

IN NEED OF PROTECTION

**An Investigation into Israeli Practices in the
Occupied Palestinian Territories During the Intifada:
29 September 2000 to 1 October 2001**

AL-HAQ

2002

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Preface:

“In Need of Protection” covers human rights violations by the Israeli occupying authorities during the first year of the second Palestinian intifada. The report covers the period from 29 September 2000 until 1 October 2001.

Like Al-Haq’s reports during the first Palestinian intifada, this report relies on Al-Haq’s first hand information from the field, gathered and prepared by Al-Haq’s trained fieldworkers geographically located in six different locations in the West Bank, including Jerusalem. Information gathered from the field in the form of sworn affidavits and reports constitutes the basis on which the legal analysis is built.

“In Need of Protection” builds on the low level protection work Al-Haq has been doing throughout the intifada; that is engaging and informing consular officials present in the Occupied Territories of their governments legal obligations towards protecting the civilian population. Al-Haq also wrote a number of targeted briefs to key state parties to the Fourth Geneva Convention, imploring them to take meaningful action intended to uphold the integrity of international humanitarian law.

With the current evolution of international criminal law towards a direction where victims of egregious violations of their rights can attempt redress in a number of states, “In Need of Protection” was written to contribute to attempts by Palestinian victims to seek justice, and to contribute in ameliorating the most pressing immediate issue for the Palestinian community in the West Bank and Gaza, Israel’s culture of impunity, which shields most of those Israeli officials and citizens who are liable for crimes against Palestinian civilians.

Randa Siniora

General Director

Al-Haq

Introduction

On 29 September 2000, after Friday prayers on al-Haram al-Sharif in Occupied East Jerusalem, clashes erupted between Palestinian worshippers angered by Ariel Sharon's visit to al-Haram compound the previous day, and members of the Israeli security forces. During the confrontation, four protestors were shot dead by the security forces within the confines of al-Haram compound. These events proved to be the opening sequence of the largest sustained Palestinian revolt against Israeli rule since the intifada of 1987-1993.¹

The circumstances of the current intifada are, however, different from its predecessor in many respects. The current intifada erupted in the wake of a peace process, and the failure of its final status negotiations, which were held in Camp David in July 2000. For the Palestinian population, the Oslo era had brought little substantive respite from Israeli control; settlements continued to expand, and along with measures such as closures, it appeared that Israel was more interested in reconfiguring the occupation rather than actually ending its rule over the West Bank and the Gaza Strip. This led to a groundswell of increasing bitterness amongst the Palestinian population that made Sharon's provocative perambulation on al-Haram al-Sharif so significant. Sharon's visit was merely the spark to an already volatile situation.

If there are any lessons from the current uprising, it is that the international community bears responsibility for repeatedly failing to enforce the prescriptions of international law applicable to occupied territories and intended to protect the population therein. For 35 years the international community of states have tolerated the institutionalised infraction of the laws that were intended to safeguard a civilian population from the predatory temptations of an occupying power. Even through the Oslo

¹ For detailed reports on Israeli human rights violations during the first intifada see the following Al-Haq publications: Punishing A Nation: "Israeli Human Rights Violations During the Palestinian Uprising," December 1987-December 1988, A Nation Under Siege: Al-Haq Annual Report on Human Rights in the Occupied Palestinian Territories, 1990 and Protection Denied, 1991.

process, where it was clear that Israel's continued settlement drive was endangering the prospect for a negotiated resolution of the conflict, little substantive action was undertaken by key third party states in order to repress violations. Though for the first time the High Contracting Parties to the Fourth Geneva Convention convened on 15 July 1999 to look at ways to ensure Israel's respect for the Convention, little came of the meeting other than the following declaration:

...The participating High Contracting Parties reaffirmed the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem. Furthermore, they reiterated the need for full respect for the provisions of the said Convention in that Territory. Taking into consideration the improved atmosphere in the Middle East as a whole, the Conference was adjourned on the understanding that it will convene again in the light of consultations on the development of the humanitarian situation in the field.

As the situation in the field deteriorated in the wake of Sharon's visit to al-Haram compound, the conference was reconvened on 5 December 2001. Another declaration followed that arguably reflected a broad consensus of international opinion on the Convention and its applicability to the Palestinian territories, but there was little substantive third party action directly stemming from the conference, aimed at restraining an Israeli military response to the uprising, which had by then, included the multiple commission of grave breaches of the Convention. The High Contracting Parties had once again effectively denied the Palestinian population the protection conferred upon them by law, despite the fact that the population was now more than ever, in need of protection. The noted international lawyer Richard Falk is perhaps correct when he once remarked that "there is no situation in international affairs that so strongly demands an international response as does the continuing character of the Israeli occupation of the West Bank and Gaza."²

² Quoted from Richard Falk: "Some Legal Reflections on Prolonged Israeli Occupation of Gaza and the West Bank," *Journal of Refugee Studies* Vol 2 No 1 1989, p 40.

It is in this spirit that Al-Haq composed this report covering the first year of the uprising. As the theme of the report concerns the urgent need of protection for the population, it deals solely with Israeli violations of the legal instruments that are the basis of the population's claim to international protection. That does not in any way down play the violations of the Palestinian National Authority (PNA) during the intifada, which has included capital punishment, torture and prolonged detention without charge or trial.

What follows is an attempt to assess Israeli violations in light of international humanitarian law and human rights principles. The report is divided into three parts. Part I: The Legal and Political Context, Part II Violations, and Part III, The Legal Mechanisms of International Protection. Part II on violations is composed of six chapters and where necessary relevant documents such as affidavits and so forth have been appended at the end of each chapter except chapter six.

Part I lays out in some detail the legal instruments upon which the Palestinian claim to international protection rests, and then goes on to lay out how Israel has over the last 35 years systematically breached the prescriptions of international law intended to protect a civilian population in occupied territory. The first part of the report also illustrates how the Interim Agreements of the Oslo process failed to undermine the legal and functional separation between the Jewish settlers and the protected Palestinian population, which Israel had developed over the 26 years prior to the Declaration of Principles. It is in fact argued, that if anything, the Interim Agreements augmented Israeli control over large swathes of the Palestinian territories. This background is essential in order to put Israel's violative conduct during the intifada into context, and to illustrate the root cause of both the continued occupation and the onset of the current uprising.

The second part of the report surveys the main violations that occurred during the first year of the uprising. This part is divided along thematic lines. The first chapter deals with Israel's use of force and appraises Israeli conduct during demonstrations as well as detailing reports of beatings against the civilian population by members of the security forces,

incidents of reckless and indiscriminate fire, attacks on medical personnel and the use of force in residential areas. In regards to the use of force during demonstrations, Al-Haq takes the position that from the circumstantial evidence available, it does appear that the Israeli security forces were pursuing a policy that was intended to cause death or serious injury to protestors.

The second chapter is concerned with Israel's policy of assassination and concludes that the policy is illegal and constitutes a crime under international law that engages criminal liability.

The third chapter looks at the numerous attacks carried out by the settler population against Palestinian residents of the territories. The chapter notes the historical aspect of the phenomena and the unwillingness of the Israeli authorities, particularly the judiciary and law enforcement agencies to fully tackle crimes perpetrated against the protected population by Jewish settlers. The chapter includes numerous cases where Israeli military personnel were present at the scene of a settler attack on protected persons or their property but failed to intervene.

The fourth chapter deals with detention and torture and the fifth chapter is concerned with property destruction. During the first year of the uprising, the Israeli military authorities have destroyed numerous civilian dwellings, swept hundreds of dunums of agricultural land and have destroyed numerous buildings belonging to the Palestinian Authority's security structure. All of this destruction was carried out either to protect settlements and the settler population or in reprisal. Al-Haq argues that the destruction was not legitimate within the parameters of military necessity as understood in international humanitarian law and was done in wanton disregard of the rights of the Palestinian population and as such, qualify as grave breaches.

The sixth chapter is concerned with the movement restrictions that were imposed on the Palestinian population in light of the intifada and looks specifically at closure and curfew. The chapter details the deleterious impact that these restrictions have had on the material well being of the population as well as the medical implications of enforced isolation. The chapter concludes that the Israeli policy has been so comprehen-

sive, that it amounts to collective punishment going way beyond any security related rationale that could be reasonably anticipated. The policy has also been pursued to ensure the security of the settler population, whose presence in the Occupied Territories is illegal.

The report also includes two case studies. The first case study is on the Israeli seige and attack on 'Arraba carried out on 12 September 2001 and the second is on how the intifada has affected the Palestinian educational system.

The last section of the report lays out the legal mechanisms within international humanitarian law concerned with international protection, specifically common article 1 to the four Geneva Conventions, and the grave breaches system enumerated in articles 146, 147 and 148 of the Fourth Geneva Convention.

