTE ARBITRARY DETENTION AND AS SUCH ARE A VIOLATION OF ARTICLE 9 OF THE COVENANT. ISRAEL HAS ANNOUNCED ITS DEROGATION FROM ITS ARTICLE 9 OBLIGATIONS, ON THE BASIS OF THE PROCEDURE ALLOWED FOR IN ARTICLE 4. HOWEVER, ARTICLE 4 REQUIRES THAT STATES PARTIES DEROGATING FROM THEIR OBLIGATIONS UNDER THE COVENANT ONLY TAKE SUCH MEASURES "TO THE EXTENT STRICTLY REQUIRED BY THE EMERGENCIES OF THE SITUATION" AND THE COMMITTEE HAS FURTHER CLARIFIED THAT IT CONSIDERS SUCH MEASURES TO BE "OF AN EXCEPTIONAL AND TEMPORARY NATURE." (GENERAL COMMENT 5/13 OF 1981, PARA. 3.) EVEN IF THE COMMITTEE WERE TO ACCEPT THAT A STATE OF EMERGENCY IN EXISTENCE FOR FIFTY YEARS AND A DETENTION LAW IN USE FOR NINETEEN YEARS CAN BE CONSIDERED "EXCEPTIONAL AND TEMPORARY," IT MUST QUESTION THE EXTENT TO WHICH ISRAEL'S USE OF ADMINISTRATIVE DETENTION IS "STRICTLY REQUIRED BY THE EMERGENCIES OF THE SITUATION," KNOWING THAT IN SEVERAL CASES ISRAEL HAS ACKNOWLEDGED THAT ITS DECISION TO DETAIN INDIVIDUALS ADMINISTRATIVELY IS NOT IN ANY WAY LINKED TO A THREAT POSED BY THOSE INDIVIDUALS. GIVEN THAT THE LAWS OF WAR PROHIBIT HOSTAGE-TAKING EVEN DURING WARTIME, THE COMMITTEE SHOULD NOT SANCTION HOSTAGE-TAKING UNDER HUMAN RIGHTS LAW BY ALLOWING ISRAEL TO JUSTIFY PROLONGED ADMINISTRATIVE DETENTION OF INDIVIDUALS AS LEVERAGE OVER THE ACTS OF OTHERS. FURTHERMORE, ARTICLE 4 REQUIRES THAT ANY MEASURES TAKEN BY STATES PARTIES DEROGATING FROM THEIR OBLIGATIONS UNDER THE COVENANT BE "NOT INCONSISTENT WITH THEIR OTHER OBLIGATIONS UNDER INTERNATIONAL LAW." AS A HIGH CONTRACTING PARTY TO THE FOURTH GENEVA CONVENTION, ISRAEL'S USE OF PROLONGED ADMINISTRATIVE DETENTION TO HOLD PERSONS PROTECTED UNDER THAT CONVENTION AS HOSTAGE IS A VIOLATION OF THE CONVENTION'S ABSOLUTE PROHIBITION AGAINST HOSTAGE-TAKING (ARTICLE 34), ITS PROVISION THAT DETAINEES BE HELD IN THE OCCUPIED COUNTRY (ARTICLE 76),⁵ AND THAT DETENTION BE "FOR IMPERATIVE REASONS OF SECURITY." (ARTICLE 78, EMPHASIS ADDED.)⁶

HUMAN RIGHTS WATCH BELIEVES ISRAEL'S USE OF PROLONGED ADMINISTRATIVE DETENTION AND HOSTAGE-TAKING TO BE A VIOLATION OF THE COVENANT AND OF INTERNATIONAL HUMANITARIAN LAW, OF QUESTIONABLE PROPORTIONALITY TO THE THREAT FACED BY THE STATE, AND LACKING THE "EXCEPTIONAL AND TEMPORARY NATURE" REQUIRED BY ARTICLE 4. HUMAN RIGHTS WATCH ALSO BELIEVES THAT ISRAEL'S USE OF PROLONGED ADMINISTRATIVE DETENTION MAY BE IN VIOLATION OF ARTICLE 7'S PROHIBITION OF CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT. IN MAY 1999 THE COMMITTEE AGAINST TORTURE EXPLICITLY ADDRESSED THIS POSSIBILITY, STATING IN ITS CONCLUSIONS AND RECOMMENDATIONS TO ISRAEL THAT "THE PRACTICE OF ADMINISTRATIVE DETENTION IN THE OCCUPIED TERRITORIES SHOULD BE REVIEWED IN ORDER TO ENSURE ITS CONFORMITY WITH ARTICLE 16." (CAT/C/ISR.)

⁵ ARAB DETAINEES FROM OUTSIDE THE WEST BANK AND GAZA STRIP ARE OFTEN HELD IN DETENTION CENTERS INSIDE ISRAEL, INCLUDING KISHON, ASHKELON, AND AYALON. SINCE THE 1995 CLOSURE OF THE KETZIOT DETENTION CENTER IN SOUTHERN ISRAEL, MOST DETAINEES FROM THE WEST BANK AND GAZA STRIP HAVE BEEN HELD AT MEGIDDO DETENTION CENTER IN NORTHERN ISRAEL.

⁶ THE ICRC'S COMMENTARY TO ARTICLE 78 FURTHER STRESSES THAT "SUCH MEASURES CAN ONLY BE ORDERED FOR REAL AND IMPERATIVE REASONS OF SECURITY; THEIR EXCEPTIONAL NATURE MUST BE PRESERVED."

2. TORTURE

HUMAN RIGHTS WATCH STRONGLY OBJECTS TO ISRAEL'S CHARACTERIZATION OF ITS LAW AS PROHIBITING THE USE OF CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT, AND PROVIDING EFFECTIVE OVERSIGHT OF DETENTION AND INTERROGATION PRACTICES. THE COMMITTEE AGAINST TORTURE HAS REPEATEDLY NOTED THAT ISRAEL HAS YET TO INCORPORATE IN ITS DOMESTIC LAW THE PROVISIONS OF THE CONVENTION AGAINST TORTURE, INCLUDING THE CONVENTION'S DEFINITION OF TORTURE. IN MAY 1998 THE COMMITTEE FURTHER STATED THAT ISRAEL'S USE OF HOODING, SHACKLING IN PAINFUL POSITIONS, SLEEP-DEPRIVATION, AND SHAKING OF DETAINEES DURING INTERROGATION "ARE IN CONFLICT WITH ARTICLES 1, 2 AND 16 OF THE CONVENTION AND SHOULD CEASE IMMEDIATELY." THE INTERROGATION PROCEDURES SPECIFIED BY THE COMMITTEE ARE BELIEVED TO BE AMONG THOSE PERMITTED BY ISRAEL'S SECRET "LANDAU RULES," AND THE COMMITTEE ALSO RECOMMENDED THAT THOSE GUIDELINES "SHOULD IN ANY EVENT BE PUBLISHED IN FULL." (CAT/C/ISR.) AT LEAST ONE DETAINEE, 'ABD AL-SAMAD HARIZAT, IS BELIEVED TO HAVE DIED AS A RESULT OF SHAKING DURING INTERROGATION.

IN ADDITION TO ISRAEL'S FAILURE TO EXPLICITLY OUTLAW TORTURE, THE IMPACT OF THE LEGISLATION CITED IN ITS REPORT AS IMPLEMENTING ARTICLE 7 (CCPR/C/91/Add.13 PARAS. 169-174) IS EFFECTIVELY NULLIFIED BY THE STATE'S FREQUENT RECOURSE TO THE "DEFENSE OF NECESSITY" TO JUSTIFY THE USE OF TORTURE. THE NECESSITY DEFENSE IS BASED ON ARTICLE 34(11) OF THE PENAL CODE, WHICH STATES THAT

A PERSON SHALL NOT BEAR CRIMINAL LIABILITY FOR AN ACT WHICH WAS IMMEDIATELY NECESSARY IN ORDER TO SAVE THE LIFE, FREEDOM, PERSON OR PROPERTY, BE IT HIS OWN OR THAT OF ANOTHER, FROM A CONCRETE DANGER OF SEVERE HARM STEMMING FROM THE CONDITIONS EXISTING AT THE TIME OF THE ACT AND HAVING NO OTHER WAY BUT TO COMMIT IT.

