United Nations CCPR/C/SR.2717

International Covenant on Civil and Political Rights

Distr.: General
20 January 2011
English
Original: French

Human Rights Committee

Ninety-ninth session

Summary record of the 2717th meeting
Held at the Palais Wilson, Geneva, on Tuesday, 13 July 2010, at 3 p.m.

Chairperson: Mr. Iwasawa

Contents

The meeting was called to order at 3.10 p.m.

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

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

1. *At the invitation of the Chairperson, the members of the delegation of Israel took places at the Committee table.*

2. **Mr. Yaar** (Israel) said that the State of Israel was proud of its long-standing commitment to the principles proclaimed by the Charter of the United Nations and re-emphasized by the International Covenant on Civil and Political Rights, and recognized that the inherent dignity and the equal and inalienable rights of all members of the human family were the foundation of freedom, justice and peace in the world. Even before Israel had ratified the Covenant on 3 October 1991, those principles had been enshrined in its declaration of independence of 14 May 1948. They had also found expression over the years in rulings of the Supreme Court and in Israel's basic laws, such as the Basic Law: Human Dignity and Liberty (1992), which defended human rights and liberties in Israel and established the values of Israel as a Jewish and democratic State.

3. Since the presentation of Israel's previous periodic report in 2003, several other significant developments in law and in practice had taken place that had strengthened the realization of civil and political rights in Israel. The delegation would address those developments in detail. In assessing how Israel met its obligations under the Covenant, the Committee should also bear in mind the dramatic developments on the ground since 2003. Particular mention should be made of Israel's disengagement from the Gaza Strip in 2005, which had involved the withdrawal of all Israeli forces, the dismantling of its military administration and the evacuation of more than 8,500 civilians. After the Israeli withdrawal, the terrorist organization led by Hamas had overthrown the Palestinian Authority in the Gaza Strip. Since that brutal seizure of power in 2005, more than 10,000 Qassam rockets, along with mortar shells and missiles, had been fired against southern Israel from the Gaza Strip. Targeting schools, playgrounds, community centres and the Israeli population as a whole, those terrorist attacks had no aim but to kill and maim civilians, sow terror and demoralize the population.

4. Even in the face of such serious threats to its national security, Israel had maintained its policy of opening itself to international scrutiny by United Nations human rights treaty bodies, other mechanisms and civil society, so as to continue improving its compliance with its international commitments and obligations. However, it was clear that Israel's specific political and social situation and the threat to its security had to be taken into account in order to understand the context in which progress had been made and identify the challenges that lay ahead.

5. The Israeli delegation hoped that the dialogue with the Committee would be open and constructive. It knew that the Committee would work with professionalism and that it would conduct an objective and even-handed assessment of the report by Israel, while bearing in mind the unique challenges faced by the State party.

6. **Mr. Blass** (Israel) said that, since it had presented its previous report in 2003, Israel had been obliged to engage in a war with Lebanon in 2006 and to launch a massive military operation against Hamas in Gaza in late 2008 and early 2009. In fact, Qassam rockets were still fired at Israeli towns every few days. Those incidents had a major impact on security, as well as financial and social implications. Israel continually attempted to find the best possible way to address such challenges, taking into account its international obligations, the welfare of its population as well as basic human rights and humanitarian considerations for all sides. The delegation hoped that the Committee would bear all that in mind.

7. Israel was doing all in its power to promote peace with the Palestinian people. The Government would do anything it could to press on with that effort and it had appeared in the previous few weeks that there was a greater chance of direct talks between representatives of the two sides. The delegation wished to take the opportunity of the meeting with the Committee to express the hope that the conflict could be resolved in a respectful manner, in order to bring about the peace and prosperity that were long overdue in the region, while respecting the rights and interests of both sides.

8. Lastly, he said that there was an issue close to the heart of all Israelis, namely the kidnapping of Gilad Shalit by Hamas. He had been held by Hamas for more than 1,479 days and his whereabouts and physical and mental condition were unknown. It was unclear whether his living conditions were adequate, whether he received proper food and medical care or whether his other basic needs were met. All prisoners held in Israel, for criminal or security reasons, regardless of their nationality, had their basic human needs met, and much more. In contrast, Gilad Shalit was held in an unknown location and unable to receive visits from family members or Israeli officials. Requests by the International Committee of the Red Cross (ICRC) to visit him had also been denied, which meant that neither his basic human rights were respected nor his basic humanitarian needs met.

9. The third periodic report was the outcome of a broad collaborative effort between various ministries and government bodies, each of which had devoted much time and thought to gathering the data requested. Input had also been received from NGOs. The report described in detail the facts, legislation, court decisions and Government policies on a broad range of issues related to the advancement of human rights in Israel, which were regularly on the agenda of all ministries.

10. The Government was constantly moving forward. Clearly, much remained to be done but when the authorities did not initiate sufficient action to address certain issues, they were reminded of them by the public, members of the Knesset and NGOs. NGOs in Israel were active in initiating legislation, raising awareness and promoting human rights. The media were active and the court system was ready to intervene in order to remedy wrongs.

11. The preparation of the third periodic report had prompted discussion on numerous issues relevant to the Committee and debate on whether the measures taken by Israel were sufficient, what more should be done and how to generate greater awareness of those issues. Israel had studied the Committee’s previous concluding observations carefully and measures taken by the relevant ministries and government bodies had led to dramatic improvements in the areas of concern to the Committee. In spite of the numerous, unique and pressing difficulties and dilemmas facing Israel in its unceasing struggle for security, it remained fully committed to respecting its international obligations and its position was that the basic human rights of all persons under its jurisdiction must never be violated, regardless of the crimes committed. Effectively preventing terrorism while ensuring that the basic human rights of even the most dangerous and brutal criminals were protected was clearly a demanding task. Indeed, as a democracy, Israel often had to fight with one hand tied behind its back.

