

Mandates of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination and the Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967

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26 May 2025

Excellency,

We have the honour to address you in our capacities as Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination and Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967, pursuant to Human Rights Council resolutions 51/13 and 1993/2A.

In this connection, we would like to bring to the attention of your Excellency's Government information we have received concerning **(i) the increased deployment of private military and/or security companies at checkpoints and road blocks for search and surveillance in the Occupied Palestinian Territory and particularly in Gaza; and (ii) the recruitment of third country nationals in service of the Israeli Defence Force (hereinafter the IDF) in return for remuneration, citizenship and other benefits.** The actions of private military and/or security companies and third country nationals may amount to serious violations of international human rights law, international humanitarian law and international criminal law.

According to the information received:

Expanding usage of private military and/or security companies in the Occupied Palestinian Territory, impacting the human rights of Palestinians

Palestinians live within complex administrative areas that are separated and surrounded by a system of physical segregation, permit regimes and restrictions on their movements. This ranges from roadblocks, fences, watchtowers, walls, barriers, checkpoints, razor wire fences, biometric identification systems as well as Israeli settlements and roads designated for the exclusive use of Israeli citizens and other nationals.

Many Palestinians are prevented from passing through checkpoints and cannot travel to surrounding areas. They are forced to coordinate their access with Israeli authorities to access basic services such as shops, healthcare and education facilities. Palestinians are also restricted from employment in multiple fields as well as acquiring new property and land.

According to the United Nations Office for the Coordination of Humanitarian Affairs (OCHA), there are 850 movement obstacles which are permanently or intermittently controlling, restricting and monitoring Palestinian movement in the West Bank, including East Jerusalem and the H2 area of Hebron. OCHA has documented these obstacles, which include 89 checkpoints staffed 24/7; 149 partial checkpoints that are not always staffed (46 of which have gates);

158 earthmounds; 196 road gates (122 of which are usually closed); 104 road blocks; and 97 linear closures each of which blocks one or more roads, such as road barriers, earthwalls and trenches.

After October 2023, the Israeli authorities established additional restrictions on movement and checkpoints across the the West Bank and East Jerusalem, as well as during the ceasefire, across the Gaza Strip, particularly the crossings from south to north. Over half of the obstacles have been assessed to have a severe impact on Palestinians by preventing or restricting access and movement to main roads, urban centres, services and agricultural areas. It has been reported that more than half of the checkpoints that connect Israel to the Occupied Palestinian Territory have either been fully or partially privatized since 2006.

Reports have been received of private military and/or security companies providing services to complement and support Israeli authorities and settlements in the occupation of Palestinian land and natural resources, as well as socio-economic marginalisation, surveillance and control over the Palestinian population. The Israeli authorities have reportedly outsourced its security functions to private military and/or security companies – contracted either directly or indirectly by the Government of Israel or settler organisations – including the monitoring, guarding and overseeing the day-to-day operations and maintenance of checkpoints in the Occupied Palestinian Territory, namely Gaza, the West Bank and East Jerusalem.

There are reports of increased requests since 7 October 2023 for private security services and personnel from existing and new clients in institutions, government offices, schools, kindergartens, various businesses as well as neighbourhoods and communities. The use of private military and/or security companies brings about two main concerns and potential risks in the current hostilities, in particular the West Bank and East Jerusalem. The first concerns the expansion of private military and/or security companies to settlements and outposts, especially to territories where attacks against Palestinian civilians have been reported. The second concerns the extension of their functions and roles towards safeguarding public order and acting as an extension of the Israeli defence and police in public spaces. Some companies allegedly have rapid response units equipped with military-grade arms and ammunition, responding within minutes to any incident that occurs in their defined area or neighbourhood.

Recruitment of third country nationals under the “Mahel” programme

Concerns are raised over the increasing influx of third country nationals serving in the Israeli military and which has contributed to the violence against Palestinians, with severe consequences for the civilian population, including reported loss of civilian lives and injuries of more than 170,000 Palestinians, as well as damage of at least 70 per cent of the civilian property and infrastructure, with no accountability or investigation from the countries of origin over the commission of human rights violations.

It has been reported that some third country nationals have been recruited to fight alongside the IDF and/or are carrying out military operations and security

services on behalf of the IDF. Third country national involvement in such operations have manifested in two main categories, namely: non-Israeli Jews fully incorporated into Israeli's combat forces; or recruitment of other groups such as non-Jewish third country nationals, with previous combat experience, drawn in mainly by financial and ideological incentives, promises of citizenship and other diverse benefits.