ALTHOUGH ISRAELI LAW DOES ALLOW FOR JUDICIAL REVIEW OF ALLEGATIONS OF ABUSE DURING INTERROGATION (CCPR/C/91/Add.13 PARAS. 188-191), IN PRACTICE THE HIGH COURT ROUTINELY ACCEPTS THE STATE'S POSITION THAT THE USE OF PHYSICAL FORCE IN INTERROGATION IS JUSTIFIED TO OBTAIN URGENTLY NEEDED INFORMATION IN ORDER TO SAVE LIVES OR PROPERTY.

ANOTHER SERIOUS FLAW IN THE JUDICIAL REVIEW PROCESS IS THE HIGH COURT'S PRACTICE OF ACCEPTING THE USE OF PHYSICAL PRESSURE DURING INTERROGATION AS LONG AS IT DOES NOT VIOLATE ISRAELI LAW, WHILE ABSTAINING FROM RULING ON WHETHER SPECIFIC INTERROGATION PRACTICES DO IN FACT VIOLATE THE LAW. THIS UNWILLINGNESS TO RULE ON WHETHER SPECIFIC PRACTICES CONSTITUTE TORTURE IS EVIDENT EVEN IN THE TWO CASES ISRAEL CITES IN ITS REPORT. IN THE BELBAYSI CASE (CCPR/C/91/Add.13 PARA. 189) THE HIGH COURT RULED TO ANNUL AN INTERIM INJUNCTION AGAINST "THE USE OF PHYSICAL FORCE" IN INTERROGATION WITHOUT COMMENTING ON THE REQUEST BY THE APPELLANT TO EXPLICITLY EXCLUDE THE USE OF SHAKING, THEREBY IMPLYING THAT ITS USE WOULD BE CONSIDERED WITHIN THE LAW. IN THE HAMDAN CASE (CCPR/C/91/Add.13 PARA. 190) THE HIGH COURT AGAIN RULED TO ANNUL AN INTERIM INJUNCTION AGAINST THE USE OF PHYSICAL FORCE WITHOUT COMMENTING ON THE MEANS USED, SAYING THAT "NO INFORMATION HAS BEEN PROVIDED TO US REGARDING THE WAYS OF INTERROGATION WHICH THE RESPONDENT INTENDS TO PURSUE, AND WE DO NOT EXPRESS ANY OPINION REGARDING THEM."⁷ THE HIGH COURT DID FINALLY AGREE TO TAKE UP THE ISSUE OF THE LEGALITY OF SPECIFIC INTERROGATION PROCEDURES IN JANUARY 1998, BUT POSTPONED ADDITIONAL SESSIONS AFTER HEARING THE STATE'S TESTIMONY IN MAY. IN EXPLAINING THE POSTPONEMENT, ONE MEMBER OF THE HIGH COURT EXPLAINED THAT IT WAS UP TO THE KNESSET TO ENACT LEGISLATION SPECIFYING WHAT INTERROGATION METHODS WERE LEGAL.

IN RESPONSE TO THE POSITION TAKEN BY THE HIGH COURT, THE MINISTRY OF JUSTICE IS REPORTEDLY PREPARING A DRAFT AMENDMENT TO THE PREVENTION OF TERRORISM ACT (1948) WHICH WOULD EXPLICITLY ENDORSE THE USE OF PHYSICAL PRESSURE IN INTERROGATION, INCLUDING INTERROGATION PRACTICES BELIEVED TO BE ALLOWED UNDER THE CONFIDENTIAL "LANDAU RULES," WHICH THE COMMITTEE AGAINST TORTURE FOUND TO CONSTITUTE TORTURE. THE TEXT OF THE AMENDMENT IS REPORTED TO ALLOW THE USE PHYSICAL PRESSURE IN INTERROGATIONS AS LONG AS THE METHODS USED MET SECRET GUIDELINES. A SIMILAR ARTICLE WAS DROPPED FROM AN EARLIER DRAFT OF THE GENERAL SECURITY SERVICES(GSS) LAW AFTER WIDESPREAD PROTESTS FROM HUMAN RIGHTS GROUPS. THE CURRENT DRAFT OF THE GSS LAW CONTINUES TO ALLOW THE ADOPTION OF SECRET GUIDELINES FOR INTERROGATION, AND GRANTS GSS EMPLOYEES IMMUNITY FROM CRIMINAL LIABILITY IF THEY ARE ACTING "IN GOOD FAITH AND IN A REASONABLE MANNER IN THE COURSE OF CARRYING OUT THEIR DUTIES," THEREBY LESSENING THE LEGAL PROTECTIONS AGAINST TORTURE. THE BILL ALSO MAKES IT A CRIMINAL OFFENSE FOR ANY MEMBER OF THE GSS OR ITS KNESSET OVERSIGHT COMMITTEE TO DISCLOSE INFORMATION WITHOUT AUTHORIZATION.

HUMAN RIGHTS WATCH BELIEVES ISRAEL'S USE OF PHYSICAL FORCE IN INTERROGATION TO BE A VIOLATION OF ARTICLE 7 OF THE COVENANT.

⁷ HAMDAN WAS EVENTUALLY RELEASED AFTER AN ADDITIONAL TEN MONTHS IN ADMINISTRATIVE DETENTION. DESPITE THE GENERAL SECURITY SERVICE'S (GSS) ASSERTIONS THAT HAMDAN'S DETENTION AND INTERROGATION USING PHYSICAL MEANS WAS NECESSARY TO OBTAIN "EXTREMELY VITAL INFORMATION NEEDED TO SAVE LIVES AND PREVENT SERIOUS TERRORIST ATTACKS," HAMDAN WAS NOT CHARGED WITH ANY CRIMINAL OFFENCE.

HUMAN RIGHTS WATCH URGES THE HUMAN RIGHTS COMMITTEE TO:

- REQUEST ISRAEL SUBMIT INFORMATION ON ITS IMPLEMENTATION OF THE COVENANT IN THE TERRITORIES IT OCCUPIES IN THE WEST BANK, GAZA, THE GOLAN, AND SOUTH LEBANON, AS PROVIDED FOR IN ARTICLE 40 (B) OF THE COVENANT, AND RULE 70 (2) OF THE RULES OF PROCEDURE OF THE HUMAN RIGHTS COMMITTEE (CCPR/C/3/REV.5);
- CONDEMN THE PRACTICE OF ADMINISTRATIVE DETENTION OF INDIVIDUALS FOR REASONS THAT DO NOT PERTAIN TO THE DETAINEE'S SPECIFIC CASE, THAT IS, IN CIRCUMSTANCES WHERE A PERSON IS DETAINED SOLELY AS LEVERAGE OVER THE ACTS OF OTHERS; AND
- CONDEMN ISRAEL'S USE OF TORTURE DURING INTERROGATION, AND REITERATE THE COVENANT'S ABSOLUTE PROHIBITION AGAINST TORTURE.

