

ISRAEL

Special Action or Decisions Taken Re: Reporting

CAT A/52/44

24. The Committee was informed by the media during the session that the Supreme Court of Israel had declared lawful the use of physical pressure by the Israeli security services in interrogating specific suspects of terrorist acts with a view to obtaining from them information which would prevent the perpetration of criminal acts in the future. The Committee took the view that, if the information was correct, the decision taken by the Supreme Court of Israel was incompatible with the provisions of the Convention.

25. In a letter that the Chairman of the Committee addressed on the Committee's behalf to the Permanent Representative of Israel to the United Nations Office at Geneva on 22 November 1996, it was recalled that article 2, paragraph 2, of the Convention provides that no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture. Reference was also made to article 19, paragraph 1, of the Convention, which stipulates that the States parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request. Accordingly, the Committee invited the Government of Israel to submit as a matter of urgency a special report on the question of the decision taken by the Supreme Court and its implication for the implementation of the Convention in Israel. The Committee indicated 31 January 1997 as the time limit for the submission of the report. The Government of Israel submitted the special report on 6 December 1996 and revised it on 17 February 1997.

CAT A/56/44

**VIII. DISCUSSION ON THE SITUATION OF THE OCCUPIED PALESTINIAN TERRITORY
IN THE LIGHT OF ARTICLE 16 OF THE CONVENTION**

214. On 22 November 2000, the Committee held a preliminary exchange of views on the above subject at the request of Mr. El Masry, who proposed that Israel should submit a special report. The Committee, however, decided to postpone the discussion of the question to its twenty-sixth session.

215. On 16 May 2001 the Committee again held an exchange of views on the issue. As a result, it decided to consider the third periodic report of Israel at its twenty-seventh session in November 2001. The Committee also decided to request an opinion from the United Nations Legal Counsel on the question of the applicability of the Convention in the occupied Palestinian territory.

CAT/C/SR.452 (2000)

COMMITTEE AGAINST TORTURE

Twenty-fifth session

SUMMARY RECORD OF THE PUBLIC PART OF THE 452nd MEETING

Wednesday, 22 November 2000, at 10 a.m.

...

Discussion of the situation in the Occupied Palestinian Territory in the light of article 16 of the Convention

15. The CHAIRMAN invited Mr. El Masry, who had raised the question of the situation in the Occupied Palestinian Territory as a matter of urgency, to introduce the topic.

16. Mr. EL MASRY said that during the previous 7 weeks, more than 230 Palestinians, one third of them children, had been killed by the Israeli security forces. There were strong indications that young people were being targeted, since almost all young victims had been killed by shots to the head or chest. The security forces were using excessive force against Palestinian demonstrators in clear violation of United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, which required such officials to minimize damage and injuries, to respect and preserve human life, to ensure that firearms were used only in appropriate circumstances and in a manner likely to decrease the risk of unnecessary harm. Israel was actually maximizing damage and injury and showing no respect for human life. It was using weapons that were not designed for policing violent demonstrations but for use in combat situations, such as tanks, artillery, helicopter gunships and even warships. The disproportionate and indiscriminate use of force and collective punishment through the demolition of houses and closures of the Occupied Palestinian Territory clearly constituted serious violations of human rights as well as cruel, inhuman and degrading treatment and punishment within the meaning of article 16 of the Convention.

17. According to a report by Amnesty International dated 5 November 2000, impunity for those who committed human rights violations and the failure to investigate the many deaths at the hands of the security forces had led to a breakdown in the rule of law. On 5 October 2000, one week after the outbreak of the demonstrations, Amnesty International had sent two delegates to investigate the situation, a staff member and a former British police officer who had specialized in public order policing. In the light of their findings, Amnesty International had expressed concern that the Israeli security forces had repeatedly resorted to excessive lethal force, leading to unlawful killings, in circumstances in which the lives of the security forces and others were not in imminent danger. The security forces had also allegedly impeded the access of the wounded to medical assistance in a number of cases.

18. The normal code of conduct for dealing with violent demonstrations called for the use, at the outset, of non-lethal methods of control, followed by the firing of warning shots. If the demonstrators still failed to disperse, the next step was to fire at the legs and not at the chest or head.

On 15 November, a member of the Israeli Parliament, the Knesset, Ms. Tamar Gojanski, had stated that the Israeli Government was carrying out a premeditated policy of killing five Palestinians a day and injuring many more.

19. As the events he had described were occurring while the Committee was in session, he felt it was his duty to bring up the matter. The least the Committee could do would be to ask Israel to respond to the allegations contained in the Amnesty International report, to take immediate action to ensure that its security forces complied with international standards governing the conduct of law enforcement officials, to bring to justice all persons responsible for unlawful killings and to pay compensation to the families of the victims.

20. Ms. GAER said that the concerns raised by Mr. El Masry were based largely on information provided by Amnesty International. But a large number of organizations had conducted preliminary investigations and come to different conclusions, presenting a more complex picture and indicating that there were problems, abuses, mistakes and provocations on all sides. The allegations by the various parties had been discussed in political bodies. Humanitarian vehicles had allegedly been misused. Issues such as insufficient regard for human life, the use of excessive force, collective punishment and the use of children had all been addressed in detail. The High Commissioner for Human rights had spoken of the problems on both sides. Amnesty International had, to her knowledge, referred specifically to torture in only one case, namely the torture, mutilation and killing of two Israeli officials in a police station.

21. It was important for the Committee to maintain its traditional approach to matters of concern under the Convention. She questioned the appropriateness of addressing such matters in an emergency situation arising from a conflict. Moreover, the work of other bodies should not be duplicated. The Committee should preserve its impartiality, professionalism, balance and transparency and avoid politicization. The United Nations Secretary-General had played a role in addressing the current situation in the Middle East; the High Commissioner for Human Rights had conducted an investigation; a fact-finding mission had been created at the Sharm el-Sheikh summit of 17 October 2000 and other forms of official action had been taken. She failed to see what appropriate contribution the Committee could make in that context.

22. Stressing the need for procedural fairness and due process, she queried the appropriateness of requesting a special report under article 19 of the Convention. The article 20 procedure was triggered only by allegations of systematic torture. If article 16 was cited as offering grounds for requesting a report, it could be argued that reports could also be demanded for violations of other articles such as the failure of States parties to investigate cases of torture, to prosecute or extradite torturers or to provide remedies for complainants. The country in question was in a state of conflict. The Committee's practice had been to refrain from taking action during a conflagration. For example, it had suspended its inquiry into the situation in Yugoslavia during the Kosovo conflict. She wondered whether the Committee had anything useful to contribute by intervening at that juncture. It should give priority to its other obligations under the Convention.

23. The Committee should also be prepared to take a balanced view of such issues, considering information from both sides that presented existing concerns in a fair and appropriate way. The

United Nations Secretary-General had publicly criticized the appearance of bias in United Nations resolutions dealing with Israel. He had said in recent weeks that language could also constitute violence and had expressed the hope that the international community would weigh its words carefully, because words could inflame or sooth.

24. Had the Committee considered, moreover, that it might set a precedent by addressing situations of armed conflict? She proposed that it should await Israel's next periodic report and treat it with no less procedural fairness than other States parties to the Convention.

25. Mr. CAMARA drew the Committee's attention to Commission on Human Rights resolution 2000/6 on the question of the violation of human rights in the occupied Arab territories, including Palestine, which condemned the continued violations of human rights in the Occupied Palestinian Territory, including East Jerusalem, in particular the continuation of acts of wounding and killing perpetrated by Israeli soldiers and settlers against Palestinians, in addition to the detention of thousands of Palestinians without trial. It further condemned the use of torture against Palestinians during interrogation, as it constituted a grave breach of the principles of international humanitarian law and the Convention against Torture, and called upon the Government of Israel to put an end immediately to the use of such practices. It requested the Secretary-General to bring the resolution to the attention, inter alia, of the Government concerned and of the competent United Nations bodies. When the Commission on Human Rights, a body with a very broad mandate, referred to the use of torture, could the Committee afford to remain silent? When the Committee had learned some time previously of the Israeli Supreme Court ruling to the effect that torture was permissible under certain circumstances, it had initiated a dialogue with the State party. It was also duty bound to address the concerns expressed in the present context regarding possible violations of the Convention.