According to reports received, third country nationals have been recruited into the IDF through the "Mahal" volunteer programme. The "Mahal" programme is fully formalized by the IDF and recruits a notable number of individuals to join its ranks each year. The programme is eligible for non-Israeli Jews, descendants of a Jewish grandparent, or Israeli citizens who have lived abroad from the ages of 10 and not resided more than 4 months in the calendar year in Israel, who are younger than 24 years old in the case of men, and 21 years old in the case of women.

According to official estimates, there are some 350 to 400 enlistments in the "Mahal" programme each year, with 500 individuals in active service. However, other estimates, place this number significantly higher especially after October 2023. Approximately 90 per cent of such recruits have been allegedly assigned to combat units. The recruitment and use of the third country nationals to fight in international conflict is considered to come under the ambit of mercenary-like activities.

Volunteers are reportedly entitled to remuneration for accommodation, food, clothing, transportation, insurance and medical care. After discharge, they also reportedly receive a grant and other benefits. Most of those who join the IDF under the "Mahal" programme come alone and are considered "lone soldiers" – individuals who have no family members living in Israel. Lone soldiers receive a higher basic salary and additional benefits beyond those afforded to regular IDF soldiers. It is also noted that non-Israeli Jews may obtain Israeli nationality following completion of "Aliyah" and before joining the IDF. Allegedly, around 50 per cent of volunteers choose to stay in the country after completing the programme and make "Aliyah".

Subsequent to a freedom of information request in 2019, the IDF confirmed 6,700 lone soldiers in its ranks in 2018, including 2,444 new immigrants. This includes those originating from Austria, Australia, Argentina, Azerbaijan, Belarus, Belgium, Brazil, Bolivia, Bulgaria, Canada, Chile, Colombia, Costa Rica, Cuba, Czech Republic, Denmark, Ethiopia, Finland, France, Germany, Georgia, Greece, Guatemala, Honduras, Hungary, India, Italy, Japan, Kazakhstan, Kyrgyzstan, Latvia, Mexico, Moldova, Morocco, Netherlands, Panama, Peru, Russian Federation, South Africa, Spain, Sweden, Switzerland, Tunisia, Turkey, Ukraine, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay, Uzbekistan, Venezuela, and Yemen. Statistics provided illustrated that some 60 per cent of these soldiers were from the United States, France, Ukraine and Russian Federation.

A similar freedom of information request in 2021 revealed similar statistics, with 2,507 new immigrants enlisted to the IDF. Most of the immigrants serving

are from the aforementioned countries, as well as from: Albania, Cambodia, China, Ecuador, El Salvador, Guadeloupe, Iran, Jamaica, Lebanon, Lithuania, Malta, Nepal, New Zealand, Paraguay, Philippines, Poland, Slovakia, Tajikistan. With 70 per cent of these soldiers originating from Belarus, France, Russian Federation, Ukraine and United States.

Without prejudging the accuracy of the information received, we express our grave concerns at the known and real risk over the alleged recruitment of third country nationals and private military and/or security companies, whereby their deployment without any supervision or accountability mechanisms negatively impacts on the peace, human rights and security of Palestinians living under Occupation. It will continue to facilitate impunity in the commission of violations of international human rights and international humanitarian law, including crimes against humanity, war crimes and possibly genocide.

While the role of private military and/or security companies and third country nationals engaged in privatized military and/or security activities would not be problematic provided that sufficient and proper training, licensing, regulation, monitoring, oversight, human rights due diligence, accountability and remedial mechanisms are in place, we are extremely concerned about the multitude and opacity of actors operating without adequate oversight mechanisms. The lack of transparency concerning the precise nature of their activities raises serious concerns over accountability, as well as respect of relevant international laws and standards.

Furthermore, the deployment of mercenary-related actors and private military and/or security contractors to an armed conflict without any supervision or accountability mechanisms may threaten several human rights, including, inter alia: the right to life, freedom from torture and other cruel, inhuman or degrading treatment or punishment, the right to liberty and security of person, freedom of movement and freedom from arbitrary arrest and detention. During armed conflict, mercenary-related actors and private military and/or security companies are obliged, as are all other members of State armed forces or non-State armed groups to a conflict, to respect the applicable rules of international law, in particular the norms related to the treatment of persons and conducts of hostilities. In this regard, we also wish to refer to the call made by the Human Rights Council to all Member States to exercise the utmost vigilance in banning the use of private companies offering international military consultancy and security services when intervening in armed conflicts (A/HRC/RES/36/3, para. 5).

In connection with the above alleged facts and concerns, please refer to the **Annex on Reference to international human rights law** attached to this letter which cites international human rights instruments and standards relevant to these allegations.