HUMAN RIGHTS WATCH ALSO CALLS ON THE HUMAN RIGHTS COMMITTEE TO RECOMMEND TO THE STATE OF ISRAEL THAT IT:

- IMMEDIATELY END THE PRACTICE OF TORTURE, AMEND DOMESTIC LAW TO BE CONSISTENT WITH THE COVENANT'S PROHIBITION OF TORTURE, INCLUDING ADOPTING A DEFINITION OF TORTURE CONSISTENT WITH INTERNATIONAL LAW, AND MAKE PUBLIC THE GUIDELINES GOVERNING INTERROGATION PROCEDURES;
- IMMEDIATELY END THE PRACTICE OF HOLDING DETAINEES AS HOSTAGES, BOTH INSIDE ISRAEL AND IN THE TERRITORIES UNDER ITS CONTROL. PERSONS HELD AS "BARGAINING CHIPS" SHOULD BE IMMEDIATELY RELEASED;
- WHERE ISRAEL CONTINUES TO DETAIN PERSONS ADMINISTRATIVELY UNDER A DECLARED STATE OF EMERGENCY FOR REASONS SPECIFIC TO EACH INDIVIDUAL'S CASE, REVISE ITS LAWS TO ENSURE THAT SUCH DETAINEES AT A MINIMUM ARE ENTITLED TO:
 - THE RIGHT TO BE BROUGHT BEFORE A JUDICIAL OR OTHER AUTHORITY PROMPTLY AFTER ARREST;
 - THE RIGHT TO RECEIVE AN EXPLANATION OF RIGHTS UPON ARREST IN HIS OR HER OWN LANGUAGE OR SOON THEREAFTER AND TO BE INFORMED OF THE SPECIFIC, DETAILED, AND PERSONALIZED REASONS FOR THE DEPRIVATION OF LIBERTY;
 - THE RIGHT OF IMMEDIATE ACCESS TO FAMILY, LEGAL COUNSEL, AND A MEDICAL OFFICER;
 - THE RIGHT TO CHALLENGE, IN A FAIR HEARING AND PERIODICALLY IF NECESSARY, THE LAWFULNESS OF THE DETENTION AND TO BE RELEASED AND SEEK COMPENSATION IF THE DETENTION IS ARBITRARY OR UNLAWFUL;
 - THE RIGHT TO COMPLAIN TO A JUDICIAL AUTHORITY ABOUT MISTREATMENT; AND
- ENSURE THAT THESE RIGHTS ARE ADMINISTRATIVELY AND JUDICIALLY ENFORCED BY AMENDING ITS DOMESTIC LAWS TO:
 - RECOGNIZE THAT INTERNATIONAL LAW DOES NOT SANCTION INDEFINITE ADMINISTRATIVE DETENTION OF INDIVIDUALS SOLELY ON THE BASIS THAT THEY MAY BE "BARGAINING CHIPS" FOR NATIONAL SECURITY;
 - ENSURE THAT ANY INDIVIDUAL HELD UNDER MILITARY ORDERS IS ENTITLED TO PROMPT REVIEW OF AN ORDER OF DETENTION, INFORMED OF THE RIGHT TO A LAWYER'S ASSISTANCE IN MAKING SUCH A CHALLENGE, AND ENTITLED TO AN APPEAL OF AN ADVERSE DECISION WITHIN A SET AND TIMELY PERIOD.
 - ENSURE THAT JUDICIAL REVIEW OF DETENTION UNDER THE EMERGENCY POWERS (DETENTION) LAW OF 1979 REQUIRES JUDGES TO CONSIDER THE ACTUAL FACTUAL RELIABILITY OF THE EVIDENCE OFFERED TO JUSTIFY A DEPRIVATION OF LIBERTY AND TO MANDATE THE PRESENCE OF THE DETAINEE AND HIS OR HER REPRESENTATIVE DURING THE HEARING.

* * *

*Human Rights Watch
Middle East Division*

Human Rights Watch is dedicated to protecting the human rights of people around the world.

We stand with victims and activists to bring offenders to justice, to prevent discrimination, to uphold political freedom and to protect people from inhumane conduct in wartime.

We investigate and expose human rights violations and hold abusers accountable.

We challenge governments and those holding power to end abusive practices and respect international human rights law.

We enlist the public and the international community to support the cause of human rights for all.

The staff includes Kenneth Roth, executive director; Michele Alexander, development director; Reed Brody, advocacy director; Carroll Bogert, communications director; Cynthia Brown, program director; Barbara Guglielmo, finance and administration director; Jeri Laber, special advisor; Lotte Leicht, Brussels office director; Patrick Mingos, publications director; Susan Osnos, associate director; Jemera Rone, counsel; Wilder Tayler, general counsel; and Joanna Weschler, United Nations representative. Jonathan Fanton is the chair of the board. Robert L. Bernstein is the founding chair.

Its Middle East division was established in 1989 to monitor and promote the observance of internationally recognized human rights in the Middle East and North Africa. Hanny Megally is the executive director; Eric Goldstein is the research director. Joe Stork is the advocacy director; Virginia N. Sherry is associate director; Clarisa Bencomo, Elahé Sharifpour-Hicks, and Nejla Sammakia are researchers; Georgina Coptoy and Awali Samara are associates. Gary Sick is the chair of the advisory committee and Lisa Anderson and Bruce Rabb are vice chairs.

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Appendix 1

CONCLUDING OBSERVATIONS OF THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

CCPR/C/79/Add.93

Original: ENGLISH

HUMAN RIGHTS COMMITTEE
Sixty-third session

HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Concluding Observations of the Human Rights Committee

Israel

1. The Committee considered the initial report of Israel (CCPR/C/81/Add.13) at its 1675th, 1676th and 1677th meetings, held on 15 and 16 July 1998, and adopted the following concluding observations at its 1694th meeting, held on 28 July 1998.

A. Introduction

2. The Committee welcomes the initial report submitted by the Government of Israel, and notes with satisfaction that it was largely prepared in accordance with the Committee's guidelines concerning the form and contents of initial reports. The Committee, however, regrets the considerable delay in the submission of the report, which was received five years after the date on which it was due.

3. The Committee notes that the report, while providing extensive information on prevailing legislation in the field of human rights in Israel, lacks sufficient information on the implementation of the Covenant in practice and on the factors and difficulties impeding its effective implementation. This was partly rectified by the oral information provided by the delegation during the examination of the report, which enabled the Committee to embark on a frank and constructive dialogue with the State party. The Committee expresses satisfaction that the Government has widely disseminated the report among non-governmental organizations prior to its consideration by the Committee.

B. Factors and difficulties affecting the implementation of the Covenant

4. The Committee notes the security concerns in the State party, the frequent attacks on the civilian population, the problems linked to its occupation of territories and the fact that the State party is officially at war with a number of neighboring States. However, the Committee draws attention to article 4 of the Covenant, which permits no derogation from certain basic rights even in times of public emergency.

C. Positive factors

5. The Committee notes with satisfaction that Israeli society is a democratic one in which sensitive issues are openly debated and that an active non-governmental community has taken firm root. It expresses appreciation for the wide dissemination of the initial report of Israel among professionals in the justice system who work directly in matters relating to the promotion and protection of human rights and among non-governmental organizations. It welcomes indications that the inter-ministerial network of persons that have worked together on the drafting of the present report may soon be institutionalized.

6. The Committee welcomes the fact that the report includes many references to decisions of the Supreme Court upholding rights protected under the Covenant.

7. The Committee welcomes the recent establishment of the Public Defender's Office. It also welcomes efforts to implement the recommendations of the Kremnitzer Committee, which address questions of police violence, and of the Goldberg Committee regarding rules of evidence. It welcomes the progressive steps which have led to the amendment of the Criminal Code and to the establishment of the Department for Investigation of Police Misconduct within the Ministry of Justice to review complaints of maltreatment by members of the police and security forces. The Committee takes note of the responsibility of the State Comptroller's Office as Ombudsman, and would welcome further information on its activities, particularly as regards measures to combat discrimination.