26. Mr. MAVROMMATIS said that he appreciated the reasons that had led Mr. El Masry to bring the matter to the Committee's attention. Innocent lives had been lost, and there appeared to be general agreement that excessive force was being used. His sympathy went to the victims on both sides. The Committee should seek guidance from Commission on Human Rights resolution 2000/6, which decided to establish a human rights inquiry commission to report to the Commission in April 2001, to ask the High Commissioner for Human Rights to conduct an investigation on the spot and to request a number of special rapporteurs, including the Special Rapporteur on the question of torture, to look into the situation and report to the General Assembly. The Committee should not take any decision until it had that additional, impartial information on whether torture was involved. He agreed with Ms. Gaer that the Committee should take care not to appear to politicize.

27. Mr. GONZÁLEZ POBLETE said that the Commission on Human Rights was a political body, whereas the Committee against Torture was a technical one, and its members were independent experts. The Convention did not empower the Committee to take action in the current situation. The Committee could not consider a document presented by Amnesty International under the article 22 procedure, because Israel had not made the declaration under that provision. Furthermore, there was a question of whether Israel should be asked to report on the Supreme Court decision allowing the use of force by the security services to obtain statements. The Committee had examined that possibility, but that had been regarded as follow-up, since, when the Committee had considered Israel's report, it had criticized the report for justifying the decision allowing Israeli security forces

to apply "moderate physical pressure", to use the euphemism, during investigations of acts of terrorism. Accordingly, the Committee could not take any action, since the situation came under neither article 22 nor article 19; nor did the Committee have sufficient information to determine whether it was dealing with the article 20 procedure. However, it should be in a position to consider what room for manoeuvre it had.

28. Mr. YU Mengjia said that the Committee was currently witnessing an alarming escalation of the conflict in the Middle East, which was fraught with grave consequences. Mr. El Masry had referred to the excessive use of lethal force. There already seemed to be sufficient information available. The Commission on Human Rights resolution to which Mr. Camara had referred specifically mentioned the issue of torture, which of course was within the Committee's purview. He therefore did not think it was excessive to ask the Israeli authorities to respond to the allegations and to take suitable measures in conformity with the Convention.

29. Mr. YAKOVLEV noted that the High Commissioner for Human Rights had stressed that the route to all protection of human rights lay through the conclusion of a just and durable peace, that the future of Palestine would depend largely on the ability of both communities to put aside thoughts of revenge and that all parties must refrain from words or actions that would exacerbate the current dangerous and sensitive situation. The Committee's decision should be taken in that light. In the current difficult situation, the Committee's actions and words should serve to bring the parties together and not to antagonize them further, thereby jeopardizing prospects for a real peace. He agreed with the general thrust of the High Commissioner's appeal.

30. Mr. RASMUSSEN said that he fully sympathized with Mr. El Masry's desire to do something in response to the terrible situation. But Mr. González Poblete's point was well taken: it was not clear that it was in the Committee's mandate to do what was being proposed. Moreover, the Committee should treat all States parties equally. Awful things were currently occurring in many countries, but the Committee did not have the power to monitor the situation all over the world simultaneously. If the Committee took action in the current case, it might be accused of not having done so in other countries where similar or even worse things were happening. But if it decided to react in every case, it would need to do so on a permanent basis, and that was not possible, because it was in session only five weeks a year. If another urgent matter requiring action were to come up in December, the Committee would open itself to criticism for not taking action in what might be an even worse case.

31. Mr. EL MASRY, responding to members' comments, said first that, while many sources could confirm the facts, he had quoted Amnesty International because it was regarded by the Committee as a very reliable, unbiased source. He could also cite the member of the mission sent by the European Union, who had spoken of 150 families who had lost their homes after a heavy artillery bombardment. The High Commissioner had an office in Gaza; unfortunately, Israel refused to receive any United Nations representative. In her statement to the Commission on Human Rights, the High Commissioner had concluded that in their attempts to disperse Palestinian demonstrators, the Israeli military authorities had used live ammunition, rubber-coated steel bullets and tear gas, and that the majority of Palestinian casualties had reportedly been to the upper part of the body, including eye injuries sustained through the firing of rubber bullets. He did not understand the Committee's

reluctance about Israel, given the very severe violations of human rights and ill-treatment of the Palestinian people.

32. He took issue with Ms. Gaer's description of the events in Palestine as armed conflict. On the one side, there was an occupying power that had confined the Palestinians to 22 per cent of the land, which it had further divided by establishing settlements and building highways; on the other side, there were mere demonstrators. The occupying power was responsible for the safety of the people in the occupied territories. What was occurring was not armed conflict, but the use of brute force in dealing with demonstrations in violation of international law. The Committee was merely asking the State party to respond to the allegations. It was all the more pertinent to raise the issue in the Committee since Israel disregarded all United Nations political bodies, whereas it was legally required to respond to the Committee. If the Committee simply expressed its concerns and asked Israel to respond, it would have an opportunity to consider the situation at its May 2001 session.

33. As for Mr. Rasmussen's point, it just happened that the situation under discussion was taking place at the current time, but if a similar situation arose between sessions, the Committee could ask the State party to respond at its following session. He thought that that was within the Committee's mandate. The credibility of the treaty-monitoring bodies was at stake: how could the Committee not ask the State party a simple question when, every evening, television reports showed bulldozers demolishing houses of relatives of suspects?

34. Mr. RASMUSSEN wondered what Mr. El Masry's reaction would be if he were asked why, at its May 2000 session, the Committee had not taken up the question of the situation in Chechnya or requested the Russian Federation to explain what was happening there.

35. Mr. CAMARA said that as the Commission on Human Rights had concluded that torture was taking place systematically, the Committee could hardly close the current session without taking any action.

36. The CHAIRMAN said he thought the issues and differences of opinion in the Committee were quite clear. The Committee needed to take a decision. Israel was due to report to the Committee at the May 2001 session. He shared the view expressed by Mr. Mavrommatis: the Committee might be accused of political interference, because it was engaging in a discussion with very few of the facts in front of it.

37. He noted that Mr. El Masry was in fact proposing a motion to the effect that the Committee request from Israel an additional report pursuant to article 19 describing the current conditions in the occupied Arab territories and how their military response in subduing public disorder did not breach article 16 of the Committee. As there did not appear to be a consensus, the Committee would need to vote on Mr. El Masry's motion.

38. Mr. EL MASRY said that he wished to point out as an additional piece of information that the Commission on Human Rights resolution had expressed grave concern at the widespread, systematic and gross violation of human rights perpetrated by the Israeli occupying power, in particular mass killings and collective punishment.

39. The CHAIRMAN recalled that the Commission on Human Rights was not a body of experts, nor was it a body which made objective findings of fact in the way the treaty-monitoring bodies did.

40. Mr. EL MASRY noted that a similar situation had arisen with regard to Egypt, whose report had been due: the Committee had received information requiring a response, and it had sought an additional report, but had decided that since the report had been due two months later, it had asked the State party to include information on that matter therein. The Committee could do the same in the current case.

41. The CHAIRMAN said that another possibility was for the Committee to raise the question once it had received the information.

42. Mr. MAVROMMATIS, speaking on a point of order, moved that the discussion be postponed until the next session.

43. Mr. RASMUSSEN and Mr. YAKOVLEV seconded the motion.

44. The CHAIRMAN noted that any motion to postpone took precedence over any substantive motion.

45. Ms. GAER asked for the motion to be put to a vote.

46. The motion to postpone the discussion of the question until the session of May 2001 was adopted by 7 votes to 1.

The meeting rose at 1 p.m.

CAT/C/SR.480 (2001)

COMMITTEE AGAINST TORTURE

Twenty-sixth session

SUMMARY RECORD OF THE FIRST PART (PUBLIC) OF THE 480th MEETING

Wednesday, 16 May 2001, at 10 a.m.

...