PART I

**THE LEGAL AND POLITICAL
CONTEXT**

The Legal Status of the Territories

In the wake of the June war of 1967, the Palestinian territories of the West Bank and the Gaza Strip came under Israeli occupation, and as a result, enjoy a specific legal status in international law. This status is referred to as the legal regime of belligerent occupation. As a result, the annex to the Fourth Hague Convention Respecting the Laws and Customs of War on Land (hereinafter the Hague Regulations), particularly articles 42 to 56, and the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War are applicable (hereinafter the Convention or the Fourth Geneva Convention). Article 42 of the Hague Regulations can be said to give the authoritative definition of occupation in international law:

Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to territory where such authority has been established and can be exercised.

Following the end of hostilities in the June war of 1967, as Israel was in possession of the West Bank and the Gaza Strip and exercised effective authority in the area, it became an occupying power with legal obligations as well as minimum “rights.”

The Palestinian population on the other hand, became a protected population under international law. Their legal status is spelt out in article 4 (1) of the Fourth Geneva Convention:

Persons protected by the Convention are those who, at a given moment and in any manner whatsoever, find themselves, in case of conflict or occupation, in the hands of a party to the conflict or Occupying power of which they are not nationals.

The protections a civilian population are entitled to are enumerated in article 27 (1) of the Fourth Geneva Convention:

Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manner and customs.....They shall at all times be humanely treated...

According to the authoritative Commentary to the Convention, article 27 occupies a key position among the articles of the Convention and is regarded as the basis of the Convention, as it proclaims the principles upon which the Geneva Law is founded.³ According to the Commentary:

The statement of these principles in an international convention gives them the character of legal obligations and marks an essential stage in the history of international law, which is concerned above all with man as man.... article 27 is the basis on which the Convention rests, the central point in relation to which all its provisions must be considered.⁴

The provisions of article 32 of the Convention augment the protections afforded to protected persons under article 27:

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

³ Traditionally there have been two branches of international humanitarian law, the Law of The Hague and the Law of Geneva. The Law of Geneva: designed to safeguard military personnel who are no longer taking part in hostilities-prisoners of war, injured combatants and persons not actively involved in the fighting-civilians. The Law of the Hague: establishes the rights and obligations of belligerents in the conduct of hostilities and limits the means of harming the enemy. It should be noted that both branches reinforce each other and have been brought together in the Additional Protocols to the Geneva Conventions of 1977.

⁴ Commentary to the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, (International Committee of the Red Cross, ed Jean Pictet) pp199-208.

and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

Article 29 of the Convention places a specific responsibility on the occupying power to ensure that the treatment of protected persons is in accordance with the provisions of the Convention. Article 29 states:

The party to the conflict in whose hands protected persons may be, is responsible for the treatment accorded to them by its agents, irrespective of any individual responsibility which may be incurred.

According to the Commentary to the Convention, the term “agent” must be understood as embracing everyone who is in the service of a contracting party, no matter in what way or in what capacity.⁵ Thus, in cases where individuals acting in their capacity as state agents inflict harm on protected persons or damage to property, they as well as the state are liable.

In the case of minors, article 50 of the Convention provides that children shall be given access to education, and that children under fifteen years shall continue to benefit from preferential measures in regard to food, medical care and protection against the effects of war. Article 76 invokes “special treatment due to minors” detained by the occupying power and article 68 paragraph 5 forbids the occupying power from pronouncing the death penalty “against a protected person who was under eighteen years of age at the time of the offence.”

The Prohibition on Annexation

As well as offering a modicum of protection to individuals, the Convention also protects the integrity of the occupied land. Both the Hague Regulations and the Fourth Geneva Convention were examples of an

⁵ Opcit Commentary to the Fourth Geneva Convention, p 211.

evolution in international law whereby territory occupied during war could no longer be annexed as a booty of war.⁶ Thus, under the Fourth Geneva Convention:

The occupation of territory in wartime is essentially a temporary, *de facto* situation, which deprives the occupied power of neither its statehood nor its sovereignty; it merely interferes with its power to exercise its rights. That is what distinguishes occupation from annexation. . . . Consequently, occupation as a result of war, while representing the actual possession to all appearances, cannot imply any right whatsoever to dispose of territories.⁷

The Convention contains a number of provisions that are intended to act as a safeguard against annexation. Article 64 of the Convention requires the occupying power to respect the penal legislation in force before the territory was occupied. This article is a reiteration of article 43 of the Hague Regulations, which is regarded as a basic principle of the law of occupation. Though article 64 of the Convention makes reference to penal laws, the idea of the continuity of the legal system applies to the whole of the law, both civil and penal, in the occupied territory.

Article 47 specifically prohibits annexation:

Protected persons who are in occupied territory shall not be deprived, in any case or in manner whatsoever, of the benefits of the present Convention by any change introduced, as the result of the occupation of a territory,

⁶The concept and term occupation is very much of modern vintage. Previously, captured territory was simply annexed and the population left to the mercy of their conquerors. It was only with the writings of Emmerich Vattel in the 18th century that a distinction emerged between occupation and subjugation. This distinction evolved slowly through the following century until it became a prohibition in international law to annex territory and subjugate its population. Hence, the well-recognised temporariness of occupation, the prohibition of annexation, and the development of legal instruments protecting the rights of an occupied population which epitomize legal thought currently.

⁷ Opcit Commentary to the Fourth Geneva Convention p 275.

into the institutions or government of the said territory, nor by any agreement concluded between the authorities of the occupied territories and the Occupying power, nor by annexation by the latter of the whole or part of the occupied territory.

The occupying power is also prohibited from confiscating private property, which is clearly stated in article 46 of the Hague Regulations, and article 49 (6) of the Fourth Geneva Convention prohibits the occupying power from transferring its citizens into the occupied territory.

The Grave Breaches System

The Convention lays down prohibitions on all forms of collective punishment, pillage, and reprisals against protected persons and their property, and in its article 147 enumerates a number of practices that are regarded as crimes under international law. Such crimes include wilful killing, torture, inhuman treatment, unlawful deportations and transfer, wilfully causing great suffering or serious injury to body or health, and the extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly.

The legal consequences of the commission of grave breaches are three-fold:

State responsibility: The occupying power is legally responsible for the acts of its agents, and is under corresponding obligations to ensure that its agents adhere to the Convention and to prosecute those who commit grave breaches;

Individual responsibility: an individual who commits a grave breach is criminally liable for his or her acts and should be prosecuted accordingly;

Inter-state responsibility: of other State signatories of the Convention: all state signatories are under an obligation to seek out and prosecute individuals responsible for committing or commissioning grave breaches (art. 146).

The Article 1 Obligation

One of the most salient features of the Fourth Geneva Convention is that it places an obligation on the High Contracting Parties to ensure that an occupying power abides by the Convention. Common article 1 stipulates:

The High Contracting Parties undertake to respect and **ensure** respect for the present convention in all circumstances (emphasis added).

This is often regarded as the inter-state obligation and anchors the international protection of a civilian population firmly within the operation of the law. Thus, article 1 contains two safeguard mechanisms vis-à-vis the protection of a civilian population. Firstly, that the occupying power itself has a legal obligation to abide by the protective prescriptions of the law; and other states have an obligation to ensure that the occupying power actually does so.

The commentary notes:

....In the event of a power failing to fulfil its obligations, the other contracting parties (neutral allied or enemy) may, and should endeavour to bring it back to an attitude of respect for the convention. The proper working of the system of protection provided by the convention demands in fact that the contracting parties should not be content merely to apply its provisions themselves, but should do everything in their power to ensure that the humanitarian principles underlying the convention are applied universally.⁸

The High Contracting Parties to the Convention are charged with the specific responsibility of upholding the integrity of the law and thus guaranteeing the minimum protective prescriptions laid down in the Convention. However, the primary responsibility for abiding by the Convention's prescriptions rests with the occupying power.

⁸ ibid p 16.

Thus, the law of belligerent occupation does two things: it grants individuals minimum protection, and it contains provisions, which are intended in part to safeguard the reversionary rights of the ousted sovereign. The Palestinian territories do, however, provide an interesting case. Egypt, which had control over the Gaza Strip from 1948 to 1967 did not claim sovereignty over the area, though Jordan did in the case of the West Bank, which was in fact annexed in 1950. It was only in 1988 that the late King Husein abrogated Jordan's claim to the area. Neither Jordanian nor Egyptian control over the Palestinian territories were regarded as legitimate by the international community, and thus, neither state has reversionary rights.