As it is our responsibility, under the mandates provided to us by the Human Rights Council, to seek to clarify all cases brought to our attention, we would be grateful for your observations on the following matters:

1. Please provide any additional information and/or comment(s) you may have on the above-mentioned allegations, including measures taken or planned by Your Excellency's Government to remedy them.

2. Please explain how the recruitment of third country nationals, the hybridisation of private violence to private actors such as settlers, and the use of private military and/or security companies are compatible with Your Excellency's Government international legal obligations and standards.
3. Please provide information on the exact number of third country nationals taking part in direct and indirect hostilities, and/or are providing military and security services to the IDF, including details on the circumstances and legal basis for their participation, the chain of command, the recruitment process and the existing monitoring and sanction mechanisms for violations of human rights and humanitarian laws.
4. Please provide information on any bilateral agreements on the use of private military and/or security services and personnel in the Occupied Palestinian Territory, and in particular in Gaza, between your Excellency's Government and other governments and/or legal entities and/or enterprises, which have been established to directly monitor the movement of the Palestinian population. Please explain how Your Excellency's Government ensures their activities in the Occupied Palestinian Territory, and in particular in Gaza, are in compliance with international human rights obligations.
5. Please provide any additional information on the licensing, certification, authorization and verification of private military and/or security companies recruited or deployed by Your Excellency's Government, as well as concrete measures for monitoring their activities operating on your territory and/or in its jurisdiction to ensure all business enterprises respect human rights throughout their operations, in line with the UN Guiding Principles on Business and Human Rights and the Montreux Document on Private Military and Security Companies. In particular, please provide specific information on whether heightened human rights due diligence is exercised in high-risk operating environments and conflict-affected areas.
6. Please provide information whether any third country nationals, private military and/or security companies, and/or contractors have been or are the subject of an investigation and/or prosecution, including the outcome of such investigations and sanctions taken. If no investigation has taken place, please explain the reasons.

This communication and any response received from your Excellency's Government will be made public via the communications reporting [website](#) within 60 days. They will also subsequently be made available in the usual report to be presented to the Human Rights Council.

While awaiting a reply, we urge that all necessary interim measures be taken to halt the alleged violations and prevent their re-occurrence and in the event that the investigations support or suggest the allegations to be correct, to ensure the accountability of any person(s) responsible for the alleged violations.

We may publicly express our concerns in the near future as, in our view, the information upon which the press release will be based is sufficiently reliable to indicate a matter warranting immediate attention. We also believe that the wider public should be alerted to the potential implications of the above-mentioned allegations. The press release will indicate that we have been in contact with your Excellency's Government's to clarify the issue/s in question.

Please note that a copy of this letter was sent to the Government of the State of Palestine.

Please accept, Excellency, the assurances of our highest consideration.

Jovana Jezdimirovic Ranito
Chair-Rapporteur of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination

Francesca Albanese
Special Rapporteur on the situation of human rights in the Palestinian territory occupied since 1967

Annex

Reference to international human rights law

In connection with above alleged facts and concerns, we would like to draw the attention of your Excellency's Government to the relevant international norms and standards that are applicable to the issues brought forth by the situation described above.

In addition, the Human Rights Council notes in resolution 9/9 that both international human rights law and international humanitarian law apply to situations of armed conflict and provide complementary and mutually reinforcing protection. Effective measures to guarantee and monitor the realization of human rights should be taken with respect to civilian populations in situations of armed conflict and effective protection against violations of their human rights should be provided, in accordance with international human rights law and applicable international humanitarian law.

International proceedings

On 19 July 2024, the International Court of Justice (ICJ) issued an Advisory Opinion on the "Legal Consequences Arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem". The International Court of Justice declared Israel's presence in the Occupied Palestinian Territory (OPT) unlawful under both *jus ad bellum* and *jus in bello* perspectives, also recognizing violations of racial segregation and apartheid prohibitions. The Court affirmed, inter alia:

"The sustained abuse by Israel of its position as an occupying Power, through annexation and an assertion of permanent control over the Occupied Palestinian Territory and continued frustration of the right of the Palestinian people to self-determination, violates fundamental principles of international law and renders Israel's presence in the Occupied Palestinian Territory unlawful"; that "this illegality relates to the entirety of the Palestinian territory occupied by Israel in 1967"; and that "this is the territorial unit across which Israel has imposed policies and practices to fragment and frustrate the ability of the Palestinian people to exercise its right to self-determination, and over large swathes of which it has extended Israeli sovereignty in violation of international law".

The ICJ also unequivocally affirmed that "occupation cannot transfer or confer sovereign title to the occupying Power over the territory that it occupies", reaffirming that "the occupation of a territory is to be a temporary, de facto situation, whereby the occupying Power can neither claim possession nor exert its sovereignty over the territory it occupies". It is to be noted that the Court explicitly affirmed that Israel's security concerns cannot override the prohibition of the acquisition of territory by force, a peremptory norm.