DISCUSSION ON THE SITUATION OF THE OCCUPIED PALESTINIAN TERRITORY IN THE LIGHT OF ARTICLE 16 OF THE CONVENTION (agenda item 9)

1. The CHAIRMAN invited Mr. El Masry to present suggestions on the item.

2. Mr. EL MASRY recalled that the decision to place the item under consideration on the agenda for the present session had been taken by the Committee at the previous session. Since November 2000, the situation of the Palestinians in the occupied territories had deteriorated and hopes for peace stood to be irretrievably lost unless, as the Special Rapporteur on the Palestinian territories occupied by Israel had recommended, measures were taken to restore confidence. In that regard, the establishment of a human rights framework was indispensable. The Committee had a wealth of information, both from United Nations documents and from the reports of non-governmental organizations (NGOs), indicating flagrant breaches by Israel of various articles of the Convention, and not solely of article 16. He would confine his remarks to a number of practices gravely transgressing the provisions of that article. Referring, first and foremost, to the excessive use of force, he said that, according to the commission of inquiry set up by the Commission on Human Rights in October 2000, almost all of the victims had been hit by real bullets and rubber bullets - a misleading term since they were coated with a very thin layer of rubber. In February 2001, the commission of inquiry had placed the death toll at 311 Palestinians and 47 Israelis, and the number of wounded at 11,575 Palestinians and 466 Israelis. The number of Palestinian victims - a third of them children - had since nearly doubled. The commission of inquiry had found considerable evidence of indiscriminate firing at civilians and had concluded that the use of lethal weapons against demonstrators and the widespread destruction of homes and property along the settlement roads could not be considered proportionate to the circumstances. The International Federation of Women Lawyers and the International Commission of Jurists had indicated that tear gas and water cannons, shown to be effective in quickly dispersing violent demonstrations when necessary, had rarely been used. Since the beginning of the intifada, Israel had indiscriminately used against civilians a whole range of heavy weapons normally used only for military warfare, including tanks, helicopters and warships. The majority of Palestinian casualties had been hit in the upper part of the body, which suggested a clear intention to kill. Such conduct was unjustifiable, since the evidence suggested that the lives of Israeli soldiers had not been in danger. The Israeli forces also used high-velocity bullets that splintered on impact, demonstrating the intention to kill or to cause serious injury, and not merely to disperse demonstrators. Twenty-seven per cent of the Palestinians killed had been children under the age of 18. Israel claimed that the Palestinian authorities indoctrinated the children and then organized their participation in demonstrations. Did that justify killing them? While acknowledging

that some children were likely to have been exposed to anti-Israeli propaganda, the commission of inquiry had emphasized that the demonstrations were substantially the result of the humiliation and frustration felt by children and their families after years of occupation.

3. Reports describing the suffering undergone by detained Palestinian children were indeed disturbing. According to Defence for Children International, over 300 Palestinian children were detained in Israeli prisons, in potentially life-threatening conditions. Reports indicated that children were tortured at the time of arrest, and during interrogation and imprisonment. The Israeli authorities had thus far ignored appeals made by human rights organizations on behalf of such children. In the update to his mission report (E/CN.4/2001/30), the Special Rapporteur cited Israeli Military Order 132, which authorized the arrest and detention of Palestinian children aged 12 to 14. There were currently some 250 children between the ages of 14 and 17 in the Israeli prisons. Moreover, children were apparently imprisoned with adults, which contravened the provisions of several international instruments, among them the Convention against Torture.

4. As for the degrading and inhuman treatment to which the Palestinians had been subjected since the advent of the occupation, he would point out that the West Bank and Gaza represented 22 per cent of the Palestinian territory. The original inhabitants were cramped by the influx of refugees from the region that now constituted Israel. The bulk of the Palestinian population lived in that limited area. Flouting its obligations under the Fourth Geneva Convention, Israel had built 90 settlements, where 380,000 of its citizens lived. The presence of the settlements was aggravated by the daily discriminatory practices of the occupying power. Tellingly, Gaza was divided into two parts: the first, or 42 per cent of its territory, was reserved for 6,000 settlers, and the second, or 58 per cent of the territory, was inhabited by 1.2 million Palestinians. Most were refugees living in crowded camps with poor sanitary conditions. The settlers were protected by the Israeli military and exempted from the jurisdiction of the Palestinian courts. Restrictions on the movements of the Palestinian population generally took four forms: comprehensive closure of the occupied territories, including the so-called safe-passage zone between Gaza and the West Bank; internal closure imposed on towns and villages; curfews; and closure of international crossing points between the Palestinian territories and neighbouring countries. Israel had recently intensified its fragmentation of the occupied territories. In that regard, the Special Rapporteur had indicated that Israel had divided Gaza into four parts and the West Bank into 60 zones, digging trenches and erecting concrete barriers to restrict the movement of people and goods between the zones. The World Organization against Torture had observed that the internal closure of the territories resulted in the creation of isolated enclaves, in which the population lived under a virtual state of siege. Among many examples of tragic incidents caused by such circumstances, he cited the cases of two persons who had died because they had been unable to reach a hospital in time. Reports contained numerous examples of humiliation, ill-treatment and violence against Palestinian citizens at checkpoints. All such measures were clearly disproportionate to the security concerns of the Israeli settlers, whose illegal presence in the occupied territories had been denounced by the international community. Rather, such measures amounted to political retaliation constituting a form of collective punishment against the whole Palestinian population, and were a clear violation of article 16 of the Convention. The Special Rapporteur had also indicated that Israeli officers had admitted that the army was carrying out a policy of extrajudicial executions against Palestinians suspected of having committed attacks against Israeli settlers or soldiers. Thirteen persons had been ambushed and killed by fire from heavy weapons. The Special Rapporteur had

denounced those killings as a grave violation of the Fourth Geneva Convention and of the principles of humanitarian law. The United Nations commission of inquiry had decided to pay special attention to those killings, because they had been officially acknowledged, promoted and condoned at the highest levels of the Israeli Government. The shooting of Dr. Thabet Ahmad Thabet, a high official in the Palestinian Ministry of Health, was a glaring instance of a political assassination. His widow had submitted a petition to the Israeli Supreme Court, which had been dismissed although the Israeli prosecutor had presented no evidence implicating the victim. Israel contended that the victims of targeted political assassinations were combatants. However, according to the commission of inquiry, the victims had been dressed as civilians and had not been participating in hostilities at the time they were killed, and Israel had presented no evidence to back up its contention. In the absence of due process, a prompt and impartial investigation, prosecution of the perpetrators and compensation to the victims, those executions were surely violations of article 2, paragraph 2, and articles 12, 13, 14 and 16 of the Convention.

5. Attention must also be drawn to the suffering of the Palestinians as a result of the destruction of their houses and property. According to the Special Rapporteur, the homes of at least 173 families had been destroyed by Israeli forces between September 2000 and February 2001. The various types of collective punishment inflicted on the Palestinian population by the Israeli forces included the use of artillery against residential areas, the destruction of agricultural land, and the considerable damage to, inter alia, water wells and olive and citrus plantations. All those violations, which caused indescribable suffering to the population of the occupied Palestinian territories, could not be justified on military or security grounds and had been committed solely for the purposes of intimidation.

6. He called on the Committee to pronounce on a number of issues, including, first and foremost, the applicability of the Convention in the occupied Palestinian territories and the responsibility of the State of Israel in the Palestinian territories. Meanwhile, however, Israel claimed that those territories were no longer within its jurisdiction and that its responsibility under the Convention did not apply. Various United Nations treaty bodies thought otherwise. Second, he hoped the Committee would urge Israel to put an end to those practices in the occupied territories, which constituted serious breaches of the provisions of the Convention, and in particular to desist from its policy of collective punishment, including the closure of the Palestinian territories. Israel should also be asked to desist from using lethal force and excessive force, and from carrying out extrajudicial executions, and to hold accountable the authors of such executions, who should not enjoy impunity. The State party should also be called on to issue immediate instructions to all the authorities concerned to strictly refrain from using force against ambulances, from impeding the provision of medical relief and from blocking access to hospitals by the sick and injured and pregnant women. Israel should also be exhorted to refrain from shooting at unarmed children. Moreover, the Committee should express its concern about the impact of such policies and other forms of cruel, inhuman or degrading treatment on the whole human rights apparatus, and particularly the erosion of the principle of individual responsibility and the right to due process of law. Lastly, he recommended that the Committee should request the State party to submit an additional report on the situation of human rights in the occupied territories with respect to the provisions of the Convention, since the third periodic report received by the Secretariat in March did not address that subject. By way of conclusion, he quoted a passage from the report of the commission of inquiry, which observed that a commitment to objectivity did not imply a posture of neutrality with respect to the violations of human rights.

7. The CHAIRMAN said that he would not like to see the Committee against Torture, an expert body, turn into a political organ, and asked Mr. El Masry what article his initiative was based on.

8. Mr. EL MASRY said that his request was based on article 19 of the Convention, concerning the submission of reports by States parties.

9. The CHAIRMAN said he saw no objection to Mr. El Masry's request. However, the Committee had not yet considered the report of the State party or given it the opportunity to express itself. Committee members should perhaps give their views on that matter.

10. Mr. CAMARA said he wondered about the competence of the Committee in that regard. Admittedly, there was serious evidence from various sources to suggest that grave violations of human rights and, in particular, of the provisions of the Convention, were now being committed in the occupied territories. The fact nevertheless remained that the Committee must base its actions on irreproachable legal and jurisdictional principles. It was also essential to abide by the principle of adversarial proceedings. He would remind Mr. El Masry that a Committee precedent existed in that regard. During the consideration of the report of Israel in 1998, the Committee had characterized as torture certain acts that the Supreme Court of that country had deemed legal. It had then requested the State party to submit a special report, and the consideration of that report had resulted in a Committee decision. It was crucial for the Committee to adopt a congruent and legally defensible approach. Since the State party had not yet presented its report, the Committee was not in a position to pronounce on the legality of acts currently being committed by Israel.

