

Arbitrary Execution in Beni Naim



By Michael Lotze

2002



Al-Haq - West Bank Affiliate of the International Commission on
Jurists - Geneva
In Special Consultative Status with the ECOSOC of the U.N.

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of the
UNITED NATIONS

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ACKNOWLEDGMENTS

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This report is dedicated by Al-Haq to the families and the memories of the Ala'a Al-Ayaidah, Ateya Ahmed Mashni Halaika, and Hussam and Hisham Naim Halaika. The author also extends his special thanks to everyone at Al-Haq who helped in researching and preparing this case study, in particular Zahi Jaradat.

ABOUT THE AUTHOR

The author worked as a researcher with Al-Haq from October 2000 through June 2003. He received his B.A. in Political Science from Earlham College in 1999 and is soon to begin work on an M.A. in International Affairs at the School of Advanced International Studies, Johns Hopkins University.

Introduction

The following case study details the willful killing on September 1, 2002 of four Palestinian men in the village of Beni Naim in the Hebron District. The four men were detained by Israeli soldiers at their place of employment and taken to nearby fields where they were shot at close range. Following the incident Al-Haq's fieldworkers traveled to Beni Naim to talk with witnesses and to gather evidence at the scene of the killings. The purpose of this study is to attempt to reconstruct the actions that led to the killing of these four men and to place these events in a legal context.

The killing of these four men came at the end of a several month period during which Palestinian civilians were repeatedly the targets of Israeli military attacks. One day prior to the killings in Beni Naim, five people, including four children between the ages of six and seventeen, were killed during a failed assassination attempt in the village of Tubas near Jenin. Earlier in the week, on August 29th, four members of one family in Gaza were killed and eight wounded when Israeli tanks fired shells containing flechette darts at their home. On August 2nd Israeli soldiers shot and killed Amjad Abdel Hadi Jebour in front of his family after detaining him in the village of Salem, which is located east of Nablus. On July 22nd an Israeli F-16 fired a single missile into a home rented by Salah Shehada, a high level Hamas activist in Gaza killing 15 Palestinians including eleven children. Another 73 Palestinians

were injured in the attack, two seriously.

During the one-month period between August 1st and September 1st, 2002 fifty-four Palestinians were killed. Of this number only ten were killed while armed or during exchanges of fire with Israeli troops. Two were killed after being arrested, one wanted individual was killed when his home was demolished on top of him, and seven were assassinated. 3 The other thirty-four individuals killed were innocent bystanders killed in their homes, fields or during Israeli military operations. Only 18% of those killed during this period were actually involved in armed attacks.

Al-Haq's fieldworkers gathered the affidavits below as a part of their routine work investigating and carefully documenting human rights violations committed in the Occupied Territories. The nature of the violations recorded below is extreme, but unfortunately the killings in Beni Naim are not a unique case. This case and the affidavits presented below are representative of the hundreds of affidavits gathered by Al-Haq over the course of the Intifada. The human rights violations detailed both below and in Al-Haq's reports papers and press releases are symptoms of a systematic failure on the part of Israel to fulfill its obligations under the Fourth Geneva Convention and to respect international human rights and humanitarian law. More importantly, they are a direct product of Israel's continued belligerent occupation of the Palestinian Territories.

Case Summary

During the early morning hours of September 1st, 2002, Ala'a Al-Ayaidah (22), Ateya Ahmed Mashni Halaika (21), and twins Hussam and Hisham Halaika (32) were detained by a group of Israeli soldiers from the stone cutting factory in which they worked and shortly thereafter executed. The factory at 4 which the men worked is located near the edge of the village of Beni Naim in an area know as Wadi Jouz. The factory is also located next to a field owned by Menachem Livni, an Israeli settler and an ex-member of the Jewish underground. Initial reports issued by the Israeli military state that the four men were killed while trying to infiltrate into Kiryat Arba. However, these claims are blatantly false. While the location where the men were killed is near to land that is often guarded by Israeli soldiers and that is controlled by an Israeli Settler, it is located over two miles from either Kiryat Arba or any other settlement, and nobody resides on the land. The Israeli military later changed its story saying that the men were killed while attempting to break into a plot of land owned by settlers, but has acknowledged that none of the men were armed.

