

COMPLAINT

BEFORE THE INTERNATIONAL CRIMINAL COURT

(STATUTE, ART. 15.1 AND 53)

1/ **Ibrahim Naif IBRAHIM ABU THORAYA**, born the 04 December 1988 at Gaza, of Palestinian nationality, dead on December 2017, 15 th, at Gaza, represented by is brother, Mohammed **IBRAHIM ABU THORAYA**, Al Qastal Towers, Gaza

And **LIST OF 562 VICTIMS – REDACTED**

The Palestinian Independent Commission for the Prosecution of the Zionist Occupation Crimes Against Palestinians was established by an Act of the Palestinian Legislative Council on 29 October 2010 entitled The Law of the Palestinian Independent Commission for the Prosecution of the Zionist Occupation Crimes Against Palestinians Number 4 (2010), located in Gaza, Palestine

have the honor to refer the facts described below for the purpose of an investigation, pursuant to Articles 15.1 and 53 of the Statute of the Court, to the Prosecutor of the International Criminal Court.

Legal representation and election of domicile

On account of the military occupation of Palestinian territories by Israel, the blockade imposed by Israel on the Gaza Strip the applicants will be represented for the purposes of this procedure by **Mr Gilles DEVERS, advocate, registered with the Court**

and

the have elected domicile at the office of Gilles DEVERS 3 Place louis Pradel, LYON, FRANCE.

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Consequently, all subsequent correspondence shall be sent only to the mailing and/or e-mail addresses given above. Any notification within the meaning of the Statute of the Court addressed in this way will be considered valid.

The legal representation, without election of domicile, is also assured by:

1/ Maître Khaled AL SHOULI, Advocate, Bar of Jordan, Al Razi Street 85, AMMAN, JORDANIE

2/ M. Ahmed TOUTAH, Advocate, Bar of Gaza, n° 2510, Toutah Area, Zeitoun, Gaza, Palestine

3/ M. Mohammed MEQDAS, Advocate, Bar of Gaza, n° 2285, Gaza, Palestine

4/ M. Mahmoud AFANA, Advocate, Bar of Gaza, n° 2568, In front of Tamwin, Shati, Gaza, Palestine

5/ M. Mohammed Al SAQQA, Advocate, Bar of Gaza, n° 4721, Humaid crossroads, Shati, Gaza, Palestine

6/ M. Ahmed Abu JALAMNBO, Advocate, Bar of Gaza, In front of Aslan office, Al Maghazi, Gaza, Palestine

7/ M. Mahmoud ISHAN, Advocate, Bar of Gaza, n° 2908, Shati, Gaza, Palestine

8/ M. Fahmi Abu LEBDA, Advocate, Bar of Gaza, n° 2614, Main street, Al Maghazi, Gaza, Palestine

- 9/ M. Ahmed SALHEYA**, Advocate, Bar of Gaza, n° 2248, In front of Abu Asi petrol station, Al Wehdah St, Gaza, Palestine
- 10/ M. Aya Al KAHLOUT**, Advocate, Bar of Gaza, n° 2219, Al Wehdah Street, Gaza, Palestine
- 11/ M. Abdulhamid EID**, Advocate, Bar of Gaza, n° 2606, Block 3, Al Bureij, Gaza, Palestine
- 12/ M. Yaser Al DEIRAWI**, Advocate, Bar of Gaza, n° 2985, Buteihan petrol station, Zawaidah, Palestine
- 13/ M. Abdullatif DAHER**, Advocate, Bar of Gaza, n° 2423, Camp, Jabalia, Gaza, Palestine
- 14/ M. Mohammed Abu KMAIL**, Advocate, Bar of Gaza, n° 2600, Tal Al Hawa, Gaza, Palestine
- 15/ M. Khaled BADAWI**, Advocate, Bar of Gaza, n° 2597, Al Zaitoun, Gaza, Palestine
- 16/ M. Younis Abu MOELEQ**, Advocate, Bar of Gaza, n° 2116, Humaid crossroads, Nasser, Gaza, Palestine
- 17/ M. Ahmed JEBRIL**, Advocate, Bar of Gaza, n° 3014, Tal Al Hawa, Gaza, Palestine
- 18/ M. Wasim Al SHANTI**, Advocate, Bar of Gaza, n° 2984, Tal Al Hawa, Gaza, Palestine
- 19/ M. Mohammed JOHA**, Advocate, Bar of Gaza, n° 2195, Al Zaitoun, Gaza, Palestine
- 20/ M. Mahmoud Al DALOU**, Advocate, Bar of Gaza, n° 2402, Al Sheikh Radwan, Gaza, Palestine
- 21/ M. Raed Al BORSH**, Advocate, Bar of Gaza, n° 2831, Jabalia Downtown, Gaza, Palestine
- 22/ M. Amal Al BASYOUNI**, Advocate, Bar of Gaza, n° 2407, Beit Hanoun, Gaza, Palestine
- 23/ Mrs Huda HELEIWA**, Advocate, Bar of Gaza, n° 1028, Al Zaitoun, Gaza, Palestine
- 24/ M. Mohammed HAMDAN**, Advocate, Bar of Gaza, n° 2541, Al Bureij, Gaza, Palestine
- 25/ M. Yaser NASSAR, Advocate, Bar of Gaza, n° 2316**, Al Zawaida, Gaza, Palestine
- 26/ M. Ramadan AHEL**, Advocate, Bar of Gaza, n° 1961, Al Daraj, Gaza, Palestine
- 27/ M. Anas DARWISH**, Advocate, Bar of Gaza, n° 2944, Al Nuseirat, Gaza, Palestine
- 28/ M. Mohamed Al SEIDAWI**, Advocate, Bar of Gaza, n° 2409, Al Nuseirat, Gaza, Palestine
- 29/ M. Mohammed Abu LEBDA**, Advocate, Bar of Gaza, n° 2614, Al Nuseirat, Gaza, Palestine
- 30/ M. Bahaa Al JAMAL**, Advocate, Bar of Gaza, n° 2116, Al Nuseirat, Gaza, Palestine
- 31/ M. Mohammed SIAM**, Advocate, Bar of Gaza, n° 2868, Al Rimal, Gaza, Palestine
- 32/ M. Khalil SHAHIN**, Advocate, Bar of Gaza, n° 2857, Al Bureij, Gaza, Palestine
- 33/ M. Mohammed Abu SALEM**, Advocate, Bar of Gaza, n° 1760, Al Oyoun St, Al Jeser crossroads, Nasser, Gaza, Palestine
- 34/ M. Abdulmenem Abu SHEHA**, Advocate, Bar of Gaza, n° 2325, In front of Palestine playground, Al Rimal, Gaza, Palestine

- 35/ M. Mohammed ABDULAZIZ**, Advocate, Bar of Gaza, n° 2458, Rimal, Gaza, Palestine
- 36/ M. Nidal JARADA**, Advocate, Bar of Gaza, n° 1445, Street n° 8, Al Zaitoun, Gaza, Palestine
- 37/ M. Abdullah SOROUR**, Advocate, Bar of Gaza, n° 3024, Rimal, Gaza, Palestine
- 38/ M. Yafa Al BUHAISI**, Advocate, Bar of Gaza, n° 2903, Deir Al Balah, Gaza, Palestine
- 39/ M. Hamed FERWANA**, Advocate, Bar of Gaza, n° 2573, Al Zaitoun, Gaza, Palestine
- 40/ M. Nedal Al SELEK**, Advocate, Bar of Gaza, n° 2504, Al Sabra, Gaza, Palestine
- 41/ M. Ashraf HABOUB**, Advocate, Bar of Gaza, n° 2429, Al Sabra, Gaza, Palestine
- 42/ M. Ramadan AHEL**, Advocate, Bar of Gaza, n° 1961, Al Daraj, Gaza, Palestine
- 43/ M. Abdullah AYESH**, Advocate, Bar of Gaza, n° 3031, Gaza, Palestine
- 44/ M. Abeeab Al RABIE**, Advocate, Bar of Gaza, n° 729, Gaza, Palestine
- 45/ M. Jaber Abu AKER**, Advocate, Bar of Gaza, n° 2575, Gaza, Palestine
- 46/ M. Ismael Al OWEITI**, Advocate, Bar of Gaza, n° 2312, Gaza, Palestine
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1. Palestinians turn to the ICC, their reference jurisdiction.
2. The present complaint concerns crimes committed by the Israeli army since December 2017, in Gaza, Palestine, during demonstrations organized by the Palestinians on their territory, in protest against the opening of the United States Embassy in Jerusalem, and the policy of colonization.
3. To date, 540 victims of Israeli attacks have given mandates to appeal to the International Criminal Court. Other files are being prepared.
4. It is a mass movement, which expresses itself in a simple way: the Palestinians, victims of the Israeli army shootings, address the only jurisdiction able to receive their complaint, and of which they expect a lot.
5. As the local situation is getting worse by the day, the Palestinians point out that a decision of the ICC prosecutor, seizing the preliminary chamber to open an investigation, would have a considerable impact on the spot. That would be the right answer, as this people turns to international justice to respond to violence. This would be a first step in the fight against impunity, as impunity encourages the commission of new crimes.