Legally, the ongoing prolonged occupation constitutes an act of aggression in violation of *jus ad bellum*, violating the non-derogable right of the Palestinian people to self-determination. Consequently, any dealings that support or sustain the occupation and its associated apparatus may amount to complicity in an international crime under the Rome Statute. The ICJ mandated Israel to terminate its occupation, dismantle all

settlements, and the associated settlement regime, provide reparations to Palestinian victims, and facilitate the return of Palestinian people displaced in 1967. Legally, the ongoing prolonged occupation constitutes an act of aggression in violation of jus ad bellum, violating the non-derogable right of the Palestinian people to self-determination. The ICJ mandated Israel to terminate its occupation, dismantle all settlements, and the associated settlement regime, provide reparations to Palestinian victims, and facilitate the return of Palestinian people displaced in 1967. At the same time, the ICJ provides that all States must co-operate with the modalities required by the UN General Assembly and Security Council to ensure an end to the occupation.

The General Assembly Resolution passed on 18 September 2024 established those modalities, reiterating the obligations of third States set out in the Advisory Opinion. The Resolution calls upon all States to, among other measures, “take steps towards ceasing the importation of any products originating in the Israeli settlements, as well as the provision or transfer of arms, munitions and related equipment to Israel, the occupying Power, in all cases where there are reasonable grounds to suspect that they may be used in the Occupied Palestinian Territory.” Secondly, the ICJ observes that all States are not to render aid or assistance in maintaining the situation created by Israel’s illegal presence. Arms and intelligence assistance to the occupation army by third States play a vital role in maintaining the occupation. Thirdly, all States are “to ensure that any impediment resulting from the illegal presence of Israel in the Occupied Palestinian Territory to the exercise of the Palestinian people of its right to self-determination is brought to an end.” The impediments currently experienced by the people of Gaza in the exercise of their right to self-determination are corporal – death, hunger, disease and climate all ravaging the population. Activities of the private and security companies that maintain and aggravate these conditions must be brought to an end. Fourthly, the ICJ states that “all the States parties to the Fourth Geneva Convention have the obligation (...) to ensure compliance by Israel with international humanitarian law as embodied in that Convention.”

Prohibition of Genocide

On 26 January 2024, the International Court of Justice also found it plausible that Israel’s acts could amount to genocide under the Convention on the Prevention and Punishment of the Crime of Genocide. On that occasion, the International Court of Justice issued six provisional measures, ordering Israel to take all measures within its power to prevent genocidal acts, including preventing and punishing incitement to genocide, ensuring aid and services reach Palestinians under siege in Gaza, and preserving evidence of crimes committed in Gaza. It has been compelled to intervene twice further in March and May 2024, in particular, recognizing an “exceptionally grave” risk in Rafah, it ordered an immediate halt to the military offensive. We would like to remind your Excellency’s Government that the Court’s provisional measures have a number of important legal implications. First and foremost, they are binding for Israel.

The Genocide Convention, independently of the provisional measures order, creates obligations upon the state parties. As the Court clarified in its interim order:

“... all the States parties to the Convention have a common interest to ensure the prevention, suppression and punishment of genocide, by committing themselves

to fulfilling the obligations contained in the Convention. Such a common interest implies that the obligations in question are owed by any State party to all the other States parties to the relevant convention; they are obligations erga omnes partes, in the sense that each State party has an interest in compliance with them in any given case”.

The prohibition of genocide more generally is considered a *jus cogens* norm and is one of the crimes that falls under the jurisdiction of the International Criminal Court (article 6 of the [Rome Statute](#)). While the ruling on the merits of the case will take many more years, and the issue of whether there was complicity in or a failure to prevent genocide will depend upon that judgment, the mere issuance of provisional measures by the Court, detailing the destruction (South Africa v Israel, paras. 46-49) and dehumanizing language (paras. 50-53) that make the risk of genocide plausible, triggers at the very least the duty to prevent since all states are now aware of the serious risk of genocide and the urgency of the case.

Right to self-determination

In light of the Advisory Opinion, it is particularly important to draw attention to the recognition therein of the denial of the right of the Palestinian people to self-determination. This is a jus cogens norm, enshrined by common article 1 of the ICCPR and ICESCR as the bedrock of international human rights law, and recognized as the prerequisite to the enjoyment of human rights. It is a recognition by states that without the right to self-determination, it is impossible to realise all other human rights. As such, it has an interpretive function for the construction of all human rights protections. Where a people are denied their right to self-determination, this must inform the way in which human rights protections are constructed vis-à-vis the state being asked to protect them. In particular, the construction of positive and negative obligations of that State party should aid in enabling the fulfilment of the right of the people themselves to self-determine the protection and realisation of all their human rights.