The information gathered by Al-Haq indicates that the men were killed at approximately 2:30 am after being detained by five to ten Israeli soldiers while they were on break outside of the factory in which they worked. The men were taken by the soldiers from where they rested in front of the factory and forced to march at gunpoint westward towards the bypass road (Route 60), which is located approximately one and a half kilometers distance from the factory. Five minutes after the men left the factory witnesses report having heard the sound of shooting followed by someone repeatedly yelling, "Ala'a, Ala'a". Several moments later, witnesses report having heard an additional burst of gunfire followed by a pause, and then another burst of gunfire. The

doctor who first arrived at the scene of the killings and examined the bodies of the men on the morning of September 1 stated that he found the bodies grouped in three locations. Two bodies were located in the road, a third body was located approximately ten meters away with a trail of blood running between it and the first two bodies found, and the forth body of Ala'a Al-Ayaidah was found approximately 100 meters further up the road in the direction of the stone factory. The locations of the bodies and the reports from witnesses indicate that Ala'a was shot first as the soldiers brought the men away from the factory. Ateya, Hussam and Hisham were shot further down the road several minutes later. Hussam and Hisham were killed immediately, but Ateya was only wounded and attempted to flee into a nearby field where he was killed by the third burst of gunfire. 5

More information on this case is given in the following testimonies.

Affidavits

Al-Haq Affidavit From:

Name: Itzhaq Ahmed Ibrahim Mashni Halaika

Profession Status: Laborer / Stone Factory

From: Shyukh Age: 23

I work in a stone factory in the village of Beni Naim owned by the Beni Naim Marble and Quarry Company. I have worked in the factory for eight months, and work the night shift with four other men from Shyukh. We specialized in cutting the stones.

At around 2:00 am everyday we finish our work and take a break. On the day of the attack, September 1, 2002 at around 2:00 am, my colleagues and I

finished our work and took a break. The number of workers in the factory from Beni Naim is seven, and five including myself are from Shyukh. During the break the seven workers from Beni Naim left the factory to return to their

homes, and the five of us from Shyukh went outside to sit in the yard in front of the factory to rest and eat. We ate, and after about ten minutes I left to go to the bathroom, which is located inside of the factory. My four coworkers remained sitting outside.

After about five minutes I finished with the bathroom and began to return to my coworkers. When I reached the entrance of the factory, about 20 meters from where we had been taking our break, I saw a group of approximately five soldiers dressed in military uniforms. My coworkers were walking in front of the soldiers with their hands in the air, and the soldiers had their guns [6] pointed at the men's backs. There were several meters distance between my friends and the soldiers. They left the area of the factory and walked westward towards the bypass road. The bypass road is located about one and a half kilometers away.

At that point I hid and waited for an opportunity to leave the factory. I didn't want the soldiers to see me. After approximately five minutes I left my hiding place and went upstairs to the factory offices in order to try and see where the soldiers had taken my coworkers, and to try to hear what had happened. From the offices I could hear one of my coworkers screaming in pain. I thought that the soldiers were beating them. Several minutes passed and then I heard the sound of shooting. After the shooting stopped I heard someone shouting "Ala'a, Ala'a"¹.

After another several minutes I heard more shooting, a break, and then shooting again.

After several minutes, but I don't know at what time, because I didn't have a watch, I saw two military jeeps come to a stop in front of a piece of land called "Jews Field". This field is located about 500 meters away from the factory. Soldiers got out of the jeeps, and I heard one of them laughing loudly.