I – FACTS

A – The applicants

1/ Victims

6. This complaint is signed by the victims of the Israeli military fire. You will find, attached, all the records. Each record contains identity, identity documents, a narrative of facts, and medical records. In addition, are attached numerous testimonies and documents relating to these events. For the deceased victims, mandates are signed by a family member.

2/ The Palestinian Independent Commission for the Prosecution of the Zionist Occupation Crimes Against Palestinians

7. The Palestinian Independent Commission for the Prosecution of the Zionist Occupation Crimes Against Palestinians was established by an Act of the Palestinian Legislative Council on 29 October 2010 entitled The Law of the Palestinian Independent Commission for the Prosecution of the Zionist Occupation Crimes Against Palestinians Number 4 (2010)
8. On 27 May 2014 the Council of Ministers issued the Executive Regulations for the work of the Organization: Number 3/343/11/M.W. (A.H.) (2014). This text authorizes The Organization to prosecute the Zionist Occupation for crimes against Palestinians through monitoring and documenting the crimes of the Israeli Occupation within and outside of Palestine, and to submit criminal and civilian complaints in this regard.

9. Article 4(1) provides for The Organization to prosecute Zionist Occupation crimes of:
 1. Genocide
 2. Crimes against humanity
 3. War crimes
 4. Crimes of aggression

10. Article 4(3) outlines the Procedures for Documentation, stating, “The organization specializes in documenting Occupation war crimes against Palestinians inside and outside of Palestine, for example:
 - a) Monitoring the crimes and documenting them;
 - b) Preparing files about international criminal complaints after it has been documented, according to customary international law;
 - d) Submit complaints, file lawsuits, civil and criminal, to local and international competent courts, and other authorized parties.

B - The context

1/ Legal context

11. The overall context has been exposed in the complaint filed on July 2017.

12. The resolution 2334 of the 21 December 2016 summarizes the position of the Security Council on the applicable law, in particular on the status of Jerusalem :

The Security Council,
 Reaffirming its relevant resolutions, including resolutions 242 (1967), 338 (1973), 446 (1979), 452 (1979), 465 (1980), 476 (1980), 478 (1980), 1397 (2002), 1515 (2003), and 1850 (2008),
 Guided by the purposes and principles of the Charter of the United Nations, and reaffirming, inter alia, the inadmissibility of the acquisition of territory by force, Reaffirming the obligation of Israel, the occupying Power, to abide scrupulously by its legal obligations and responsibilities under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949, and recalling the advisory opinion rendered on 9 July 2004 by the International Court of Justice,
 Condemning all measures aimed at altering the demographic composition, character and status of the Palestinian Territory occupied since 1967, including East Jerusalem, including, inter alia, the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law and relevant resolutions,
 Expressing grave concern that continuing Israeli settlement activities are dangerously imperilling the viability of the two-State solution based on the 1967 lines,
 Recalling the obligation under the Quartet Roadmap, endorsed by its resolution 1515 (2003), for a freeze by Israel of all settlement activity, including “natural growth”, and the dismantlement of all settlement outposts erected since March 2001,
 Recalling also the obligation under the Quartet roadmap for the Palestinian Authority Security Forces to maintain effective operations aimed at confronting all those engaged in terror and dismantling terrorist capabilities, including the confiscation of illegal weapons,

Condemning all acts of violence against civilians, including acts of terror, as well as all acts of provocation, incitement and destruction,
Reiterating its vision of a region where two democratic States, Israel and Palestine, live side by side in peace within secure and recognized borders,
Stressing that the status quo is not sustainable and that significant steps, consistent with the transition contemplated by prior agreements, are urgently needed in order to (i) stabilize the situation and to reverse negative trends on the ground, which are steadily eroding the two-State solution and entrenching a one-State reality, and (ii) to create the conditions for successful final status negotiations and for advancing the two-State solution through those negotiations and on the ground,

1. Reaffirms that the establishment by Israel of settlements in the Palestinian territory occupied since 1967, including East Jerusalem, has no legal validity and constitutes a flagrant violation under international law and a major obstacle to the achievement of the two-State solution and a just, lasting and comprehensive peace;
2. Reiterates its demand that Israel immediately and completely cease all settlement activities in the occupied Palestinian territory, including East Jerusalem, and that it fully respect all of its legal obligations in this regard;
3. Underlines that it will not recognize any changes to the 4 June 1967 lines, including with regard to Jerusalem, other than those agreed by the parties through negotiations;
4. Stresses that the cessation of all Israeli settlement activities is essential for salvaging the two-State solution, and calls for affirmative steps to be taken immediately to reverse the negative trends on the ground that are imperilling the two-State solution;
5. Calls upon all States, bearing in mind paragraph 1 of this resolution, to distinguish, in their relevant dealings, between the territory of the State of Israel and the territories occupied since 1967;
6. Calls for immediate steps to prevent all acts of violence against civilians, including acts of terror, as well as all acts of provocation and destruction, calls for accountability in this regard, and calls for compliance with obligations under international law for the strengthening of ongoing efforts to combat terrorism, including through existing security coordination, and to clearly condemn all acts of terrorism;
7. Calls upon both parties to act on the basis of international law, including international humanitarian law, and their previous agreements and obligations, to observe calm and restraint, and to refrain from provocative actions, incitement and inflammatory rhetoric, with the aim, inter alia, of de-escalating the situation on the ground, rebuilding trust and confidence, demonstrating through policies and actions a genuine commitment to the two-State solution, and creating the conditions necessary for promoting peace;
8. Calls upon all parties to continue, in the interest of the promotion of peace and security, to exert collective efforts to launch credible negotiations on all final status issues in the Middle East peace process and within the time frame specified by the Quartet in its statement of 21 September 2010;
9. Urges in this regard the intensification and acceleration of international and regional diplomatic efforts and support aimed at achieving, without delay a comprehensive, just and lasting peace in the Middle East on the basis of the

relevant United Nations resolutions, the Madrid terms of reference, including the principle of land for peace, the Arab Peace Initiative and the Quartet Roadmap and an end to the Israeli occupation that began in 1967; and underscores in this regard the importance of the ongoing efforts to advance the Arab Peace Initiative, the initiative of France for the convening of an international peace conference, the recent efforts of the Quartet, as well as the efforts of Egypt and the Russian Federation;

10. Confirms its determination to support the parties throughout the negotiations and in the implementation of an agreement;

11. Reaffirms its determination to examine practical ways and means to secure the full implementation of its relevant resolutions;

12. Requests the Secretary-General to report to the Council every three months on the implementation of the provisions of the present resolution;

13. Decides to remain seized of the matter.

13. On December 6, 2017, the president of the United-States of America, M. Trump, published a statement about Jerusalem¹

“[...] But today, we finally acknowledge the obvious: that Jerusalem is Israel’s capital. This is nothing more, or less, than a recognition of reality. It is also the right thing to do. It’s something that has to be done.

« That is why, consistent with the Jerusalem Embassy Act, I am also directing the State Department to begin preparation to move the American embassy from Tel Aviv to Jerusalem. This will immediately begin the process of hiring architects, engineers, and planners, so that a new embassy, when completed, will be a magnificent tribute to peace.”