11. Mr. MAVROMMATIS said that he had listened with great attention to the account of the disturbing and tragic incidents that were occurring in the occupied Palestinian territories and deplored the many innocent victims, most of whom were admittedly Palestinians. Like Mr. Camara, he believed that the Committee against Torture was empowered only to consider allegations that arose from the provisions of the Convention. He was uncertain whether asking the State party to submit a special report would resolve the problems discussed. Furthermore, there were other similarly serious situations all over the world - in his own country, for example - and the Committee should refrain from treating them differently.

12. The CHAIRMAN said that the Committee had received the third periodic report of Israel, and, although it had not planned to do so, could schedule consideration of it at the next session. In accordance with the usual practice, it could then request the State party to submit information on the subjects not covered by the report.

13. Ms. GAER said that no one could deny the tragic nature of the present situation in the occupied territories, and the feelings of hatred, fear and frustration reported by the Mitchell Commission were illustrative. The Special Rapporteur on the Palestinian territories occupied by Israel, the High Commissioner for Human Rights and the Secretary-General of the United Nations had all expressed their concern about the escalation of violence. The situation in the territories was nevertheless very complex. Mr. El Masry's statement presented only one side of the truth. She reminded the members of the Committee that their task was to employ impartiality, objectivity and transparency in the consideration of reports of States parties, and should refrain from politicizing the debate. The

Committee's credibility depended on that. She also wondered about the usefulness of a special report under article 19 of the Convention and pointed out that there were armed conflicts in six or seven of the States parties whose reports the Committee had to consider. It would be advisable, in her view, to consider carefully the criteria the Committee could choose to give priority to the examination of the situation in a particular country. Furthermore, it would be wiser to address human rights violations in the occupied territories in the context of the consideration of the third periodic report of Israel. In that regard, the Special Rapporteur on the question of torture had addressed a letter to the Government of Israel requesting authorization to return to the country to investigate those violations. As to the principle of the applicability of the Convention, the question should be included in the consideration of the report; the Israeli Government had made its position known on that issue and had declared that it was willing to cooperate with the Committee and to provide the information requested on the exercise of its powers and responsibilities. Lastly, the Committee had before it documents from three treaty bodies, whose general observations varied with regard to the question of competence. Those bodies had, however, formulated their observations after the consideration of a report and not before.

14. Mr. RASMUSSEN said he shared members' concerns about the situation in the occupied territories. However, alarming situations existed elsewhere, in Chechnya and East Timor for example, and interest should be taken in them as well. Since the Committee had already received the third periodic report of Israel, the date for considering it could be brought forward.

15. Mr. GONZALEZ POBLETE said all members were aware that the serious events in the occupied territories represented a danger to peace and security. But unlike the political organs of the United Nations, the Committee's mandate was clearly defined in articles 19 to 22 of the Convention. Article 19, the only article applicable in the case in question, provided for an adversarial procedure in which the State party could present its point of view, since the Committee could not pronounce without having permitted the State party to make known its views. Requesting the State party to add more information to a periodic report or to be prepared to answer questions on the application of the Convention in the occupied territories hardly seemed appropriate: the Committee should not depart from its usual practice under article 19 of the Convention. It could perhaps consider establishing an investigative procedure that would precede the periodic reports, but if so, it should be applicable in all cases, and not just exceptional ones. The serious issues raised by Mr. El Masry should be dealt with during the consideration of the third periodic report.

16. Mr. YU Mengjia said that the events in Palestine were of serious concern to the Committee. Raising the question of torture and ill-treatment in the occupied territories was therefore not unwarranted. In view of the arguments presented by Mr. El Masry, the urgent nature of the situation, and the information available concerning the excessive use of force in those territories, it would be wise to change the order of consideration of the periodic reports of States parties and to take up the third periodic report of Israel as soon as possible.

17. Mr. YAKOVLEV said he agreed that, in view of the tragic events described by Mr. El Masry and the complexity of the situation, the matter should be discussed during the consideration of the third periodic report of Israel, as soon as possible. In so doing, the Committee would surely come up against the difficult questions of when, to what extent, and under what conditions the provisions

of the Convention could be invoked in the occupied territories against the occupying State. A similar problem had been dealt with by the Committee in a different context, that of an armed insurrection; there, it had been a question of the extent to which acts of torture committed by terrorist groups were the responsibility of one side or the other. Regrettably, that type of local conflict was becoming more common, and was one the Committee would be faced with more and more. It should therefore make ready and should consider the criteria that would apply in response to the question of whether the Convention was applicable when one part of the territory was occupied by another power. It was a complex question, difficult to answer categorically, and precedents must be sought. Establishing whether or not the provisions of the Convention would extend to such an occupied territory would not be an easy task, and that was even truer of other instruments which were much broader in scope. After deciding the question in not too simplistic a way, the Committee would then need to respond to a still more delicate matter, namely, under what specific conditions a State occupying another State could be held responsible under the Convention for everything that happened in the occupied territory: whether the normal legal system was applicable, or whether it was a theatre of operations in which responsibilities were constantly changing (military jurisdiction, special judicial arrangements, zone of military operations, etc.). With regard to Palestine, if the Committee considered that the State party could legitimately be required to bear the responsibility for what was happening in the occupied territories, it would then have to establish whether the provisions of the Convention, and particularly articles 1 and 16, had or had not been violated.

18. In view of those difficulties, the Committee should reflect on its course of action, for example by asking the Secretariat to provide documentation regarding the problems in the occupied territories, and examining the discussions of other bodies on that matter, although not necessarily following their lead. Equipped with those theoretical tools, the Committee would be in a position to raise specific questions with the Israeli delegation during the consideration of its periodic report.

19. Mr. HENRIQUES GASPAR, said he too was deeply troubled by the human rights violations being committed in that part of the world and wholeheartedly endorsed Mr. Yakovlev's remarks. Once the question was raised within the Committee, it became a legal issue and must be handled as such. To assert that the case should not be considered because others also existed was an argument of a political nature; the Committee should consider those other cases as well, but from the standpoint of international law. As for the Committee's competence in the case at hand, article 19 of the Convention was the only relevant article, and the first question to be asked was the very complex one Mr. Yakovlev had skilfully articulated, that of jurisdiction. The Committee had a number of specific elements concerning the exercise of all powers in the occupied territories to determine whether jurisdiction existed under international law, in the case in point, under article 2 of the Convention, which used the phrase "any territory under its jurisdiction".

20. Once that first question was resolved, the next question was that of the Committee's competence, which should be considered in the light of article 19 of the Convention: either the Committee could fulfil its mandate during the consideration of periodic reports, or it could deem that the situation was sufficiently serious and urgent, according to the information available, to call for the submission of a supplementary report, as provided for in paragraph 1 of article 19.

21. A procedural question then arose, as other members of the Committee had pointed out. The

State party in question had already submitted its report, which could therefore be considered at the next session. It would be an excellent opportunity for adversarial dialogue, and the Committee should prepare by pondering the problem of Israel's jurisdiction over the occupied territories. It must be well versed in the specific problems that Israel's report was likely to raise, from the standpoint both of the facts and of international law. As Mr. Yakovlev had emphasized, the Committee must assemble clear legal arguments in order to raise the question of jurisdiction with the State party and must then request specific information on what was occurring in the occupied territories.

22. The CHAIRMAN recalled that, during the consideration of Israel's previous reports, it had been acknowledged that, when a State used force against anyone within its jurisdiction, it must justify its actions. That principle had been raised with regard to the interrogation of prisoners, but might also be applicable to events in any territory in which a State wielded power. If the Committee therefore decided to ask Israel to describe what was happening in the occupied territories, it would fall to that State to justify resorting to force in those territories, to invoke the legal arguments it deemed appropriate and to present facts to support its legal argument. In addition, requesting the State to justify its position in no way prevented the Committee from asking the Secretariat to supply it with any information that might assist it in its task.

23. Ms. GAER said that, in addition to cases of occupation, there were a number of situations in which the jurisdiction issue was quite complex. There were also many humanitarian law and human rights instruments and texts. To perform its task in the best possible way, the Committee should request the Senior Legal Officer to clarify the matter of jurisdiction and other legal points mentioned, in particular by Mr. Yakovlev.