Military Necessity

The law of belligerent occupation is permissive. Thus, the protection it affords a civilian population is not comprehensive. The law grants an occupying power certain prerogatives and bows to the exigencies of practicality in situations of conflict. For example, the occupying power can detain protected persons if so required for the security of its forces. An occupying power can take measures in order to restore public order and safety (article 43 Hague Regulations), so long as it does not breach articles 27 and 32 of the Fourth Geneva Convention. An occupying power can move protected persons from their place of abode for reasons of security and in the interests of their own safety. Despite the obligation of the occupying power to ensure that the pre-existing law remains in force, it can repeal or suspend provisions of the law in the interests of its security. Requisitions in kind and services can take place provided it is for the needs of the army of occupation and as long as they are in proportion to the resources of the occupied territory. A member of the occupying forces can incapacitate a protected person if that person poses an immediate danger to life or limb (doctrine of self defence). In short, an occupying power is given licence to take measures to ensure the security of its personnel and is granted considerable authority to administer the occupied territory. The law is thus a very careful balance between military/security necessities and the principle of humanity.

Israel's Position on the Applicability of the Law of Belligerent Occupation to the West Bank and Gaza Strip

Despite the overwhelming reiteration of the international community and prominent legal scholars that the Fourth Geneva Convention is applicable to the Occupied Palestinian Territories, Israel has refused to recognize it as governing its belligerent occupation. One argument that has been proffered in some legal quarters in support of Israel's position revolves around article 2 paragraph 2 of the Convention which states:

The convention shall also apply to all cases of partial or total occupation of the **territory of a High Contracting Party** ...(emphasis added).

Israel has in the past made the argument that as neither Jordan nor Egypt were legitimate sovereigns, the Convention does not apply as the areas in question were not the *de jure*⁹ territories of High Contracting parties. Thus, the Convention only applies to a situation where the occupying power displaces a legitimate sovereign, the holder of a perfect *de jure* title to the territory concerned. As Jordan and Egypt were not *de jure* sovereigns there was a vacuum of sovereignty in the West Bank and Gaza, which Israel filled.¹⁰

However, Israel's interpretation is a strictly technical argument which does not take into consideration the purpose and objective of the Convention. According to article 31 (1) of the 1969 Vienna Convention on the Law of Treaties, there are three basic approaches to treaty interpretation. Firstly, the actual text is taken into consideration. Secondly, the intention of the parties has to be taken into account, and thirdly, the

⁹ *de jure* refers to legitimacy as stipulated in law or as recognised as lawful. This is opposed to *de facto* which refers to a factual situation which does not enjoy legitimacy.

¹⁰ see Yehuda Zvi Blum, "The Missing Reversioner: Reflections on the Status of Judea and Samaria," in *Israel Law Review* (1968) pp 279-301.

object and purpose of the treaty are essential for interpretation.¹¹ The Convention was drafted to primarily protect individuals, not to answer questions of sovereignty. The provisions of the Convention override disputes concerning sovereignty. Moreover, the use of the term legitimate sovereign is not used in the text of the Convention and almost all states and legal scholars support the Convention's applicability regardless of the question of sovereignty. In any case, through their right to self-determination, the Palestinian people are recognised as having sovereign rights over the territories. The applicability of the Convention also rests on article 4(1) cited above, and therefore, the civilian population would be protected as individuals who find themselves in the hands of a hostile foreign power. The applicability of the Convention is *in personam*.

Though concurring with the opinion that the Fourth Geneva Convention is not applicable to the Occupied Territories, Israel's former Attorney-General Meir Shamgar did posit the position that Israel would abide by the "humanitarian provisions" of the Convention. Shamgar did not spell out what these provisions were, and he overlooked the fact that the entire Law of Geneva is humanitarian in scope.

The Israeli Supreme Court sitting as the High Court of Justice does however view the Hague Regulations as applicable to Israel's administration of the Occupied Territories due to its *jus cogens*¹² status in international law. Nonetheless, in most cases where the Court was called upon to rule on certain aspects of Israel's violative conduct, its interpretation of the Regulation's articles more often than not facilitated and justified breaches of the law rather than upheld the cardinal principle of protection for an occupied population. This was particularly the case in matters deemed

¹¹ Article 31 (1) of the Vienna Convention on the Law of Treaties stipulates: *A treaty shall be interpreted in good faith in accordance with the ordinary meaning...in their context and in the light of its object and purpose.*

¹² According to Beck's Law Dictionary: A Compendium of International Law Terms and Phrases *jus cogens* is: "compelling law," peremptory principles of international law that cannot be overridden by specific treaties between countries; that is norms that admit of no derogation; they are binding on all states at all times. Please note here that Israel is a dualist state. In other words international treaties can be invoked in Israeli courts only if the Knesset adopts enabling legislation. The exception being if the treaty is deemed by

to be of security concern to the occupying power. An example was the *Ayyub v. Minister of Defence* Case of 1978, also known as the *Beit El* case. The case concerned plans by the military authorities to construct a civilian settlement on land that had been requisitioned for military purposes. The petitioners argued that such a plan was in breach of Israel's obligations under international law. The Court rejected the petition on the grounds that the settling of civilians in occupied territory is in fact required by the occupying power in accordance with article 52 as it ensures public order and safety which the occupying power is charged with preserving under article 43. Article 52 allows for land to be temporarily requisitioned if needed by the army of occupation. According to Justice Witkon:

It is indisputable that in occupied areas the existence of settlements-albeit "civilian"- of citizens of the occupying power contributes greatly to the security in that area and assists the army in fulfilling its task. One need not be a military and defence expert to understand that terrorist elements operate with greater ease in an area solely inhabited by a population that is indifferent or sympathises with the enemy than in an area which one also finds people likely to observe the latter and report any suspicious movements to the authorities. Terrorists will not be granted a hideout, assistance or supplies by such people.¹³

The position rendered by Justice Witkon is wholly at odds with international law. According to the noted scholar Antonio Cassese, "...the Court has frequently shown excessive self-restraint towards the other Israeli authorities, or has indulged in some sort of legal formalism that ultimately diminishes its bearing on the action of the occupying forces. Very

the Israeli authorities to have embodied peremptory norms of international law (*jus cogens*). The Knesset has not passed enabling legislation on the Geneva Civilians Convention. See Leonard M.Hammer, "Reconsidering the Israeli Courts' Application of Customary International Law in the Human Rights Context," *ILSA Journal of International & Comparative Law*, Fall 1998.

¹³ HC 606/78,610/78 *Ayyoub et al. v. The Minister of Defence* ("The *Beit El* case").

often, the Court has made great strides towards the abstract affirmation of the need to respect the interests of the local population, while *in concreto* it has refrained from actually catering for those interests.”¹⁴

In H.C. 785/87,¹⁵ the Israeli Supreme Court sitting as the High Court of Justice undertook a disquisition into the implications of article 49 (1) of the Convention, which prohibits deportations. This was despite the unwillingness of the Court to view the Convention as legally valid in Israeli courts due to the lack of Knesset enabling legislation and the position that the Convention did not reflect customary law. The Court construed article 49 (1) as a prohibition against Nazi style collective deportations in contradistinction to individual deportations, the subject of the proceedings, and the type of deportation that was often carried out by the Military government against prominent opponents of its occupation. The Deputy-President of the Court, Ms. Ben-Porat, underlined the need to interpret article 49 in a manner that would enable the military government to fulfil article 43 of the Hague Regulations which obliges an occupying power to maintain order and safety in a occupied territory. The deportation of those deemed a “security threat” was seen as being in line with the article 43 stipulation of the

¹⁴ Antonio Cassese “Power and Duties of an Occupant in Relation to Land and Natural Resources” in Playfair et al. *International Law and the Administration of Occupied Territories*, pp 441-442, (Clarendon Press 1992). For an analysis of High Court decisions see Mazen Qupty “The Application of International Law in the Occupied Territories as Reflected in the Judgements of the High Court of Justice in Israel” pp 87-125 in Playfair et al. Note in the *Elon Moreh Case* of 1979 the Supreme Court sitting as the High Court of Justice ruled that the establishment of a civilian settlement for ideological purposes intended to remain in perpetuity was illegal and thus ruled against the establishment of the *Elon Moreh* settlement. What may have swayed the court’s opinion in this case was the open espousal of the settlers that the settlement was not for security purposes but linked to a divine right to settle the “Land of Israel.” The *Elon Moreh Case* didn’t stop land acquisition but merely led the military authorities to adopt different, or in the Court’s opinion sounder legal methods of expropriating land. What is more, the *Elon Moreh* settlement was established near the original site on “State land.” See HC 390/79 *Mustafa Dweikat et al. v. The State of Israel et al.*

¹⁵ H.C. 785/87, ‘Abd-al-Naser ‘Abd-al-Aziz ‘Abd-al-‘Afu et al v. Commander of West Bank et al. Supreme Court Judgement in Cases Concerning Deportation, H.C. 785/87, H.C. 845/87, H.C. 27/88 in ILM, vol 29(1), 1990, pp139-181. See also Jean-Marie Henckaerts, “Deportation and Transfer of Civilians in Time of War” *Vanderbilt Journal of Transnational Law*, October 1993.