¹ Ala'a Al-Ayaidah

After several minutes another military vehicles came and joined the other two. I became afraid of staying in the factory and for the safety of my coworkers, so I left the factory on foot through the nearby fields until I reached Shyukh. When I left the factory² I thought that it was around 3:00 am. I reached Shyukh around 6:00 am.³

About one-half hour after I arrived home I heard on the Israeli radio that four Palestinians had been killed in Beni Naim. I thought that these must be my coworkers, and my fears that the men killed were Ala'a, Hisham, Hussam, and my brother Ateya were confirmed moments later. Hisham and Hussam were also brothers. Yousef Halaika, the mayor of Shyukh, confirmed the deaths for me. 7

Affidavits

Al-Haq Affidavit From:

Name: Mohammad Shueb Mohammad Al-Manasrah

Profession: Merchant

From: Beni Naim Age: 59

At around 1:30 am on Sunday, September 1, 2002, I was in my house, which is located approximately 100 meters from the Beni Naim Marble and Quarry Company's stone factory, when I saw a group of about eight soldiers near my house. I began to watch their movements.⁴

I watched them move in the direction of the stone factory. They reached the factory at around 2:10 am. Around five minutes later I saw the soldiers leaving the factory with four people. I wasn't sure where the four men came from, but I saw them leaving the factory.

2 The stone factory from which Itzhaq observed these events is located on the top of a hill that overlooks the surrounding area including the "Jews Field".

3 Shyukh is located approximately 10 km. North of Beni Naim

4 Al-Haq's fieldworker visited the home of this witness and was shown the spot from which the witness watched these events. From this location the factory, road and field where the men were killed are all clearly visible.

At this point I left my house so that I could find out what was going on. I thought that the hands of the men were tied, but I am not sure about this, because the light was not very good.

About five minutes after the soldiers and men left the area going westward I heard the sound of someone screaming. I thought that perhaps one of the men was being beaten. A few moments later I heard the sound of shooting, then a break of about five minutes, then more shooting, another break, and more shooting again. This all happened at around 2:30 am.

8 Shortly thereafter I heard the sound of a car coming, and saw the lights of two cars stop about 500 meters to the west of my house. The cars stopped in the area near to where the men had been taken. After the cars stopped I heard one or two shots fired. Several minutes later another four cars arrived in the area.

The next morning I heard that four men had been killed in the village, heard from the Israeli news that the men killed had tried to carry out a military operation. However, I believed that the men were innocent and that the soldiers took them from the factory and executed them. After the men were killed the soldiers tried to frame them.

Affidavits

Al-Haq Affidavit From:

Name: Mohammad Darwish Hamed Ziadat

Profession: Merchant

From: Beni Naim Age: 39

I live in the Wadi Jouz area of Beni Naim. Around 2:30 am on Sunday September 1, 2002 I was awakened from my sleep by the sound of shooting. I got out of bed when I heard the shooting and looked out of the window,

which faces towards the stone factory. I could hear the sound of loud shouting. The person said, "Ala'a, my brother Ala'a, Ala'a" and repeated this over and over.

I continued to look out the window and to listen. I could hear the sound of walking nearby and heard the sound of voices, but couldn't distinguish what was being said. About five minutes after the first shooting stopped I heard the sound of more shooting. This shooting continued for some time, stopped briefly, and then started again. Later I saw lights in the sky that lit up the whole area. I then left the window. In the morning I heard that four men from Shyukh who worked in the stone factory in our village had been killed. I connected this news with what I had heard. My wife heard the sound during 9 the night as well, and when she heard that four men had been killed near our home in the morning she had a nervous breakdown.

Affidavits

Al-Haq Affidavit From:

Name: Shirin Waleed Rashid Rabai

Profession: Accountant, Palestine Red Crescent Society – Beni Naim

From: Beni Naim Age: 21

I finished my work at the Red Crescent Society at around 10:00 pm on August 31, 2002 and was taken home by an ambulance from work. My house is located in the Wadi Jouz area in Beni Naim on the western edge of the village. When I arrived near to my home I saw a number of Israeli military vehicles near our house. I told my mother about this when I came inside, and she said that she had noticed them and had heard and seen them moving around the house during the day. Later after midnight I heard shooting and cars moving very near our house. The road near our house is closed to traffic and can only be used by the military. In the morning I heard that four people had been killed approximately 100 meters away from our house.

