



THE STATE OF EMERGENCY IN PALESTINE IN LIGHT OF THE INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

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ABSTRACT:

Article 48 of the International Covenant on Civil and Political Rights opens the door for singeing the Covenant by, inter alia, any member State in any of the United Nations specialized agencies. After the membership of Palestine, as a State, in the United Nations Educational, Scientific, and Cultural Organization on 31 October 2011, the possibility for Palestine of becoming party to the Covenant is now open. In order to be party to the Covenant, Palestine needs to be prepared. It should launch a process of reforming existing legislation in line with international human rights law, starting with the said Covenant. This paper offers an example of the required legislative reform by focusing on Article 4 of the Covenant and analyzing it in comparison with the state of emergency provisions of the 2003 Palestinian Basic Law.

المخلص:

تفتح المادة 48 من العهد الدولي الخاص بالحقوق المدنية والسياسية الباب للتوقيع على العهد لأي دولة عضو في أي من الوكالات المتخصصة التابعة للأمم المتحدة. بعد عضوية فلسطين، كدولة، في منظمة الأمم المتحدة للتربية والعلوم والثقافة في 31 تشرين الأول / أكتوبر 2011 باعتبارها وكالة من الوكالات المتخصصة التابعة للمنظمة الدولية الأم، أصبح ممكناً لدولة فلسطين أن تصبح طرفاً في هذا العهد الدولي. ومن أجل أن تكون طرفاً في ذلك العهد، تحتاج فلسطين إلى أن تكون مستعدة على مختلف الأصعدة. فيتعين على فلسطين أن تطلق عملية إصلاح للتشريعات القائمة بما يتماشى مع القانون الدولي لحقوق الإنسان، بدءاً من العهد المذكور. تقدم هذه الورقة مثلاً على الإصلاح التشريعي المطلوب من خلال التركيز على المادة الرابعة من العهد وتحليلها بالمقارنة مع أحكام حالة الطوارئ الواردة في القانون الأساسي الفلسطيني المعدل لعام 2003.

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INTRODUCTION

Article 48, paragraph 1, of the International Covenant on Civil and Political Rights of 16 December 1966 (ICCPR)¹ provided that the ‘present Covenant is open for signature by any State Member of the United Nations or member of any of its specialized agencies’²With the membership of Palestine in the United Nations Educational, Scientific and Cultural Organization (UNESCO), as one of the United Nations (UN) specialized agencies³, on 31 October 2011⁴, the possibility for the ‘State of Palestine’ to become party to the ICCPR, and to a number of other treaties, has become open.

After its establishment, the State of Palestine would have many rights under various branches of international law. It could join international courts, regional and global organizations, become party to treaties, establish full-fledged diplomatic relations, enter into alliances with other States, enact Palestinian nationality law, issue passports and protect its citizens abroad. Palestinian officials and scholars do focus on such rights⁵. What is absent so far, however, is the discussion about the obligations of the State. This paper tries to fill in this gap by tackling one obligation arising from a major instrument, namely Article 4 of the ICCPR relating to the state of emergency, as an example of such obligations. Since its adoption in 1966, and in particular after coming into force in 1977, massive jurisprudence has been developed in addressing State duties under the ICCPR, both at the academic

level and as part of the work of the Human Rights Committee that monitors the implementation of the Covenant. It would be therefore of little theoretical or practical benefit to revisit the interpretations of the ICCPR and the general obligations that it poses⁶. Yet the issue is much more interesting once it comes to the obligations of new States, such as Palestine, as national policies, legislation and institutions should be reevaluated in the light of the Covenant. Thus while the State of Palestine would strengthen its international stand by becoming party to key treaties, it should be aware of the actions that it needs to adhere to as part of this process. The state of emergency in Palestine has been regulated by the Amended Basic Law of 18 March 2003⁷, Articles 110-113⁸. The ICCPR addressed the state of emergency in Article 4. We will first insert Article 4 and the aforementioned articles of the Basic Law in full in order to pave the way for the assessment of the Palestinian provisions in light of ICCPR. Gaps in the state of emergency system that exists in Palestine as manifested in decrees and decisions that followed the presidential decree, by which the Palestinian Authority proclaimed the state of emergency on 14 June 2007⁹, would be identified. Ways of reforming the existing system would be then proposed.