Hague Regulations.¹⁶

The international community of states and international legal scholars never accepted this position. Every deportation of protected persons, individually or collectively, regardless of the motive is prohibited, as expressly stated in the article. The unrestricted parameter of article 49 (1) has been recognised formally by the International Committee of the Red Cross (ICRC).¹⁷

Israel's violative conduct

As an occupying power, Israel has systematically violated the prescriptions of the laws governing a belligerent occupation. These infractions pervade Israel's policies towards the territories in question. What is more, the acquiescence of key states has meant that no practical action on the part of the international community has been undertaken to repress Israel's persistent and ongoing violations. As a result, the Palestinian population has been left unprotected.

Israel has been motivated by an annexationist agenda, which has included extensive expropriation of land, much of it private, and the construction of exclusively Jewish civilian settlements.¹⁸ An occupying power can requisition land temporarily for its use as stipulated in article 52 of the Hague Regulations and can make use of public property in accordance with the rules of usufruct¹⁹ as noted in article 55, however, Israel's expropriation of land for permanent civilian settlement is a clear breach of the conditions laid out in the Hague Regulations.

¹⁶ See Israel Year Book on Human Rights, "The Israeli Supreme Court and the Law of Belligerent Occupation: Deportations," pp 1-27. The Faculty of Law, Tel-Aviv University, Volume 23 1993.

¹⁷ Comité International de la Croix-Rouge, "The Application of International Humanitarian Law in the Territories Occupied by the State of Israel since 1967," 1984.

¹⁸ Methods of land acquisition:

Land acquired for "Military Purposes"

Prior to 1979 the most frequently used method to acquire land was to seize it for military purposes. It should be noted that once the land was expropriated under this rubric it was often used for civilian settlement. This method of land acquisition largely fell into abeyance.

In pursuance of its annexationist agenda, the Israeli military authorities promulgated a series of Military Orders that regulated every sphere of life of the Palestinian population (except East Jerusalem which was ille-

ance after the Elon Moreh case where the High Court prohibited the seizure of land under the rubric of “military purposes” when it was in fact intended primarily for civilian settlement. After the 1995 Israeli-Palestinian Interim Agreement on the West Bank and Gaza Strip (Oslo II), land was once more seized under the rubric of military purposes in order to facilitate the construction of the so-called bypass roads.

Land Acquired as “State Land”

In 1979 Military Order 59 was amended by Military Order 364 to enable the transfer of land from Palestinians to Jewish settlers by declaring non-registered property “State Land.” Military Order 364 rendered a mere declaration by the authorities that land is “State Land” sufficient proof that the land is considered as such until the opposite is proven. It should be noted that the original purpose of Military Order 59 was to enable the Israeli Custodian of Enemy Property to manage Jordanian State property for the duration of the occupation.

Land Seized as “Abandoned Property”

The Israeli authorities have also seized Palestinian owned land from Palestinian absentees who they considered to have abandoned their property. An absentee was defined in Military Order 58 as...someone who left the area of the West Bank before, during, or after the 1967 war. Nonetheless, “even when the (absentee) owner of the property has not left the area (and therefore his property does not qualify as abandoned property) and a Jewish settlement is in need of land, the Custodian can still acquire possession of it and enter into transactions with third parties who are either individuals or Israeli development companies.” Article 5 of Military Order 59 makes such transactions valid provided they are entered into in “good faith” and the Custodian of Absentee Property believed the property to be abandoned when he entered the transaction, “even if it was later proven that the property at the time was not governmental property.”

Land Expropriated for “Public Purposes”

Military Orders 131, 321 and 949 allowed the Military government to seize land by compulsory acquisition for “public purposes.” Public purposes in this context does not refer to the protected Palestinian population but instead to the Jewish settlers. All the methods of expropriating land were intended for the sole purpose of settling Israeli Jews in occupied territory.

¹⁹ Usufruct is a civil law doctrine derived from Roman law. As defined in Justinian’s *Institutes* II.2.4. “Usufruct is the right to the use and fruits of another person’s property, with the duty to preserve its substance.” Translation by Birks and McLeod, *Justinian’s Institutes*, (Duckworth: London, 1987), p. 61.

gally annexed).²⁰ The Military Orders were so extensive that they effectively replaced the laws that prevailed in the West Bank and the Gaza Strip on the eve of the occupation.²¹ The legislative changes were to enable settlement and in the process create a legal and functional separation between the protected population and the Jewish settlers. Raja Shehadeh in his book *Occupier's Law* divided the promulgation of the Military Orders for the West Bank into four legislative stages.

The first legislative stage occurred between 1967-1971 and has been described as the most significant, as the Military Orders promulgated during this period laid the foundation for the occupation. Many of the Military Orders during this period extended military jurisdiction over various facets of life. For example, the military authorities extended their control over transactions in immovable property, the use of water and other natural resources, and granted themselves the power to expropriate land. Military Orders also determined the granting of driving licences and determined the criteria upon which one could practice a profession. During this period the system of control through the introduction of an ID system was initiated and the judicial system was altered extensively with the jurisdiction of the military courts extended to include civil matters under their remit.

The second legislative stage was from 1971-1979. During this stage the Israeli authorities were particularly concerned with facilitating Jewish settlement. For example, Military Order 418 for the West Bank amended

²⁰ East Jerusalem and its immediate environs encompassing a total area of 70 km sq was annexed in June 1967 by the passage of three laws: Amendment no.11 to the Law and Administration Ordinance Law, Amendment no.6 to the Municipalities Ordinance Law and the Protection of the Holy Places Law. The annexation was reaffirmed in 1980 when the Knesset adopted the Basic Law: Jerusalem, which stated, "Jerusalem completed and united is the capital of Israel. Jerusalem is the seat of the President of the State, the Knesset, the government and the Supreme Court..."

²¹ Article 64 of the Convention makes allowance for the alteration of the legal system in the occupied territory for two purposes, either to bring the municipal law of the occupied territory in line with the prescriptions of the Convention or for the purposes of security and the orderly administration of the occupied territory.

the Jordanian planning law to make possible the zoning of large areas in the West Bank for the construction of Jewish settlements. Military Order 783 declared the establishment of five Jewish regional councils covering the West Bank. The third legislative stage was from 1979-1981. The Military Orders during this period served the following objectives: extending Israeli law to settlers and excluding them from the West Bank courts, and organising the administration of the Jewish settlements to make them consistent with local government in Israel.

The fourth legislative stage from 1981 onwards was concerned with facilitating the use of extensive areas of land for settlement activity. The main purpose of the Military Orders from this period onwards included transferring the ownership of large swathes of land to Jewish settlers and the initiation of policy schemes to prevent Palestinian development.²²

The security related Military Orders were aimed at stifling Palestinian resistance to Israeli measures and ensuring the safety of the settlers residing in the territories. By the promulgation of Military Order 224 the military government revived the British Mandate (Emergency) Regulations of 1945 and Military Orders derived from them to administratively detain, deport leading activists, demolish and seal houses, impose curfews and periodically close institutions such as universities. Torture became routine and the Israeli military authorities resorted to the extra-judicial killing of many “wanted” activists.

Israeli Settlements in the Occupied Palestinian Territories

The Jewish settlements in the Occupied Palestinian Territories are the most salient expression of Israel’s annexationist agenda and the greatest obstacle to the realisation of the right to self-determination of the Palestinian population. The early settlement enterprise undertaken by the State of Israel was unofficially guided by plans put forward by Yigal Allon in 1967, the then Labour Minister in the Israeli government. The aim of the “Allon Plan” was the establishment of “defensible borders” for the State

²² See “Occupier’s Law: Israel and the West Bank,” Raja Shehadeh, *Al-Haq – Law in the Service of Man/Institute of Palestine Studies* (Washington D.C.1987), pp VIII – XI.

of Israel based on a perceived threat from the east. Israeli strategic analysts regularly articulated the need for strategic depth, which could be provided by the newly occupied territories. The Zionist ideological imperative to settle was present, but a security discourse was more prevalent in the early period of the occupation. The “Allon Plan” contained prescriptions for annexing approximately 40 percent of the West Bank as well as the southern Gaza Strip, the Golan Heights and a Strip of the Sinai linking Eilat to Sharm el Sheikh. Allon envisioned an autonomous framework for the Palestinian residents with links to Jordan.