12. Some of the improvements pertaining to the implementation of the Covenant were described in the third periodic report and in the replies to the list of issues. It was worth highlighting the significant improvements made in some key areas.

13. Legislation had become a more mature and sophisticated tool for creating social change in sensitive areas such as those discussed in the report. Following the establishment of the State of Israel, human rights values had been embedded in a series of basic laws that related to all aspects of life and provided a basis for the protection of civil rights. Although Israel still did not have a written constitution, those basic laws guaranteed the fundamental rights of every person in Israel. Recent legislation was more wide-ranging in scope and

more radical in its underlying principles than some legislation of the preceding decade. Examples included: the Criminal Procedure Law (Amendment No. 51) of 2007, which accepted the legal doctrine of "abuse of process" in Israeli criminal law, previously recognized by the Supreme Court in a number of cases; the Investigation and Testimony Procedures Law (Adaptation to Persons with Mental or Psychological Disability) of 2005, which concerned investigations of persons with intellectual and mental disabilities; the Anti-Trafficking Law (Legislative Amendments) of 2006, which promulgated a broad crime of trafficking to cover trafficking for a number of illegal purposes; and the Gender Implications of Legislation Law (Legislative Amendments) of 2007, which imposed a duty to examine systematically the gender implications of legislation before it was enacted by the Knesset.

14. Israeli courts had continued to play a crucial role in anchoring and promoting human rights throughout Israeli society. The Supreme Court, sitting as the High Court of Justice, ensured that all the branches of Government and the private sector operated in accordance with the law. Moreover, in its decisions, the Supreme Court had further established and protected basic rights such as the right to freedom of speech, the right to strike, the right to associate and, especially, the right to full equality, as fundamental values in Israel.

15. The High Court of Justice played a central role in protecting human rights. Any person, regardless of citizenship, residency or status, who felt that their rights had been unlawfully denied, could petition the High Court of Justice. The court examined human rights petitions on an expedited basis during hostilities. On those occasions, the security forces could be obliged to suspend military operations pending a court order, and even to cease them completely should the court so decide. The Supreme Court had received worldwide recognition for its pivotal role in promoting human rights and received approximately 2,300 petitions in its guise as the High Court of Justice each year. One example of the importance of the court's role was a landmark decision delivered in May 2006 in the Yisascharov case, in which the court had established the legal doctrine on the exclusion of unlawfully obtained evidence. In another case, the Supreme Court had ruled that the State must provide a bed for every detainee held in Israeli prisons. It had also twice rejected petitions that challenged the holding of the annual Pride Parade in Jerusalem. Recently, the Court had revoked a law that allowed for the operation of a privately-run prison, considering that it infringed the constitutional rights of prisoners, and had revoked part of a criminal procedure law that permitted court sessions in absentia for suspects in cases affecting security.

16. With regard to measures taken by the executive branch, the Ministerial Committee on the non-Jewish Sector had established an authority for the economic development of the Arab sector, including the Druze and Circassian sectors, in 2007. Additionally, the Government constantly undertook projects to improve infrastructure and to increase the rate of development in Arab villages and towns. To that end, it had allocated substantial funds to local outline plans for urban development and, in 2005, had adopted a national strategic plan for the development of the Negev. The plan aimed to encourage growth in that region between 2006 and 2015 by improving infrastructure and education, creating jobs, increasing the population and reducing income disparities between residents of the Negev and those in the rest of the country. Direct and indirect funding for that plan would reach several billion new sheqalim between 2006 and 2015.

17. The delegation of Israel would do all in its power to provide the Committee with detailed replies to the numerous questions it had raised. The State party's position with regard to the implementation of the Covenant in the West Bank and the Gaza Strip had been presented in previous sessions and in its replies to the list of issues. The delegation would nevertheless reply to any questions put before it, including any concerning the West Bank and the Gaza Strip. The State party had made enormous efforts to adhere fully to its

commitments under the Covenant in its territory and took the remarks of the Committee very seriously.

18. **The Chairperson** thanked the delegation of Israel and invited it to reply to questions 1 to 17 of the list of issues.

19. **Mr. Blass** (Israel) said, with regard to the responsibility of the State of Israel under international law to apply the Covenant in the West Bank (question 1), that Israel recognized there was a profound connection between the law of armed conflict and human rights law and that there might be convergence between the two in some respects. However, in the current state of international law and the practice of States around the world, it was Israel's view that those two systems of law, which were codified in separate instruments, were distinct and applied in different circumstances. The Covenant, which was territorially bound, did not apply and was not intended to apply to areas outside its national territory.

20. The principle of equality was fundamental in the Israeli legal system, as was apparent in its legislation and adjudication. Although it was not included in the Basic Law, above all due to political considerations, the Israeli Supreme Court had repeatedly ruled according to the principles of equality and the prevention of discrimination, thus playing a pivotal role in the promotion of those basic principles. Furthermore, the Supreme Court viewed the principle of equality as part of human dignity, which was a right protected under the Basic Law.

21. With regard to the establishment of a national human rights institution (question 2), it had to be emphasized that the promotion and protection of human rights played an essential role in Israel, and had been an inseparable part of the State from its inception, as was evidenced by Israel's declaration of independence, basic laws, ordinary laws and Supreme Court rulings. Several commissions and institutions had also been established to uphold human rights in various fields of daily life, including: the Ombudsman (Public Complaints Commissioner), the Commission for Equal Employment Opportunities, the Commission for Equal Rights for People with Disabilities, the Authority for the Advancement of the Status of Women, the Ombudsman of the Ministry of Health, the National Council for the Child and the Military Ombudsman.