TEXT

Article 4 of the ICCPR on the state of emergency reads as follows:

‘1. In time of public emergency which threatens the life of the nation and the

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

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

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

The provisions of the state of emergency in the Basic Law of 2003 are the following:

Article 110

'1. The President of the National Authority may declare a state of emergency by decree when there is a threat to national security caused by war, invasion, armed insurrection or in times of natural disaster, for a period not to exceed thirty days.

2. The state of emergency may be extended for another period of thirty days if a two-thirds majority of the members

of the Legislative Council vote in favor of the extension.

3. The decree declaring a state of emergency shall state its purpose, the region to which it applies and its duration.

4. The Legislative Council shall have the right to review all or some of the procedures and measures adopted during the state of emergency, at the first session convened after the declaration of the state of emergency or in the extension session, whichever comes earlier, and to conduct the necessary interpellation in this regard.'

Article 111

'It is not allowed to impose restrictions on fundamental rights and freedoms when declaring a state of emergency except to the extent necessary to fulfill the purpose stated in the decree declaring the state of emergency.'

Article 112

'Any arrest resulting from the declaration of a state of emergency shall be subject to the following minimum requirements:

1. Any detention carried out pursuant to a state of emergency decree shall be reviewed by the Attorney General, or by the appropriate court, within a time period not to exceed fifteen days from the date of detention.

2. The detained individual shall have the right to appoint a lawyer.'

Article 113

'The Palestinian Legislative Council may not be dissolved or its work hindered during a state of emergency, nor shall the provisions of this title be sus-

pending.’

While the above Article 110 and 113 dealt with the institution that is in charge of declaring the state of emergency as well as the emergency’s period, geographical limitation and the role of the Legislative Council with regard to the emergency, Articles 111 and 112 relate to the rights that might be derogated from during the emergency situation. Articles 110 and 113, it can be said, focused on procedural aspects of the state of emergency’s proclamation; Articles 111 and 112 are relative to substance.

PROCEDURAL ASPECTS

Article 110, paragraph 1, of the Basic Law stated that the ‘President of the National Authority may declare a state of emergency by decree when there is a threat to national security caused by war, invasion, armed insurrection or in times of natural disaster, for a period not exceeding thirty days.’ This provision seems to be consistent with Article 4, paragraph 3, of the ICCPR as the State that declares emergency should specify ‘the date on which it terminates such derogation;’ namely the state of emergency itself, and the derogation from certain rights thereof, should be temporary. Paragraph 2 of Article 110 of the Basic Law adds extra assurance by requiring that the ‘state of emergency may be extended for another period of thirty days if a two-thirds majority of the members of the Legislative Council votes in favor of the extension.’ The two-third majority, which is equivalent to the vote required for the amend-

ment of the Basic Law¹⁰, implies that the extension of the state of emergency amounts to the level of constitutional amendment. However, Article 110 does not answer the question on the possibility of extending the state of emergency when the situation that led to the proclamation of the emergency continues beyond the sixty-day periods fixed in the Basic Law. Nor the said article is offering a solution for the possibility of extending the state of emergency when the Legislative Council is absent due to the emergency itself or due to other situations that prevents the Council to convene.

It appears that the thirty-day requirement of Article 110 has been respected when the President of the Palestinian Authority proclaimed the state of emergency for the first time on 5 October 2003¹¹, and, more clearly, in the second time on 14 June 2007¹². By a closer look at the matter, however, one may conclude otherwise. The reason of this conclusion is twofold. Firstly, the aforementioned 2003 decree was only published in the official gazette almost four months after its proclamation, that is on 29 January 2004¹³, while the 2007 decree was gazetted nearly two months after its adoption, namely on 9 August 2007¹⁴. In both instances, the state of emergency was made public, as far as the official publication is concerned, after the lapse of the thirty-day period of the state of emergency specified in Article 110 of the Basic Law. Secondly, most of the measures that were taken during the period of the state of emergency that was declared on 14 June

2007 produced ongoing legal effects that lasted after the declared period. These measures include, for example, naming a new cabinet/council of ministers¹⁵, referring cases of civilians to military courts¹⁶, ceasing the application of a number of articles of the Basic Law¹⁷, shutting down or restricting the work of a number of existing civil society organizations¹⁸, and dismissing or 'ending the appointment' of certain categories of public servants¹⁹. Most of these measures have continued for over five years after the declaration of the state of emergency, even until the time of writing these lines (June 2012).