The second phase of settlement was the culmination of a number of social factors making their presence felt in Israeli society at the time. In 1974, Gush Emunim²³ was founded by a group of Israeli citizens who overtly voiced a biblical entitlement to West Bank and Gaza lands and advocated settling the whole of the Palestinian territories. With the election victory of Menachem Begin and the Likud in 1977, an alliance was quickly established between Gush Emunim and the Likud government. The intentions of both the Likud government and Gush Emunim found expression in the settlement plan of World Zionist Organisation official Mattityahu Drobles. In 1977 Drobles unveiled “A vision of Israel at Century’s End” which called for the settling of two million Jews in the Occupied Territories by the end of the century. The principle aim of the plan was to strike at the basis of potential Palestinian sovereignty by fragmenting the territorial continuity of the Palestinian community in the Occupied Territories. According to the plan:

The best and most effective way of removing every shadow of doubt about our intention to hold on to Judea and Samaria (**West Bank**) forever is by speeding up the settlement momentum in these territories. The purpose of settling the areas between and around the centers occupied by the minorities (**The Palestinian majority in the West Bank**) is to reduce to the minimum the danger of an additional Arab state being established in these territories. Being cut off by Jewish settlements the minority population will find

²³ Literally meaning “Bloc of the Faithful.”

it difficult to form a territorial and political continuity.

The Begin government proceeded to fulfil this vision. Moreover, regardless of which of the two parties were in power, settlement expansion continued at an accelerated pace, particularly in and around Jerusalem where large urban complexes were built effectively acting as suburbs for major Jewish population centres in Israel and Israeli occupied Jerusalem. By-pass roads ensured a quick journey to Tel-Aviv and Jerusalem by-passing Palestinian towns and villages.

The settlements thus had two strategic purposes; to act as the vehicle for transforming the demographic composition in the territories in question and in the process creating “facts”, and secondly, to fragment Palestinian contiguity. To achieve these ends settlements were carefully located to bloc the development of Palestinian towns and to link up with each other to form settlement blocs. Where appropriate these blocs were to link up with towns in Israel effectively erasing the “Green Line.”²⁴ The fact that Labour led governments laid the basis for the settlement enterprise, which expanded under succeeding Likud and Labour governments from 1977 onwards, is an indication that a consensus quickly developed within Israel’s political establishment with wide popular support. According to the Israeli human rights organisation B’Tselem:

The Israeli government initiated most of the Jewish settlements in the Occupied Territories. All of the relevant Ministries and authorities assisted by expropriating land, planning, implementation and financing. The State Comptroller’s annual report of 1983 enumerates 125 settlements that the Ministerial Committee for Settlement Matters had decided to establish. The various Israeli governments encouraged and continue to encourage Israeli civilians to move to the occupied territories by providing benefits like grants and loans under favourable terms.

²⁴ The “Green Line” refers to the 1949 armistice line separating Israel from the then Jordanian controlled West Bank.

Even where the settlers, rather than the government established the settlements (as in the case of Kedumim, Shilo and Ofra), the government acted retroactively to turn them into permanent settlements. To achieve this the government assisted with planning, infrastructure, establishment of public buildings and institutions, expropriation of land to expand the settlements and by encouraging other Israeli civilians to live there.²⁵

The Oslo Process and the Law of Belligerent Occupation

International humanitarian law should have been an integral part of the peace process that began in Madrid in October 1991, and which culminated in the signing of the Declaration of Principles On Interim Self-Government Arrangements on 13 September 1993 and its subsequent agreements.²⁶ However, none of the agreements compelled Israel to abide by the prescriptions of international humanitarian law and key western states did not insist on this being an integral part of the political process.

²⁵See B'Tselem's "Israeli settlement in the Occupied Territories as a violation of human rights: Legal and Conceptual aspects," March 1997 pp19-20.

²⁶ There have been six major agreements between the PLO and the State of Israel that make up the Oslo process. As well as the Declaration of Principles signed on the 13 September 1993 there has also been the:

- Agreement on the Gaza Strip and the Jericho area-4 May 1994
- The Israeli-Palestinian Agreement on the West Bank and Gaza Strip (Oslo II)-28 September 1995
- The Hebron Protocol-15 January 1997
- Wye River Memorandum-23 October 1998
- The Sharm al-Sheikh Memorandum-4 September 1999

The current territorial dispensation under the agreements so far is area A (Full Palestinian control: security and civil responsibility) 17.2%, B (partial Palestinian control:civil responsibility) 23.8% and C (full Israeli control) 59%. In the Gaza Strip, Israel controls 20% with the Palestinian Authority in control of the remaining 80%. Despite the fact that parts of the occupied territories came under nominal Palestinian control, Israel retained overall responsibility and remained an occupying power pursuant to that overall control.

This in turn resulted in key third party states actively facilitating and guaranteeing a “peace process” that involved substantial violations of international law. Important provisions of the Convention such as the prohibition on alien settlement in occupied territory were treated as negotiating positions rather than binding law.

The Fourth Geneva Convention in and of itself is not silent on agreements reached between representatives of the occupied population and an occupying power. The Convention prohibits an occupying power from concluding an agreement with any member of the local population that would relieve the occupying power of any of its obligations under the Convention. Article 7 clearly states that:

No special agreement shall adversely affect the situation of protected persons....

Article 8 prohibits protected persons from renouncing their rights and article 47 cited above protects against the derogation of rights that may come about by 1) changes introduced by the occupying power into local institutions of government, 2) by agreement between the occupying power and local authorities and 3) by the annexation of territory.²⁷

The Interim Agreements effectively sanctioned the settlements and granted Israel the prerogative to ensure their security. Article XII (1) concerning Arrangements for Security and Public Order of the 1995 Interim Agreement explicitly mentions the continued existence of the settlements and reiterated Israel’s role in providing security for them and for the settlers:

Israel shall continue to carry...the responsibility for the over all security of Israelis and settlements, for the purpose of safeguarding the internal security and public order, and will have all the powers to take steps necessary to meet this responsibility.

²⁷ See “The PLO-Israel Interim Arrangements and the Geneva Civilians Convention” by John Quigley in “Human Rights, Self-Determination and Political Change in the Occupied Palestinian Territories” edited by Stephen Bowen-International Studies in Human Rights, (Martinus Nijhoff Publishers, The Netherlands, 1997) pp 25-47.

During the interim period the Israeli authorities continued to control Palestinian zoning and land use decisions. The Israeli civil administration²⁸ had by the time of the Oslo process drawn up outline plans for 280 Palestinian towns and villages. What was significant about these Israeli plans for Palestinian locales was that they were drawn up not to facilitate growth, but were in fact intended to demarcate the boundaries in which Palestinian development was to be confined. In contrast, the outline plans for Jewish settlements took into consideration their present and future needs, thus facilitating growth and development.²⁹ It was this zoning and spatial reality that was the basis upon which the territorial dispensation of the Oslo process was based.

Another example of how the Oslo process consolidated Israeli control is article 16 of the Interim Agreements under the “Government and Absentee Land and Immovables” section where the Palestine Liberation Organisation (PLO) undertook to respect the legal rights of Israelis related to government and absentee lands located in areas under its control. It should be noted that these “legal rights” were obtained by Military Orders which effectively altered the local law in the interests of the occupying power and its citizens.³⁰ It could be argued that this recognition by the PLO of Israeli “legal rights” to land effectively established an agreed upon rationale for Israeli control over state and absentee land in Areas A and B. The significance of this can perhaps be realised when it is noted that as much as half the land in the West Bank has been classified as “State land.” An important potentially deleterious precedent had been established.

²⁸ The Civil Administration was established in 1981 pursuant to the promulgation of Military Order 947. See “Civilian Administration in the Occupied West Bank: Analysis of Israeli Military Government Order No.947,” a study by Raja Shehadeh & Jonathan Kuttub, *Al-Haq-Law in the Service of Man*, January 1982.

²⁹ Raja Shehadeh, “From Occupation to Interim Accords: Israel and the Palestinian Territories,” *CIMEL/SOAS Book Series NO.4* (Kluwer Law International 1997) p 83. See also “Town Planning Under Military Occupation, Anthony Coon, commissioned by Al-Haq, (Dartmouth Publishing-1992). See also “The Law of the Land: Settlements and Land Issues Under Israeli Military Occupation,” Raja Shehadeh, *Palestinian Academic Society for the Study of International Affairs*-July 1993.

³⁰ Opcit Shehadeh “From Occupation to Interim Accords,” p 43.

The Interim Agreements effectively consolidated the legal and administrative changes that the occupying power had made to the governance of the territories, which were intended to facilitate a form of active colonisation, and as such, are in breach of article 47 of the Convention. The Palestinian National Authority was given circumscribed responsibility over day-to-day issues directly affecting the population such as health and schooling, while Israel retained control over most of the land in the West Bank, and over the water resources in both the West Bank and the Gaza Strip.³¹ It is clearly the case that the areas that saw active settlement activity during the interim period were to be annexed to Israel in a final agreement. This was borne out by what is publicly known of the Israeli negotiating position at Camp David in July 2000.