Affidavits

Al-Haq Affidavit From:

Name **Abedrabboh Hassan Abed Al-Manasrah**

Profession: **Doctor, General Practitioner**

From: **Beni Naim** *Age:* **43**

At around 5:15 am on September 1, 2002 I received a call from Dr. Hijazi Abu Mezar who is the director of the emergency response unit of the Red Crescent Society in the Hebron area. He informed me that he had been informed that four people had been killed in Beni Naim in the Wadi Jouz area. He told me that an ambulance was near to the place where the men had been killed.

I called the ambulance driver who was on shift directly. His name is Amjad Misk, and I asked him for more information. He told me that four men had been killed in the village, and he said that the mayor of Beni Naim and two additional members of the village council were with him at the location where the men had been killed. A group of soldiers were also present at the site. I then asked him to return to the Red Crescent Society headquarters in the village to pick me up. He arrived five minutes later accompanied by a medic named Mohammed Abu Rayan.

We then returned to the location where the men had been killed, but before we left I called another ambulance driver and volunteers to come help us in Wadi Jouz. When I arrived at the roadblock near the site of the killings I saw soldiers stopped nearby. I began to talk to a military officer with the help of a one of the men with me who acted as a translator. I asked him to remove the roadblock so that the ambulance could proceed. However, he told me that I should walk and carry the bodies back with me. I refused and said that I had to be accompanied by the ambulance because the bodies were still quite far away. Eventually he agreed that we could use a bulldozer to remove the

barrier. We were able to get a bulldozer to the site quickly and removed the barrier.

During this time the volunteers arrived. When the roadblock was lifted I proceeded to the location of the bodies with two of the volunteers, Salameh Abu Sakout and Fayez Al-Khadour. Amjad Misk and Mohammad Abu Rayan followed us in another ambulance accompanied by Dr. Waleed Al-Taraireh. We were required to follow a military jeep to the site of the bodies, which was about 150 meters from the roadblock. I could see a large number of soldiers near the bodies and could also see the mayor of Beni Naim and Saber Khalil Al-Manasrah, who owns the nearby stone factory.

I immediately began to check the bodies. Two of them were located next to each other. There was an Israeli officer and an Israeli in civilian clothes who came to me at this point and told me to drag the bodies away immediately, and not to check them. I refused and continued to check the bodies. Their bodies were riddled with bullets, most of which had hit them in their heads and chests. Their clothes were covered in blood. A large amount of blood had also pooled around the bodies. The blood had started to coagulate. From what I observed it was obvious that the men had been shot from the front and from a short distance, at the location where I observed them. Beside one of the bodies I found a box of cigarettes containing five cigarettes and a lighter. One of the two men was not wearing any shoes and the other man was wearing rubber boots. While I was looking around the scene I found another boot around five meters from the body. I also observed what looked like boot marks on the heads of the two men. You could see the outline of the sole of the boots in the blood on the men. I then asked the men with us to put the two men in the ambulance.

Approximately ten meters distance from where these two bodies were located we found another body. There were many bullets in this body, which was located in a field next to the road. There was a trail of blood that ran

between the place where we found the first to bodies and where the third body was found. The injuries on this body were located in it head, chest, pelvis and belly. I could also see fragments of bullets on the chest of the body and on the ground surrounding it. I then tied the hands and legs of the body together and ordered that it be put in the ambulance.

I couldn't see the fourth body, so I asked the military commander where it was located. He pointed towards the east of where the first

three bodies were located. We found the body about 100 meters away. I did not notice any traces of blood between where the first three bodies were located and where we found the fourth body. I looked for these traces. When we came to this body we found it lying in a rut in the road. The wounds on this body were located in the head and chest. There was a large pool of blood lying around the body, which indicates that the man was
[12] killed at this location. I examined the body, tied the hands and legs, and ordered that it be put in the ambulance.