24. Mr. EL MASRY said he endorsed the Chairman's view that the State party should be allowed to set out its arguments first. And it would certainly be useful to ask the assistance of the Secretariat in gathering relevant documentation.

25. With reference to the points made by Mr. Yakovlev, the State's responsibility for acts committed by Israeli military officers or agents was incontestable, whether or not they had been committed in the occupied territories. To cite a precedent, following acts committed by Canadian personnel stationed in Somalia, Canada had given over a large portion of its periodic report to those incidents.

26. Ms. Gaer had implicitly raised the question whether it was an armed conflict. The report of the commission of inquiry unambiguously affirmed that there was no international conflict occurring in the occupied territories, since Palestine did not yet fulfil the criteria allowing it fully to be considered a State. Nor was it a question of internal armed conflict, since the reactions were by unorganized demonstrators and not planned actions by organized armed groups.

27. The Committee seemed to agree that the report of Israel should be examined at the next session. Since that report did not cover the occupied territories, the State party should immediately be requested to provide information on the occupied territories under its jurisdiction, as provided for in paragraph 1 of article 19, as Mr. Henriques Gaspar had wisely pointed out. There was no doubt that the Convention applied to the three occupied Palestinian territories that Israel effectively controlled; that control was exclusive in the first case and was exercised in conjunction with the Palestinian police

in the second case; in the third territory, the Palestinian authorities only exercised their authority at the municipal level, since Israel controlled land, air and sea. Under the Oslo Accords, Israel had retained the responsibility for international affairs and the defence of the territories, and in resolution 1322 (2000) of 7 October 2000, the Security Council had expressly designated Israel as the occupying power of the territories occupied on 6 June 1967.

28. Mr. YAKOVLEV said Mr. El Masry's arguments were convincing and he considered that the Committee could use them to ask the State party for information on the behaviour of its army in the occupied territories.

29. Mr. MAVROMMATIS said it was essential to consult the Legal Liaison Office on the matter of jurisdiction since the discussion demonstrated that the Committee was not in a position to resolve it. Furthermore, he did not think it was wise to ask the State party for a supplementary report on the situation in the occupied territories. If the Israeli Government did not agree to that request, the Committee would be obliged to defer consideration of the report to a later session. The Committee should simply inform the Israeli authorities that the delegation would be asked questions on the situation in the occupied territories.

30. Mr. EL MASRY proposed that the Committee should send a letter to the State party mentioning the numerous allegations of violations of the Convention in the occupied territories.

31. Ms. GAER said that sending a letter of that type would mean the Committee had reached a conclusion on the matter of jurisdiction before having heard the State party speak on that matter. In her view, sending a letter to the Israeli Government was not necessary, because it would surely learn about the Committee's discussions from the press release and the summary record of the present meeting. If the Committee nonetheless decided to send a letter, it should simply state that it would consider the application of the Convention in the territories under the jurisdiction of the State party, without specifying whether or not it considered that the occupied territories constituted part of those territories.

32. Mr. HENRIQUES GASPARGASPAR, supported by Mr. EL MASRY, said that the Committee had enough lawyers to determine on its own whether the occupied territories were under the State party's jurisdiction, without needing to consult the Legal Liaison Office. It would be enough to ask the Secretariat to gather the relevant documentation so that the Committee could make its own decision.

33. Mr. MAVROMMATIS said that he disagreed. In his view, it was not the role of the Committee, which incidentally had three members who were not lawyers, to settle such a delicate, complex matter of international law.

34. The CHAIRMAN said that the opinion of the Legal Office was simply additional information, and would not prevent the Committee from taking an opposing view, if necessary.

35. Mr. GONZALEZ POBLETE said that the Committee was not bound by information it received, and that the decision ultimately was its own.

36. The CHAIRMAN proposed that the members should vote by show of hands on the question of whether the Legal Office should be asked to give an opinion.

37. The proposal was adopted.

38. The CHAIRMAN, noting that five out of nine members of the Committee had voted in favour, said that the Committee thus decided to request the Legal Liaison Office to give its opinion on the matter of Israel's jurisdiction over the occupied territories.

39. Noting that all members seemed to accept the idea that the third periodic report of Israel should be considered at the session in November 2001, he said that the Committee must also decide whether it was appropriate to send a letter to the Israeli Government and, if so, must determine its substance.

40. Mr. HENRIQUES GASPAR said that sending a letter of the type proposed by Ms. Gaer would serve no purpose, since the State party could well reply that the report contained all the relevant information.

41. Mr. GONZALEZ POBLETE, supported by Mr. YAKOVLEV, said that the Secretariat should send to the State party the same letter it normally sent to all States parties to invite them to participate in the consideration of their reports.

42. Mr. MAVROMMATIS said he feared that such a letter would not be sufficiently clear with regard to the Committee's expectations and that the delegation might, during the consideration of the report, refuse to reply to members' questions on the grounds that they had been unable to prepare beforehand. He therefore proposed the letter should specify that the delegation would be expected to answer questions on the situation in the occupied Palestinian territories in Spring 2001. As for all States parties, the Secretariat could attach to the letter any documents from non-governmental organizations (NGOs), namely those Mr. El Masry had received about human rights violations in the occupied territories.

43. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee approved Mr. Mavrommatis' proposal, and requested the Secretariat to send to the State party the usual letter of invitation along with documents from NGOs, informing it that the delegation should be prepared to discuss the issues raised therein.

44. It was so decided.

The public part of the meeting rose at 12.25 p.m.

CAT A/57/44 (2002)

Chapter VI. Opinion of the United Nations Legal Counsel concerning the applicability of the Convention in the Occupied Palestinian Territory

215. At its twenty-sixth session the Committee decided to seek the advice of the United Nations Legal Counsel concerning the applicability of the Convention in the Occupied Palestinian Territory. By a letter dated 22 June 2001 the Chairman of the Committee asked the Legal Counsel to provide the Committee with such opinion. In his reply of 19 September 2001 the Legal Counsel stated that, “the Convention is binding upon Israel, as the occupying Power in respect of the Occupied Palestinian Territory”. He added that, “the Committee against Torture appears already to have proceeded upon this supposition”.

Chapter VII. Discussion on the situation in the Occupied Palestinian Territory in the light of the Convention

216. At its twenty-eighth session the Committee decided, at the request of one of its members, to hold a discussion on the situation in the Occupied Palestinian Territory in the light of the Convention. Such discussion took place at the 522nd meeting, on 14 May 2002. As a result, the Committee decided, by a vote of 9 in favour and 1 against, that in the exercise of his/her mandate, the Rapporteur on follow-up to conclusions and recommendations adopted by the Committee with respect to reports submitted by States parties should take into consideration the discussion held at the above-mentioned meeting.

CAT/C/SR.522 (2002) (French only)

COMMITTEE AGAINST TORTURE

Twenty-eighth session

SUMMARY RECORD OF THE 522ND MEETING

Tuesday, 14 May 2002, at 10 a.m.

LA SITUATION DES DROITS DE L'HOMME DANS LES TERRITOIRES PALESTINIENS OCCUPÉS, AU REGARD DE LA CONVENTION CONTRE LA TORTURE (Point 12 de l'ordre du jour)

1. Le PRÉSIDENT invite M. El Masry, qui a proposé l'ajout de ce point à l'ordre du jour de la vingt-huitième session, à prendre la parole.
2. Mme GAER, prenant la parole pour une motion d'ordre, dit qu'elle conteste la compétence du Comité pour s'occuper de la situation dans un pays particulier. Le Comité n'a pas à mettre à l'index tel pays précis alors que dans le cadre de ses activités, il aurait tout lieu de faire la même chose pour des dizaines d'États.
3. M. EL MASRY, prenant la parole pour une motion d'ordre, objecte que le Comité a accepté l'ajout de cette question à son ordre du jour, qu'il a donc pris une décision à ce sujet et qu'il ne peut pas maintenant revenir dessus.
4. Le PRÉSIDENT dit que l'ajout d'un point à l'ordre du jour est une chose et que la détermination de la compétence du Comité pour examiner ce point en est une autre. Avant d'être interrompu, il avait l'intention d'inviter M. El Masry dans un premier temps à persuader le Comité que celui-ci avait compétence pour examiner la question et, si le Comité en était convaincu, de l'inviter ensuite à traiter du fond de la question. Il demande donc à M. El Masry d'expliquer d'abord en quoi, à son avis, le Comité est compétent, au regard de la Convention, pour examiner la situation dans les territoires palestiniens.
5. M. EL MASRY rappelle que le dernier jour de la vingt-septième session, à l'issue de l'examen du troisième rapport périodique d'Israël, le Comité avait demandé à l'État partie, de cesser un certain nombre de pratiques. L'État partie n'en a tenu aucun compte et la situation des derniers mois montre que tout au contraire il a persisté dans les diverses politiques que le Comité avait considérées comme constituant un traitement cruel ou inhumain. Le Comité est donc fondé, dans le cadre du suivi de l'examen du rapport de l'État partie, à examiner la question au regard des obligations contractées par Israël en vertu de la Convention.
6. Le PRÉSIDENT croit comprendre que M. El Masry propose que le Comité étudie la question dans le cadre de l'examen des rapports que les États parties sont tenus de soumettre conformément à l'article 19. S'il n'y a pas d'objection, il considèrera que le Comité s'estime compétent pour examiner la situation dans les territoires palestiniens, compte tenu des conclusions et recommandations qu'il avait formulées à l'issue de l'examen du troisième rapport périodique d'Israël.