14. Israel’s government congratulated Trump for the speech, described by the Prime minister, Benjamin Netanyahu, as an “important step toward peace”.

15. This announcement provoked condemnation from all around the world. This installation of the United States Embassy in Jerusalem, which violates international law, means that there is no longer a credible solution in the short term for the establishment of a viable Palestinian state.

16. On December 20, 2017, by a vote of 128 in favour to 9 against (Guatemala, Honduras, Israel, Marshall Islands, Federated States of Micronesia, Nauru, Palau, Togo, United States), with 35 abstentions, the Assembly adopted the resolution “Status of Jerusalem”, by which it declared “null and void” any actions intended to alter Jerusalem’s character, status or demographic composition. Calling on all States to refrain from establishing embassies in the Holy City, it also demanded that they comply with all relevant Security Council resolutions and work to reverse the “negative trends” imperilling a two-State resolution of the Israeli-Palestinian conflict².

¹ <https://www.whitehouse.gov/briefings-statements/statement-president-trump-jerusalem/>

² <https://www.un.org/press/en/2017/ga11995.doc.htm>

2/ Palestinian demonstrations

17. In response to these events, Palestinians organized numerous demonstrations on their territory, bordering the frontier.
18. There is a separation barrier, built with solid facilities, with masonry, stakes and fences. The barrier is protected by heavy installations. Behind the separation barrier, there are classic military equipment, which allows soldiers to stand up, with guards, sandbags or earth embankments enabling them to watch and act safely. Are erected as well towers whose height exceeds the barrier, from which the Israeli army can watch and shoot.
19. The Palestinian protesters are on the opposite ground, which is a wasteland with no defense facilities. There are just some reliefs and some concrete blocks, which eventually offer a limited protection. The young protesters are located on this area, on a strip of land that is between 300 and 50 meters from the barrier.
20. These are civilians who come for demonstrations.
21. Since December 2017, the Palestinians have not fired any shots at the Israeli soldiers.
22. The only weapons available for the protesters are slingshots or catapults throwing stones at the soldiers. The photographs show that only a few protesters have these materials.
23. The risk posed by throwing stones is objectively very limited. These throws are essentially symbolic. Indeed, the demonstrators cannot manage to approach the barrier, being in the best case at about fifty meters, but it is impossible to stay because when approaching they are targeted by the Israeli fire.
24. The stones thrown are aimed at soldiers who are in military uniform, so with an adequate protection even in case of being hit by a stone. Moreover, the soldiers benefit from material protection with high wire mesh, solid protections, and on the tower, strong protections and sandbags.
25. In such a way, these demonstrations are essentially peaceful, with no armed elements, and the stones throwing does not represent any real physical threat to the soldiers.
26. For the Palestinians, these demonstrations are a means to express their determined opposition to the colonization process.
27. To disperse the demonstrators with a real risk of crossing the barrier, Israeli soldiers can use gas and defensive grenades.
28. However, responding to the military command, the soldiers use targeted fire. The use of targeted shootings against civilian demonstrators, who are also on their own territory and separated by an impenetrable barrier, characterizes the violation of international law.

C – The case of Ibrahim Abu Thorara

1/ General data

29. Ibrahim Abu Thuraya had always lived in a refugee camp in Gaza, with his 11 member family. He was a fisherman.
30. In 2008, he lost both his legs and one of his eyes in an Israeli attack. Ibrahim remained very active, and to earn a living, he washed cars.
31. A 2012 portrait of Ibrahim gives an insight into his life :

“Ibrahim’s day begins early, at 7AM he gathers his supplies, ties his bucket to his old ragged wheelchair, then he kisses his mother’s hand and says “goodbye” as he begins his journey around the streets of Gaza looking for cars to wash. He maneuvers deftly with his rag and bucket and tries his best to reach every part of the car. All this for \$1.50 or \$3 if the car owner decides to be generous. “Please never look at my disabled body, look at the great job I ‘m doing,” said Abu Thuraya “I never felt despaired. It’s not the end of the world and life should go on.” He refuses any offers from car owners to give him money without him doing any job. “I’m not a hobo or a beggar. I can work and make my living,” he said. “Although I earn little money, at the end of the day I feel happy and satisfied because I hate just staying at home or becoming a beggar.” Ibrahim says: “I feel embarrassed when people look at my disability, but life has to continue.”

Piece : December 18, 2012 - Irish Friends of Palestine – Ibrahim Life

32. He was faithfully part of the Palestinian resistance to the Israeli military occupation, through political and peaceful way. In a 2017 statement, he declared :

“They are living on our land and they are armed. We are not armed, but it is our land. And that’s make us powerful.
 If I were hopeless, you wouldn’t find me working car washing. If I were hopeless, you wouldn’t not see me swimming in the sea. I wouldn’t go out to meet people and talk to them. I thank Allah, I’am hopeful.
 It is true that they have weapons, but they fear the stones. The stones, the holy Quran and the power are our weapons.
 I go out to any confrontations because Jerusalem is the capital of Palestine. Jerusalem is ours. We can’t give up on Palestine? We sacrifice our blood to Palestine.
 We are here to send the Zionist occupation a message, that Palestinian people is a strong people.

2/ General context

a/ Date and schedule

33. The facts date from Friday, December 15, 2017.
34. There was no public call for the demonstration. These demonstrations are regular and spontaneous meetings of young demonstrators, they take place after the noon prayer (Duhur), and before the evening one (Maghrib or Maghreb). The demonstrations take place in the east of Shujaeyia, which is a place that has become habitual.

35. INTF060-W1 : “I used to go to border for four years”. That day, the protesters gathered around 15:30.
36. INTF060-W1 : “It was between Aser and Maghreb prayers. It was sunset”. INTF060-W3 : “It was about 15:30 after Aser or maybe before 16:00”.
37. Ibrahim was shot between 16:45 and 16:50.

b/ A Palestinian demonstration on December 15th

- **Departure to the demonstration**

38. Ibrahim was interviewed that morning in his house in Deir Al Balah (INTF060-W4 and INTF060-W5). After they finished filming him for the documentary they were making about him, they took him to Gaza with them and dropped him off at Salah Aldeen Mosque. We don't know what he did in between being dropped at the mosque but it seems that he went to this witness's house 15 minutes after dhuhr.

INTF060- W7 : “I was waiting for the guys, a quarter of an hour after dhuhr, we were sitting there and Ibrahim Abu Thuraya came and said, “Let's go.” He insisted on going.

39. He went there every day since President Trump's statement on Jerusalem.

INTF060-W5 : “He was participating in demonstrations daily”.

40. He had his equipment, a Palestine flag, stored in a plastic bag.

INTF060-W5: “He had a small black plastic bag and he put the flag of Palestine in it. I was with him when he put the flag in the bag and then he hung it on his wheelchair”.

41. His intention is well described by the witnesses. For a long time, and his disability changed nothing, he was a resistance activist, and his participation in the protests was usual. After his 2008 injuries, his presence established that resistance is inherent to each Palestinian, regardless of his physical condition. In his statements, he explained that participating in the demonstrations against the Israeli army was a way to overcome the disability, that disability which was the result of an Israeli war crime. President Trump's statements on Jerusalem reinforced his general motivation. Thus, he was expressing a political conviction, meaning his permanent opposition to the Israeli army, and providing testimony to the world about the permanence of the Palestinian resistance.
42. Moreover, this consciousness is largely shared within Palestinian youth. Press reports all show the importance of demonstrations throughout the occupied Palestinian territories. Slogans and statements were based on two principles: the rejection of Trump's declaration, and the defense of Jerusalem, the capital of Palestine.
43. It's a matter of freedom of expression.

44. Ibrahim had expressed his motivation in a recent interview.

INTF060-W5: “It was a 15 minutes interview only and it was the interview that was published on social media. In this interview he said that he wanted to go to raise the flag of Palestine”.

45. He had also discussed with his friends. He intended to do as usual, that is to say to be the first of the demonstrators, to get closer to the barrier, about 20 or 30 m. He stood in front of the soldiers, with the Palestinian flag, convinced that the Palestinians are the strongest, not because of weapons, but because of the sovereignty over the land.