Before we left the area carried out it was apparent that the men were shot from short range and that one of the men was shot and then moved approximately ten meters before he was killed.

Legal Findings

A. Human Rights Law – The Right to Life

“Everyone has the rights to life, liberty and security of person.”

Article 3, of the Universal Declaration of Human Rights

“Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

Article 6, of the International Covenant on Civil and Political Rights

13

“Everyone’s right to life shall be protected by law. No one shall be deprived of his life intentionally...”

Article 2, The European Convention for the Protection of Human Rights and Fundamental Freedoms

“Every person has the right to have his life respected. This right shall be protected by law and, in general, from the moment of conception. No one shall be arbitrarily deprived of his life.”

Article 4(1), American Convention on Human Rights

The right to life is the most fundamental of all human rights, and is the foundation upon which all other rights are built. Enshrined in the Universal Declaration of Human Rights (UDHR), the International Covenant of Civil and Political Rights (ICCPR) and most other major human rights treaties and documents, the right to life is universally recognized as a part of *jus cogens* or customary international law. As such, the right to life is not “considered a matter exclusively within the domestic jurisdiction⁵ of a State, but a matter of international concern. States have to ensure that their organs respect the life of persons within their jurisdiction. Regarding jurisdiction and the obligation to enforce respect for the rights to life, Article 2 of the UDHR, which addresses this issue, states that,

“Everyone is entitled to all the rights and freedoms set forth in this declaration without distinction of any kind...”

Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a ¹⁴person belongs, whether it be independent, trust, non self-governing or under any other limitation of sovereignty.”

The United Nations Human Rights Committee commented on the Right to life as laid out in Article 6 of the International Covenant on Civil and Political Rights in CCPR General comment 6: *The Right to Life*⁶. The Committee states that, “the rights to life enunciated in article 6 of the Covenant... is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation.⁷ General Comment 6 then goes on to state that,

5 Fact Sheet No. 11 (Rev.1), Extrajudicial, Summary or Arbitrary Executions – www.unhchr.ch/html/menu6/2/fs11.htm

6 CCPR General Comment 6-hereafter General Comment 6 www.unhchr.ch-Treaty Bodies Database

7 General Comment 6(1)

*“The protection against arbitrary deprivation of life which is explicitly required by the third sentence of article 6(1) is of paramount importance. The Committee considers that States parties⁸ should take measures not only to prevent and punish deprivation of life by criminal acts, but also to prevent arbitrary killing by their own security forces. The deprivation of life by the authorities of the State is a matter of the utmost gravity.”*⁹

The arbitrary deprivation of life is also prohibited in Article 1 of the Resolution on the Principles of Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions from 1989, which states that,

“Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences under their criminal laws, and are punishable by appropriate penalties which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions”.

15

The case laid out above is a clear violation of the right to life. The four men killed in Beni Naim posed no threat to the soldiers who killed them and were killed without apparent reason. The killings appears to have been arbitrary and thus a violation of international human rights law. In accordance with its obligation under both customary international law and under the ICCPR, Israel must take steps to fully investigate this case, to hold those responsible for the killing accountable, and to ensure that such actions are prevented in the future.

⁸ Israel ratified the International Covenant on Civil and Political Rights on October 3, 1991

⁹General Comment 6(3)

B. Humanitarian Law

Applicability

International humanitarian law is the primary body of law addressing situations of war and belligerent occupation. Two documents that are of great importance in the Occupied Palestinian Territories are the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War of August 12, 1949 and the Annex to the Convention respecting the Laws and Customs of War on Land, otherwise known as the Hague Regulations of 1907.¹⁰ These two treaties are augmented by the two additional protocols to the Geneva Conventions and by case law.