7. *Il en est ainsi décidé.*

8. Le PRÉSIDENT invite M. El Masry à poursuivre son intervention sur le fond de la question.

9. M. EL MASRY rappelle qu'à sa vingt-septième session, en novembre, le Comité s'était déclaré préoccupé par des violations graves des droits de l'homme commises par Israël dans les territoires occupés et que par ailleurs plusieurs organisations non gouvernementales dignes de foi, comme Amnesty International, Human Rights Watch, Bethselem et l'OMCT, ont rendu compte de violations alarmantes et persistantes des droits de l'homme et du droit international humanitaire. Le délégué d'Amnesty International a rapporté que la ville de Jénine n'est plus qu'un tas de ruines, les infrastructures ont été anéanties, des maisons ont été détruites ou rendues inutilisables laissant 4 000 personnes, soit plus du quart de la population du camp, sans abri; les civils ont été la cible de missiles lancés par hélicoptère et leurs maisons ont été démolies à coups de bulldozers sans qu'une telle pratique puisse se justifier par la nécessité d'aller rechercher des combattants. Les victimes de ces destructions sont des civils de tous âges et la plupart sont des réfugiés de la guerre de 1948 qui se retrouvent ainsi pour la deuxième fois spoliés de leur toit. Le Comité contre la torture avait déjà dénoncé la pratique des démolitions de maisons comme une violation de l'article 16 de la Convention.

10. Les exécutions extrajudiciaires et les tirs entraînant la mort de Palestiniens sont quotidiens. D'après la Société palestinienne du Croissant Rouge, entre septembre 2000 et mai 2002, 1538 palestiniens ont été tués de façon délibérée et illégale et 19189 autres ont été blessés. L'armée israélienne empêche les ambulances et les véhicules et le personnel médicaux de se rendre auprès des malades et des blessés, et n'hésite pas à tirer. Pendant l'opération menée du 4 au 15 avril 2002 à Jénine, les Forces de défense israéliennes (FDI) ont ouvert le feu de façon répétée sur les ambulances et ont empêché les organisations humanitaires, y compris le CICR, de pénétrer dans le camp et de soigner les habitants civils, et ce blocus a continué même après le 15 avril, quand la grande majorité des individus armés s'était rendue. D'après Amnesty International, le comportement général de l'armée israélienne fait craindre que le but principal des opérations ne soit de punir collectivement tous les Palestiniens, et certaines déclarations du Premier Ministre Ariel Sharon tendent à montrer qu'il en est bien ainsi. Les FDI ont coupé l'électricité, l'eau et le téléphone et, pendant six jours, elles ont empêché le personnel de l'UNRWA d'approvisionner en biens de première nécessité la population du camp. Toutes les organisations humanitaires ont confirmé l'extrême difficulté qu'elles avaient rencontrée pour accéder au camp.

11. L'emploi de boucliers humains, en violation flagrante du droit international humanitaire, est courant et a été systématique à Jénine. Les FDI ont obligé des enfants, des vieillards et des femmes à les accompagner partout où elles voulaient pénétrer pour procéder à des fouilles. Mettre en danger la vie d'autrui représente un traitement cruel et dégradant; de plus, les malheureux qui ont dû ainsi protéger de leur corps les soldats israéliens risquent d'être ensuite accusés de collaboration. Certains d'entre eux ont été libérés quand leurs services n'ont plus été nécessaires, mais d'autres sont retenus. La liste des exactions commises par l'armée israélienne est longue, et chacun des cas justifierait une enquête en vue d'engager des poursuites contre les responsables.

12. Les arrestations sont effectuées au mépris des garanties élémentaires depuis que, le 5 avril 2002, le Commandant des armées a pris une ordonnance – l'ordonnance 1500 – permettant

à tout soldat israélien de procéder à une arrestation et de retenir la personne arrêtée pendant 18 jours avant d'engager une procédure judiciaire; ensuite, en application de la loi ordinaire, il dispose de huit autres jours avant de déférer l'intéressé devant un juge, ce qui fait que la détention sans contrôle de l'autorité judiciaire peut durer 26 jours. De surcroît, cette ordonnance a été déclarée rétroactive au mois de mars. Elle permet en outre de ne pas informer les personnes arrêtées des charges qui pèsent contre elles. La campagne d'arrestation, qui vise l'ensemble des Palestiniens de sexe masculin âgés de 15 à 45 ans, constitue également un châtimeur collectif. L'armée refuse de révéler le nom des personnes arrêtées et l'endroit où elles se trouvent, ce qui représente un traitement cruel et inhumain pour le prisonnier comme pour ses proches. Des sources dignes de foi indiquent que les détenus sont maintenus menottés, qu'ils subissent des mauvais traitements, voire des tortures pendant les interrogatoires, qu'ils restent sans manger ni boire pendant plusieurs jours et qu'ils ne peuvent pas communiquer avec un avocat.

13. Le 18 avril 2002, l'organisation Bethselem et trois autres organisations humanitaires israéliennes ont déposé une requête urgente à la Haute Cour d'Israël pour exiger que l'accès à un avocat soit garanti et que le recours à la torture soit interdit, mais la Cour a rejeté cette requête.

14. Les autorités israéliennes ont refusé d'autoriser la mission d'enquête du Conseil de sécurité et elles ont également refusé l'envoi d'équipes de secours et tout type d'observation extérieure. On voit donc que les violations des droits de l'homme et de la Convention contre la torture et autres peines ou traitements cruels, inhumains ou dégradants sont flagrantes et massives. Israël n'a pas donné effet aux recommandations du Comité, renforçant au contraire sa répression dans chacun des domaines pour lesquels le Comité s'était déclaré préoccupé. Celui-ci devrait donc rappeler à l'État partie ses obligations en vertu de la Convention et voudra peut-être le faire en lui adressant une lettre.

15. Le PRÉSIDENT demande à M. El Masry s'il entend faire une proposition formelle.

16. M. EL MASRY répond qu'il s'agit là d'une suggestion que le Comité peut examiner.

17. Mme GAER reconnaît que les événements survenus au Proche-Orient au cours des derniers mois sont tragiques mais doute fort que le Comité soit compétent pour organiser un débat spécifiquement consacré à Israël, et ce dans l'abstrait, en l'absence de l'État partie concerné, sans méthodologie et sans critères, alors même que la situation est tout aussi grave dans 28 autres États parties à la Convention.

18. Il convient de replacer l'action d'Israël dans son contexte. L'armée israélienne n'a pas décidé un beau matin de s'en prendre sans raison à des civils innocents dans des camps de réfugiés. L'action d'Israël dans les territoires occupés était nécessaire et proportionnée à la gravité des menaces qui pesaient sur la démocratie, sur la sécurité des citoyens et sur l'existence même de l'État d'Israël. Depuis septembre 2002, les Israéliens ont été la cible de 12 838 attentats qui ont fait 472 morts (dont 71% de civils) et 3 846 blessés.

19. Il existe deux parties au conflit. Or en raison de la structure particulière de la Convention contre la torture, le Comité ne s'intéresse qu'à une de ces parties et ce, semble-t-il, pour la condamner. En agissant ainsi il ne contribuera en rien aux efforts déployés par la communauté

internationale pour amener les deux camps à mettre fin à la violence et ne fera que saper sa propre crédibilité. Le Roi de Jordanie lui-même a déclaré que Yasser Arafat devait non seulement tout mettre en œuvre pour faire cesser la terreur mais aussi commencer à tenir ses engagements et ne pas manquer l'occasion qui se présente actuellement.