46. Some non reliable press reports claimed that Ibrahim was planning to cross the border, to imply that he had chosen to die. These claims are unrealistic. His expression must be analyzed in the context of his life, that of a Palestinian who could not accept that he would never go to Jerusalem. He had also made future plans, about which he was excited.

47. But only the facts count, and they are clear: it is strictly impossible to cross the border, and Ibrahim never tried something impossible. The photographs show the equipment, namely: a heavy metal barrier, barbed wire fences, cement blocks over one meter high to protect soldiers, and observation towers. An armored bulldozer would be necessary to overcome these obstacles, and with the air force support. The Israeli military surveillance is permanent, and the Israeli army has considerable means of response. Thus, when demonstrations are organized near Nahal Oz, there is absolutely no possibility for a Palestinian to cross the barrier. There is no precedent.

INTF060-W5: “He had no intentions to cross the border. He had no intentions to be a martyr. He said that he will go to the demonstrations every day. He said, “Maybe we don’t have weapons but we have the power of justice because we are the owners of the land”.

48. He confirmed his intentions to a witness.

INTF060- W7: “He wanted to deliver a message that he is an amputee and is fearless. He wanted to do an interview with a journalist so I got him a news reporter from Al-Mayadeen. He said to him that Trump must withdraw his statement, Jerusalem is the capital of Palestine. The reporter asks him: “What do you want to say to the Jews?” He says “I am not afraid, and Trump must withdraw his statement.” The guy was full of enthusiasm and he had a strong heart although both of his legs were amputated. He only had the Palestinian flag. He got out of his wheelchair and he crawled on his hands to get to the fence”.

49. He had spoken in the same way to a journalist who was going there.

INTF060-W5: “I left him at the mosque and went to cover other incidents. On our way from Deir Al Balah to Gaza, he said, “I am in a wheelchair but I used to go wherever I want and do whatever I want. So you can go and cover the incidents and I will see you at the border”.

50. His presence meant a lot, because his willingness to continue to protest despite his disability was a motivation for all young people.

INTF060-W3: “Ibrahim was a special person because the demonstrators were considering him as their model because he was an amputee”.

INTF060-W12: “He was motivating the guys and telling them, “I am on a wheelchair and I can move forward. So you can do it as well”.

INTF060-W5: “Ibrahim Abu Thoraya went to the border, as any other person, to raise the flag of Palestine and participate in the demonstrations”.

INTF060-W12: “Ibrahim AbuThoraya was in the place and he was a source of motivation and strength to the other guys to go and protest against the occupation soldiers. The occupation soldiers were annoyed because of the presence of AbuThoraya because he was supporting the guys and raising the flag of Palestine all the time”.

51. Ibrahim had behaved that day as he usually did during these demonstrations. There are many photos showing Ibrahim at the heart of the demonstrations towards the border, in the same circumstances as on December 15, 2017. It was, basically, a protest, and is within the scope of freedom of expression.

INTF060- W7: “We went to show to the Arab countries that we don’t sit back and do nothing. After all, Jerusalem belongs to all of the Arab countries”.

- **The demonstration**

52. In Gaza, demonstrations are held habitually and are well known. Protesters from Gaza city usually gather near the border with Israel, in front of a kibbutz, named Nahal Oz. The first Israeli houses are about 875 yards (800 meters) behind an iron fence which separates Nahal Oz from the Gaza Strip. On the Palestinian side is Shejaiya, a neighborhood of Gaza City that was almost completely destroyed in 2014, when the Israeli army assaulted the territory. It means that this Israeli place is particularly guarded and protected by the Israeli army.

53. That day, several hundred demonstrators had gathered, probably 200, as it appears from the testimonies and photographs.

INTF060-W1: “There were young guys on the right and left. There were about 200 of them”.

INTF060-W12: “There were hundreds of protesters at Nahal Oz”.

54. Testimonies and photographs show that the group was very diverse. It was a spontaneous demonstration, without any overall organization. There were no organizers or leaders on site; it was the youth who spoke. We see several flags, the Palestine one and of other political groups.

INTF060- W7: “When he got to the fence, there were flags for Fatah, a red PFLP flag and one of Palestine and he was trying to sort them out”.

55. The numerous photographs and videos show that only civilians were present, and in a very large majority, young demonstrators. There were no fighters in military uniform, or any weapon of war.
56. Palestinian protesters are on a wasteland without any defense facility. There are just some reliefs of the ground, and some concrete blocks, which may offer limited protection. The young protesters are on a strip of land between 150 and 50 meters from the barrier.
57. At this point, it must be emphasized that:
 - Palestinians are on their land, separated from Israeli soldiers by an insurmountable barrier;
 - there are only young civilian protesters, without military equipment;
 - this is an informal gathering of about 200 protesters;
 - the Palestinian side is a vacant lot, without protection;
 - the protesters withdrew after dark, ie 17:30 in December.
58. The photographs show that protesters burn tires, taking advantage of the wind that drives the smoke towards the Israeli zone.
59. Similarly, several protesters threw stones using slingshot or catapult, but it remains largely symbolic. Stones are thrown from a distance, about 100 m. If the stones reach the border, mostly blocked by the metal barrier or concrete protection. If they manage to reach the soldiers, they are minor attacks because the soldiers are wearing military protection and a helmet. In this way, the most dangerous acts are throwing stones, but throwing these stones does not represent any real danger, and can not under any circumstances justify a response by targeted shooting, with weapons of war.

INTF060-W1: “Most of the young guys were gathered to chant. The guy who was throwing the stones threw one stone and ran away. The stone didn’t even reach the soldiers”.

INTF060- W7: “We did not have any weapons, we didn’t have anything aside stones and the stones cannot reach, and will not harm the army. We weren’t a threat to Israel either. [...] I didn’t expect them to kill him because his legs were amputated. None of us were a threat to them. They were sniping at us like mice”.

3/ Israeli military organization

a/ Equipment

60. Israeli soldiers enjoy a particularly favourable situation to control the security.
61. The disproportion is flagrant: on the one hand, young civilian demonstrators, unarmed and unprotected, moving on bare ground; on the other, protected and armed soldiers, situated high up. Along the border, the occupation soldiers made significant earthworks to make an impassable separation, and to enhance the security of the Israeli side. The

separation barrier is placed below, and the Israeli soldiers are placed a little higher, which allows them to dominate the situation.

62. Behind the protective barrier, which is a solid construction, reinforced by rolls of barbed wire, is an empty space, and a little further, are the military protections, with on the one hand cement protections, aligned like a wall, with a height of about 1.50 m, and secondly surveillance towers with regular space. On the site there are three nearby. This equipment is reinforced by sandbags. The area is set up to allow easy movement of military vehicles.
63. Being always on the heights, the soldiers are in a favourable position for surveillance. They can fire from the control towers, or behind the protective wall.

INTF060- W7: “There were three watchtowers and between them there were mounds of sand. Above them there were soldiers that come specifically for Friday. These soldiers would come on Fridays, and usually sit on these sand mounds; three to four soldiers. Between each watchtower, the distance is around 100 metres. At that point, someone set fire to an Israeli flag. The guys were all cheering and were stamping on the flag.

Above this tower there were sand bags for cover and three soldiers. To the right of the watchtower, there was a block of cement, and to the left, there was another block. There was one soldier behind each block; right and left. What I have said was after asr”.

INTF060-W 12: “It was a 6x2.5 meters hill. They were hiding behind it but the upper third of their bodies were visible so that they could shoot”.

INTF060-W5: “They were behind sand bags and watch towers. On that day, there was an announcement that they will increase the number of the border guards, especially snipers.”

b/ Number of soldiers

64. At the beginning of the demonstration, the witnesses counted between three to six soldiers on the watchtower, and others who were along the protective wall. The soldiers are visible and they hide just because the physical risk is nonexistent. In a second time, another group of soldiers will arrive, and this will be the moment of the gunshots.

INTF060-W1: “I saw that there was a watchtower and there were two or three soldiers on it on the right. On my right side there were three armed soldiers”.