8. The Committee notes with satisfaction the establishment of bodies in various ministries to address questions relating to the status of women, and particularly welcomes the operation of the Knesset Committee for the Advancement of the Status of Women. It also notes with satisfaction: the establishment of a national authority on the advancement of women with a wide range of responsibilities; the amendment of the Equal Employment Opportunities Law placing the burden of proof upon the employer in civil sexual harassment suits; and the enactment of the Equal Pay (Male and Female Employees) Law.

D. Principal subjects of concern and recommendations

9. The Committee notes with regret that, although some rights provided for in the Covenant are legally protected and promoted through the Basic Laws, municipal laws, and the jurisprudence of the courts, the Covenant has not been incorporated in Israeli law and cannot be directly invoked in the courts. It recommends early action in respect of recent legislative initiatives aimed at enhancing the enjoyment of a number of the rights provided for in the Covenant, including proposals for new draft Basic Laws on due

process rights and on freedom of expression and association. It also recommends that consideration be given to enacting further laws to give effect to any rights not already covered by Basic Laws.

10. The Committee is deeply concerned that Israel continues to deny its responsibility to fully apply the Covenant in the Occupied Territories. In this regard, the Committee points to the longstanding presence of Israel in these territories, Israel's ambiguous attitude to their future status, as well as the exercise of effective jurisdiction by Israeli security forces therein. In response to the arguments presented by the delegation, the Committee emphasizes that the applicability of rules of humanitarian law does not by itself impede the application of the Covenant or the accountability of the State under article 2, paragraph 1, for the actions of its authorities. The Committee therefore is of the view that the Covenant, under the circumstances, must be held applicable to the Occupied Territories and those areas of southern Lebanon and West Bekaa where Israel exercises effective control. The Committee requests the State party to include in its second periodic report all information relevant to the application of the Covenant in territories which it occupies.

11. The Committee expresses its deep concern at the continued state of emergency prevailing in Israel, which has been in effect since independence. It recommends that the Government review the necessity for the continued renewal of the state of emergency with a view to limiting as far as possible its scope and territorial applicability and the associated derogation of rights. In this regard, the Committee draws attention to article 4 of the Covenant, which permits no derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18, and requires that permitted derogations be limited to the extent strictly required by the exigencies of the situation.

12. The Committee expresses serious concern over deeply imbedded discriminatory social attitudes, practices and laws against Arab Israelis that have resulted in a lower standard of living compared with Jewish Israelis, as is evident in their significantly lower levels of education, access to health care, access to housing, land and employment. It notes with concern that most Arab Israelis, because they do not join the army, do not enjoy the financial benefits available to Israelis who have served in the army, including scholarships and housing loans. The Committee also expresses concern that the Arab language, though official, has not been accorded equal status in practice, and that discrimination against members of the Arab minority appears to be extensive in the private sector. In this regard, the Committee urges the State party to take steps without delay to ensure equality to Arabs and to proceed as soon as possible with the planned formulation of a draft law on discrimination in the private sector and to adopt it at an early date.

13. The Committee is concerned that Palestinians in the Occupied Territories who remain under the control of Israeli security forces do not enjoy the same rights and freedoms as Jewish settlers in those territories, in particular in regard to planning and building permits and access to land and water. The Committee is also concerned at the policies of confiscation of lands and settlement in the Occupied Territories. The Committee recommends that coordinated and targeted efforts be made to establish basic standards that are applicable equally to all persons under the jurisdiction of Israel.

14. The Committee is also concerned at the discrimination faced by Bedouins, many of whom have expressed a desire to continue to live in settlements in the Negev which are not recognised by the Israeli Government and which are not provided with basic infrastructure and essential services. The Committee

recommends that members of Bedouin communities should be given equality of treatment with Jewish settlements in the same region, many of which are also dispersed and populated by small numbers of people.

15. The Committee expresses concern over the situation of women, who despite the advances noted in paragraph 9, continue to face discrimination in many aspects of life, including in military service and in religious institutions, and that they are underrepresented in the conduct of public affairs. The Committee notes that no clear plan of action exists which addresses the situation of the most disadvantaged group of women, namely those belonging to the Arab minority. The Committee recommends that targeted measures be considered to accelerate progress towards equality, and in particular for Arab women.

16. The Committee regrets that women brought to Israel for purposes of prostitution, many of whom are brought as a result of false pretenses or coercion, are not protected as victims of trafficking but are likely to bear the penalties of their illegal presence in Israel by deportation. Such an approach to this problem effectively prevents these women from pursuing a remedy for the violation of their rights under article 8 of the Covenant. The Committee recommends that serious efforts be made to seek out and punish the traffickers, to institute rehabilitation programmes for the victims and to ensure that they are able to pursue legal remedies against the perpetrators.

17. With respect to article 6 of the Covenant, the Committee is concerned about the number of Palestinians who have been killed by the security forces, as well as all persons who have been the victims of terrorist attacks. The Committee expresses concern over the use of rubber-coated metal bullets by the security forces in the Occupied Territories in dispersing demonstrations. The use of this type of rubber bullets is reported to have killed many Palestinians, including children. The Committee urges the State party to enforce rigorously the strict limitations on the operational rules as to the use of firearms and the use of rubber bullets against unarmed civilians. It requests that the next periodic report include precise information on the number of deaths, including those caused by rubber bullets, the number of complaints arising from their use and the number of defense and security personnel that have been punished or disciplined as a result.

18. The Committee regrets the introduction by the Government of a draft law which would deny victims compensation for excesses committed by members of the security forces against Palestinian residents of the Occupied Territories. It requests that detailed information on these matters be included in the next periodic report of the State party.

19. The Committee is deeply concerned that under the guidelines for the conduct of interrogation of suspected terrorists authority may be given to the security service to use "moderate physical pressure" to obtain information considered crucial to the "protection of life". The Committee notes that the part of the report of the Landau Commission that lists and describes authorised methods of applying pressure remains classified. The Committee notes also the admission by the State party delegation that the methods of handcuffing, hooding, shaking and sleep deprivation have been and continue to be used as interrogation techniques, either alone or in combination. The Committee is of the view that the guidelines can give rise to abuse and that the use of these methods constitutes a violation of article 7 of the Covenant in any circumstances. The Committee stresses that article 7 of the Covenant is a non-derogable prohibition of torture and all forms of cruel, inhuman or degrading treatment or punishment. The Committee urges the State party to cease using the methods referred to above. If legislation is to be enacted for the purpose of

authorising interrogation techniques, such a law should explicitly prohibit all forms of treatment prohibited by article 7.

20. Further in relation to article 7 of the Covenant, the Committee notes that prisoners may be segregated in Israel as a preventive measure for the protection of security, the maintenance of order or to guarantee the safety of the prisoner. Noting that segregation involves substantial isolation and may be extended over long periods of time, the Committee recalls its General Comment 20(44) in which it noted that prolonged solitary confinement of a detained or imprisoned person may violate article 7. The Committee recommends that efforts be made to avoid prolonged isolation of segregated prisoners.

21. The Committee remains concerned that despite the reduction in the number of persons held in administrative detention on security grounds, persons may still be held for long and apparently indefinite periods of time in custody without trial. It is also concerned that Palestinians detained by Israeli military order in the Occupied Territories do not have the same rights to judicial review as persons detained in Israel under ordinary law. A specific concern of the Committee is that at least some of the persons kept in administrative detention for reasons of State security (and in particular some Lebanese) do not personally threaten State security but are kept as “bargaining chips” in order to promote negotiations with other parties on releasing detained Israeli soldiers or the bodies of deceased soldiers. The Committee considers the present application of administrative detention to be incompatible with articles 7 and 16 of the Covenant, neither of which allow for derogation in times of public emergency. The Committee takes due note that Israel has derogated from article 9 of the Covenant. The Committee stresses, however, that a State party may not depart from the requirement of effective judicial review of detention. The Committee recommends that the application of detention be brought within the strict requirements of the Covenant and that effective judicial review be made mandatory.