20. S'agissant de la situation à Jénine, il convient d'indiquer que les organisations terroristes avaient truffé le camp de réfugiés d'engins explosifs et d'objets piégés afin de causer un maximum de décès parmi les soldats israéliens et de destructions, que les combattants palestiniens n'ont rien fait pour se distinguer des civils, mettant ainsi ces derniers en danger, qu'ils ont utilisé des enfants notamment pour transporter des explosifs, qu'ils ont recouru à la perfidie (feindre la reddition par exemple) pour tuer des soldats israéliens et qu'ils ont détourné de leur usage les emblèmes des Conventions de Genève.

21. Il est vrai que de leur côté, les soldats israéliens ont fait pénétrer des civils dans les maisons dont ils craignaient qu'elles soient piégées. La Cour suprême israélienne a formellement condamné cette pratique et l'armée israélienne a immédiatement interdit d'utiliser de quelque manière que ce soit les civils comme boucliers humains. S'agissant des massacres qui auraient été commis dans le camp de Jénine, il s'avère que le bilan de l'intervention israélienne n'est pas de plusieurs centaines de morts comme on l'avait prétendu au départ mais de 52 morts et de moins d'une dizaine de disparus. L'intervention israélienne visait à détruire les infrastructures terroristes et les réseaux bien organisés qui sont chargés de recruter, préparer, équiper et transporter les personnes qui commettent des attentats-suicides. Les soldats israéliens, pour leur part, ont reçu des ordres précis concernant le respect du droit humanitaire international. Il existe en Israël de nombreuses juridictions, civiles et militaires, chargées de juger les auteurs d'infractions à ces normes.

22. Il convient de rappeler par ailleurs que le Conseil de sécurité, la Commission des droits de l'homme et le Secrétaire général de l'ONU lui-même se sont longuement penchés sur la question du Proche-Orient. On ne peut donc prétendre que la communauté internationale ne s'y intéresse pas.

23. La question qui se pose au Comité est celle de sa responsabilité à l'égard de tous les États parties. Il ne doit pas agir dans la précipitation et devrait éviter de mettre à l'index un seul État partie et prendre garde de ne pas politiser son action. Il doit absolument conserver une attitude équitable à l'égard de tous les États parties. Il n'a jamais pris à l'égard d'États parties tels que la Colombie, l'Ouganda, la République démocratique du Congo, l'Algérie, le Venezuela ou le Sénégal les mesures qu'il envisage de prendre à l'égard d'Israël. Ces pays ont pourtant été le théâtre d'événements tout aussi dramatiques que ceux qui se déroulent au Proche-Orient.

24. Mme Gaer espère que le Comité ne stigmatisera pas un État partie sous le prétexte fallacieux qu'Israël est un État très particulier.

25. M. YAKOVLEV dit que les événements du Proche-Orient sont certes tragiques mais le Comité doit inscrire son action dans le cadre de la Convention et rester impartial et objectif. Il convient de rappeler à cet égard qu'aux termes de l'article 2 de la Convention aucune circonstance exceptionnelle quelle qu'elle soit ne peut être invoquée pour justifier une quelconque infraction à la Convention. Il y a lieu également de rappeler le principe juridique fondamental en vertu duquel nulle partie ne peut être jugée sans avoir été entendue.

26. Le Comité pourrait invoquer l'article 19 de la Convention pour demander à l'État partie de réagir aux informations dont il dispose sur les événements survenus dans les territoires occupés.

27. M. CAMARA dit que la tâche du Comité aurait été simplifiée si Israël avait fait la déclaration prévue à l'article 21 de la Convention. En effet, dans ce cas, d'autres États auraient sans doute saisi le Comité.

28. Cela dit, dans la pratique, le Comité a toujours admis depuis qu'il examine la mise en œuvre de la Convention par Israël, qu'il pouvait également examiner la situation dans les territoires palestiniens occupés.

29. En outre, en vertu de l'article 19 de la Convention et de l'article 64 de son règlement intérieur, le Comité peut demander à l'État partie de lui présenter, outre ses rapports périodiques, tous autres rapports et renseignements sur les nouvelles mesures qu'il a prises.

30. En l'occurrence, le Comité pourrait demander à Israël de lui fournir, dans le cadre du suivi des recommandations du Comité, des informations sur les questions soulevées par M. El Masry. Le Comité devrait toutefois s'abstenir de débattre du fond de la question en l'absence de l'État partie.

31. M. MAVROMMATIS dit que le Comité ne peut fonder sa discussion que sur l'examen du dernier rapport d'Israël et les recommandations présentées à l'issue de cet examen. Il s'associe aux points de vue exprimés par les deux orateurs précédents et précise qu'il faut permettre à l'État partie d'enquêter sur les allégations portées à son encontre et de fournir des réponses au Comité. Par ailleurs, le Comité ne doit pas perdre de vue la nature politique du conflit du Proche-Orient. Certains événements montrent qu'il devrait y avoir une amélioration de la situation sur le terrain. En outre, les États-Unis semblent prendre l'initiative de la convocation d'une conférence pour débattre de la question. En tout état de cause, M. Mavrommatis ne voit pas quelle action ou décision le Comité est habilité à prendre.

32. M. MARIÑO MENENDEZ note que le Comité se trouve face à deux parties, qui toutes deux peuvent faire l'objet de reproches. Il se demande donc si le Comité ne pourrait pas faire référence au Protocole additionnel I aux Conventions de Genève relatif à la protection des victimes des conflits armés internationaux. Quoiqu'il en soit, il devrait porter toute son attention sur le suivi des recommandations qu'il a formulées à l'issue de l'examen du dernier rapport d'Israël en novembre 2001 et éviter de prononcer une condamnation.

33. Le PRÉSIDENT précise que le Comité n'a aucune compétence pour condamner Israël et qu'il ne croit pas avoir entendu M. El Masry faire une telle demande, même d'une façon implicite. Par ailleurs, le Comité ne peut pas faire référence à un instrument international relatif aux conflits internationaux pour les événements qui se produisent au Proche-Orient.

34. M. YU Mengjia dit que le Comité ne peut bien sûr qu'espérer la fin du conflit et l'instauration de la paix. Il ne pense cependant pas que le Comité puisse, eu égard à son mandat, éviter toute discussion sur la question. Il y va de sa crédibilité. La discussion a le mérite de poser la question de savoir ce que le Comité peut ou ne peut pas faire. Se fondant sur l'article 20 de la Convention,

M. Yu Mengjia n'est pas opposé à ce qu'il y ait un débat sur les questions de fond en l'absence de l'État partie concerné.

35. M. RASMUSSEN déplore qu'Israël n'ait pas permis à la mission d'enquête du Conseil de sécurité de se rendre sur le terrain pour faire la lumière sur les événements survenus dans le camp de Jénine mais il partage l'argument avancé par M^{me} Gaer qui se demande pourquoi le Comité agirait avec Israël autrement qu'avec les autres pays. M. Rasmussen ne peut donc se rallier à la proposition de M. El Masry.

36. M. GONZÁLEZ POBLETE rappelle que le Comité contre la torture, à la différence de la Commission des droits de l'homme, n'est pas un organe politique mais un organe technique. De plus, il n'a juridiction que sur l'une des parties au conflit; l'autre partie, n'ayant pas la qualité d'État, ne peut être partie à la Convention contre la torture. Le Comité n'a aucun droit de prendre position sans avoir écouté le point de vue de l'État concerné sur les faits qui lui sont reprochés. Il peut lui demander de venir présenter des informations sur la situation. D'autre part, M. González Poblete n'est pas sûr que les nouvelles dispositions adoptées en matière de suivi soient rétroactives. Le Comité n'a donc d'autre choix que d'attendre le prochain rapport d'Israël.

37. Le PRÉSIDENT dit que dans toute situation de conflit, il existe des divergences d'opinion sur le déroulement et la nature même des événements en cause. Le Comité est un organe technique, limité de par son mandat. La question examinée relève du suivi de ses décisions. Il incombe donc au rapporteur qui sera chargé du suivi de vérifier si les préoccupations et recommandations du Comité ont été prises en compte par l'État partie concerné. Le Président se dit également favorable à l'idée de faire savoir à Israël que lorsque le Comité examinera le prochain rapport d'Israël, il s'attend à y voir figurer certaines informations précises.