INTF060-W8: “Through the camera I saw what was behind the borderline, the soldiers and their equipment. There was a watchtower. Above the watchtower, there were six sniper soldiers kneeling in the firing position on the ground, who had guns for sniping. Sometimes they pointed the weapon towards me. There was also a soldier inside the watchtower, but the one who sniped was the soldier above (the watch tower) who was in a kneeling position, ready to fire. On the left side (from us), next to the watch tower, there was a sand mound and there were soldiers on it.

To the right of the watch tower, there was a sand mound which had six soldiers on it. To the left of the watch tower, past the sand mound, approximately 20 metres going to the left, there were concrete blocks. There were four soldiers behind these blocks. There were 30-40 soldiers, not including the military vehicles. All of this is recorded in the film I was shooting.

c/ Means of observation

65. Several witnesses confirmed that soldiers have cameras, including a camera mounted on a drone, to monitor and identify the protesters. They have every facility to use these materials, because the demonstrators have no military equipment. Thus, the soldiers necessarily filmed the scene, and the Israeli command has no credibility when it says it does not know what happened.

INTF060-W8: “One of them was holding his rifle and the other, a camera, and with them, there was also a laptop. They were filming through a drone camera flying inside the border. They fly the drones above us to film the guys there. This means that they know who is there”.

INTF060-W12: “Now, there is a soldier with a camera who monitors the guys so if they find one of the wanted guys or someone who used to come to the border they shoot them on the head or they cause some serious injuries to them by an explosive bullet on the head or the back. They have started using this method since 2017. Before, they were using rubber bullets a lot but now they are using live bullets, explosive bullets but they are not using rubber bullets anymore.

The guys at our side put tires on fire to distort the vision of the Israelis and to suffocate them. They were using stones and catapults. Some of the guys were throwing stones while others were just watching”.

INTF060-W8: “That day was different than other days because we are used to seeing the soldiers inside the watch towers, but on this day, they were on the top of the watch towers. There was an unusually large number [of soldiers] dispersed with guns with a green laser and I have photos of these soldiers while they are aiming and shooting, aiming with the laser towards the guys. That was towards the end of the night”.

d/ Use of weapons

66. In these circumstances, Israeli soldiers use weapons frequently and without any need. They should let it go because the Palestinians are on their own territory. The Israeli army has no right to ensure order in a territory that is not its own. There is no risk to its territory, its soldiers or its citizens. The videos show that the Palestinians have remained long moments to demonstrate, shouting slogans and throwing stones, and there is no requirement for military intervention. No event imposed this intervention.
67. Moreover, to ensure the control of the order, the Israeli soldiers benefit from a perfectly serene framework, acting from a protected area, and being armed.

68. To disperse the protesters, Israeli soldiers have to use gases, which they can do intensively, so it is impossible to stay in the area. To do this, the soldiers use special military vehicles equipped to make important shots.
69. While the use of gas would be enough, the soldiers resorted to targeted shots. This fact is well known, and it is claimed by the Israeli leadership, which evokes a response needed to protect soldiers. But there is no threat because the demonstrators have no military equipment. Thus, the use of targeted shootings against civilian demonstrators, who are on their own territory and act within the framework of freedom of expression, characterizes a violation of international law.

INTF060-W8: “They were firing automatically and the grenades were flying with the wind but at night the gas grenades formed a cloud on the ground. The gas was a different type that we aren’t used to. Even the paramedics were affected by this. Even my clothes smelt of the gas when I had got home. It made us vomit a lot. A lot of the journalists suffered from other symptoms, such as tears, burning, suffocation and vomiting”.

INTF060-W1: “I began to move forward slowly to see the incident from close up. When I went forward they told me that they [Israelis] were throwing tear gas canisters. One of my friends told me not to go any further because I may get injured or shot. I told him that its ok and I walked and moved forward”.

INTF060-W12: “I used to go to border for four years. Usually there were clashes between the soldiers and the guys for an occasion. The guys threw stones and the soldiers shot them. There was a systematic attack on the guys. Before, they were attacking the guys who were at the frontline”.

70. Israeli soldiers are targeting protesters with shootings in their arms and in their legs. There are many testimonials, and medical findings confirm it, with serious injuries and maiming. However, the use of a weapon of war against civilians, apart from self-defense, is a disproportionate use of force.
71. Weapon fire on Palestinian civilians has no justification. The photographs and videos show that live fire is used from the outset, that is to say even before using the gas. On several videos, we see wounded people who are evacuated after receiving a shot, while there is no gas smoke. The soldiers freely choose targets on civilian protesters, and decide to fire at them.

INTF060-W5: “I saw other injured people in the place. They were more than 100 injured persons. They were shot by live-bullets. I knew that it was live-bullets from its sound and from the people and the paramedics who were there and from the medical resources. Also, live-bullets enter the body”.

INTF060-W8: “The guys were getting closer to the fence, and the amount of teargas was massive. There were numerous injuries. I photographed the injuries. The majority of these injuries were to the leg, and there was a martyr but I don’t remember his name. I can get his name if you want. The injuries were due to live ammunition”.

INTF060-W12: “We went to the protests at Nahal Oz and there were a number of protestors. The clashes were strong between the guys and the occupation forces. There were a number of injured people and most of the injuries were between medium to severe. Most of the attacks led to disabilities so that the guys can’t face them in the coming wars. The guys had a patriotic motive to defend Al Quds and the case because Trump declared Al Quds as the capital of Israel”.

INTF060-W1: “Let me mention that there were two other guys. I saw them when I heard the sound of shooting. I found a young guy who fell on the ground and he was injured. After 15 minutes, another guy at the front got injured too”.

3/ The crime

a/ Ibrahim

- **The attitude of Ibrahim**

72. Ibrahim's presence did not go unnoticed. He was a well-known personality. By the way, there was a huge crowd for his burial.

INTF060-W5: “Everyone in Gaza knew him. This was obvious when he was martyred as everyone was shouting and saying his name”. This refers to the moment he was shot, not his funeral

73. Ibrahim was also known to Israeli soldiers, which makes perfect sense. Indeed, Ibrahim went very often to the demonstrations that are held at this place, he was known by soldiers positioned at this location. He used to approach a few tens of meters from the border, and seeing his bodily appearance, he was easy to identify, whether he was on his wheelchair, or walking with his arms. In the same way, Ibrahim used to climb electrical pylons installed on the site, with the strength of the arms, to install a Palestinian flag there. The Israeli army has this type of photograph, since it published in the days that followed, a statement with the photo of Ibrahim climbing a pylon.

74. According to the demonstrators, it is certain that Israeli soldiers knew Ibrahim

INTF060-W8: “They know Abu Thoraya and that both of his legs are amputated, for sure”.

INTF060-W3: “Ibrahim was always there and he was obvious to the occupation”.

75. Moreover, an Israeli soldier spoke to him in Arabic, telling him to leave. The soldiers then fired around him to scare him, and they made fun of him.

INTF060- W7: “There was a soldier shouting at him, “Go away Ibrahim, you thief.” He was talking to him in Arabic. I was confused: it felt like the soldier was one of us! Ibrahim stood there, the Jew shot live fire around him and to his side to make him scared so he would retreat. He stood there and took off his shirt. The Israelis were laughing at him and clapping”.

- **The location of Ibrahim**

76. Ibrahim's whereabouts when he was killed is established with precision. The best evidence depends on the Israeli army because the soldiers filmed the whole scene.
77. In reality, there is no doubt for a simple reason; Ibrahim had come, as he did the other times, to stand at the protesters' outpost, so he could speak directly to the Israeli soldiers. Photographs taken at other events show that it was in the same place, at the forefront.
78. Witnesses locate its presence at a distance of 50 to 20 m from the barrier, which is accurate and credible information. No one could imagine that Israeli soldiers would kill him, and the protestors did not watch him particularly.
79. It is always difficult to estimate a distance accurately, and all people moved a lot. Ibrahim himself got closer to the soldiers. A video taken just after the shooting shows that Ibrahim was between 20 to 30 meters from the barrier. There can also be a difference of some meters, depending if the reference taken in account is the barrier or the soldiers who are located a few meters after the barrier, behind the protections. It is clear that Ibrahim was the most advanced demonstrator, approaching a few tens of meters, less than 50 meters.