22. While acknowledging the security concerns that have led to restrictions on movement, the Committee notes with regret the continued impediments posed on movement, which affect mostly Palestinians travelling in and between East Jerusalem, the Gaza Strip and the West Bank, and which have grave consequences affecting nearly all areas of Palestinian life. The Committee considers this to raise serious issues under article 12. In regard to persons in these areas, the Committee urges Israel to respect the right to freedom of movement provided for under article 12, including the right to return to one’s country.

23. In regard to Palestinians who are resident in East Jerusalem, the Committee is concerned that the increasingly restrictive conditions for maintaining the right to permanent residence, the denial of requests for family reunification and the difficulty experienced by non-Jews in obtaining building permits and accommodation have resulted in increasing numbers being forced to move to the Occupied Territories. The Committee expresses its profound concern at the effect of the unpublished directive of the Ministry of the Interior, under which Palestinians may lose their right to live in the city if they cannot prove that East Jerusalem has been their “centre of life” for the past seven years. The Committee notes that this policy is being applied retroactively to both Palestinians who live abroad and to those who live in the West Bank or in nearby Jerusalem suburbs, but not to Israeli Jews or to foreign Jews who are permanent residents of East Jerusalem. The Committee recommends that the rules and procedures relating to permanent residency status be applied without discrimination.

24. The Committee deplores the demolition of Arab homes as a means of punishment. It also deplores the practice of demolitions, in part or in whole, of “illegally” constructed Arab homes. The Committee notes with regret the difficulties imposed on Palestinian families seeking to obtain legitimate construction permits.

The Committee considers the demolition of homes to conflict directly with the obligation of the State party to ensure without discrimination the right not to be subjected to arbitrary interference with one’s home (article 17), the freedom to choose one’s residence (article 12) and equality of all persons before the law and equal protection of the law (article 26).

25. The Committee is also concerned that the Israel Lands Administration (ILA), responsible for the management of 93% of land in Israel, includes no Arab members and that while the ILA has leased or transferred land for the development of Jewish towns and settlements, few Arab localities have been established in this way until recent years. The Committee recommends that urgent steps be taken to overcome the considerable inequality and discrimination which remains in regard to land and housing.

26. The Committee regrets that the authorities appear to be placing obstacles in the way of family reunion in the case of marriages between an Israeli citizen and a non-citizen who is not Jewish (and therefore not entitled to enter under the Law of Return). These obstacles, which include long waiting periods for entry permits, a “probation” period of over five years’ residence to establish that the marriage is genuine and a further waiting period for citizenship, are applied even more rigorously in the case of Arab citizens, particularly those who marry persons resident in the Occupied Territories. The Committee considers such obstacles to be incompatible with articles 17 and 23. It is recommended that the Government reconsider its policies with a view toward facilitating family reunion of all citizens and permanent residents.

27. The Committee is concerned that Arab women citizens of Israel have in some cases been required to relinquish their citizenship should they marry a Palestinian and apply for residence in the Occupied Territories. It welcomes the Israeli Government’s response that this policy no longer applies and recommends that those already affected be made fully aware of the relevant legal provisions and that their status be restored.

28. The Committee is concerned at the preference given to the Jewish religion in the allocation of funding for religious bodies, to the detriment of Muslims, Christians, Druze and other religious groups. The Committee recommends that regulations and criteria for funding be published and applied to all religious groups on an equal basis.

29. The Committee is concerned that the application of religious law to determine matters of personal status, including marriage and divorce, and the absence of provision for civil marriage effectively denies some persons the right to marry in Israel, and results in inequality between men and women. It is also concerned that the minimum age of marriage for girls, fixed by law at 17, may be reduced by the religious courts, and that no minimum age is fixed for men. The lack of provision for civil burial is also a matter of concern. The Committee urges early implementation of measures currently under consideration to facilitate civil marriages and civil burial for those that do not adhere to a religion. It recommends that the State party take into account international standards for the age of majority in its current review of the minimum marriageable age for men and women.

30. The Committee recommends that the Government consider ratifying the Optional Protocol to the Covenant.

31. The Committee requests that the Government of Israel submit its second periodic report, which was due by June 2000. It also requests that the next report include information on the implementation of the Covenant in all lands over which Israel exercises effective control during the period covered by the report.

32. The Committee recommends the publication and distribution of the concluding observations of the Committee to public bodies, media agencies, and non-governmental organisations working in the area of human rights.

Appendix 2

THE UNITED NATIONS HUMAN RIGHTS COMMITTEE

The International Covenant on Civil and Political Rights and its first Optional Protocol allowing individuals to submit complaints to the Human Rights Committee were adopted by the General Assembly on December 16, 1966 and entered into force on March 23, 1976. The Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, was adopted on December 15, 1989 and entered into force on July 11, 1991. Israel is one of 140 states party to the covenant, having ratified it on October 3, 1991. It has not yet joined the ninety-two states party to the First Optional Protocol, nor the thirty-one states party to the Second Optional Protocol. Israel's initial report on its implementation of the covenant, which was submitted on April 9, 1998, was due in January 1993. Its second periodic report is due June 2000.

The Human Rights Committee was established to monitor the implementation of the covenant and the protocols to the covenant by the states parties. It is composed of eighteen independent experts who are, in the words of the covenant, "persons of high moral character and recognized competence in the field of human rights." Committee members serve in their personal capacity, and are elected for a four year term by a secret ballot of the states party to the covenant. Elections for half the membership are held every two years, during the annual session of the General Assembly. During the sixty-third session, the committee members were Nisuke Ando (Japan); Prafullachandra Natwarlal Bhagwati (India); Thomas Buergenthal (United States of America); Christine Chanet (France); Omran El Shafei (Egypt); Elizabeth Evatt (Australia); Pilar Gaitan de Pombo (Colombia); Eckart Klein (Germany); David Kretzmer (Israel); Rajsoomer Lallah (Mauritius); John Mark Alexander Lord Colville (United Kingdom of Great Britain and Northern Ireland); Cecilia Medina Quiroga (Chile); Fausto Pocar (Italy); Julio Prado Vallejo (Ecuador); Martin Scheinin (Finland); Danilo Türk (Slovenia); Maxwell Yalden (Canada); and Abdallah Zakhia (Lebanon).

The committee convenes three times a year for sessions of three weeks' duration, normally in March at United Nations headquarters in New York and in July and November at the United Nations Office in Geneva. During these sessions the committee receives and examines reports by states parties to the covenant, issues General Comments on the scope and meaning of provisions of the covenant, and under certain conditions, receives communications from individuals and from States parties alleging violations of the covenant.

States parties must submit reports on the measures they have adopted which give effect to the rights recognized in the covenant and on the progress made in the enjoyment of those rights. The first report is due within one year of entry into force of the covenant, and subsequent reports are due every five years. The committee examines the reports in public meetings, through a dialogue with representatives of each state party whose report is under consideration. On the final day of the session, the committee adopts concluding observations summarizing its main concerns and making appropriate suggestions and recommendations to the state party. Although only members of the committee and representatives of the relevant state party may take part in the dialogue, nongovernmental organizations are encouraged to submit written information or

reports to the committee. The Committee also submits to the general assembly an annual report on its activities.