The Hague Regulations of 1907 are generally considered a part of customary international law. Israel has not contested this view and has stated its acceptance of the Hague Regulations applicability in the Occupied Territories. However, although the applicability of the Fourth Geneva Convention in the Occupied Territories is universally recognized by the international community, and despite its status as a signatory to the convention, ¹⁶ Israel refuses to recognize the Conventions de jure applicability in the Occupied Territories. It is Israel's claim that the Occupied Territories are not occupied, but are rather "administered territories". Israel claims that the Convention is therefore not fully applicable in the Occupied Territories. Nevertheless Israel has committed to implementing the "humanitarian provisions" of the Convention, although no specification has ever been made regarding the provisions that Israel considers "humanitarian".

The international community does not share this viewpoint.¹¹ Repeated UN Resolutions and statements issued by governments around the world have affirmed the de jure applicability of the Fourth Geneva Convention in the Occupied Palestinian Territories.

¹⁰ Specifically Article 42 to 56.

¹¹ For more information on the applicability of international humanitarian and human rights law to the Occupied Territories refer to Al-Haq's report, Israel's Noncompliance with the International Covenant on Civil and Political Rights: Supplemental Information Additional to the Second Periodic Report of the State of Israel Concerning its Implementation of the International Covenant on Civil and Political Rights, February 2003

The conventions applicability was most recently reaffirmed in a statement issued at the conclusion of a meeting of the High Contracting Parties to the Fourth Geneva Convention held on December 5, 2001. The statement said that,

"Taking into account art. 1 of the Fourth Geneva Convention of 1949 and bearing in mind the United Nations General Assembly Resolution ES-10/7, the participating High Contracting parties reaffirm the applicability of the Convention to the occupied Palestinian Territories, including East Jerusalem and reiterate the need for full respect for the provisions of the said Convention in that Territory."

The Right To Life

Prohibitions against arbitrary killing are laid out in the both the Hague Regulations and in the Fourth Geneva Convention. The purpose of the Fourth Geneva Convention is to protect civilians during times of armed conflict and when they are living under occupation, while the Hague Regulations of 1907 lay out similar protections in addition to establishing general regulations for situation of armed conflict. The right to life is most clearly enunciated in Article 46 of the Hague Regulations of 1907, which state that, "the lives of persons... must be respected." 17

Article 27 of the Fourth Geneva Convention is built upon this provision of the Hague Regulations. Article 27 states that, "protected persons are entitled, in all circumstances, to respect for their persons... They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof". In the official commentaries on the Fourth Geneva Convention, Jean Pictet writes that Article 27 occupies a key position in the convention, and is a codification of the customary legal principles that form the basis upon which all of the other rights in the convention are based. He states that Article 27, "proclaims the principle of respect for the human

person and the inviolable character of the basic rights of individual men and women.¹²

However, Article 27 does not specifically mention the right to life, but instead calls upon States Parties to ensure “respect for the person” and humane treatment. Pictet also addresses this issue in the commentaries when he asks,

*“What about the right to life itself? Unlike Article 46 of the Hague regulations the present Article does not mention it specifically. It is nevertheless obvious that this right is implied, for without it there would be no reason for the other rights mentioned. This is a simple conclusion a majori ad minus, and is confirmed by the existence of clauses prohibiting murder, reprisals and the taking of hostages, in Articles 32, 33 and 34 of the Convention.”*¹³

Murder and Willful Killing

In regard to the killings documented by Al-Haq in Beni Naim, Article 32 of the Fourth Geneva Convention, which specifically prohibits murder, is also pertinent. Article 32 states that,

- [18] “The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measure of brutality whether applied by civilian or military agents.”

12 Pictet, Jean S. Editor, Commentary on the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, p. 200, International Committee of the Red Cross, Geneva. c. 1958.

13 Ibid, p. 201

The term murder as used in this context is defined as the denial of the right of an individual to exist in any situation where the killing is not deemed justifiable by military necessity or is not resultant from a capital sentence lawfully issued by a court of law.¹⁴ The killings in Beni Naim were arbitrary and cannot be justified under the rubric of military necessity. The victims were detained from their place of employment and killed. None of the men were armed and none of them posed a threat to the soldiers who killed them.