INTF060-W1: "I noticed Ibrahim Abu Thoraya at the right side of the hill. He wasn't able to move a lot because of his condition and the difficult terrain that wasn't helping him. Ibrahim was at the frontline more than the others. He was close to the fence".

INTF060- W7: "Ibrahim was at the fence and was hanging the flags and he retreated and stayed away from the fence, about 30 or 50 metres away from the fence. He was next to me when Ibrahim was injured. He was 30 to 50 metres away when we were shouting and holding the flags".

INTF060-W12: "The distance between Ibrahim and the soldiers when he was shot was about 12 meters. I was 7 meters from Ibrahim and I was filming with my mobile phone before Ibrahim moved forward. I stopped filming and closed my phone and I sat to watch what was happening. I didn't expect that they would shoot him. I opened my mobile again to film but by that time the guys carried him".

INTF060-W5: "He was 20 meters away from the border and he was so close to the snipers so they could easily shot him. I was 40-50 meters away from the border. I didn't see him when he was murdered.

- **A Peaceful protestor**

80. Ibrahim did not cause any danger to the Israeli soldiers. He was in a close proximity to the soldiers, for half an hour already, at least. That day, like the other times, he had no weapon on him. The soldiers had spoken with him, asking him to leave, so they knew the situation very well. He had the Palestinian flag in one hand, and he was doing the V of victory with the other hand. His attitude was totally peaceful.

INTF060-W1: “I can assure that Ibrahim was unarmed and he was not carrying anything. The one who shot Ibrahim meant to kill him”.

INTF060-W2: “I didn’t notice any threat from Ibrahim to the soldiers. He was only talking to them”.

INTF060- W7: “The distance between Ibrahim and the fence was 50 metres when he was shot. He was facing towards the fence, around an hour and a half after asr. Ibrahim was holding a flag and making the peace sign before he was shot”.

INTF060-W12: “He was at the frontline and the guys were around him. The guys were behind him and he was at the front. They were protesting against the soldiers and throwing stones on them. I don’t know who these guys were. He was on his wheelchair when they shot him. The place where he was shot and the girls who shot him were shown in the video. When he was shot it was before Maghreb. The guys carried AbuThoraya and they were shocked with the incident. Their anger increased and then a heavy firing of gas canisters and shooting started on the guys. They carried AbuThoraya and he was a dead body”.

INTF060-W12: “Ibrahim was shot at about 4:30. Before he was shot he was at the front and he had a catapults and he was throwing stones on the Israelis. After that there was a heavy gas firing and then the guy moved forward, threw stones on the female soldier and ran away then AbuThoraya moved forward and they shot him”.

b/ The Israeli attack

- **Engagement of the shots**

81. The situation was tense, but relatively calm. There had been a gas and live fire, but the situation remained stable. Suddenly, arrived on the Israeli zone behind the wall of protection a Jeep equipped for the massive shots of gas. Immediately, there were massive jets, like a real shower of gas. At first, nothing changed for Ibrahim’s situation.

INTF060-W4: “I saw Ibrahim 20 meters away from the fence, after that a jeep arrived and start to launch a lot of tear gas, we could not see Ibrahim Abu Thoraya, when I saw Ibrahim he was not holding anything but the Palestinian flag, he didn’t have any faction’s flag. The jeep had a tear gas launcher, after it launched the people scattered because of the tear gas. They [the Israelis] shot live fire on any left”.

INTF060-W1: “Let me mention that there were two other guys. I saw them when I heard the sound of shooting. I found a young guy who fell on the ground and he was injured. After 15 minutes, another guy at the front got injured too. The guys said that a gas jeep arrived so they retreated and escaped”.

82. It is in these circumstances that, minutes before the death of Ibrahim, was killed another young demonstrator, Yasser Sukkar:

INTF060-W7 : “After asr, about 30 soldiers came and there were two female soldiers and two soldiers who came from a jeep without any doors, I think they call it ‘MAG.’ I am not sure what the model is. The four soldiers, the two female soldiers and the other two, went to the watch tower. Above this tower there were sand bags for cover and three soldiers. To the right of the watchtower, there was a block of cement, and to the left, there was another block. [...]

During this time, after the burning of the flag, the Jews were shooting heavily towards the legs and above. At that point, Yasir Sukkar was martyred. A female soldier shot him dead. She was visible. She was blonde. She was wearing a helmet and was outside of the tower behind the cement block, and was shooting from there. The jeep with the tear gas launcher came and began to fire rapidly; it didn’t launch one canister, it launched 20 teargas canisters. After the teargas launch, of course we ran away because of the smell of the teargas.

INTF060-W3: “I heard from people that there was a person with severe injury coming from the protests so I went to document it. When I reached the victim I saw the guys carrying his body on a stretcher and he was unconscious. I can’t remember where exactly his injury was and whether it was on the head or chest. It was known in the place that this guy died. After that I went to Shifa hospital to document the other injured people and I knew from the medical resources that the victim name was Yasser Sukkar.

I saw Yasser when he was carried after he was injured at about 250 meters. I think he was injured at less than 100 meters because we waited for a while until he reached us.

INTF060-W1: “The one who got injured before Ibrahim was from the Sukkar family. When I saw the two guys who were injured in their legs I was curious because the injuries were in their legs and in the same place. Immediately, I realised that the soldier who was shooting the guys was deliberately shooting them in these areas (legs, abdomen, etc.)

I asked a guy why they all got injured in the same place. One of the young guys who went there often, answered me and said that if they want to kill someone they shoot him, and if they want to paralyze or disable them they shoot them for this purpose. After that, I was standing 10 metres behind Ibrahim. I ran towards him. I said to myself that he might fall over. It didn’t occur to me that Ibrahim might be a threat to them; we weren’t a threat to Israel either.”

- **Shooting on Ibrahim**

83. It was after this first phase that Ibrahim was shot. Ibrahim remained in his position as a protester, motionless. He refused to go back. There was a bit of confusion from the gas and bullet shooting that had just taken place, but Ibrahim was still in his advanced position, about twenty meters away. Several people witnessed the shooting and saw Ibrahim collapse when he was hit by the bullet. There is no doubt that it is an Israeli shooting, carried out by soldiers who were behind the protective wall. Ibrahim was facing the soldiers, and the bullet hit his forehead just above the brow bone, that is, from the front. The bullet has been extracted and is the subject of an expert report.

84. It's a sniper shot, designed to kill. The soldiers have precision weapons, especially at 20 meters. Ibrahim did not move, or very little, because of his disability. Soldiers shoot and aim safely and without panic, given the protections and security they have. It's a criminal shot.

INTF060-W5: "I saw 15 soldiers and all of them were snipers. Sometimes they were deliberately shooting to cause no harm while other times they were deliberately shooting to cause injuries to people. They were using weapons but I don't know what they are".

INTF060-W6: "15 meters in front of me was Ibrahim Abu Thoraya. He was doing the victory sign and carrying the flag of Palestine and saying, "Al Quds is the capital of Palestine" and he was moving forward. A few minutes after, he was shot[...]. Ibrahim fell onto his right side when he was hit. Before Ibrahim was martyred he was waving the Palestinian flag in one hand and making the victory sign with the other. After that, he was fired on and hit with a gunshot. Ibrahim was far from the fence, to be exact, 30 meters."

INTF060-W1: "I stayed in the same place but I wasn't so close. I saw Ibrahim Abu Thoraya at the front close to the fence. Personally, I didn't expect them to kill him because he was tired and unable to move. I stayed there for 20 minutes observing the place. Suddenly I heard a gunshot where Ibrahim Abu Thoraya was. I saw Ibrahim fall on the ground and the young guys tried to save him. Then everybody went to help Ibrahim. Going by what I saw during the incident and Ibrahim's acts, Ibrahim was not a threat. He was just yelling at the soldiers and trying to go closer to the fence. I am sure that the soldiers who were at the fence were able to cause a nonfatal injury to Ibrahim such as a hand injury".

INTF060-W12: "On the other side there were about 4 or 5 female soldiers, they were opposite to him, and at the left side there were seven soldiers on the watch tower and at the right there were four soldiers. I was at the frontline as I used to reach there to film special shots so I heard the voices of the soldiers and they were badmouthing the guys in Hebrew language. We are considered as the enemies of Jews so for sure they were badmouthing."