Copies of state party reports to the Human Rights Committee, as well as the committee's Concluding Observations, Summary Records of reviews of state party reports, and General Comments on the covenant, can be obtained on the Internet at:

<http://www.unhchr.ch/tbs/doc.nsf>

or by writing to:

Office of the High Commissioner for Human Rights
Palais des Nations 8-14, avenue de la Paix 1211
Geneva 10, Switzerland

Appendix 3

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Adopted by the General Assembly of the United Nations on December 16, 1966; entered into force Mar. 23, 1976, in accordance with Article 49, for all provisions except those of Article 41; March 28 1979 for the provisions of Article 41 (Human Rights Committee), in accordance with paragraph of the said Article 41.

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying civil and political freedom and freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his civil and political rights, as well as his economic, social and cultural rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article I

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.
2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.
3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

2. Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such legislative or other measures as may be necessary to give effect to the rights recognized in the present Covenant.

3. Each State Party to the present Covenant undertakes:

(a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;

(b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;

(c) To ensure that the competent authorities shall enforce such remedies when granted.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the present Covenant.

Article 4

1. In time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed, the States Parties to the present Covenant may take measures derogating from their obligations under the present Covenant to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, color, sex, language, religion or social origin.

2. No derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18 may be made under this provision.

3. Any State Party to the present Covenant availing itself of the right of derogation shall immediately inform the other States Parties to the present Covenant, through the intermediary of the Secretary-General of the United Nations, of the provisions from which it has derogated and of the reasons by which it was actuated. A further communication shall be made, through the same intermediary, on the date on which it terminates such derogation.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.

2. There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

3. When deprivation of life constitutes the crime of genocide, it is understood that nothing in this article shall authorize any State Party to the present Covenant to derogate in any way from any obligation assumed under the provisions of the Convention on the Prevention and Punishment of the Crime of Genocide.

4. Anyone sentenced to death shall have the right to seek pardon or commutation of the sentence. Amnesty, pardon or commutation of the sentence of death may be granted in all cases.

5. Sentence of death shall not be imposed for crimes committed by persons below eighteen years of age and shall not be carried out on pregnant women.

6. Nothing in this article shall be invoked to delay or to prevent the abolition of capital punishment by any State Party to the present Covenant.

Article 7

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

Article 8

1. No one shall be held in slavery; slavery and the slave-trade in all their forms shall be prohibited.

2. No one shall be held in servitude.

3. (a) No one shall be required to perform forced or compulsory labor;

(b) Paragraph 3 (a) shall not be held to preclude, in countries where imprisonment with hard labor may be imposed as a punishment for a crime, the performance of hard labor in pursuance of a sentence to such punishment by a competent court;

(c) For the purpose of this paragraph the term "forced or compulsory labor" shall not include:

(I) Any work or service, not referred to in subparagraph (b), normally required of a person who is under detention in consequence of a lawful order of a court, or of a person during conditional release from such detention;

(ii) Any service of a military character and, in countries where conscientious objection is recognized, any national service required by law of conscientious objectors;

(iii) Any service exacted in cases of emergency or calamity threatening the life or well-being of the community;

(iv) Any work or service which forms part of normal civil obligations.

Article 9

1. Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

2. Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

3. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement.

4. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.

5. Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

Article 10

1. All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.

2. (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons;

(b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.

3. The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.

Article 11

No one shall be imprisoned merely on the ground of inability to fulfil a contractual obligation.

Article 12

1. Everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.
2. Everyone shall be free to leave any country, including his own.
3. The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (ordre public), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant.
4. No one shall be arbitrarily deprived of the right to enter his own country.

Article 13

An alien lawfully in the territory of a State Party to the present Covenant may be expelled therefrom only in pursuance of a decision reached in accordance with law and shall, except where compelling reasons of national security otherwise require, be allowed to submit the reasons against his expulsion and to have his case reviewed by, and be represented for the purpose before, the competent authority or a person or persons especially designated by the competent authority.

Article 14

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law. The press and the public may be excluded from all or part of a trial for reasons of morals, public order (ordre public) or national security in a democratic society, or when the interest of the private lives of the parties so requires, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice; but any judgement rendered in a criminal case or in a suit at law shall be made public except where the interest of juvenile persons otherwise requires or the proceedings concern matrimonial disputes or the guardianship of children.
2. Everyone charged with a criminal offense shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
 - (a) To be informed promptly and in detail in a language which he understands of the nature and cause of the charge against him;
 - (b) To have adequate time and facilities for the preparation of his defense and to communicate with counsel of his own choosing;
 - (c) To be tried without undue delay;
 - (d) To be tried in his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of this right; and to have legal assistance assigned to him, in any case where the interests of justice so require, and without payment by him in any such case if he does not have sufficient means to pay for it;

(e) To examine, or have examined, the witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(f) To have the free assistance of an interpreter if he cannot understand or speak the language used in court;

(g) Not to be compelled to testify against himself or to confess guilt.

4. In the case of juvenile persons, the procedure shall be such as will take account of their age and the desirability of promoting their rehabilitation.

5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

6. When a person has by a final decision been convicted of a criminal offense and when subsequently his conviction has been reversed or he has been pardoned on the ground that a new or newly discovered fact shows conclusively that there has been a miscarriage of justice, the person who has suffered punishment as a result of such conviction shall be compensated according to law, unless it is proved that the non-disclosure of the unknown fact in time is wholly or partly attributable to him.

7. No one shall be liable to be tried or punished again for an offense for which he has already been finally convicted or acquitted in accordance with the law and penal procedure of each country.

Article 15

1. No one shall be held guilty of any criminal offense on account of any act or omission which did not constitute a criminal offense, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offense was committed. If, subsequent to the commission of the offense, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.

2. Nothing in this article shall prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognized by the community of nations.

Article 16

Everyone shall have the right to recognition everywhere as a person before the law.

Article 17

1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honor and reputation.

2. Everyone has the right to the protection of the law against such interference or attacks.

Article 18

1. Everyone shall have the right to freedom of thought, conscience and religion. This right shall include freedom to have or to adopt a religion or belief of his choice, and freedom, either individually or in community with others and in public or private, to manifest his religion or belief in worship, observance, practice and teaching.
2. No one shall be subject to coercion which would impair his freedom to have or to adopt a religion or belief of his choice.
3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health, or morals or the fundamental rights and freedoms of others.
4. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to ensure the religious and moral education of their children in conformity with their own convictions.

Article 19

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 - (a) For respect of the rights or reputations of others;
 - (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 20

1. Any propaganda for war shall be prohibited by law.
2. Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law.

Article 21

The right of peaceful assembly shall be recognized. No restrictions may be placed on the exercise of this right other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 22

1. Everyone shall have the right to freedom of association with others, including the right to form and join trade unions for the protection of his interests.

2. No restrictions may be placed on the exercise of this right other than those which are prescribed by law and which are necessary in a democratic society in the interests of national security or public safety, public order (ordre public), the protection of public health or morals or the protection of the rights and freedoms of others. This article shall not prevent the imposition of lawful restrictions on members of the armed forces and of the police in their exercise of this right.

3. Nothing in this article shall authorize States Parties to the International Labor Organization Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or to apply the law in such a manner as to prejudice, the guarantees provided for in that Convention.

Article 23

1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.
2. The right of men and women of marriageable age to marry and to found a family shall be recognized.
3. No marriage shall be entered into without the free and full consent of the intending spouses.
4. States Parties to the present Covenant shall take appropriate steps to ensure equality of rights and responsibilities of spouses as to marriage, during marriage and at its dissolution. In the case of dissolution, provision shall be made for the necessary protection of any children.

Article 24

1. Every child shall have, without any discrimination as to race, color, sex, language, religion, national or social origin, property or birth, the right to such measures of protection as are required by his status as a minor, on the part of his family, society and the State.
2. Every child shall be registered immediately after birth and shall have a name.
3. Every child has the right to acquire a nationality.