22. The Committee had also asked how many houses had been demolished in East Jerusalem since 2003 (question 4). Between 2004 and 2009, the municipality of Jerusalem had demolished nearly 700 buildings and building extensions, fewer than 500 of them in East Jerusalem, where most of the population was Arab, and more than 200 in West Jerusalem. All had been demolished because of violations of building and planning laws. In West Jerusalem, building violations almost invariably consisted of extensions to lawfully constructed buildings, such as the addition of a room in a courtyard or an attic within a roof space. In East Jerusalem, violations mostly took the form of entire buildings constructed without a permit. The demolitions in the eastern parts of Jerusalem had therefore been more dramatic than in the west of the city. All demolitions were conducted in accordance with due process guarantees and following a hearing, which was subject to judicial review and the right to appeal. All demolitions were decided upon without distinction on the basis of race or ethnic origin. Those affected by a demolition order were entitled by law to appeal to the Supreme Court. Nevertheless, it should be noted that the percentage of Arabs in the population in Jerusalem had risen from 26.6 per cent in 1967 to 31.7 per cent in 2000.

23. Israel had several programmes and institutions to raise public officials' awareness of discrimination issues (question 5). The Institute for Legal Training for Attorneys and Legal Advisers in the Ministry of Justice conducted annual one-day seminars on various human rights issues. The Institute of Advanced Judicial Studies conducted seminars and courses for judges of all levels on different human rights related issues. The Israeli police regularly held educational activities for police officers in order to raise their awareness of social

complicity and religious and cultural diversity in Israel. Israel Defense Forces soldiers of all ranks received training, mainly from the School of Military Law, on the law of armed conflict.

24. With regard to measures taken by Israel to ensure that Arab citizens were able to use their own language and enjoy their own culture (question 6), he pointed out that Arabic was an official language in Israel. In 2007, the Knesset had passed the High Institute for the Arabic Language Law, under which an Arabic language academy had been established. The Supreme Court had emphasized repeatedly the importance of naming roads in Arabic script, the use of Arabic in road signs and in official forms and documents, as well as translation in courts. Several laws stipulated that certain official notices, like public tenders and construction notices, should be published in Arabic newspapers. Israeli public television channels should devote some broadcast time to programmes in Arabic, or provide Arabic subtitles. Primary legislation in Israel was also being translated into Arabic. The Ministry of Culture and Sport allocated funds to support cultural activities in Arabic and Arabic NGOs were entitled to receive such funds, for which the eligibility tests had been translated into Arabic. The amount earmarked for that purpose in the current year was more than 9 million new sheqalim (NIS), equivalent to more than US$ 2 million. Particular attention was paid to Druze and Circassian heritage and a special department had been created to meet the needs of those communities. The Ministry of Transportation and Road Safety was studying the establishment of clear and uniform rules regarding the text on signs. The relevant ministries were currently reviewing that study and no changes had yet been made.

25. The Committee had requested information on the measures taken to respect and protect the rights of Arab Bedouin (question 7). More than 180,000 Bedouin lived in the Negev desert, about two thirds of them in legally planned and built urban and suburban centres. One third of the Bedouin population resided in hundreds of unauthorized clusters spread across the Negev. The seven Bedouin towns in the Negev had approved plans and included infrastructure such as schools, clinics, running water and electricity. The Government had decided that 11 more towns should be built to accommodate the Bedouin population and in consideration of their special needs. An advisory committee had been established to present recommendations for a comprehensive, feasible plan that would establish norms to regulate Bedouin housing in the Negev, including rules for compensation, mechanisms for the allotment of land, civil enforcement, a timetable for the plan's execution and, if necessary, proposed legislative amendments. The committee, chaired by a former Supreme Court Justice, Mr. E. Goldberg, comprised seven members, including two Bedouin representatives. Its final report, submitted to the Government on 11 December 2008, contained recommendations on three main areas: land, housing and law enforcement. The Government had accepted the recommendations as a basis for arranging housing for the Bedouin in the Negev and had appointed a group of experts that included representatives of ministries, the Israel Land Administration and the Attorney General. As explained in the written replies, the Government of Israel had spared no effort in providing the Bedouin in the Negev with education, health, electricity, water and the ability to enjoy their rich culture. However, it could not allow people to build wherever they chose without regard to the planning status of the area or the need to have a lawful building permit. The Government, therefore, could not provide utilities to persons residing in such illegal dwellings.

26. The definition of terrorism and related issues (question 8) were currently being examined in a process aimed at introducing comprehensive legislation on the struggle against terrorism and the necessary means to counter the terrorist threat faced by Israel. Since the enactment of the Incarceration of Unlawful Combatants Law in 2002, 49 persons had been detained and 7 were currently being held under the provisions of that legislation. In June 2008, the Supreme Court had rejected an appeal by two detainees and upheld the constitutionality of the Law, after addressing the substantive legal aspects of the

incarceration of unlawful combatants. Under the Law, a judicial review of the incarceration took place every six months in a district court and its decision could be challenged before the Supreme Court.

27. There should be no doubt that, in the current circumstances, Israel was living in a state of emergency (question 9). Although the State had suffered a wave of terrorism, a war and countless armed attacks on its civilian population since September 2000, it had considered refraining from extending the state of emergency. It could not, however, be ended immediately, because certain legislation was tied to the state of emergency and had to be revised in order not to leave crucial matters of State unregulated when the state of emergency expired. Although some rights could be restricted under the state of emergency, their status was no different from those covered by other legislation, and no rights had been suspended. The current state of emergency would remain in force until 13 June 2011.

28. Turning to question 10, on the compliance of the military forces with international law, he said that information on relevant rulings by the Supreme Court and standard practice according to international procedures were outlined in the State party's written replies to the list of issues. The Military Advocate General's Corps was responsible for ensuring that the Israel Defense Forces adhered to the law, including international law. That was done through the use of the military police criminal investigation division and the military courts under the scrutiny of the civilian law enforcement authorities led by the Attorney General. The decisions of the Military Advocate General were also subject to judicial review by the Supreme Court.

29. With regard to question 13, on legislation criminalizing torture, all acts of torture, as defined in article 1 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, were criminal acts under Israel's legislation. In addition, all forms of torture or other cruel, inhuman or degrading treatment or punishment were prohibited by Israel's Basic Law: Human Dignity and Liberty.