INTF060- W7: "There was a block that we hid behind. After the smell of the teargas settled down, all those that were injured were carried to the ambulances. After the fog cleared up, I saw Ibrahim falling over. I am not sure where he was injured. I was running away from the teargas. I was not even aware of myself. I was unable to see because of the teargas."

- **Probable role of a woman soldier**

85. This is an Israeli shot, designed to kill: there is no alternative hypothesis. On the other hand, in the current state, for the Palestinian side, the testimonies and the photographs do not make it possible to identify who was the killer among the soldiers. The Israeli military command necessarily knows it, because everything is filmed, and a serious interrogation of the soldiers present would confirm the author of the shooting. That said, two testimonies describe precisely the role of a female soldier.

INTF060-W12 : “Most of soldiers were wearing glasses and face-covers. The female soldiers who shot fire on AbuThoraya were hidden behind a hill and nobody noticed them when they appeared. AbuThoraya moved toward the girls because the girls shot fire on the guys and the guys retreated. He moved forward to encourage them. They were 4 or 5 female soldiers behind the hill. The soldiers shot fire on AbuThoraya because he provoked them as he moved forward when all the other guys ran away.

Ibrahim AbuThoraya was shot by a female soldier after a guy hit her with a stone. She went and returned with some other female soldiers. The guy retreated but Ibrahim AbuThoraya moved forward and raised the flag of Palestine then the girls shot him directly on the head and he was martyred few minutes after that. This injury caused his death instantly.”

INTF060-W6: “They Three Israeli soldiers were wearing military clothes. They were wearing a helmet and M16. They were three soldiers including a female soldier. The three of them were directing their weapons toward Ibrahim when he got injured so I couldn’t identify which person fired the shot.

There was a tower. Three soldiers came down from it and moved toward the fence opposite to Ibrahim Abu Thoraya. Ibrahim was saying, “No for the decision. Al Quds is ours” and he was asking the other guys to join him as well.

I was 15-20 meters away from Ibrahim. I was next to him.

Ibrahim was facing the fence and looking directly at the border and the Israeli tower. Three [Israeli soldiers] went down from the tower 3 meters behind the fence. They went down for Ibrahim. After Ibrahim did the victory sign and raised the flag in front of them they directly shot him after that. They went down especially for him. Nobody else except him was there in the area and close to the fence. The guys were meters behind him.”

- **After the shooting**

86. After the shooting, Ibrahim was immediately taken care of by the demonstrators, who all noticed that there was only one wound, with blood flowing abundantly. The bullet did not come out, which showed that the soldiers had chosen ammunition to do the most serious bodily harm.
87. Everything shows that the achievement was irreversible with the shot done with the intent to kill. But Ibrahim has not been able to benefit from immediate care, like all the wounded, because in flagrant violation of international law, the Israeli authorities forbid ambulances from approaching the border, imposing that they remain at a distance of 300 m, which is very detrimental to the wounded.

INTF060-W12: “One of the guys moved him forward with the wheelchair and retreated and when he was shot the guys carried him immediately”.

INTF060- W7: “When I got to Ibrahim I found him alive. His face was towards the fence and he was standing in front of the Jews when he fell over. He fell over to the right. The bullet was above his left eyebrow. I carried him. He was alive and the guy came running and we took him to the ambulance. Ibrahim was still alive.

He was on the ground and there were around 50 people around him. They were throwing stones and shouting. The army was firing gas and live and rubber bullets. We ran away when they were firing shots and we were treating the injured and transferring them to the ambulance.”

INTF060-W1: “At that moment, I was close to Ibrahim and I saw his injuries. I found that the injury was on his head, above his eyes. His face was covered in blood”.

INTF060-W3: “His injury was directly above the left eye. This is exactly what I remember. It was clear that he was shot to be killed. His injury was different from the other injured people who were injured on their limbs. Ibrahim’s injury was above the left eye”.

II – REQUEST FOR THE OPENING OF AN INQUIRY

A – Jurisdiction

1/ Alleged crimes within the jurisdiction of the Court

88. On the basis of the information available, there is a reasonable basis to believe that war crimes have been committed :
- murder (article 8(2)(c)(i));
 - intentionally directing attacks against civilians (article 8(2)(e)(i));

2/ Place and date of alleged commission of the crimes

a/ Territory

89. The above crimes are alleged to have been committed on the territory of Palestine.
90. Since Palestine is a State Party, the Court may exercise jurisdiction over all alleged crimes committed on Palestinian territory since 1 January 2015, irrespective of the nationality of the accused.
91. In particular, article 12(2)(a) provides that the Court may exercise its jurisdiction over crimes referred to in article 5 if the “State on the territory of which the conduct in question occurred” is a Party to the Statute. Thus, since the alleged crimes identified in this Request have been committed on the territory of a State Party to the Rome Statute, the Court has territorial jurisdiction over these alleged crimes, regardless of whether the alleged suspects are nationals of a State Party (*D. Akande, ‘The Jurisdiction of the International Criminal Court over Nationals of Non-Parties: Legal Basis and Limits’, Jrnl Int’l Crim Justice 1 (2003), pp. 618-650; G. Danilenko, ‘ICC Statute and Third States’, in A. Cassese, P. Gaeta & J. Jones eds., The Rome Statute Of The International Criminal Court: A Commentary, (2002), pp. 1871-1897).*

92. A suspect is not required to be physically present in the territory of a State Party when a crime is committed for the Court to be able to exercise jurisdiction over his or her conduct, as long as the crime imputed to the suspect occurred within the confines of such territory (*Prosecutor v. Saif Al-Islam Gaddafi and Abdullah Al-Senussi, Appeals Chamber, “Judgment on the appeal of Libya against the decision of Pre-Trial Chamber I of 31 May 2013 entitled ‘Decision on the admissibility of the case against Saif Al-Islam Gaddafi’”, ICC-01/11-01/11-547-Red, 21 May 2014, para. 62*)

b/ Date

93. The crimes allegedly committed on the territory of Palestine between December 2017 and May 2018 fall within the Court’s jurisdiction *ratione temporis*.

3/ Link with international conflict

94. These crimes took place in the context of international armed conflict.

4/ « Potential cases » (Art. 15)

95. At the article 15 stage, admissibility is assessed in relation to “potential cases” which may be brought. These potential cases are defined by criteria such as:
- (i) the persons or groups of persons involved that are likely to be the focus of an investigation for the purpose of shaping a future case or cases;
 - and (ii) the crimes within the Court’s jurisdiction allegedly committed during the incidents that are likely to be the focus of an investigation for the purpose of shaping a future case or cases.
96. As for the level of specificity and detail required to make an admissibility determination, the Prosecution has borne in mind the nature of the present stage, the low evidentiary threshold which applies, and the object and purpose of the article 15 stage. Accordingly, the identification by the Prosecution of the incidents and persons or groups of persons relevant to the above test “at this stage is preliminary, and as such, this may change as a result of the investigation” (*Georgia Article 15 Decision, para. 37 ; Kenya Article 15 Decision, para. 50*). Moreover, the assessment of the persons or groups of persons allegedly involved “involves a generic assessment, *ie* general in nature and compatible with the fact that an investigation is yet to be opened” (*Georgia Article 15 Decision, para. 51. See also Kenya Article 15 Decision, para. 60*).
97. The attached documents show what this criterion is achieved.
98. These first files were made urgently, but they gather enough evidence to convince the need to conduct an investigation. They will be completed.
99. The situation of the victim Ibrahim was the subject of a detailed report, which makes the crime perfectly probable, and which shows the quality of the work that can be produced by the services of Palestine, to the International Criminal Court.

100. The information available provides a reasonable basis to believe that members of the Israeli Army committed systematic murders of Palestinians demonstrators, in Palestine, near the border.
101. Finally, it should be noted that this complaint is limited to the demonstrations that have been held since December 2017. These events must be understood as a global fact justifying the jurisdiction of the court. It is not necessary to extend it to the general problems that are in this case the colonization the blockade of Gaza.