The Interim Agreements effectively gave the settlements a degree of legitimacy which they do not enjoy under international law. For example, the mandating of a protective role for the IDF with Palestinian consent vis-à-vis the safety of the settlers is inconsistent with the wording and meaning of article 49(6) of the Convention. What is more, the Israeli negotiators were able to turn a cardinal prohibition, that is the illegality of civilian settlements, into a negotiable item, with PLO consent. The fact that representatives of the protected population negotiated the Interim Agreements, which effectively consolidated Israeli control over large swathes of the Palestinian territories, does not in any way negate the specific illegality of these aspects of the agreements under international law.

³¹ See “Natural Resources and Belligerent Occupation: Mutation Through Permanent Sovereignty” by Iain Scobbie in *Human Rights, Self Determination and Political Change in the Occupied Palestinian Territories* opcit pp 221-291. According to the World Bank, Palestinians use approximately 15 to 20 percent of the annually available water. The World Bank notes: “As the Western and Eastern aquifers extend from the West Bank to Israel, groundwater from these aquifers have been exploited in the Israeli coastal plains for a long period of time. Since 1967, the groundwater use by Israel increased gradually, until it reached the limit of all the water available, while the use by the Palestinians remained by only a small amount above the level available to them in 1967.” See “Developing the Occupied Territories, An Investment in Peace”, The World Bank, vol 4 September 1993 p 54.

Ehud Barak: Settlement and Camp David

Upon the signing of the Declaration of Principles On Interim Self-Government Arrangements there were 110,000 settlers living in the Palestinian territories excluding East Jerusalem. By June 2000 the figure was approximately 195,000 again excluding East Jerusalem.³² The settler population in East Jerusalem is currently estimated to be 170,000. The expansion of the settlements that occurred over the eight years of the Oslo process and the number of Israeli citizens that settled in the Palestinian territories was unprecedented. There was a near doubling of the settler population in the Occupied Territories with an increase of Israelis living in East Jerusalem by two thirds. It has been estimated that by late 2000, settlements accounted for approximately 13 percent of state sponsored construction which is more than three times the amount of similar construction in the Israeli cities of Tel-Aviv and Haifa.³³ As things stand now, there are approximately 200 distinct settlement locations in the Occupied Territories with numerous outposts, many of which consist of caravans or tented encampments.

Despite a rhetorical commitment to peace, settlement construction under the Labour government of Ehud Barak was particularly extensive. In the first six months of 2000, settlement construction grew by 96 percent. This was a higher growth rate than the comparative period of the previous Netanyahu administration. By the time Barak left office the settler population in the Palestinian territories excluding East Jerusalem numbered approximately 203,068 while there was a settler population increase during Barak's tenure of 22,419. Government construction tenders from June 1999 to September 2000 was 3,499 while building sites in the Palestinian territories sold by the Israel Lands Authority in 2000 numbered 2,804. Public construction starts in settlements in the West Bank and Gaza for 2000 was estimated at 1,943 units.³⁴ Settlement ex-

³² Foundation for Middle East Peace: Report on Israeli settlement in the Occupied Territories September-October 2000 p 5.

³³ *ibid.*

³⁴ Foundation for Middle East Peace: Report on Israeli settlement in the Occupied Territories March-April 2001, "Barak's Settlement Legacy" p 8.

pansion was particularly extensive in areas that were deemed to be of national consensus i.e. the settlements around Jerusalem such as the Etzion bloc and Ma'ale Adumim; as well as settlements such as Ariel to the north of the Greater Jerusalem settlements.

It was this legacy that Barak sought to consolidate and render permanent at the final status negotiations at Camp David in July 2000. Contrary to popular perceptions, Barak went to Camp David, not to facilitate the creation of a Palestinian state, but to ensure the permanence of Israel's settlement enterprise and the State's strategic control over the Palestinian territories; in effect negating the right to self-determination of the protected population. At Camp David, Barak was determined to retain Israel's strategic control over the airspace and borders of the Palestinian territories as well as the transport routes to and from the settlements. Barak not only wanted to retain control and annex the so-called settlement blocs whereby massive settlements such as Ma'ale Adumim would come under *de jure* Israeli control, there was also the appearance of a new category of settlements known as settlement clusters which referred to groups of isolated settlements in the heart of Palestinian territory that would effectively become islands of Israeli sovereignty in a putative Palestinian state.³⁵ Barak also wanted Israel to retain control of the Jordan Valley. Taken together, the settlement blocs and clusters would have effectively led to the emergence of a Palestinian entity dissected by Israeli settlements, roads, and military installations. Barak's policy was also to merge the third redeployment as stipulated in Oslo II with a final status agreement. Unlike previous Israeli leaders, Barak did not undertake any major withdrawals from Palestinian territory as stipulated in signed agreements. This was despite having a Knesset mandate on May 15 2000 to hand over Abu-Dis, 'Eizariyya and al-Sawahra al-Sharqiyya, three villages on the outskirts of East Jerusalem, to full Palestinian control.

³⁵ See "Negotiating the Settlements: The Success of Right-Wing Political Entrapment Against Peace" Gershon Baskin, November 2000.

At Camp David Barak was also eager to retain Israeli control over al-Haram al-Sharif and most of East Jerusalem while ceding to the Palestinians autonomy in certain areas of the city. By supporting and actively advancing Barak's position during the negotiations, then U.S. President Clinton tacitly acknowledged the demographic and geographic transformations created by the settlements as the basis for Israel's territorial claims to the Palestinian territories despite the patent illegality of such claims.³⁶

³⁶In an article which was published in the New York Times on 8 July 2001 and in a longer article that appeared in the New York Review of Books a week later, a former Middle East "expert" in the Clinton administration, Robert Malley, argued that the failure of the Camp David summit was not Arafat's alone, but was rather the result of a "tragedy of errors" by all sides. According to Malley, Barak offered far less than the post mortem accounts of the Camp David summit suggested. According to the articles, Barak, by failing to fulfil the third redeployment mandated under Oslo II coupled with vague promises of future concessions, compounded Palestinian suspicions concerning Israeli intentions at the summit. See also "Camp David One Year Later: Old myths and New," by Sophie Claudet in Jerusalem Quarterly File, Institute of Jerusalem Studies, Summer 2001.

PART II

VIOLATIONS

The Legal Status of the Conflict

During the current intifada, Israel has sought to give itself a greater margin of appreciation in terms of its military response to the uprising than may be legitimate. Israel has sought to portray the current situation as an armed conflict short of war, which necessitates a military response rather than one guided by law enforcement codes on the use of force.³⁷ This has been particularly evident in the tactics that the Israeli security forces have used to confront stone throwing demonstrators. These tactics have been described as more suitable to combat situations than to circumstances warranting police crowd control methods, and explains why the Israeli authorities have failed to investigate the deaths of many individuals who have been killed as a result of Israeli fire. It is also evident in Israel's legal justification for its policy of extra-judicial executions.³⁸ Under the permissive rubric of military necessity, the Israeli security forces have also destroyed homes and laid waste a considerable amount of land, much of it agricultural and mostly in the Gaza Strip. It is also the justification the Israeli government has used to push legislation that would prevent innocent Palestinians who have been injured during the course of the uprising from claiming compensation from the State.

According to the *Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction* in the Prosecutor v. Dusko Tadic of the Interna-

³⁷ The law enforcement codes on the use of force include the Code of Conduct for Law Enforcement Officials of 1979 and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990. Both codes embody the internationally recognized principles of necessity and proportionality in the use of force, which are intended to safeguard international legal rights foremost of which is the right to life and the prohibition of torture or other cruel inhuman or degrading treatment or punishment.

³⁸ As a justification for its systematic policy of extra-judicial executions Israel's Attorney General Elyakim Rubenstein stated "The laws of war, which are part of international law, permit injuring, during a period of war-like operations, someone who has been positively identified as a person who is working to carry out fatal terror attacks against Israeli targets. These people are enemies who are fighting against Israel, with all that implies, while committing fatal terror attacks and intending to commit additional attacks-all without counter measures from the Palestinian Authority." See "Liquidations legal acts in time of war, state tells court," Moshe Reinfield Ha'aretz 13 February 2001.

tional Criminal Tribunal for the Former Yugoslavia, “an armed conflict exists whenever there is a resort to armed force between states or protracted violence between governmental authorities and organised armed groups or between such groups within a state.”³⁹ It is clearly the case that during the first months of the intifada, the circumstances were closer to a civil uprising than to an armed conflict. There were indeed armed clashes between the Israeli military and armed Palestinians, but the intifada was overwhelmingly characterised by popular protests at road blocs and at junctions leading to settlements. The Palestinian Authority did not make a declaration of war and nor did Israel officially classify the Authority as an enemy. Palestinians involved in armed confrontations were loosely organised with no discernable command structure and many of the gunmen seemed to have been acting individually. According to the United Nations Commission of Inquiry: “sporadic demonstrations/confrontations often provoked by the killing of demonstrators and not resulting in the loss of life on the part of Israeli soldiers; acts of terrorism in Israel and the shooting of soldiers and settlers on roads leading to settlements by largely unorganised gunmen cannot amount to protracted armed violence on the part of an organized armed group.”⁴⁰ Al-Haq concurs with this opinion, but notes that as the first year of the uprising came to a close, there was an increase in shooting incidents and armed clashes between Palestinian gunmen and the Israeli army and a noticeable reduction in civil protests. However, Al-Haq maintains the position that even at this point, it would be inaccurate to describe the situation as an armed conflict due to the relatively isolated nature of these incidents during the period in question. Thus, Israel was bound by law enforcement standards on the use of force and not by the more per-

³⁹ See Prosecutor v. Dusko Tadic, “Decision on the Defence Motion for Interlocutory Appeal On Jurisdiction,” 2 October 1995, para 70, International Criminal Tribunal for Former Yugoslavia. See also “Classification of Armed Conflict in the Former Yugoslavia: Nicaragua’s Fallout,” by Theodore Meron, *American Journal of International Law*, April 1998.