Article 25

Every citizen shall have the right and the opportunity, without any of the distinctions mentioned in article 2 and without unreasonable restrictions:

- (a) To take part in the conduct of public affairs, directly or through freely chosen representatives;
- (b) To vote and to be elected at genuine periodic elections which shall be by universal and equal suffrage and shall be held by secret ballot, guaranteeing the free expression of the will of the electors;
- (c) To have access, on general terms of equality, to public service in his country.

Article 26

All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, color, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

Article 27

In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practice their own religion, or to use their own language.

PART IV

Article 28

1. There shall be established a Human Rights Committee (hereafter referred to in the present Covenant as the Committee). It shall consist of eighteen members and shall carry out the functions hereinafter provided.
2. The Committee shall be composed of nationals of the States Parties to the present Covenant who shall be persons of high moral character and recognized competence in the field of human rights, consideration being given to the usefulness of the participation of some persons having legal experience.
3. The members of the Committee shall be elected and shall serve in their personal capacity.

Article 29

1. The members of the Committee shall be elected by secret ballot from a list of persons possessing the qualifications prescribed in article 28 and nominated for the purpose by the States Parties to the present Covenant.
2. Each State Party to the present Covenant may nominate not more than two persons. These persons shall be nationals of the nominating State.
3. A person shall be eligible for renomination.

Article 30

1. The initial election shall be held no later than six months after the date of the entry into force of the present Covenant.
2. At least four months before the date of each election to the Committee, other than an election to fill a vacancy declared in accordance with article 34, the Secretary-General of the United Nations shall address a written invitation to the States Parties to the present Covenant to submit their nominations for membership of the Committee within three months.
3. The Secretary-General of the United Nations shall prepare a list in alphabetical order of all the persons thus nominated, with an indication of the States Parties which have nominated them, and shall submit it to the States Parties to the present Covenant no later than one month before the date of each election.
4. Elections of the members of the Committee shall be held at a meeting of the States Parties to the present Covenant convened by the Secretary General of the United Nations at the Headquarters of the United Nations. At that meeting, for which two thirds of the States Parties to the present Covenant shall constitute a quorum, the persons elected to the

Committee shall be those nominees who obtain the largest number of votes and an absolute majority of the votes of the representatives of States Parties present and voting.

Article 31

1. The Committee may not include more than one national of the same State.
2. In the election of the Committee, consideration shall be given to equitable geographical distribution of membership and to the representation of the different forms of civilization and of the principal legal systems.

Article 32

1. The members of the Committee shall be elected for a term of four years. They shall be eligible for re-election if renominated. However, the terms of nine of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these nine members shall be chosen by lot by the Chairman of the meeting referred to in article 30, paragraph 4.
2. Elections at the expiry of office shall be held in accordance with the preceding articles of this part of the present Covenant.

Article 33

1. If, in the unanimous opinion of the other members, a member of the Committee has ceased to carry out his functions for any cause other than absence of a temporary character, the Chairman of the Committee shall notify the Secretary-General of the United Nations, who shall then declare the seat of that member to be vacant.
2. In the event of the death or the resignation of a member of the Committee, the Chairman shall immediately notify the Secretary-General of the United Nations, who shall declare the seat vacant from the date of death or the date on which the resignation takes effect.

Article 34

1. When a vacancy is declared in accordance with article 33 and if the term of office of the member to be replaced does not expire within six months of the declaration of the vacancy, the Secretary-General of the United Nations shall notify each of the States Parties to the present Covenant, which may within two months submit nominations in accordance with article 29 for the purpose of filling the vacancy.
2. The Secretary-General of the United Nations shall prepare a list in alphabetical order of the persons thus nominated and shall submit it to the States Parties to the present Covenant. The election to fill the vacancy shall then take place in accordance with the relevant provisions of this part of the present Covenant.
3. A member of the Committee elected to fill a vacancy declared in accordance with article 33 shall hold office for the remainder of the term of the member who vacated the seat on the Committee under the provisions of that article.

Article 35

The members of the Committee shall, with the approval of the General Assembly of the United Nations, receive emoluments from United Nations resources on such terms and conditions as the General Assembly may decide, having regard to the importance of the Committee's responsibilities.

Article 36

The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under the present Covenant.

Article 37

1. The Secretary-General of the United Nations shall convene the initial meeting of the Committee at the Headquarters of the United Nations.
2. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
3. The Committee shall normally meet at the Headquarters of the United Nations or at the United Nations Office at Geneva.

Article 38

Every member of the Committee shall, before taking up his duties, make a solemn declaration in open committee that he will perform his functions impartially and conscientiously.

Article 39

1. The Committee shall elect its officers for a term of two years. They may be re-elected.
2. The Committee shall establish its own rules of procedure, but these rules shall provide, inter alia, that:
 - (a) Twelve members shall constitute a quorum;
 - (b) Decisions of the Committee shall be made by a majority vote of the members present.

Article 40

1. The States Parties to the present Covenant undertake to submit reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights:
 - (a) Within one year of the entry into force of the present Covenant for the States Parties concerned;
 - (b) Thereafter whenever the Committee so requests.
2. All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit them to the Committee for consideration. Reports shall indicate the factors and difficulties, if any, affecting the implementation of the present Covenant.
3. The Secretary-General of the United Nations may, after consultation with the Committee, transmit to the specialized agencies concerned copies of such parts of the reports as may fall within their field of competence.
4. The Committee shall study the reports submitted by the States Parties to the present Covenant. It shall transmit its reports, and such general comments as it may consider appropriate, to the States Parties. The Committee may also transmit to the Economic and Social Council these comments along with the copies of the reports it has received from States Parties to the present Covenant.

5. The States Parties to the present Covenant may submit to the Committee observations on any comments that may be made in accordance with paragraph 4 of this article.

Article 41

1. A State Party to the present Covenant may at any time declare under this article that it recognizes the competence of the Committee to receive and consider communications to the effect that a State Party claims that another State Party is not fulfilling its obligations under the present Covenant. Communications under this article may be received and considered only if submitted by a State Party which has made a declaration recognizing in regard to itself the competence of the Committee. No communication shall be received by the Committee if it concerns a State Party which has not made such a declaration. Communications received under this article shall be dealt with in accordance with the following procedure:

(a) If a State Party to the present Covenant considers that another State Party is not giving effect to the provisions of the present Covenant, it may, by written communication, bring the matter to the attention of that State Party. Within three months after the receipt of the communication the receiving State shall afford the State which sent the communication an explanation, or any other statement in writing clarifying the matter which should include, to the extent possible and pertinent, reference to domestic procedures and remedies taken, pending, or available in the matter;

(b) If the matter is not adjusted to the satisfaction of both States Parties concerned within six months after the receipt by the receiving State of the initial communication, either State shall have the right to refer the matter to the Committee, by notice given to the Committee and to the other State;

(c) The Committee shall deal with a matter referred to it only after it has ascertained that all available domestic remedies have been invoked and exhausted in the matter, in conformity with the generally recognized principles of international law. This shall not be the rule where the application of the remedies is unreasonably prolonged;

(d) The Committee shall hold closed meetings when examining communications under this article;

(e) Subject to the provisions of subparagraph (c), the Committee shall make available its good offices to the States Parties concerned with a view to a friendly solution of the matter on the basis of respect for human rights and fundamental freedoms as recognized in the present Covenant;

(f) In any matter referred to it, the Committee may call upon the States Parties concerned, referred to in subparagraph (b), to supply any relevant information;

(g) The States Parties concerned, referred to in subparagraph (b), shall have the right to be represented when the matter is being considered in the Committee and to make submissions orally and/or in writing;

(h) The Committee shall, within twelve months after the date of receipt of notice under subparagraph (b), submit a report:

(i) If a solution within the terms of subparagraph (e) is reached, the Committee shall confine its report to a brief statement of the facts and of the solution reached;

(ii) If a solution within the terms of subparagraph (e) is not reached, the Committee shall confine its report to a brief statement of the facts; the written submissions and record of the oral submissions made by the States Parties concerned shall be attached to the report.