30. Regarding audio and video recording of investigations, the obligation to record the investigation of suspects was currently being implemented. That legislation did not apply to those suspected of security offences, nor would it in the near future. There was, however, no intention of making that law permanent.

31. With regard to the referral of complaints of torture to the Attorney General's Office and the use of the "necessity defence" (question 14), the Supreme Court had ruled in 1999 that investigations should be free of all forms of torture and cruel, inhuman or degrading treatment. The Court had also stated that the "necessity" exception was likely to arise in instances of "ticking time bombs" and that the immediate need (to preserve human life) referred to the imminent nature of the act rather than that of the danger. Hence, the imminence criteria were satisfied even if the bomb was set to explode in a few days, or perhaps even after a few weeks, provided the danger was certain and there was no alternative means of preventing its materialization. The Israeli Security Agency (ISA) operated according to those principles and had prepared internal guidelines on how consultation with high-ranking officials of the agency should take place when the circumstances of an interrogation warranted the necessity exception.

32. Interrogations were monitored regularly by ISA, the Ministry of Justice, the State Comptroller and the courts. The Inspector for Complaints against ISA Interrogators operated independently under the supervision of a high-ranking attorney in the Ministry of Justice who approved the Inspector's decisions. Those decisions were examined by the Attorney General and the State Attorney when the issues raised were sensitive or when the circumstances required it. In the previous four years, 194 examinations had been conducted by the Inspector, none of which had led to criminal charges. Nonetheless, certain procedures and interrogation techniques had been modified as a result.

33. With regard to question 15, on complaints against Israeli military forces and the outcome of any criminal proceedings against them, he said that the actions and conduct of law enforcement officials were subject to review by several legal institutions. Each of the law enforcement authorities had disciplinary procedures that could be initiated by a person alleging a violation, other entities or the authorities themselves. All civil servants were subject to the provisions of the Penal Law and most of them to the regulations pertaining to government employees. Detainees, prisoners or any other person could apply directly to the courts or start administrative proceedings to obtain reparation for the action or decision in question.

34. Israel maintained that the provisions of the law dealing with arraignment before a judge and access to legal counsel complied with the Covenant. In 2006, the Supreme Court had held that the "central position of the right to legal counsel in Israel's legal system" was undisputed. A distinction should be made between norms relating to access to legal counsel during interrogation and those governing the right to legal representation of prisoners serving their sentences. Detainees accused of criminal offences were entitled to consult legal counsel during the interrogation period under section 34 of the Criminal Procedure (Powers of Enforcement – Arrests) Law of 1996. When a detainee asked to meet legal counsel or legal counsel asked to meet a detainee, the person in charge of the investigation had to allow that meeting without delay. However, the meeting could be postponed if, in the opinion of the police officer in charge, it would mean terminating or suspending an investigation or other measures connected with the investigation, or placed the investigation substantially at risk. The officer in charge could further delay the meeting if there was reason to believe that it might thwart or obstruct the arrest of additional suspects in the same matter, or prevent the disclosure of evidence or the seizure of an object related to the offence. That delay could not exceed 24 hours from the time of arrest. An additional 24-hour deferment, up to a total of 48 hours, could be granted if the officer in charge provided a written explanation of why such a deferment was necessary to safeguard human life or thwart a crime. Detainees should, however, be granted a reasonable opportunity to consult legal counsel prior to their arraignment. According to available data, use was seldom made of the additional deferment.

35. With regard to the rights of detainees suspected of security-related offences, legislation allowed for the postponement of a meeting with legal counsel during the interrogation period in exceptional cases and on specific grounds, for example to prevent the hindrance to interrogations and to safeguard human life. Such decisions were taken in the light of the specific circumstances of each case. Although a meeting could be postponed for up to 21 days under the law, postponement orders were generally only for a few days, after which the need to prolong the postponement was assessed according to the requirements of the interrogation. That procedure was subject to judicial review by a district court.

36. An amendment made in 2005 to the Prisons Ordinance of 1971 stipulated the conditions under which detainees could meet legal counsel. Under section 45, such meetings were held in private and in conditions that allowed for confidentiality and the supervision of the prisoner's movements. Prison directors had to facilitate such meetings during regular hours and without delay. Section 45A authorized the Israeli Prisons Service (IPS) Commissioner and the prison director to postpone or stop such a meeting for a set period of time if there was good reason to believe that it could lead to the committing of an offence that put the security of a person, the public, the State or the prison at risk, or to a substantial violation of prison regulations. The prison director could delay such a meeting for no longer than 24 hours and the IPS Commissioner could order an additional five-day delay with the agreement of a district attorney. Appeals against decisions under section 45A could be made before the relevant district court. District courts could further extend delays by periods of up to 21 days and a maximum of 3 months. Appeals against such decisions

could be made to the Supreme Court and a Supreme Court judge could further extend those periods based on one of the grounds specified above.

37. With regard to arraignment before a judge, section 29 of the Criminal Procedure (Powers of Enforcement – Arrests) Law specified that persons arrested without a warrant must be brought before a judge as soon as possible and not later than 24 hours after their arrest, with a special provision regarding weekends and holidays. Section 30 allowed for an additional 24-hour extension based on the need to carry out an urgent interrogation that could only be conducted when the detainee was in custody and before their arraignment, or if urgent action needed to be taken regarding an investigation in a security-related offence. Following the completion of the above measures, the detainee must be brought before a judge swiftly or released from custody.

38. For security-related offences, the delay prior to arraignment was longer but never more than 96 hours. Such delays were, in practice, rarely extended. In 2009, for example, the arraignment of five persons had been postponed for no longer than 48 hours and none for the 72 hours provided for under the law.