This is further underlined by resolution 45/130 adopted by the Third Committee on 14 December 1990, on the importance of the universal realization of the rights of peoples to self-determination and of the speedy granting of independence to colonial countries and peoples for the effective guarantee and observance of human rights, in particular its operational paragraph 3, which “[r]eaffirms [...] the inalienable right of the Palestinian people and all peoples under foreign occupation and colonial domination to self-determination, national independence, territorial integrity, national unity and sovereignty without foreign interference”; and operational paragraph 6 which “[s]trongly condemns [...] the constant and deliberate violations of the fundamental rights of the Palestinian people, as well as the expansionist activities of Israel in the Middle East, which constitutes and obstacle to the achievement of self-determination and independence by the Palestinian people and a threat to peace and stability in the region”.

Right to life

Concerning the protection of the right to life, safety, and security, article 3 of the Universal Declaration of Human Rights (UDHR) and article 6 of the International

Covenant on Civil and Political Rights (ICCPR), guarantees the right of every individual to life and provides that no one shall be arbitrarily deprived of his life. In general comment No. 36, the Human Rights Committee reiterated that the right to life is the supreme right from which no derogation is permitted even in time of public emergency that threatens the life of the nation (CCPR/C/21/Rev.1/Add.6). Adding that the inherent right to life and its effective protection are prerequisites for the enjoyment of all other human rights. In addition, the Committee states in paragraph 64 that “[p]ractices inconsistent with international humanitarian law, entailing a risk to the lives of civilians and other persons protected by international humanitarian law, including the targeting of civilians, civilian objects and objects indispensable to the survival of the civilian population, indiscriminate attacks, failure to apply the principles of precaution and proportionality, and the use of human shields would also violate article 6 of the Covenant.

We would like to recall that the right to life applies to all human beings, and that Governments have a responsibility to protect this right in territories under their control regardless of the citizenship of the persons concerned (E/CN.4/2003/3, para. 55). This was also confirmed by the Committee in its concluding observations on Israel, which it “reiterated and underscored the Covenant applies with regard to all conduct by the State party’s authorities or agents adversely affecting the enjoyment of the rights enshrined in the Covenant by persons under its jurisdiction regardless of the location (CCPR/C/ISR/4, para. 5).

Furthermore, the Committee requires that “Investigations into allegations of violations of article 6 must always be independent, impartial, prompt, thorough, effective, credible and transparent” and that full reparation should be granted to victims (general comment No. 36, para. 28), and insists that “Investigations and prosecutions of potentially unlawful deprivations of life should be undertaken in accordance with relevant international standards, including the Minnesota Protocol on the Investigation of Potentially Unlawful Death, and must be aimed at ensuring that those responsible are brought to justice, at promoting accountability and preventing impunity, at avoiding denial of justice and at drawing necessary lessons for revising practices and policies with a view to avoiding repeated violations.

Similarly, States have positive obligations to protect and fulfil human rights. In this respect, we would like to recall that it is now widely accepted that States’ obligations to protect and fulfil human rights, such as the right to life, extend beyond their own agents and also encompass protecting against human rights abuses by third parties, including private actors, and to take positive steps to fulfil human rights. This includes taking appropriate measures to prevent, punish, investigate and bring perpetrators to justice and redress harm caused by both State and private actors (CCPR/C/21/Rev.1/Add.13, para. 8).

In its general comment No. 36, the Human Rights Committee further recalled that States have a due diligence obligation to take adequate preventive measures in order to protect individuals against reasonably foreseen threats to life originating from private persons and entities whose conduct is not attributable to the State (CCPR/C/GC/36, para. 21). It follows that States have the responsibility to take steps to prevent human rights abuses by those providing private military and security services, including by adopting legislative and administrative measures to regulate their

actions. This includes taking adequate measures to “prevent, investigate, punish and remedy arbitrary deprivation of life by private entities, such as [...] private security firms” (Ibid). States are further required to effectively regulate, monitor and control the conduct of private individuals or entities empowered or authorized to employ force with potentially lethal consequences (CCPR/C/GC/36, para. 15).

The Human Rights Committee further established that States must also take appropriate legislative and other measures to ensure that all activities taking place in whole or in part within their territory and in other places subject to their jurisdiction, but having a direct and reasonably foreseeable impact on the right to life of individuals outside their territory, including activities taken by corporate entities based in their territory or subject to their jurisdiction, are consistent with the right to life, taking due account of related international standards of corporate responsibility, and of the right of victims to obtain an effective remedy (CCPR/C/GC/36, para. 22).