In every matter, the report shall be communicated to the States Parties concerned.

2. The provisions of this article shall come into force when ten States Parties to the present Covenant have made declarations under paragraph I of this article. Such declarations shall be deposited by the States Parties with the Secretary-General of the United Nations, who shall transmit copies thereof to the other States Parties. A declaration may be withdrawn at any time by notification to the Secretary-General. Such a withdrawal shall not prejudice the consideration of any matter which is the subject of a communication already transmitted under this article; no further communication by any State Party shall be received after the notification of withdrawal of the declaration has been received by the Secretary-General, unless the State Party concerned has made a new declaration.

Article 42

1. (a) If a matter referred to the Committee in accordance with article 41 is not resolved to the satisfaction of the States Parties concerned, the Committee may, with the prior consent of the States Parties concerned, appoint an ad hoc Conciliation Commission (hereinafter referred to as the Commission). The good offices of the Commission shall be made available to the States Parties concerned with a view to an amicable solution of the matter on the basis of respect for the present Covenant;

(b) The Commission shall consist of five persons acceptable to the States Parties concerned. If the States Parties concerned fail to reach agreement within three months on all or part of the composition of the Commission, the members of the Commission concerning whom no agreement has been reached shall be elected by secret ballot by a two-thirds majority vote of the Committee from among its members.

2. The members of the Commission shall serve in their personal capacity. They shall not be nationals of the States Parties concerned, or of a State not Party to the present Covenant, or of a State Party which has not made a declaration under article 41.

3. The Commission shall elect its own Chairman and adopt its own rules of procedure.

4. The meetings of the Commission shall normally be held at the Headquarters of the United Nations or at the United Nations Office at Geneva. However, they may be held at such other convenient places as the Commission may determine in consultation with the Secretary-General of the United Nations and the States Parties concerned.

5. The secretariat provided in accordance with article 36 shall also service the commissions appointed under this article.

6. The information received and collated by the Committee shall be made available to the Commission and the Commission may call upon the States Parties concerned to supply any other relevant information.

7. When the Commission has fully considered the matter, but in any event not later than twelve months after having been seized of the matter, it shall submit to the Chairman of the Committee a report for communication to the States Parties concerned:

(a) If the Commission is unable to complete its consideration of the matter within twelve months, it shall confine its report to a brief statement of the status of its consideration of the matter;

(b) If an amicable solution to the matter on the basis of respect for human rights as recognized in the present Covenant is reached, the Commission shall confine its report to a brief statement of the facts and of the solution reached;

(c) If a solution within the terms of subparagraph (b) is not reached, the Commission's report shall embody its findings on all questions of fact relevant to the issues between the States Parties concerned, and its views on the possibilities of

an amicable solution of the matter. This report shall also contain the written submissions and a record of the oral submissions made by the States Parties concerned;

(d) If the Commission's report is submitted under subparagraph (c), the States Parties concerned shall, within three months of the receipt of the report, notify the Chairman of the Committee whether or not they accept the contents of the report of the Commission.

8. The provisions of this article are without prejudice to the responsibilities of the Committee under article 41.

9. The States Parties concerned shall share equally all the expenses of the members of the Commission in accordance with estimates to be provided by the Secretary-General of the United Nations.

10. The Secretary-General of the United Nations shall be empowered to pay the expenses of the members of the Commission, if necessary, before reimbursement by the States Parties concerned, in accordance with paragraph 9 of this article.

Article 43

The members of the Committee, and of the ad hoc conciliation commissions which may be appointed under article 42, shall be entitled to the facilities, privileges and immunities of experts on mission for the United Nations as laid down in the relevant sections of the Convention on the Privileges and Immunities of the United Nations.

Article 44

The provisions for the implementation of the present Covenant shall apply without prejudice to the procedures prescribed in the field of human rights by or under the constituent instruments and the conventions of the United Nations and of the specialized agencies and shall not prevent the States Parties to the present Covenant from having recourse to other procedures for settling a dispute in accordance with general or special international agreements in force between them.

Article 45

The Committee shall submit to the General Assembly of the United Nations, through the Economic and Social Council, an annual report on its activities.

PART V

Article 46

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 47

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

PART VI

Article 48

1. The present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies, by any State Party to the Statute of the International Court of Justice, and by any other State which has been invited by the General Assembly of the United Nations to become a Party to the present Covenant.
2. The present Covenant is subject to ratification. Instruments of ratification shall be deposited with the Secretary-General of the United Nations.
3. The present Covenant shall be open to accession by any State referred to in paragraph 1 of this article.
4. Accession shall be effected by the deposit of an instrument of accession with the Secretary-General of the United Nations.
5. The Secretary-General of the United Nations shall inform all States which have signed this Covenant or acceded to it of the deposit of each instrument of ratification or accession.

Article 49

1. The present Covenant shall enter into force three months after the date of the deposit with the Secretary-General of the United Nations of the thirty-fifth instrument of ratification or instrument of accession.
2. For each State ratifying the present Covenant or acceding to it after the deposit of the thirty-fifth instrument of ratification or instrument of accession, the present Covenant shall enter into force three months after the date of the deposit of its own instrument of ratification or instrument of accession.

Article 50

The provisions of the present Covenant shall extend to all parts of federal States without any limitations or exceptions.

Article 51

1. Any State Party to the present Covenant may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General of the United Nations shall thereupon communicate any proposed amendments to the States Parties to the present Covenant with a request that they notify him whether they favor a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that at least one third of the States Parties favors such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of the States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. Amendments shall come into force when they have been approved by the General Assembly of the United Nations and accepted by a two-thirds majority of the States Parties to the present Covenant in accordance with their respective constitutional processes.
3. When amendments come into force, they shall be binding on those States Parties which have accepted them, other States Parties still being bound by the provisions of the present Covenant and any earlier amendment which they have accepted.

Article 52

Irrespective of the notifications made under article 48, paragraph 5, the Secretary-General of the United Nations shall inform all States referred to in paragraph I of the same article of the following particulars:

(a) Signatures, ratifications and accessions under article 48;

(b) The date of the entry into force of the present Covenant under article 49 and the date of the entry into force of any amendments under article 51.

Article 53

1. The present Covenant, of which the Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.

2. The Secretary-General of the United Nations shall transmit certified copies of the present Covenant to all States referred to in article 48.

Appendix 4

ISRAEL'S RESERVATIONS AND DEROGATIONS TO THE COVENANT

Reservations:

"With reference to Article 23 of the Covenant, and any other provision thereof to which the present reservation may be relevant, matters of personal status are governed in Israel by the religious law of the parties concerned.

"To the extent that such law is inconsistent with its obligations under the Covenant, Israel reserves the right to apply that law."

Notification of Derogations under Article 4 (3) of the Covenant

"Since its establishment, the State of Israel has been the victim of continuous threats and attacks on its very existence as well as on the life and property of its citizens.

"These have taken the form of threats of war, of actual armed attacks, and campaigns of terrorism resulting in the murder of and injury to human beings.

"In view of the above, the State of Emergency which was proclaimed in May 1948 has remained in force ever since. This situation constitutes a public emergency within the meaning of article 4(1) of the Covenant.

"The Government of Israel has therefore found it necessary, in accordance with the said article 4, to take measures to the extent strictly required by the exigencies of the situation, for the defence of the State and for the protection of life and property, including the exercise of powers of arrest and detention.

"In so far as any of these measures are inconsistent with article 9 of the Covenant, Israel thereby derogates from its obligations under that provision."

3 October 1991