39. The conditions in detention facilities for inmates held for security offences were determined by the specific rules that applied to them for security reasons. Nevertheless, they were entitled to adequate living conditions and medical care, received visits from family members, ICRC representatives and diplomats, and had access to legal counsel. Breaches of order and discipline in detention facilities resulted in disciplinary and administrative measures, including solitary confinement, which did not in any case violate the prisoner's basic rights. The Prisons Ordinance of 1971 enumerated 41 prison offences, for which one of the penalties was solitary confinement for no longer than 14 days. The placement of detainees in solitary confinement for longer than seven consecutive days was also prohibited. Only the prison director or deputy director could order periods of solitary confinement longer than seven days. Solitary confinement was not used as a method of interrogation, although it was sometimes necessary to separate detainees during interrogation in order to prevent the transfer of information. Even then, the detainee retained the right to see representatives of ICRC and legal counsel. Israeli legislation did not allow incommunicado detention, which aimed to deprive individuals of any contact with the outside world. Solitary confinement did not completely cut detainees off from the outside world. Moreover, all detainees held for security-related offences were entitled to send and receive mail for the duration of their detention.

40. **The Chairperson** thanked the delegation of Israel and invited the Committee members to ask additional questions.

41. **Ms. Chanet** noted that the Israeli authorities had delivered a long document in reply to the list of issues (CCPR/C/ISR/Q/3/Add.1), but that certain replies were particularly short, such as the response to question 1, in which the State party restated its position that the Covenant was not applicable to the Occupied Territories and underscored that the issue of the link between the law of armed conflict and human rights law was academic and controversial. On several issues on the list, the State party had simply referred to its perfunctory reply to question 1.

42. The controversial nature of a question should not preclude discussion of it and a question of law was not necessarily academic, especially when, as was the case in the issue at hand, it affected thousands of people's rights under the Covenant. The mandate of the Human Rights Committee was to examine the implementation of the Covenant in the States parties and to discuss with delegations any difficulties that arose, even if they involved controversial or legal issues. The State party should not therefore try to avoid the question of the implementation of the Covenant in and beyond its territory as it was doing.

43. The Committee stood by the view that it had held from the outset with regard to other States parties than Israel, and which it had repeated constantly over the years, that the Covenant applied to occupied territories with respect to acts carried out in them by the authorities of the State party. The Committee had reaffirmed this view with regard to Israel in 1998 and 2003, when it had considered the State party's initial and second periodic reports. In 2004, the International Court of Justice had delivered an advisory opinion on the construction of a wall in the occupied Palestinian territory that had supported the position of the Committee when it concluded, citing the *travaux préparatoires* of the Covenant and the jurisprudence of the Committee, that the Covenant applied to acts carried out by a State on its own authority outside its territory. The Court had also referred to its own jurisprudence and stated that the protection provided by human rights conventions was not suspended in case of armed conflict, except when the derogations described in article 4 of the Covenant applied. The view held by Israel that the state of armed conflict precluded the application of the Covenant in the West Bank and the Gaza Strip was therefore unacceptable, as was the State party's contention concerning the lack of a declaration on its part, since a declaration, on the contrary, was mainly a means for the State party to recognize that the Covenant was applicable outside its territory.

44. Israel had intervened militarily in Lebanon in 2006 and in the Gaza Strip in 2008–2009, and had recently boarded a vessel in international waters. Those interventions had claimed victims and it was legitimate to ask on what legal basis they had been carried out. If only in order to explain those actions, the delegation of Israel could not ignore the question of the Covenant's applicability outside its territory.

45. Turning to the right to equality, she said that the State party appeared to believe that that right was guaranteed because anyone who felt they had been discriminated against could file a complaint, notably with the Supreme Court. However, the examples provided by the delegation of Israel demonstrated the limits of those remedies, given that there was, apparently, no certainty that the obligation to bring the legislation into line with the relevant basic law would be met and, as a result, no date had been set to amend the legislation. Moreover, it was strange to place the onus on individuals to complain to the court whenever a legal provision introduced some form of discrimination. She requested information on particular guarantees that were supposed to ensure respect for the principle of equality. Firstly, given that the use of Arabic was permitted in dealings with the administration, she asked if that also applied to court documents, including in the case of detainees, and minors in particular. Were those concerned informed in Arabic of the charges made against them? She would also like to know if Arab members of the Knesset had the same privileges and status as other members, especially with regard to subsidies for electoral campaigns. Additionally, she requested clarification of the rules for the revoking of Israeli citizenship and the circumstances under which that could occur. In that regard, she wondered about the situation of mixed couples and requested information on the conditions that determined the issue and withdrawal of special movement permits under orders Nos. 1,649 and 1,650 of May 2009.

46. Question 3 of the list of issues had not been answered and a mere reference to the reply to question 1 was unsatisfactory. In general, Israel stood by its settlement policy but the International Court of Justice, in its advisory opinion of 2004, had found that the policy had no lawful basis and that Israel had established settlements on occupied Palestinian territory in breach of international law and, in particular, of the right of peoples to self-determination. It had found that construction of the wall and its associated regime severely impeded the Palestinian people's exercise of its right to self-determination and was therefore a breach of Israel's obligation to respect that right. All of which demonstrated that the right to self-determination was not linked to a territory but represented an obligation for States parties. That made the absence of a reply to question 3 and a simple referral to the reply to question 1 all the more incomprehensible.

47. The situation in Israel was characterized by alterations to demographics, confiscation of land and the demolition of houses. Following the reasoning of the State party, the implementation of the Covenant had less and less meaning as settlements spread over the territory. What of Israeli citizens visiting the West Bank? Did the Israeli authorities deem that the Covenant no longer applied to them? In all, it was very difficult to understand the logic or legal basis for the State party's position.

48. **Mr. Fathalla** concurred with Ms. Chanet with regard to the State party's written replies to the list of issues. The fact that the delegation of Israel had stated its willingness to answer all questions, including those regarding the West Bank and the Gaza Strip, was cause for some optimism, however, and he assumed that the State party would show that it accepted its responsibility for both territories.