B – Admissibility

1/ Complementarity

a/ Legal references

102. Article 17(1)(a) and (b) establishes a twofold test for complementarity:
- (i) whether, at the time of the proceedings in respect of an admissibility challenge, there is an on-going investigation or prosecution of the same case at the national level (first limb); and, if this is answered in the affirmative,
 - (ii) whether the State is unwilling or unable genuinely to carry out such investigations or prosecutions (second limb) (*Prosecutor v. Germain Katanga and Mathieu Ngudjolo Chui, Appeals Chamber, “Judgment on the Appeal of Mr. Germain Katanga against the Oral Decision of Trial Chamber II of 12 June 2009 on the Admissibility of the Case”, ICC-01/04-01/07-1497, 25 September 2009 (“Katanga Admissibility Appeals Judgment”), paras. 1 and 75-79*).
103. Inaction by a State under the first limb renders a case admissible before the Court, subject to an assessment of gravity under article 17(1)(d) (*Katanga Admissibility Appeals Judgment, para. 78*). The Prosecution conducts its determination(s) on complementarity in relation to the potential cases that are likely to be the focus of an investigation by the Prosecution.
104. The admissibility provisions of the Statute are founded on the complementary relationship between the ICC and “national criminal jurisdictions”. As such, in principle, it is only national criminal investigations and/or prosecutions of a State that can trigger the application of article 17(1)(a)-(c).

b/ The people of Palestine and the ICC

- **Since 2008, Palestinian civil society**

105. Since January 2008, Palestinian civil society has consistently approached the International Criminal Court to provide a legal response to the most serious violations of the law committed by the occupying military power in the territory of Palestine.
106. After many actions, the Palestine Government ratified the International Criminal Court Treaty on December 31, 2014.
107. In July 2017, 42 associations and unions, and 448 Gazans, represented by 47 lawyers from the Palestine Bar Association, submitted a detailed complaint to the prosecutor's

office, along with the elements of the historical and legal analysis, and the finding of the violations against them. more serious law for the population residing in Gaza. In one way or another, these serious violations are characterized by attacks on human life.

- **National jurisdiction**

108. Today, and while the possibility of a Palestinian state has become hypothetical, the international criminal court is, more than ever, the natural interlocutor of the Palestinian people. The exercise of sovereignty in Palestine does not allow for trials to judge violations of the law committed by the occupation army.

- **Lack of international regional jurisdiction**

109. There is no jurisdiction with international regional jurisdiction.

- **United Nations**

110. US blocked a request for an inquiry made by several states, presented to the Security Council.

- **Israeli justice**

111. Violations of the law by the Israeli army should be judged by Israeli courts, but experience shows non-credible responses. The most important facts are ignored by Israeli justice, which holds them as the basis of legality. Exceptionally, for flagrant individual acts, proceedings are conducted, but the proceedings despise the standards of international law and show a guilty indulgence for the military.

112. In the case of Ibrahim Abu Toraya, the Israeli investigation was conducted by the military police, which does not meet procedural standards. The military police initially claimed that the information was false. The Palestinian services conducted an autopsy, and they showed the bullet that killed, which is an Israeli bullet. The army then admitted that it had to make an investigation, but it quickly reached its conclusions, saying that the shooting had ended an hour before the shooting on Abu Toraya, which is devoid of all seriousness.

113. Among the many reports that were published, everyone could see another situation, that of the young man shot from the back while pushing a tire. The father has filed a complaint and is among the complainants. Again, the Israeli army did not investigate, and explained that he was a terrorist.

114. Regarding the dramatic day of May 14, 2018, the Israeli government congratulated the soldiers for the way they protected the border.

115. So there is nothing to expect from an investigation that would be done in Israel.

116. On the basis of the information set out above, it is apparent that either no national investigations or prosecutions have been conducted or are ongoing against the persons or groups of persons set out in this request. In these circumstances, the International Criminal Court is the only recourse for the victims of Palestine.

2/ Gravity

117. The gravity assessment has been conducted against the backdrop of the potential cases that are likely to arise from an investigation into the Situation (*Kenya Article 15 Decision, paras. 50, 58, and 188; Côte d'Ivoire Article 15 Decision, para. 202*).
118. A gravity assessment involves a generic examination of whether the persons or groups of persons relevant to the assessment capture those who may bear the greatest responsibility for the alleged crimes committed. The assessment must also be done from both a quantitative and a qualitative viewpoint, and factors such as nature, scale and manner of commission of the alleged crimes, as well as their impact on victims, are all indicators of the gravity of a given case (*Kenya Article 15 Decision, paras. 60-62; Côte d'Ivoire Article 15 Decision, paras 203-205; Georgia Article 15 Decision, para. 51*).
119. Accordingly, the Prosecution's submissions on gravity relate to an assessment of gravity of one or more potential cases, rather than the gravity of the entire situation.
120. Based on the information available, the potential case(s) concerning alleged crimes committed by members of the Israeli Army are of sufficient gravity to justify further action by the Court.
121. The alleged crimes have been committed on a large scale, with reports that murder has been practised institutionally.

3/ Interests of justice

122. The seriousness and extent of war crimes committed in Palestine, highlighted by the extended period of time over which crimes have been and continue to be committed, the wide range of perpetrators among all the parties to the conflict, the recurring patterns of criminality, and the limited prospects for accountability at the national level, all weigh heavily in favour of an investigation.
123. Victims of alleged crimes within the context of the situation have manifested their interest in seeing justice done. The Prosecution has sought to ascertain the interests of victims, through direct consultations with victims' organisations in Palestine as well as through an examination of communications and publicly available information
124. Fourteen civil society organisations in Palestine and 450 inhabitants, defended by fourteen Palestinian lawyers, signed a joint complaint to the Prosecutor in July 2017, calling for immediate action by the ICC to address the situation in their country.
125. In light of the gravity of the acts committed, and the absence of relevant national proceedings against those who appear to be most responsible for the most serious crimes within the situation, the potential cases that would arise from an investigation of the situation would be admissible. Taking into account the gravity of the crimes and the interests of the victims, there are no substantial reasons to believe that an investigation would not serve the interests of justice.

126. Experience shows, alas, that impunity is a factor that aggravates the commission of crimes.
127. Numerous appeals to international justice have been made :
 - Arab League calls for opening of investigation by International Criminal Court ;
 - Many Western countries – France, Great Britain, Germany - denounced the use of force, and they demand the organization of an independent investigation.
128. The decision to seize the Pre-Trial Chamber for the initiation of the investigation would be hailed in Palestine and in the world, except by the United States and Israel.
129. This decision would have a particularly useful role as it would be a response to a crime being committed. It would inevitably bring about a change in practices, at least in the extent of Israeli abuses, and this decision would save lives limiting the number of new wounded.
130. In public statements, the Government of Palestine now mentions the possibility of bringing a situation under Article 14, but experience shows that this government is under great pressure, and don't yet use Article 14. It is not possible to wait, and it is necessary to act under Article 15.
131. In a statement to the newspaper *L'Humanité* (May 15th), M. Salman el Herfi, representative of the Palestinian Authority in France, declared :

Peut-on parler dans le cas du massacre de Gaza de crime de guerre ?

Salman el Herfi: « Bien évidemment. Comment nommer autrement une telle action ? Là encore, la communauté internationale doit prendre ses responsabilités. Israël est une création des Nations unies et en est partie prenante. Par conséquent en vertu du droit international, nous demandons au Conseil de sécurité de l'Onu de prendre ses responsabilités vis-à-vis d'un de ses états membres qui une fois de plus viole outrageusement ce droit international. Nous demandons aussi au procureur général de la cour pénale internationale (CPI) de prendre ses responsabilités. La protection de la population civile est une prérogative majeure de la CPI. Depuis des décennies, dès lors que les Palestiniens manifestent, il n'y a aucune protection internationale pour empêcher les massacres. Le dossier palestinien pourrait sur la table du conseil de sécurité de l'Onu, du conseil des droits de l'Homme et de la cour pénale sans que rien ne soit fait. Enfin, chaque État a ses propres responsabilités dans le drame palestinien et a le droit de prendre position et de peser ».

132. The request for investigation meets the criteria of the Statute, and will constitute progress in the fight against impunity,
133. And Justice will be done.
134. At Paris

Gilles DEVERS
Advocate