Arbitrary arrest and detention

Article 9 of the ICCPR establishes that everyone has the right to liberty and security of person, and that no one shall be subject to arbitrary arrest or detention. The Human Rights Committee, in its general comment No. 35 interpreting the article's scope, has underscored the arbitrariness of any arrest or detention without a legal basis and further held that an arrest or detention may be arbitrary irrespective of its being authorized by domestic law. In the same comment, the Human Rights Committee stated that the notion of “arbitrariness” introduced in article 9 should be broadly interpreted to include elements of “inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality.”¹ The Committee also held any arrest or detention carried out as punishment for the legitimate exercise of the rights as guaranteed by the ICCPR to be arbitrary, including the rights to freedom of expression and assembly.

Right to security

Article 9 also guarantees the right to security of person, which refers to protection against physical or psychological injury, or attacks on physical and moral integrity, and obliges State parties to take appropriate measures to protect individuals from foreseeable threats to their life or physical integrity from any State or non-State actor. State officials violate the right when they unjustifiably inflict bodily injury on another person. As the Human Rights Committee has underlined, States parties should respond appropriately to patterns of violence against certain categories of victims, such as intimidation of human rights defenders and journalists, and should take appropriate measures to protect the victims of such violence.²

Right to privacy

Article 17 of the ICCPR, which provides that no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on honour and reputation, and that everyone has the right to protection of the law against such interference or attacks. Further, in its general

¹ Human Rights Committee, general comment No. 35, CCPR/C/GC/35, para. 12.

² CCPR/C/GC/35, para. 9.

comment No. 16 in relation to article 17, the Human Rights Committee asserted that surveillance, whether electronic or otherwise, should ordinarily be prohibited.

Freedom of movement

Article 12(1) of the ICCPR provides that “[e]veryone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence.” The permissible limitations which may be imposed on the right are stated at article 12(3) to include those provided by law and necessary to protect national security, public order, public health, or morals or the rights and freedoms of others. However, these limitations must not nullify the principle of liberty of movement and require consistency with the other rights recognized in the Covenant. Moreover, article 12(3) clearly indicates that it is not sufficient that the restrictions serve the permissible purposes; they must also be necessary to protect them. Furthermore, the restrictive measures must be appropriate to achieve their protective function; they must be the least intrusive instrument amongst those which might achieve the desired result; and they must be proportionate to the interest to be protected (general comment No. 27, para. 14).

Rights of internally displaced persons

We would finally like to recall the 1998 Guiding Principles on Internal Displacement which establish that all authorities shall respect their obligations under international law, including human rights and humanitarian law, to prevent and avoid conditions that might lead to the displacement of persons. The principles shall be observed by all authorities, groups and persons irrespective of their legal status and applied without any adverse distinction (principle 2). The principles apply without discrimination, including on the basis of race, colour, language, religion or belief, political or other opinion, national, ethnic, or social origin, legal or social status, and disability, and certain internally displaced persons, including persons with disabilities, shall be entitled to protection and assistance required by their condition and which takes into account their special needs (principle 4). All authorities and international actors shall respect and ensure respect for their obligations under international law, including human rights and humanitarian law, so as to prevent and avoid conditions that might lead to displacement of persons (principle 5).

Every human being shall have the right to be protected from being arbitrarily displaced, including in situations of armed conflict or when such displacement is based on policies of apartheid, “ethnic cleansing”, or similar practices aimed at/or resulting in altering the ethnic, religious, or racial composition of the affected population, and when it is used as collective punishment (principle 6). Where no alternatives to displacement exist, all measures shall be taken to minimize displacement and its adverse effects, and the authorities undertaking such displacement shall ensure that proper accommodation is provided to the displaced persons and that such displacements are effected in satisfactory conditions of safety, nutrition, health, and hygiene and that members of the same family are not separated (principle 7). Displacement shall not be carried out in a manner that violates the rights to life, dignity, liberty and security of those affected (principle 8). States are under a particular obligation to protect against the displacement of Indigenous Peoples, minorities, peasants, pastoralists, and other groups with a special dependency on and attachment to their lands (principle 9).

Every human being has the inherent right to life which shall be protected by law and internally displaced persons shall be protected in particular against inter alia genocide, murder, and summary or arbitrary executions. Threats and incitement to commit any of the foregoing acts shall be prohibited. Attacks or other acts of violence against internally displaced persons who do not or no longer participate in hostilities are prohibited in all circumstances. Internally displaced persons shall be protected, in particular, against direct or indiscriminate attacks or other acts of violence, including the creation of areas wherein attacks on civilians are permitted, starvation as a method of combat, and attacks against their camps or settlements (principle 10). Every human being has the right to respect of his or her family life, and family members who wish to remain together shall be allowed to do so. Families which are separated by displacement should be reunited as quickly as possible (principle 17).