In the Trial Judgment of the Celebici Case,¹⁵ the International Criminal Tribunal for the Former Yugoslavia held that murder is equivalent to willful killing, noting that although semantic differences exist between the two terms, accepted meanings of the terms, the context in which they are used, and the facts necessary to prove either "murder" or "willful killing" are similar as such that "there can be no line drawn between 'willful killing' and 'murder' which affects their content."¹⁶

The killings in Beni Naim qualify as willful killing, and those responsible for this crime are therefore prosecutable both under local law and for committing a Grave Breach of the Fourth Geneva Convention. Civilian deaths incidental to a justifiable military action are not illegal under international law assuming the military action is carried out subject to the principle of proportionality. However, any killing of a civilian that is intentional or is not justified by military necessity qualifies as a grave breach of the Fourth Geneva Convention under Article 147. Willful killing is also listed as a war crime in the statutes of the International Criminal court. A necessary prerequisite for a crime to qualify as a war crime is the existence of an international armed conflict. However, *the Report of the Preparatory Commission for the International Criminal Court, Finalized draft text of the Elements of Crimes* establishes in footnote 34 that, "the term 'international armed conflict' includes military occupation."

¹⁴ Ibid, p. 223

¹⁵ Prosecutor V. Delalic, herein referred to as the Celebici Case

¹⁶ Celebici Trial Judgement, para. 421-2

The distinction between a "willful killing" and any other killing rests in intent or mens rea.¹⁷ The judges in the Celebici case defined necessary intent by saying that, "necessary intent, meaning mens rea, required to establish the crimes of willful killing and murder, as recognized in the Geneva Conventions, is present where there is demonstrated an intention on the part of the accused to kill, or inflict serious injury in reckless disregard of human life."¹⁸ A death that can be deemed the accidental consequence of another action cannot be deemed "willful". The definition of the term "willful" accepted in the Celebici Case is the definition found in the official Commentary to article 85 of Additional Protocol I to the Geneva Conventions, which states that, "the accused must have acted consciously and with intent, i.e., with his mind on the act and its consequences and willing them..."

According to the information gathered by Al-Haq regarding the killings in Beni Naim, the four men were killed while in the custody of Israeli soldiers. At the time that they were killed none of the men were armed and they posed no discernable danger to the soldiers who shot them. As the men were already in the custody of the soldiers there can be no reasonable justification for killing them. It appears that the men were killed because they were Palestinian. The soldiers who shot them must have known what the results of their actions would be and should therefore be held accountable for their actions.

¹⁷The "mental element "

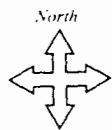
¹⁸ Celebici Trial Judgement, para. 439

¹⁹ Gutman, Roy and David Rieff, "Crimes of War: What the Public Should Know" pp. 381-3 WW Norton and Co., New York, c. 1999.

Conclusion

In light of these findings Al-Haq calls upon the Israeli Authorities to carry out an investigation into this case and to hold accountable those found responsible for killing Ala'a Al-Ayaidah, Ateya Ahmed Mashni Halaika, Hussam Naim Halaika and Hisham Naim Halaika. Al-Haq also calls upon the International Community to demand that Israel take action in this case, and failing that, to itself take action to hold the Israeli soldiers and officials responsible for the above named war crimes and Grave Breaches of the Fourth Geneva Convention accountable for their actions. As war crimes and Grave Breaches the International community is both morally and legally responsible for investigating these acts and for ensuring that those who are found culpable for them are tried before a court of law.

Al-Haq continues to request that the International community demand that Israel end its occupation of the Palestinian Territories. The story outlined above is not an isolated incident or a product of the current Intifada. Rather, it is the direct result of the continued illegal occupation of the Palestinian Territories by Israel. Israel must end its illegal occupation and begin to respect international law if the continued human rights violations in the Occupied Territories are to be brought to an end.



Route 60
(North to Hebron)

Roadblock

To Beni Naim

Jews Field

Hisham and Hussam

Roadblock

Ateya

Ala'a

Stone Factory