49. The Israeli delegation had recognized that many challenges remained, adding that the work of NGOs was very important. The Committee had, however, been sent reports by NGOs and other institutions that presented quite a different picture and it behoved the Committee to take them equally into account in order to determine objectively how the Covenant was applied in the State party. In particular, with regard to question 4 of the list of issues, a report by the United Nations Office for the Coordination of Humanitarian Affairs stated that the construction of housing by Palestinians was prohibited in 70 per cent of Area C, or 60 per cent of the West Bank. NGOs had also reported on that situation and he would like to hear the views of the Israeli delegation.

50. The NGO Al-Haq had said that Palestinians constructed dwellings without building permits because the demand for housing outweighed the number of available permits, the housing shortage was exacerbated by the annexation policy of the Israeli authorities and Palestinians feared that they might lose their resident status in Jerusalem if they left the city. He asked how many building permits had been issued to Palestinians in East Jerusalem and Area C and, by way of comparison, how many had been issued to illegal settlers in the region. He also wished to know how many illegal settlements in East Jerusalem and in the West Bank had been issued with demolition notices, how much land in East Jerusalem had been earmarked for the establishment of illegal settlements, how much settlement expansion was planned in East Jerusalem and elsewhere in the West Bank and how much owners or occupants were fined when they were forcibly evicted or their homes were demolished. He requested clarification of the objectives behind the urban development strategy for Jerusalem, given that information before the Committee suggested they were in breach of the basic rules of international law.

51. In question 12 of the list of issues, the Committee had requested information about the provision of medical supplies to people in the Gaza Strip since Operation Cast Lead and about the access of Palestinians in the Occupied Territories to adequate water supplies, but had received no reply. According to one NGO, B'Tselem, the average water consumption of settlers in Hebron was 194 litres a day, while in nearby Yatta it was just 27 litres. Those figures suggested that access to water supplies was discriminatory. Al-Haq had reported that, in the Palestinian villages of Jayyous and Falamia, access to six wells that supplied several Palestinian localities had been blocked, reducing the average supply to 23 litres per person per day in Jayyous, clearly insufficient given that the World Health Organization (WHO) considered 100 litres necessary for a healthy life. He wanted to know if that information was correct and what was the daily water consumption of settlers in the West Bank and the district of Hebron. He also wondered if the Israeli authorities had received complaints from Palestinians about the dumping of used water on Palestinian farmland and what the State party intended to do about pollution of that kind. He also asked why villages such as Al-Tiwani had not been authorized to build infrastructure to bring in water supplies when neighbouring Israeli settlements had.

52. With regard to the supply of medical provisions to the Palestinians, WHO had recently reported that Israel had prevented suppliers from sending a scanner from Ramallah to Al-Shifa' hospital, in Gaza, along with defibrillators and other medical instruments. Israel had blocked the transport of radioactive matter used in the detection of secondary tumours in cancer patients and medical teams had been unable to travel from Ramallah to Gaza or from Israel to the Gaza Strip to perform operations or provide medical care. What did the delegation have to say about those incidents?

53. With regard to question 15, he wondered about the activities of the Israel Security Agency (ISA); according to information from NGOs, none of the 620 complaints brought against ISA officers between 2001 and September 2009 had led to criminal investigations or the laying of charges. Moreover, ISA legislation passed in 2000 granted ISA agents immunity for acts carried out reasonably and in good faith when in service and established that all regulations governing their activities were confidential, meaning that complainants could not know whether the acts they reported were authorized. Agents' names were also confidential. It would be interesting to know how Israel ensured the independence of the Ministry of Justice Police Investigation Unit (Mahash), since most of its investigators were police or intelligence officers temporarily assigned to the unit. According to the State Comptroller, 45 of the 76 Mahash investigators at work in September 2009 were on loan from the police and intelligence services. He wished to know if it was true that Mahash investigated the activities of ISA agents only at the request of the Attorney General and that no such request had ever been made.

54. **Mr. O'Flaherty** said that he would first address question 6 on the rights under article 27 of the Covenant. According to information received by the Committee, judgements of the Supreme Court were not translated into Arabic, whereas they were frequently translated into English. Some officials had claimed that the budget did not allow for translation into Arabic but that begged the question of why translation of judgements into English was not affected by budgetary constraints. According to the NGO Adalah, Ministry of the Interior officials on occasion refused to accept documents in Arabic from Arab citizens of Israel seeking to deal with civil status issues, even though the regulations stipulated that official documents must be accepted in the original language, including Arabic. He had also learned that it was impossible to obtain request forms in Arabic for subsidized services. Those were only a few examples and it would be useful to hear the delegation's views on that subject in the light of article 27. That article also covered the freedom of minority groups to communicate and travel. Information before the Committee indicated that it was extremely difficult for Arab citizens of Israel to travel to neighbouring States, even to attend cultural events that constituted no security threat.

55. He requested clarification of a decision to replace the Arab names of towns and villages on road signs with Hebrew names transcribed into Arabic. The Committee had been told the decision was still being applied in certain areas, mostly ones with an Arab or mixed population, in spite of a Supreme Court ruling overturning it. The practice was difficult to reconcile with article 27 of the Covenant. Question 7 of the list of issues dealt with protection of the rights of Arab Bedouin. Their case was a uniquely tragic one, as they were a fundamentally rural people quite unsuited to city life. The basic needs of the Bedouin needed to be met where they lived, even in places where they had settled without permission. The State party had itself recognized that fact and he sought confirmation that it was acting accordingly. He would also like to know how the State party consulted the Bedouin, especially with regard to the location of authorized towns, and whether it intended to apply the United Nations Guiding Principles on Internal Displacement to the Bedouin.

56. He noted that the State party was studying the definition of terrorism (question 8) and asked how long the study would take, how the different definitions of terrorism in its legislation would be brought into line with international standards and what account would

be taken of the Committee's previous concluding observations and the conclusions and recommendations of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, contained in the report of his mission to Israel in 2007, notably paragraphs 16 and 55. With regard to the information requested by the Committee on the fate of "unlawful combatants" imprisoned under the Incarceration of Unlawful Combatants Law, more detailed data disaggregated by age, sex, nationality and ethnic origin would be welcome. The delegation might be able to explain how that law was compatible with the Covenant, including article 7, whether the Supreme Court had studied its compatibility with international humanitarian and international human rights law and, if so, what the Court's view had been.