Article 110, paragraph 3, of the Basic Law added that the 'decree declaring a state of emergency shall state its purpose, the region to which it applies and its duration.' This paragraph seems to be consistent with the ICCPR's proviso (Article 4, paragraph 3) that the State that proclaims emergency should specify the 'reasons' of that proclamation. The aforesaid two decrees by which the President of the Palestinian Authority proclaimed the state of emergency have observed such requirements; the reason/purpose of the state of emergency was included therein. For example, Decree No. 10 of 14 June 2007 mentioned that the reason of the state of emergency's proclamation is the 'criminal war in the Gaza Strip and the takeover of the institutions of the Palestinian National Authority²⁰.' It also specified the region in which the emergency was proclaimed, i.e. 'the territory of the Palestinian National Authority.²¹' Yet, according to the Human Rights Committee's General Comment No. 29 of

24 July 2001²², the reason included in the said Decree No. 10 is not sufficient. States should 'provide careful justification not only for their decision to proclaim a state of emergency but also for any specific measures based on such a proclamation. If States purport to invoke the right to derogate from the Covenant during, for instance, a natural catastrophe, a mass demonstration including instances of violence, or a major industrial accident, they must be able to justify not only that such a situation constitutes a threat to the life of the nation, but also that all their measures derogating from the Covenant are strictly required by the exigencies of the situation.'²³ Therefore, Palestine, for the purpose of being consistent with the ICCPR, should set out the reasons behind issuing all decrees and decisions that were enacted during or pursuant to the proclamation of the state of emergency; this has not been fulfilled.

Article 110, paragraph 4, and Article 113 of the Basic Law added guarantees for the Palestinian Legislative Council to review measures adopted during the state of emergency, the non-dissolution of the Council at the time of emergency, and the non-suspension of the Basic Law's provisions relating to the state of emergency. Yet suspending, by a presidential decree²⁴, articles of the Basic Law on the power of the Legislative Council to give confidence to the new government that has been formed during the state of emergency effectively leads to the dissolution of the Council²⁵.

SUBSTANTIVE ASPECTS

The framework on the rights that might be restricted during period of the state of emergency was set forth in Article 111 of the Palestinian Basic Law, which reads: 'It is not allowed to impose restrictions on fundamental rights and freedoms when declaring a state of emergency except to the extent necessary to fulfill the purpose stated in the decree declaring the state of emergency'. This provision's language is problematic. It is vague, leaves the door open for conflicting interpretations: what is meant by 'restriction,' 'fundamental rights and freedoms,' or 'extent necessary'? In no applicable legislation in Palestine one could find precise definition to such expressions, leaving a free hand for the Executive Power to violate any human right.

Article 112 of the Basic Law provided more concrete example on one right that might be derogated from, i.e. arrest/detention. The article stated, in its paragraph 1, that any 'detention carried out pursuant to a state of emergency decree shall be reviewed by the Attorney General, or by the appropriate court, within a time period not to exceeding fifteen days from the date of detention.' Paragraph 2 of the same article gave the detainee 'the right to appoint a lawyer.' This article permits detention for fifteen days without fair trial guarantees, with the exception of the right to appoint a lawyer. Who knows what would happen during the fifteen days of interrogation with the absence of a prosecutor or a judge. It would be even worse

when cases of civilians are transferred, presumably after fifteen days, to the military court to be tried by a military officer and based on revolutionary laws and procedures²⁶.

The right of fair trial is a peremptory norm of international law that should be respected by all States²⁷. This is apparent from the clause that allowed derogation from certain rights in light of 'other obligations under international law' inserted in Article 4, paragraph 1, of the ICCPR. In its General Comment No. 20 of 24 July 2001²⁸, the Human Rights Committee made a clear reference to such obligation by saying that 'States parties may in no circumstances invoke article 4 of the Covenant as justification for acting in violation of . . . peremptory norms of international law, for instance by . . . arbitrary deprivations of liberty or by deviating from fundamental principles of fair trial²⁹.' And as 'certain elements of the right to a fair trial are explicitly guaranteed under international humanitarian law during armed conflict, the Committee finds no justification for derogation from these guarantees during other emergency situations. The Committee is of the opinion that the principles of legality and the rule of law require that fundamental requirements of fair trial must be respected during a state of emergency. Only a court of law may try and convict a person. . . . In order to protect non-derogable rights, the right to take proceedings before a court to enable the court to decide without delay on the lawfulness of detention, must not be diminished by a State party's decision to derogate from the Covenant.³⁰