All internally displaced persons have the right to an adequate standard of living, including at a minimum safe access to: (a) essential food and potable water; (b) basic shelter and housing; (c) appropriate clothing; and (d) essential medical services and sanitation (principle 18). All wounded and sick internally displaced persons as well as those with disabilities shall receive to the fullest extent practicable and with the least possible delay, the medical care and attention they require, without distinction on any grounds other than medical ones. When necessary, internally displaced persons shall have access to psychological and social services (principle 19).

The primary duty and responsibility for providing humanitarian assistance to internally displaced persons lies with national authorities and all authorities concerned shall grant and facilitate the free passage of humanitarian assistance and grant persons engaged in the provision of such assistance rapid and unimpeded access to the internally displaced (principle 25). Persons engaged in humanitarian assistance, their transport and supplies shall be respected and protected. They shall not be the object of attack or other acts of violence (principle 26).

Mercenaries and mercenary-related actors, and their impact on human rights

We wish to stress that the recruitment, use, financing and training of mercenaries and mercenary-related actors impedes the right of peoples to self-determination and violates the purposes and principles enshrined in the Charter of the United Nations, as recalled by the Human Rights Council (A/HRC/RES/57/8). This resolution requests all States to “exercise the utmost vigilance in banning the use of private companies offering international military consultancy and security services when intervening in armed conflicts or actions to destabilize constitutional regimes” (para. 5).

Similarly, General Assembly resolution 79/162 stresses concerns over the “impact of the activities of private military and security companies on the enjoyment of human rights, in particular when operating in armed conflicts” and noted that such “companies and their personnel are rarely held accountable for violations of human rights” (para. 7). This resolution requests all States to “exercise the utmost vigilance in banning the use of private companies offering international military consultancy and security services when intervening in armed conflicts or actions to destabilize constitutional regimes” (para. 5). We also recall that General Assembly resolution 3103

states that “the use of mercenaries by colonial and racist regimes against national liberation movements struggling for their freedom and independence from the yoke of colonialism and alien domination is considered to be a criminal act and the mercenaries should accordingly be punished as criminals.”

As set forth in the United Nations Guiding Principles on Business and Human Rights, which were unanimously endorsed by the Human Rights Council in its resolution (A/HRC/RES/17/31), all business enterprises have a responsibility to respect human rights. The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate. It exists independently of States’ abilities and/or willingness to fulfil their own human rights obligations, and does not diminish those obligations. Furthermore, it exists over and above compliance with national laws and regulations protecting human rights.

The Guiding Principles have identified two main components to the business responsibility to respect human rights. This requires that “business enterprises: (a) Avoid causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; [and] (b) Seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts” (guiding principle 13). This dual-requirement is further elaborated by the requirement that the business enterprise put in place:

1. A policy commitment to meet their responsibility to respect human rights;
2. A human rights due-diligence process to identify, prevent, mitigate and account for how they address their impacts on human rights. The business enterprise should communicate how impacts are addressed; and
3. Processes to enable the remediation of any adverse human rights impacts they cause or to which they contribute (guiding principle 15).

The guiding principles 25 to 31 provide guidance to business enterprises and States on steps to be taken to ensure that victims of business-related human rights abuse have access to effective remedy.

As specified in the report of the Working Group on the issue of human rights and transnational corporations and other business enterprises to the General Assembly (A/75/212), on steps that States and business enterprises should take to prevent and address business-related human rights abuse in conflict and post-conflict affected contexts, business should exercise heightened due diligence in conflict-affected contexts because of the increased risk of being involved in serious human rights abuses. The same applies to States.

The Montreux Document on pertinent international legal obligations and good practices for States related to operations of private military and security companies during armed conflict recalls existing legal obligations of States and private military and security companies and their personnel and draws on various international humanitarian and human rights agreements and customary international laws, including the references above. In particular, States where a private military and security company

is registered or incorporated, or where a private military and security company has its principal place of management, as well as States that directly contract for the services of private military and security companies have an obligation, within their power, to ensure respect of these companies for international humanitarian law. Such States have an obligation not to encourage or assist in, and to take appropriate measures to prevent and suppress violations of international humanitarian law committed by the personnel of private military and security companies through appropriate means such as administrative or other regulatory measures as well as administrative, disciplinary or judicial sanctions, as appropriate. Moreover, States are required to enact legislation to provide effective penal sanctions, to search, and to bring before its courts persons alleged to have committed or ordered to be committed the wilful killing or wilfully causing great suffering or serious injury to body or health of a civilian.