38. M. EL MASRY souligne qu'il n'a pas demandé la condamnation de l'État d'Israël ni formulé de proposition formelle. Il a seulement présenté des informations en indiquant que le Comité voudrait peut-être adresser une lettre à l'État partie pour lui rappeler qu'il doit s'acquitter des obligations qui lui incombent au regard de la Convention quelles que soient les circonstances. À ce propos, le Comité se souviendra qu'à sa dernière session, il a publié, à la suite de l'adoption par le Conseil de sécurité de la résolution 1373 (2001) une déclaration dans laquelle il avait indiqué en des termes très forts que les États devaient continuer de s'acquitter des obligations prévues dans la Convention, même dans le cadre de la lutte contre le terrorisme. Dans cette optique, selon la procédure de suivi prévue dans le projet de Règlement intérieur révisé (CAT/C/3/Rev.5), le Comité pourrait demander au Rapporteur chargé du suivi d'étudier la situation dans les territoires palestiniens à la lumière des événements récents.

39. Plusieurs membres du Comité se sont demandés pourquoi réagir spécifiquement à la situation en Israël alors que tant d'autres États du monde sont aussi responsables de graves violations de la Convention. La différence est que, quels que soient les actes commis dans les autres pays, en Colombie, en Bosnie ou autres, ces États continuent d'exister. La situation des Palestiniens est exceptionnelle. Alors qu'en 1948 ils formaient la majorité de la population, ils ont dû fuir le territoire sur lequel ils vivaient. Aujourd'hui ils n'ont pas le droit de retourner sur leur terre alors que, en vertu de lois discriminatoires sur la nationalité, l'État d'Israël autorise toute personne juive à devenir

citoyen israélien.

40. Un autre élément important est le fait qu'en Palestine il ne s'agit pas d'une situation de guerre; on est en présence d'une armée à l'armement très sophistiqué qui impose sa loi à une population civile. Il est vrai que certains Palestiniens commettent également des actes barbares, mais l'islam condamne catégoriquement le fait de tuer, et donc les attentats suicides. Il ne faut en outre pas oublier que le Gouvernement israélien a empêché la venue de la mission d'enquête que prévoyait le Conseil de sécurité. Pour toutes ces raisons, le Comité pourrait demander aux autorités israéliennes, par l'intermédiaire du Rapporteur chargé du suivi, de s'expliquer sur les allégations de violation de la Convention.

41. Mme GAER dit qu'il faut être prudent lorsqu'on parle d'histoire car les mêmes événements peuvent être considérés sous un angle différent et tout dépend de jusqu'où on remonte dans le temps pour expliquer certains faits historiques. On peut aussi soutenir que le peuple juif, victime d'un génocide il y a 50 ans, était le premier peuple en Palestine. Néanmoins, ces questions n'ont pas à être abordées par le Comité, qui a la charge de veiller à l'application de la Convention.

42. Il faut être aveugle pour ne pas voir qu'Israël est en état de guerre, en situation de conflit armé. L'existence même de l'État d'Israël est mise en cause par certains Palestiniens; l'on sait que dans certains manuels scolaires de la région, l'État d'Israël n'est même pas représenté. La haine et la terreur sont à l'origine de la tragédie que connaît Israël et de l'engrenage du conflit. Alors que le Conseil de sécurité avait appuyé l'initiative visant à dépêcher une mission d'enquête sur le terrain, Israël a estimé qu'elle ne serait pas équitable. Le Secrétaire général des Nations Unies a finalement décidé de ne pas l'envoyer.

43. Le PRÉSIDENT demande à M^{me} Gaer de ne pas prolonger les débats et de faire, si elle le souhaite, une proposition concrète.

44. Mme GAER, notant que le Comité a consacré beaucoup de temps à l'examen de la situation dans les territoires palestiniens, pense que rien ne justifie qu'il prenne une mesure comme l'envoi d'une lettre aux autorités israéliennes. Si le Comité décidait d'envoyer une telle lettre, il devrait également se demander s'il ne doit pas adresser la même lettre aux 28 États parties responsables de graves violations des droits de l'homme pour leur rappeler qu'ils doivent s'acquitter de leurs obligations au regard de la Convention. En outre, M^{me} Gaer note que le Comité n'a pas encore défini dans le détail un certain nombre de procédures prévues dans le projet de Règlement intérieur révisé et que, s'il décidait de prendre une mesure à l'égard des autorités israéliennes à la demande d'un seul de ces membres, il outrepasserait sans doute sa compétence et donnerait à sa décision une connotation politique. Elle propose donc que le Comité mette un terme à son débat sur la situation au Moyen-Orient et ne prenne aucune mesure à l'égard d'Israël.

45. M. CAMARA souligne que le Comité est un organe technique et qu'il intervient au cas par cas. Il est actuellement saisi de la situation dans les territoires palestiniens et il ne doit pas refuser de s'en occuper au motif qu'il y a 28 autres États dans lesquels la situation est aussi mauvaise, voire pire.

46. Le PRÉSIDENT, constatant qu'aucun membre du Comité n'appuie la proposition faite par

Mme Gaer tendant à ce que le Comité ne prenne aucune mesure concernant la situation dans les territoires palestiniens, déclare que cette proposition est caduque. Le Comité doit maintenant se prononcer sur les mesures qu'il souhaite prendre: adresser une lettre à l'État partie pour lui rappeler ses obligations au regard de la Convention, lui demander d'élaborer un rapport spécial sur la situation, indiquer à l'État partie que le Comité abordera les allégations de violations portées à sa connaissance lors de l'examen de son prochain rapport périodique ou demander au Rapporteur chargé du suivi de veiller à la mise en œuvre des recommandations formulées par le Comité.

47. Répondant à une question posée par M. MAVROMMATIS, le PRÉSIDENT dit que si le Comité chargeait le Rapporteur chargé du suivi d'intervenir, celui-ci aurait pour tâche de contrôler la manière dont Israël respecte ou non les recommandations que le Comité a adoptées après avoir examiné le rapport périodique d'Israël à sa vingt-septième session.

48. M. EL MASRY dit qu'il n'insiste pas pour que le Comité demande à Israël d'élaborer un rapport spécial.

49. M. GONZÁLEZ POBLETE, revenant sur sa proposition de ne pas intervenir à l'égard d'Israël, suggère que le Comité recommande au Rapporteur chargé du suivi, dans le cadre de ses activités générales de suivi, de prendre spécialement en considération les faits survenus et le débat tenu par le Comité à la présente séance.

50. M. MAVROMMATIS appuie cette proposition.

51. M. YAKOVLEV dit qu'il est prêt à soutenir cette proposition étant entendu que le Rapporteur chargé du suivi ne se rendra pas en Israël mais réunira toutes les informations utiles sur la situation et les présentera au Comité à l'occasion de l'examen du prochain rapport périodique de l'État d'Israël.

52. Le PRÉSIDENT précise que le Rapporteur chargé du suivi prendra contact avec les autorités israéliennes, par l'intermédiaire de la Mission permanente, pour leur demander ce qui a été fait pour tenir compte des préoccupations et recommandations exprimées par le Comité après l'examen du troisième rapport périodique d'Israël. Par exemple, le Comité s'était déclaré préoccupé par les violations de l'article 16 de la Convention, et il peut donc légitimement demander au Gouvernement israélien ce qu'il a fait dans ce domaine.

53. M. MAVROMMATIS pense qu'il appartiendra au Rapporteur chargé du suivi de décider s'il souhaite présenter ses conclusions au moment de l'examen du prochain rapport périodique d'Israël ou avant.

54. Mme GAER propose de modifier le texte présenté par M. Gonzalez Poblete en lui ajoutant le membre de phrase «en relation avec la procédure de suivi appliquée à tous les États parties».

55. Le PRÉSIDENT constate que cet amendement n'est pas appuyé.

56. Essayant de parvenir à un consensus, M. MAVROMMATIS, soutenu par

M. GONZÁLEZ POBLETE, propose de recommander au Rapporteur chargé du suivi de «prendre en considération les faits survenus et le débat» plutôt que de «prendre spécialement en considération».

57. Mme GAER dit qu'elle ne peut s'associer au consensus. Elle regrette en outre que, le Comité, qui n'a pas encore établi de directives à l'égard du Rapporteur chargé du suivi, confie déjà à celui-ci une démarche précise à l'égard d'un seul État partie.

58. Constatant l'absence de consensus au sein du Comité, le PRÉSIDENT soumet au vote le texte proposé par M. Gonzalez Poblete et modifié par M. Mavrommatis.

59. *M. Camara, M. El Masry, M. Yu Mengjia, M. González Poblete, M. Mariño Menendez, M. Mavrommatis, M. Rasmussen, M. Yakovlev et M. Burns votent pour. Mme Gaer vote contre. Par 9 voix pour et une voix contre, le texte proposé est adopté.*

60. Mme GAER regrette la décision prise par le Comité, estimant que celui-ci aurait dû avoir le courage de refuser la politisation de ses travaux en vue d'assurer la protection des droits de toutes les personnes.