Article 4, paragraph 2, of the ICCPR does not allow the derogation from the following articles of the Covenant: Article 6 on the right to life, Article 7 on the prohibition of torture or medical or scientific experimentation without consent, Article 8, paragraphs 1 and 2, on the prohibition of slavery, Article 11 on the prohibition of imprisonment because of inability to fulfill a contractual obligation, Article 15 on the principle of legality in the field of criminal law, Article 16 on the recognition of everyone as a person before the law, and Article 18 on the freedom of thought, conscience and religion³¹. There is no clear guarantee, from the wording of Article 111 of the Palestinian Basic Law, for the respect of these rights. There was no reference in the Decree of 14 June 2007 to specific rights that would be suspended³². In practice one can find, by reviewing the decrees and decisions that were enacted by the Palestinian President or Prime Minister pursuant to the proclamation of the state of emergency, serious concerns on a number of rights that were effectively restricted. Presidential Decree No. 11 of 2007³³, for example, effectively paralyzed the role of the Palestinian Parliament in monitoring the performance of the Executive Power by suspending the provision of the Basic Law (Article 79) relating to confidence in government³⁴. Presidential Decree No. 17 of 2007³⁵ too, vested the Minister of Interior with absolute power 'to take any measure that he thinks fit' against civil society institutions, including shutting down or relicensing any association. Prime Minister's Decision No. 20 of 2007,

from its side, established basis for dismissing public employees. And Presidential Decree No. 28 of 2007, lastly, referred to certain 'crimes' committed by civilians to military court. The latter decree, in turn, referred in its preamble to a number of statutes that are often characterized as anti-human rights, such as the Palestine Liberation Organization (PLO) Revolutionary Penal Law of 1979, the PLO Revolutionary Criminal Procedures Law of 1979, and Military Order No. 555 of 1959 regarding the Crimes against State Security³⁹. By officially blocking the functions of the Parliament as well as restricting a number of rights and referring cases involving civilians to the military courts; these measures indicate that the Palestinian Authority has permitted itself to violate any right during the state of emergency without effective oversight from the legislator or the judiciary. This conclusion would make it useful for the Palestinian legislator, in order to conform to international human rights standards in the projected State, to adopt the measures indicated in Article 4 of the ICCPR. Such measures would: (1) give flexibility to the government regarding the time limit for the state of emergency which might require longer period that exceed the thirty days fixed in the Basic Law, (2) avoid the vacuum for extending the state of emergency when the Parliament is unable to convene, and, at the same time, (3) guarantee the respect of specific fundamental rights listed in Article 4, paragraph 2, of the ICCPR from which no derogation would be permitted. After becoming party to the ICCPR, Palestine would

become under the obligation of Article 4, paragraph 3, of the Covenant that requires immediate notification to other States parties to the Covenant through the intermediary of the UN Secretary-General. In such notification, Palestine should indicate the provisions from which it has derogated⁴⁰. The purpose of this notification, among other things, is to inform other States of the provisions it has derogated from in order to 'permit other States parties to monitor compliance with the provisions of the Covenant.'⁴¹

Palestine, furthermore, needs to observe other recommendations of the Human Rights Committee as introduced in General Comment No. 29 of 24 July 2001 regarding the derogation during the state of emergency⁴², and adjusting its legislation accordingly. Palestine should add to its legislation a provision providing remedies for any human rights violation, even if such violation is resulted from the legal measures taken during the state of emergency. This proposed clause 'constitutes a treaty obligation inherent in the Covenant as a whole. Even if a State party, during a state of emergency, and to the extent that such measures are strictly required by the exigencies of the situation, may introduce adjustments to the practical functioning of its procedures governing judicial or other remedies, the State party must comply with the fundamental obligation . . . of the Covenant to provide a remedy that is effective'⁴³.

CONCLUSION

Similar provisions to that of Article 48, paragraph 1, of the ICCPR exist explicitly in five other international human rights treaties, namely: (1) International Convention for the Elimination of All Forms of Racial Discrimination (CERD) of 21 December 1965⁴⁴, Article 17, paragraph 1; (2) International Covenant on Economic, Social and Cultural Rights of 16 December 1966⁴⁵, Article 26, paragraph 1; (3) First Optional Protocol to ICCPR of 16 December 1966⁴⁶, Article 8, paragraph 1; (4) Second Optional Protocol to ICCPR Aiming at the Abolition of the Death Penalty of 15 December 1989⁴⁷, Article 7, paragraph 1; (5) Additional Protocol to the International Covenant on Economic and Social and Cultural Rights of 10 December 2008⁴⁸, Article, 17, paragraph 1. Other human rights treaties do not include explicit provision that permits a member State of a UN specialized agency to join such instruments. The reason of this, probably, is that in the sixties of the twentieth century, at the time when the two international covenants and the CERD were adopted, there has been still a number of States that were non-members of the UN but members in one or more of Organization's specialized agencies; the very situation in which Palestine is undergoing at present before acquiring a full UN membership.