Respect for human rights while countering terrorism

Although no universal treaty generally defines “terrorism”, States should ensure that counter-terrorism legislation is limited to criminalizing conduct which is properly and precisely defined on the basis of the international counter-terrorism instruments, the General Assembly’s Declaration on Measures to Eliminate International Terrorism (1994), and Security Council resolution 1566 (2004). Based on these authoritative sources, the model definition of terrorism advanced by the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism provides clear, “best practice” guidance, by identifying conduct that is genuinely terrorist in nature and precisely defining the elements (A/HRC/16/51, para. 28).

The principle of legal certainty under article 15(1) of the ICCPR requires that criminal laws are sufficiently precise so that it is clear what types of behaviour and conduct constitute a criminal offence and the legal consequences of committing such an offence. This principle recognizes and seeks to prevent ill-defined and/or overly broad laws which are open to arbitrary application and abuse, to target civil society on political or other unjustified grounds (A/70/371, para. 46(b)).

Many resolutions of the United Nations General Assembly, Security Council and Human Rights Council reaffirming that any measures taken to combat terrorism and violent extremism must comply with the obligations of States under international law, in particular international human rights law, refugee law and international humanitarian law. Counter-terrorism measures must conform to fundamental requirements of legality, proportionality, necessity and non-discrimination. The wholesale adoption of security and counter-terrorism regulations without due regard for these principles can have exceptionally deleterious effects on the protection of fundamental rights, particularly for minorities, historically marginalized communities, and civil society.

States must ensure that measures to combat terrorism and preserve national security do not hinder the work and safety of individuals, groups and organs of society engaged in promoting and defending human rights (A/HRC/RES/22/6, para. 10(a)).

International humanitarian law

While Israel remains the unlawful occupying power, it is bound by the obligations set out in the Fourth Geneva Convention of 1949 on the protection of the civilian population during armed conflicts, Additional Protocol I of 1977 to the Convention, and customary international humanitarian law throughout the occupied Palestinian territory.

Common article 1 to the four Geneva Conventions of 1949 places a standing obligation on States to “respect and ensure respect” for the Conventions’ protections in all circumstances. To this end, States are required to adopt all measures necessary to ensure respect for the Geneva Conventions not only by their organs but also by private individuals within their jurisdictions as well as other States and non-State parties, as outlined in the ICRC Commentary on the First Geneva Convention (2016).

Parties to a conflict must adhere to the rules on the conduct of hostilities, including the principles of distinction, proportionality and precautions. Indiscriminate attacks are prohibited under International Humanitarian Law and parties to conflicts must at all times distinguish between civilian and combatants. Direct attacks against civilians are prohibited. Parties to conflicts must further do everything feasible to verify that targets are military objectives and take all precautions to avoid and minimize incidental loss of life. When a choice is available between different military objects, Additional Protocol I to the 1949 Geneva Conventions requires that the target chosen pose the least danger to the civilian population (art. 57(3)).

Moreover, common article 3(1)(a) of the Geneva Conventions categorically prohibits, “violence to life and persons in particular murder of all kinds, mutilation, cruel treatment and torture”, against those not taking active part in the hostilities. Both the inherent right to life and the principle of distinction between combatants and those not taking direct part in hostilities are rules are recognized as part of customary international law and are universally binding at all times.

Violence against, and attempts upon the life of, those who are wounded and sick are strictly prohibited under international humanitarian law. In addition, the wilful killing of a person who is wounded or sick, or wilfully causing great suffering or serious injury to their person, constitutes grave breaches under common article 3 of the three Geneva Conventions and constitutes war crimes. In certain circumstances, the denial of medical treatment may constitute cruel or inhuman treatment, an outrage upon human dignity, or even torture. Article 8(a) of the Additional Protocol I of 1977 stipulates that the terms ‘wounded’ and ‘sick’, may include persons with disabilities.

We further underscore that children should be granted special protections during conflict. The 1949 Geneva Conventions and their 1977 Additional Protocols determine that “children shall be the object of special respect and shall be protected against any form of indecent assault. The parties to the conflict shall provide them with the care and aid they require” (Additional Protocol I, art. 77). The protections for children under IHL include: sheltering them from hostilities; maintaining family unity; and ensuring the necessary care, relief, or protection for those caught in hostilities and evacuation from besieged areas.

Additionally, the specific protection, health and assistance needs of women and girls affected by armed conflict must be respected, including in the light of the specific rules relating to the prohibition of sexual violence as stated by article 27 of the IV Geneva Convention of 1949 and Additional Protocol I, articles 76-77.