57. With regard to question 9, on the continued state of emergency since the creation of the State of Israel, he reiterated the Committee's view, emphasized in earlier concluding observations, that a state of emergency must by definition be temporary and exceptional. The State party had long ago undertaken to consider the question but that process was still not complete. If the outcome was a review, rather than the lifting, of the state of emergency, would it be limited to the provisions of article 9 of the Covenant or would it also look at other articles?

58. **Ms. Keller** echoed the views of Ms. Chanet and Mr. Fathalla on the delegation's replies to the list of issues. With regard to question 10, the State party had submitted a document to the United Nations on 29 January 2010 entitled *Gaza Operation Investigations: An Update*. That report had exposed serious shortcomings in the State party's investigations, particularly their lack of independence, as they had been conducted by army commanders or military police and overseen by the Military Advocate General, who had been the legal adviser to the armed forces of the State party during Operation Cast Lead. She wished to know how the delegation responded to those concerns. A further concern was that, of 150 incidents giving rise to investigations, only 36 were under criminal investigation and only 1 case had resulted in the conviction of a soldier, for the theft of a credit card. It was understood that, since the report had been submitted to the United Nations, another case had gone to trial; that case involved the use of a nine-year-old boy as a human shield, but the charges, abuse of authority and conduct unbecoming, were not commensurate with the offence, while none or virtually none of the white flag cases had resulted in charges being laid. In the light of reliable reports that a number of offences had been committed during Operation Cast Lead, was the State party satisfied with the credibility of the investigations to date? She also asked why the military investigations described in the update were limited to whether orders had been followed or rules of engagement or policies had been respected, rather than whether those orders, rules or policies complied with international law and, particularly, with the rights enshrined in the Covenant. The update indicated that 10 incidents involving attacks on medical crews and facilities had been investigated. However, human rights organizations, ICRC and the United Nations had indicated that 41 medical facilities and 29 ambulances had been damaged and that 16 medical workers had been killed and 25 wounded. How did the State party explain that discrepancy?

59. On 20 March 2010, two teenagers, Muhammad Qadus and Usaid Qadus, had been killed by Israeli forces at a demonstration in the West Bank. The Committee had received information that their deaths had resulted from the use of conventional bullets, though the soldiers had been instructed to use rubber bullets. It would be interesting to know when the military police investigation into the matter would be complete, and what remedy was available to the victims' family in the event that wrongdoing on the part of the State party's forces was found to have occurred.

60. According to the database of Al-Mezan on 6 June 2010, Israeli armed forces had carried out 184 extrajudicial executions in Gaza since 2003, not counting Operation Cast

Lead, and a further 155 individuals had died as a result of those targeted killings. Such operations continued despite the Supreme Court's decision of December 2006, which had imposed tight restrictions on that practice. In the light of those restrictions, she would like to know how the State party accounted for such a high number of targeted killings. A complaint had been filed on 22 November 2009 with the Israeli Military Advocate General and the Attorney General requesting a criminal investigation into the assassination of Sa'eed Siam, which had also resulted in the death of six civilians. Proceedings seemed to have ground to a halt and she asked why that was.

61. The journalist Anat Kamm was being prosecuted for treason and espionage for leaking classified military documents to which she had had access during her military service, to the newspaper *Haaretz*. Those documents had allegedly been used for an article that had appeared in *Haaretz* in November 2008 indicating that the Israeli army continued to carry out extrajudicial killings in the West Bank, in defiance of the Supreme Court's ruling in 2006. In January 2009, the Attorney General had concluded that there was no basis for accusing the Israel Defense Forces of ignoring the Supreme Court's instructions. The delegation could perhaps explain how the Attorney General had concluded that there was no basis for a criminal investigation, given the existence of classified documents and the testimony of a former soldier on the matter.

62. It was the Committee's understanding that the Military Police only began investigations into the killing or wounding of civilians during military operations on the basis of operational debriefings by the Israel Defense Forces. It would be interesting to know if the State party had considered the incorporation of other relevant evidence, such as sworn statements by witnesses, into the preliminary phase of investigation.

63. With regard to the prohibition of torture, she requested clarification of the guidelines and regulations used by the ISA to determine whether the circumstances of a specific interrogation warranted the necessity requirement. In its written replies, the State party had provided the number of examinations conducted by the Inspector for Complaints against ISA Interrogators between 2006 and 2009. It would be interesting to know how many complaints had been submitted to the Inspector in the same period and what remedies were available should the Inspector find there had been wrongdoing during an interrogation, which had never yet happened.

64. She also wished to know if the State party had considered ensuring the presence in all places of detention of qualified and independent doctors who could speak privately with prisoners and examine alleged cases of torture or ill-treatment in line with the Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Istanbul Protocol). She asked if the State party was willing to require that comprehensive medical records be kept for all detainees interrogated by the ISA throughout their detention and that they not be classified.

65. She wished to know why Amendment No. 4 of 17 June 2008, which exempted police from recording the interrogation of security suspects, had been extended until July 2012. The delegation might also explain why the 1994 amendment authorizing the Attorney General to direct the Department of Investigations of Police Officers to conduct criminal investigations into complaints against the ISA had not been used in recent years and why that type of investigation was systematically entrusted to the Inspector for Complaints against ISA Interrogators, itself part of the ISA.

66. According to the Ombudsman's 2005 report, more than two thirds of complaints of police violence filed with the Department of Investigations of Police Officers were closed without investigation and only a small number of those for which an investigation was opened led to the laying of criminal charges. Moreover, files containing only the testimony of the complainant and the police were closed for lack of evidence. She wondered why so

few complaints led to investigations and why inquiries were not held in cases where there were two conflicting versions of an incident in order to test the credibility of those versions further.