⁴⁰ The UN Human Rights Commission of Inquiry established pursuant to Human Rights Commission resolution S-5/1 of 19 October 2000, E/CN.4/2001/121. Report published on 15 March 2001. See p 13.

missive military necessity rubric which prevails in times of armed conflict.

However, even if the current intifada was deemed to be an armed conflict, or if it reaches the level of a protracted armed conflict at some point in the future, the Israeli army would still be constrained by the provisions of international humanitarian law. The Israeli army would be bound by the principle of discrimination whereby civilians would not be the object of attack providing that they did not take a direct part in hostilities. The Israeli army would also be subject to the principle of proportionality whereby any attack must not be disproportionate to the military advantages to be achieved.⁴¹ The Israeli authorities would of course still be bound by the protective obligations vis-à-vis the civilian population as prescribed in the Convention. Moreover, when facing protests by unarmed civilians, Israel would also be bound by the appropriate policing standards and would still be under the obligation not to cause unnecessary harm and suffering.

⁴¹ If the situation was deemed to be an armed conflict, under the rubric of *military necessity* the IDF could attack military targets that could have adverse consequences for civilians and civilian objects. However, there exist three constraints on the exercise of military necessity:

1. Any attack must be intended and tend toward the military defeat of the enemy. Attacks not so intended cannot be justified under the rubric of military necessity.
2. Even if an attack is aimed at militarily weakening the enemy, it must not cause harm to civilians or to civilian objects that is excessive in relation to the concrete and direct military advantage anticipated.
3. Military necessity cannot justify the violation of other rules of IHL.

CHAPTER I

ISRAEL'S USE OF FORCE

One of the most conspicuous aspects of the uprising has been the largely unwarranted use of lethal force by the Israeli military, border police and police. This was clearly illustrated by the high casualty figures amongst the Palestinian population. The Israeli security forces and Jewish settlers combined killed approximately 660 Palestinians, 166 of whom were estimated to be minors under the age of 18.⁴² It is estimated that 16,118 Palestinians were injured in the first year of the uprising. Many of those injured will suffer from permanent disabilities.⁴³

The majority of Palestinians who were killed or injured during the first year of the uprising were unarmed civilians, many of them in demonstrations, who were not in a position to cause harm to the Israeli soldiers they were confronting. A number of civilians were killed or injured in the vicinity of demonstrations, a number while they were circumventing checkpoints, and some due to shelling by Israeli tanks and attack helicopters at targets situated in residential areas. Medical personnel were also attacked despite distinct markings on their vehicles and clothes. Al-Haq also received reports from Palestinian civilians who were beaten at checkpoints by Israeli soldiers and border policemen.

The Israeli authorities made easy recourse to euphemisms such as “war” or “armed conflict” and attempted to convince the international community that only those who posed an immediate threat to the lives of soldiers and citizens were targeted. These assertions were not borne out by the painful reality on the ground, in particular, in the scale of child casualties. It was also obvious that many of those doing the killing and injuring were well protected, or situated in secure positions such as the outpost at Netzarim junction in the Gaza Strip. It also became clear that the Israeli army was using snipers against civilian demonstrators with its obvious deadly results.

⁴² These figures are from Al-Haq's data base.

⁴³ See the Palestine Red Crescent Society, casualty figures from 29 September 2000 to 30 September 2001.

Moreover, a pattern in the wounds of those who were killed became apparent from the early days of the uprising. According to American Physicians for Human Rights who conducted a medical and forensic investigation in Israel and the Occupied Palestinian Territories from 20-27 October 2000, of the first 1,134 casualties reported in the various hospitals in the Palestinian territories, 26 percent were admitted with wounds to the head. The delegation also found that a considerable number of those who were injured were shot in the thigh leaving many permanently disabled. According to the report that American Physicians for Human Rights published on 3 November 2000, “the numerous high velocity wounds to the thigh are highly unlikely to be random events, but rather suggest a policy on the part of the Israel Defence Forces (IDF) that allows individual soldiers to shoot under very broad circumstances.” On this pattern of injuries, Dr. Kirschner of American Physicians for Human Rights stated, “I consider this to be a form of torture. There is no question in my mind that this was a very conscious military decision to use this weapon to wound people as a form of intimidation of the population. And as a result, probably several thousand young Palestinian men will end up with permanent disabilities.”

In their concluding remarks, American Physicians for Human Rights noted that:

The numerous head and eye injuries, the high proportion of thigh wounds and fatal head wounds, and the fact that similar patterns of such shootings occurred over a period of weeks demonstrate two disturbing patterns: 1) IDF soldiers are not firing only in life threatening situations and 2) they are firing at heads to injure and kill, not to avoid loss of life and injury.*

From Al-Haq’s own documentation and that of international human rights organisations, this pattern in death and injuries noted by American Physicians for Human Rights was observed throughout the year under investigation.

* The findings of the investigation conducted by American Physicians for Human rights can be found in “Evaluation of the Use of Force in Israel, Gaza and the West Bank,” November 3, 2000.

There were a number of observable aspects of Israel's use of force. It was usually disproportionate, it was often indiscriminate, and the Israeli military forces failed to distinguish on many occasions between medical personnel, civilians and armed Palestinian fighters. In other words, Al-Haq found a disturbing pattern of unnecessary actions that accounted for the high death and injury rate amongst the Palestinian civilian population. Below, Al-Haq's documentation reflects this reality.

A. Demonstrations

Shooting an unarmed youth is totally illegal. I am very disturbed by the number of children who were killed over the last year and a half. Was each of these incidents a case where there was no choice and we had to shoot to kill? This is a question that should disturb all of us.

Major General (res) Ami Ayalon former Head of the General Security Service.⁴⁴

The excessive and disproportionate use of force against unarmed protestors, many of them children, has been one of the principal methods used by the Israeli security forces to suppress the intifada. The Israeli security forces would usually encounter popular demonstrations on the perimeters of A areas, roads to settlements or on junctions on roads leading to settlements. In most instances the demonstrators threw stones and Molotov cocktails at members of the security forces. In response, the Israeli security forces shot tear gas, stun grenades, rubber-coated metal bullets and live ammunition and in many cases aiming specifically at the heads and chests of the demonstrators. In some cases individuals who were standing near the stone throwers or even some distance away were also hit by Israeli fire. The demonstrators were invariably not in a position to cause serious bodily harm to members of the Israeli security forces in view of their protective gear, armaments and in many instances their placement in heavily protected positions at a

⁴⁴ Ami Ayalon in an interview on "Yomam," an Israeli Channel One programme, February 1, 2002.

distance from the protestors. Nonetheless, the fatalities among the Palestinian demonstrators were considerable.

Many of the Palestinian fatalities over the year of the uprising occurred within the context of demonstrations. What is more, a clear pattern in the type of injuries was discernable. Most of those killed or injured were found to have sustained gunshot wounds to the head or torso. Moreover, a considerable number of the demonstrators who were injured sustained gunshot wounds to the thighs, rendering many permanently disabled. The Israeli authorities have maintained however, that the soldiers have been forced to use live ammunition because gunmen hide behind demonstrators. According to Major Olivier Rafowicz“We react when they open fire on one of our people and on our position, but we are not firing on specific parts of the body. We return fire to the source of the fire.”

On October 11, 2000, Sami Salmi (17) was participating in clashes between Palestinian youths and Israeli soldiers near an Israeli checkpoint west of Toulkarem. In response to the stones thrown by the youths, the Israeli soldiers initially fired tear gas and then proceeded to fire live ammunition. The distance between the youths and the soldiers was approximately 200 meters. There was an Israeli bulldozer making its way through Palestinian agricultural land in the vicinity of the checkpoint. Salmi moved forward towards the bulldozer holding a Molotov cocktail. A friend of Salmi who was hiding behind a sand mound 50 meters away shouted at him to come back because he saw that one of the two soldiers accompanying the bulldozer was in a kneeling position and aiming at him. Salmi refused and continued advancing towards the bulldozer until he was a 100 meters from the vehicle and at that point he threw the Molotov cocktail at it. At the same time, the soldier fired a live bullet that hit Salmi in his chest. A number of youngsters carried Salmi while under Israeli fire to one of the ambulances present in the area. Three of the youths who evacuated Salmi were hit by Israeli fire. Salmi was taken to Toulkarem hospital where he died.⁴⁵

⁴⁵ Taken from Al-Haq affidavit 116/2000.