By becoming party to such instruments, Palestine would gain further legitimacy bases that do not exist at present. Palestine would appear as a State that

respects human rights and as a 'peace-loving' at the global level, especially since four of the aforementioned conventions form the 'International Bill of Human Rights.' This would, in turn, strengthen the Palestinian position when it pursues its application to the full UN membership. As a State party, Palestine can nominate experts in the committees based on such treaties. The State may influence international law-making and prove its existence as an independent State officially as part of such committees' processes. Palestine, like any other State, cannot be represented at the committees, or treaty-based bodies, without being party to such treaties. Joining the two covenants and the CERD is an effective accession to three international separate organizations: the first organization is the 'Human Rights Committee,' the second is the 'Committee on Economic, Social and Cultural Rights,' and the third is the 'Committee against Racial Discrimination.' At the same time, the State of Palestine should be prepared to carry on the obligations set forth in international human rights treaties and change its legislation and policies and reform its institutions accordingly in order to be a member of the community of States that respects human rights.

NOTES

1. 999 United Nations Treaty Series (UNTS) 171 (1976).
2. The ICCPR, along with the International Covenant on Economic, Social and Cultural Rights, are the first binding international human rights treaties at the global level. The ICCPR was adopted on 16 December 1966 and entered into force on 23 March 1977. It deals with fundamental rights, including the right to life, prevention of torture or arbitrary detention, fair trial, privacy, freedom of expression, rights to association, peaceful assembly, freedom of movement, the right to nationality, the right of citizens to return, as well as child and women's rights.
3. Agreement between the United Nations and the United Nations Educational, Scientific and Cultural Organization, Approved by the General Conference on 6 December 1946 and by the General Assembly of the United Nations on 14 December 1946 (UNESCO, *Manual of the General Conference*, Paris: UNESCO, 2002, p. 147), Article 1. This article stated: 'The United Nations recognizes the United Nations Educational, Scientific and Cultural Organization (UNESCO) as a specialized agency responsible for taking such action as may be appropriate under its basic instrument for the accomplishment of the purposes set forth therein' (emphases supplied).
4. UNESCOPRESS, General Conference admits Palestine as UNESCO Member State, 31 October 2011.
5. See, e.g., Mutaz M. Qafisheh, ed., *Membership of Palestine in the United Nations: Legal and Political Implications* (Newcastle: Cambridge Scholars Publishing, 2013)—17 studies.
6. See, in general, Oren Gross and Fionnuala Nialain, 'Emergency, War and International