67. In its concluding observations in 2003 (CCPR/CO/78/ISR), the Committee had recommended that Israel review its emergency legislation, limit detention without access to a lawyer to a maximum of 48 hours, ensure the compliance of anti-terrorism measures with the Covenant, stop the use of Palestinian civilians as human shields, review its use of the necessity defence and ensure the independent investigation of all complaints of torture or other ill-treatment and the prosecution of suspected perpetrators of such acts. Did the State party intend to implement those recommendations?

68. Of the more than 600 complaints of torture and ill-treatment by the ISA submitted to the Israeli authorities since 2001, none had resulted in a criminal investigation since all had been sent to an internal body of the ISA for preliminary examination and then closed without investigation. She asked if the State party remained convinced that ISA internal inquiries were the best method for investigating allegations of ISA misconduct and whether it had considered entrusting that type of investigation to independent individuals authorized by the security services.

69. With regard to the rights of detainees, it would be useful to have data on the use of provisions in the Criminal Procedure (Powers of Enforcement – Arrests) Law of 1996 and the 2005 Amendment to the Prisons Ordinance of 1971 (sect. 45) to delay consultations with legal counsel and to know what remedy was available to detainees whose right to consult legal counsel had been postponed illegally by officials who abused their power when applying the relevant legislation. She also asked whether the State party would consider allowing ICRC and other independent monitors to visit its prisons unannounced, including wings where security detainees were held, in order to enhance protection against torture and ill-treatment. The Committee was concerned about the draft anti-terrorism legislation of 2010, which, in conjunction with provisions preventing detainees from consulting legal counsel for up to 21 days, could result in detainees being represented in court by legal counsel they had never met. Had the State party considered the potential effect of the bill, combined with existing legislation, on the right of access to legal representation and, if so, what solutions had it considered?

70. The Committee understood that, under the military regulations in the West Bank, military courts could exclude a detainee's counsel from all or parts of hearings and that the ISA could prevent detainees from meeting legal counsel for up to 90 days. If that was correct, had the State party considered replacing that regime with a system of security-cleared counsel in order to ensure that there was someone in the courtroom able to defend the detainee?

71. **Mr. Thelin** requested clarification of the interception on 31 May 2010 of a vessel that had tried to break the blockade of Gaza. It appeared that the Israeli Government had recently presented a report on that operation, which raised factual and legal questions, particularly with regard to the principle of proportionality. He said that the Committee would like to receive the report and he looked forward to the delegation's comments on it.

72. The Committee was not satisfied by the State party's reply to a question on Operation Cast Lead, in which it merely referred to its reply to question 1 of the list of issues, on the applicability of the Covenant to the Occupied Palestinian Territories. The debate on the applicability of the Covenant to the Gaza Strip was hard to justify, as was the State party's refusal to take notice of the advisory opinion issued by the International Court of Justice on 9 July 2004, which it had not even mentioned in its replies. Documents submitted to the Committee by NGOs, particularly Human Rights Watch, Amnesty International, Al-Mezan and Physicians for Human Rights, contained detailed accounts of

the acts committed by the Israel Defense Forces during Operation Cast Lead that showed there had been numerous violations of international standards. The Committee would appreciate the delegation's comments on that matter.

73. **Mr. Salvioli** said that the Special Rapporteur on freedom of religion or belief had stated after her 2009 mission to Israel and the Occupied Palestinian Territories that she was greatly concerned about numerous reports of religious discrimination, particularly by members of the police and armed forces. He wondered therefore about the usefulness of the training programmes implemented since 2003 to make public officials aware of the different kinds of discrimination on the basis of religion and ethnic origin, and whether the State party planned to modify those programmes in order to obtain better results.

74. With regard to torture, he asked whether the prohibition of torture covered all forms of torture and cruel, inhuman or degrading treatment as defined under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, including serious forms of psychological violence.

75. The Criminal Procedure (Detainee Suspected of Security Offence) (Temporary Order) Law of 2006 had begun as a temporary measure supposed to last 18 months. Was its extension to 2010 a sign that it could become permanent?

76. The State party had not replied to question 16 on the use of administrative detention. The Committee had received numerous reports from a variety of sources on that matter and it would be useful if the delegation explained the frequent use of administrative detention, especially for Palestinians from the Occupied Territories, which often went hand in hand with restrictions on detainees' right to have access to legal counsel and to be fully informed of the reasons for detention. The Committee also wanted to know more about the rules and procedures of administrative detention in Israel and the Occupied Palestinian Territories. He invited the delegation to comment on reports that Palestinians had been arrested and sent to detention centres in Israel during Operation Cast Lead and that men, women and children had been detained in salt quarries in degrading conditions without access to food, water, sanitary installations or shelter. It appeared that family members of Palestinian detainees had been prevented from leaving Gaza to visit them, in some cases for years. If true, that situation was extremely worrying and demanded a response from the delegation.

77. **Ms. Majodina** spoke of the human and environmental costs of the blockade of Gaza and asked why the Israeli Government could not allow the transport to Gaza of construction materials and humanitarian aid needed to solve major water supply and sanitation problems that endangered people's lives. She also wished to know what the Government intended to do in order to ensure that international humanitarian and human rights law and the 2005 Agreement on Access and Movement between Israel and the Palestinian Authority were respected.

78. **Mr. Amor** said that the notion of "necessity" was dangerous, as it could be invoked to justify the use of torture or other serious violations. It was time that, in its ruling on the necessity exception, the Supreme Court had defined criteria for its use, such as the imminence of the act, but the interpretation of those criteria could not fail to be somewhat subjective. It would be interesting to clarify the notion of necessity and its use in practice, especially the number of times it had been invoked.

79. **The Chairperson** thanked the delegation and the Committee members and invited them to continue their dialogue at the next meeting.

The meeting rose at 6 p.m.