- Law - Another Perspective,' 70 *Nordic Journal of International Law* 29 (2011); Emanuel Gross, 'How to Justify an Emergency Regime and Preserve Civil Liberties in Times of Terrorism?,' 5 *South Carolina Journal of International Law and Business* 1 (2009); Hong Sik Cho, 'Liberal Democracy in State of Emergency: Seen by Standing on the Shoulders of Carl Schmitt,' 4 *National Taiwan University Law Review* 55 (2009); Andras Jakab, 'German Constitutional Law and Doctrine on State of Emergency - Paradigms and Dilemmas of a Traditional (Continental) Discourse,' 7 *German Law Journal* 453 (2006); Dominic McGoldrick, 'The Interface Between Public Emergency Powers and International Law,' 2 *International Journal of Constitutional Law* 380 (2004); Venelini I. Gaven, 'Emergency Powers and the New East European Constitutions,' 45 *American Journal of Comparative Law* 585 (1997); John Quigley, 'Israel's Forty-Five Year Emergency: Are There Time Limits to Derogations from Human Rights Obligations?,' 15 *Michigan Journal of International Law* 491(1994); Paul Hunt and Brice Dickson, 'Northern Ireland's Emergency Laws and International Human Rights,' 11 *Netherlands Quarterly of Human Rights* 173 (1993); Herbert Marx, 'The Emergency Power and Civil Liberties in Canada,' 16 *McGill Law Journal* 39 (1970).
7. Palestine Gazette, Special Edition, 19 March 2004, p. 5.
8. Article 114 simply repealed 'All provisions regulating states of emergency that were applicable in Palestine prior to the entry into force of this Basic Law shall be cancelled, including the [British] Mandate Defense (Emergency) Regulations issued in the year 1945'.
9. Decree No. 9 of 14 June 2007 Concerning the Declaration of State of Emergency, Palestine Gazette, No. 71, 9 August 2007, p. 6.
10. Basic Law of 2003, op. cit., Article 12.
11. Decree No. 18 of 5 October 2003, Palestine Gazette, No. 48, 29 January 2004, p. 3. Article 3 of this Decree implied the 30-day period by referring to 'the period fixed in Article 110' of the Basic Law.
12. Decree No. 9 of 2007, op. cit., Article 1.
13. This state of emergency was proclaimed by the late President Yaser Arafat over the disagreement amongst Fatah Party on the formation of the government after the resignation of the then Prime Minister Mahmoud Abbas in September 2003. The Proclamation formed an emergency government with nine portfolios for the task of 'devoting and strengthening the national unity.'
14. The proclamation of the state of emergency came this time as a result of Hamas' take-over of the Gaza Strip from the hands of the Fatah-led Palestinian Authority in June 2007.
15. Decree No. 13 of 17 June 2007 Concerning the Formation of the Council of Ministers, Palestine Gazette, No. 71, 9 August 2007, p. 10.
16. Decree No. 28 of 6 July 2007 Concerning the Jurisdiction of the Military Judiciary under the State of Emergency, Palestine Gazette, No. 73, 13 September 2007, p. 36.
17. Decree No. 11 of 2007, op. cit.
18. Decree No. 16 of 20 June 2007 Concerning the Granting of the Ministry of Interior the Power to Review All Licenses of Associations, Palestine Gazette, No. 71, 9 August 2007, p. 15.
19. Decision of the Head of the Council of Ministers No. 20 of 27 June of 2007 Concerning the Cessation of All Work Contracts Concluded after 31 December 2005, Palestine Gazette, No. 73, 13 September 2007, p. 103.
20. Decree No. 9 of 2007, op. cit., Article 1.
21. Ibid.
22. UN Doc. HRI/GEN/1/Rev.7, 12 May 2004, op. cit., p. 184.
23. Paragraph 5.
24. Decree No. 11 of 15 June 2007 Concerning the Suspension of the Enforcement of the Provi-

sions under Articles 65, 66 and 67 [of the Basic Law], Palestine Gazette, No. 71, 9 August 2007, p. 8.

25. Cf. Teo Jin Huang, 'Preserving the Legal Order in Times of Emergency: Should State Responses to Emergencies Ever be Extra-Constitutional?', 25 *Singapore Law Review* 35 (2007).

26. Decree No. 28 of 2007, op. cit.

27. See, generally, Stephanos Stavros, 'The Right to a Fair Trial in Emergency Situations,' 41 *International and Comparative Law Quarterly* 343 (1992).

28. Op. cit.

29. Paragraphs 11, 13, 15 and 16.

30. *Ibid.*, paragraph 16.

31. Other human rights conventions expanded the non-derogation of rights during the state of emergency beyond the ICCPR. Article 27 of the American Convention on Human Rights of 22 November 1969 (1144 UNTS 143 (1979)), for example, included more rights that should not be suspended, including the right to juridical personality, right to nationality, rights of the family, right to a name, and right to participate in government. The Palestinian legislator should consider such provisions in its legal system in order to advance the system in light of the most modern developments in the field of human rights at the international stage, as other States did. See, in general, Alan Greene 'Separating Normalcy from Emergency: The Jurisprudence of Article 15 of the European Convention on Human Rights,' 12 *German Law Journal* 1764 (2011); Christoph Schreuer, 'Derogation of Human Rights in Situations of Public Emergency: The Experience of the European Convention on Human Rights,' 9 *Yale Journal of World Public Order* 113 (1983).

32. Op. cit.

33. Op. cit.

34. Also Decree No. 8 of 17 June 2007 Concerning the Suspension of the Enforcement of the

Provisions under Article 79 [of the Basic Law], Palestine Gazette, No. 71, 9 August 2007, p. 9.

35. Op. cit.

36. Also Decision No. 8 of 20 June 2007 [by the Prime Minister] Concerning Associations and [Civil Society] Bodies, Palestine Gazette, No. 71, 9 August 2007, p. 47.

37. Op. cit.

38. Op. cit.

39. Cf. Shyamkrishna Balganes, 'Fundamental Rights During A Proclamation of Emergency: The Indian Experience,' 12 *Student Advocate* 24 (2000); Venkat Iyer, 'States of Emergency - Moderating Their Effects on Human Rights,' 22 *Dalhousie Law Journal* 125 (1999); L.C. Green, 'Derogation of Human Rights in Emergency Situations,' 16 *Canadian Yearbook of International Law* (1978).

40. See Human Rights Committee, Communication No. 628/1995 (Tae Hoon Park v. Republic of Korea); in Office of the High Commissioner for Human Rights, Selected Decisions of the Human Rights Committee under the Optional Protocol, Vol. 6, 2005, p. 153. In this regard, the Human Rihts Committee noted that 'the State party has not made the declaration under article 4 (3) of the Covenant that a public emergency existed and that it derogated certain Covenant rights on this basis' (p. 157).

41. General Comment No. 29 of 2001, op. cit., paragraph 17.

42. Op. cit.

43. Paragraph 14.

44. 666 UNTS 195 (1971).

45. 993 UNTS 3 (1983).

46. 999 UNTS 302 (1976).

47. 1642 UNTS 404 (1999).

48. UN Doc. A/RES/63/117.

REFERENCES

- Balganesh, Shyamkrishna, 'Fundamental Rights During A Proclamation of Emergency: The Indian Experience,' 12 *Student Advocate* 24 (2000).
- Cho, Hong Sik, 'Liberal Democracy in State of Emergency: Seen by Standing on the Shoulders of Carl Schmitt,' 4 *National Taiwan University Law Review* 55 (2009).
- Gaven, Venelini I., 'Emergency Powers and the New East European Constitutions,' 45 *American Journal of Comparative Law* 585 (1997).
- Green, L.C., 'Derogation of Human Rights in Emergency Situations,' 16 *Canadian Yearbook of International Law* (1978).
- Greene, Alan, 'Separating Normalcy from Emergency: The Jurisprudence of Article 15 of the European Convention on Human Rights,' 12 *German Law Journal* 1764 (2011).
- Gross, Emanuel, 'How to Justify an Emergency Regime and Preserve Civil Liberties in Times of Terrorism?,' 5 *South Carolina Journal of International Law and Business* 1 (2009).
- Gross, Oren and Niallain, Fionnuala, 'Emergency, War and International Law - Another Perspective,' 70 *Nordic Journal of International Law* 29 (2011).
- Huang, Teo Jin, 'Preserving the Legal Order in Times of Emergency: Should State Responses to Emergencies Ever be Extra-Constitutional?,' 25 *Singapore Law Review* 35 (2007).
- Hunt, Paul and Dickson, Brice, 'Northern Ireland's Emergency Laws and International Human Rights,' 11 *Netherlands Quarterly of Human Rights* 173 (1993).
- Jakab, Andras, 'German Constitutional Law and Doctrine on State of Emergency - Paradigms and Dilemmas of a Traditional (Continental) Discourse,' 7 *German Law Journal* 453 (2006).
- Lyer, Venkat, 'States of Emergency - Moderating Their Effects on Human Rights,' 22 *Dalhousie Law Journal* 125 (1999).
- Marx, Herbert, 'The Emergency Power and Civil Liberties in Canada,' 16 *McGill Law Journal* 39 (1970).
- McGoldrick, Dominic, 'The Interface Between Public Emergency Powers and International Law,' 2 *International Journal of Constitutional Law* 380 (2004).
- Qafisheh, Mutaz M., ed., *Membership of Palestine in the United Nations: Legal and Political Implications* (Newcastle: Cambridge Scholars Publishing, 2013).
- Quigley, John, 'Israel's Forty-Five Year Emergency: Are There Time Limits to Derogations from Human Rights Obligations?,' 15 *Michigan Journal of Inter-*

national Law 491(1994).

Schreuert, Christoph, 'Derogation of Human Rights in Situations of Public Emergency: The Experience of the European Convention on Human Rights,' 9 Yale Journal of World Public Order 113 (1983).

Stavros, Stephanos, 'The Right to a Fair Trial in Emergency Situations,' 41 International and Comparative Law Quarterly 343 (1992).