On November 6, 2000, at approximately 2 p.m., Wajdi Hattab (14) along with five to seven Palestinian boys aged between fourteen to fifteen years of age were throwing stones at Israeli soldiers positioned inside the Geishuri factory at the southern entrance to Toulkarem. The boys were 50 meters from the soldiers who were firing tear gas canisters and rubber coated metal bullets. Wajdi was hit by a rubber coated metal bullet in his forehead and was treated for his injury and then returned to confront the Israeli soldiers. At 3.30 p.m. a jeep belonging to the Israeli border police appeared on the right side of the Geishuri factory and a border policeman got out. He fired towards the boys and they started running towards an ambulance of the Palestinian Red Crescent Society when the policeman fired a second time and hit Hattab who was running behind the others. Hattab fell to the ground as a live bullet penetrated his back and exited his chest. He was killed instantly.⁴⁶

On Friday November 8, 2000, Mu'taz Teilakh (16) prayed with other Moslem worshippers from Bethlehem at the Israeli checkpoint between Bethlehem and Jerusalem. After the prayer ended, Teilakh joined in the clashes against the Israeli soldiers positioned inside Rachel's Tomb in Bethlehem. While he was helping with the evacuation of one of the injured demonstrators he was shot in the head with a live bullet fired from Rachel's Tomb.⁴⁷

On November 14, 2000, at approximately 3.30 p.m., 30 youths, among them sixteen-year-old Ibrahim Daoud, went to the southwest entrance of Qalqiliya on Jaljouliya street. As they were walking in open space, an Israeli military jeep carrying six soldiers stopped at a distance of 30 meters from the youths. The youths started throwing stones at the jeep and the soldiers responded by firing rubber and live bullets at the stone throwers. The soldiers were firing while hiding behind the doors of the jeep. One of the boys witnessed Daoud being shot:

I was 3 meters from Ibrahim. We were throwing stones and were approximately 30 meters from the jeep. During

⁴⁶ Taken from Al-Haq affidavits 114/2000 and 115/2000.

⁴⁷ See Al-Haq affidavit 233/2001. See Field Work Report on the Killing of Mu'taz Teilakh, 11 December 2000.

that time, I heard the sound of a bullet being fired towards us but not from the jeep. Its source was the agricultural land planted with avocado trees on the west side that was 60 meters from us, and usually Israeli snipers enter this area and fire live bullets at us. Well, I am saying that the bullet that injured Ibrahim in his stomach was coming from the middle of the avocado plantation, and I saw him put his hand on his stomach and he started vomiting blood from his mouth and his eyes were red. He started running back where there were three ambulances.⁴⁸

Daoud was taken to a nearby United Nations Relief and Works Agency (UNRWA) hospital, but died shortly afterwards.

On November 15, 2000, Jadoo' Abu-al-Kbash (15) and other youths from al-Sammou' were throwing stones at Israeli soldiers positioned on the by-pass road near the west entrance of al-Sammou' village. The Israeli soldiers were firing tear gas, rubber coated metal bullets and live ammunition at the youths. Abu-al-Kbash was hit by a rubber coated metal bullet in his neck and was treated at a local dispensary. He then returned to the confrontation area and continued throwing stones with the other youths. Abu-al-Kbash was shot a second time in the chest with live ammunition. He was brought to al-Ahli hospital 25 km from al-Sammou', but died within minutes of his admission to the hospital.⁴⁹

On 17 November 2000, Abdallah 'Armanah was shot and killed by an Israeli soldier as he was participating in clashes in the al-Karitas area of Bethlehem. Jawdat Jum'a Rashid 'Oda, a mechanic, was a witness to the shooting and gave the following testimony to Al-Haq:

I was in my garage. I saw four Israeli soldiers facing the Palestinian youths. The soldiers were shooting at the youths. While they were shooting, the soldiers were insulting the youths in Hebrew, which I understand. The youths were around 300 meters away from the soldiers. Their stones

⁴⁸ Taken from Al-Haq affidavit 119/2000.

⁴⁹ Taken from Al-Haq affidavit 117/2000. See also Al-Haq Field Work Report on the Death of Jadoo' Abu-al-Kbash, 19 November 2000.

didn't even reach the soldiers. Despite this, the soldiers went on shooting. I saw a soldier with a sight fixed to his rifle shoot at 'Armanah who was crossing the road after he had thrown a stone.⁵⁰

Husam 'Imad al-Disi (15) was killed while participating in clashes on 26 February 2001 near the Qalandiya refugee camp. According to Al-Haq's documentation, on the afternoon of 26 February, al-Disi was among a group of Palestinian youths making their way from the Qalandiya refugee camp to the Jerusalem airport nearby. As the youths approached the fence of the airport clashes broke out between the youths and the Israeli soldiers positioned within the airport perimeter. Al-Disi was shot in the chest while approaching the airport fence and died shortly afterwards.⁵¹

Lou'ay Muhammad Husein Tamimi (14) was shot and injured during clashes at the entrance of Deir Nizam village near Ramallah on 14 March 2001. Tamimi died of his wounds on 1st April. According to eyewitness accounts, a group of children proceeded to the entrance of Deir Nizam and started to throw stones at settler cars passing nearby. Shortly afterwards soldiers arrived and a confrontation ensued between the children and the soldiers. When the shooting began many of the children ran for cover, including Tamimi. An Israeli soldier, standing approximately twenty meters from Tamami, shot him with a pistol.⁵²

Muhammad Muqbel from Ramallah was injured during clashes with Israeli forces and gave the following observation to Al-Haq:

On Fridays we usually demonstrate to protest against the continuing Israeli occupation. On 30 March 2001, the 25th anniversary of Land Day, we organized a demonstration after the main prayers and went to protest at the northern entrance of al-Bireh. Soon after we arrived, the Israeli soldiers began shooting. They used tear gas as well as

⁵⁰ Taken from Al-Haq affidavit 53/2000.

⁵¹ Taken from Al-Haq affidavit 068/2001. See also Field Report on the death of Husam 'Imad al-Disi.

⁵² Taken from Al-Haq affidavits 081/2001 and 082/2001.

bullets. In the first fifteen minutes a woman was injured. I went to attend to her, but before I reached her, an ambulance took her away. We continued our protest and sang songs against the occupation. I took the loud speaker and sang. The young people moved forward and were met by a barrage of tear gas and rubber bullets. We moved backwards and forwards in response to Israeli fire. When we moved forward a third time, I hid behind a tree to protect myself. A bullet hit me in the pelvis. I fell down and people began shouting "Abu Ali has been injured." A sniper opened fire on the person who came to help me and he was injured also. I was eventually taken to Ramallah hospital and underwent surgery. The doctors told me this was a shot to kill, but providence protected me.⁵³

B. Death & Injury by Indiscriminate & Reckless Fire

Israeli soldiers have shot a number of Palestinian civilian bystanders during the intifada. This has been due in large measure to the indiscriminate and excessive use of force against protestors, which has resulted in bystanders near demonstrations or indeed some distance away being injured or killed. Medical personnel attending the wounded as well as members of the media covering the clashes were also injured. Palestinian civilians circumventing the myriad of checkpoints dotted around the West Bank have also been killed or seriously wounded due to reckless firing.

On October 21 2000 Fayez Muhammad Husein Qeimari was shot and killed near Bab al-Zawiya in Hebron. According to Al-Haq's reconstruction of the events: At around 11 in the morning, a group of Palestinian protestors, including dignitaries of the city, marched from Ras Jora to Bab al-Zawiya. When the protestors arrived at Bab al-Zawiya, the young among the protestors began to throw stones at Israeli soldiers who were

⁵³ Taken from Al-Haq affidavit L1/2001.

stationed across from Bab al-Zawiya in H2⁵⁴. In response, the soldiers shot rubber bullets and live ammunition injuring some of the protestors. Qeimari, who was approximately 250 meters away from the disturbances, was cleaning his car when he was hit in the head by a bullet and died shortly afterwards.⁵⁵

Munib Barakat Ibrahim Abu-Munshar was shot and killed on the 11 November 2000 as he delivered building materials to a client in the H1 area of Hebron. According to Al-Haq's reconstruction of the events, Abu-Munshar along with a colleague, Sa'di al-Atawna, were delivering building material to a client in the vicinity of Bab al-Zawiya. There was a demonstration approximately 100 meters away. As the two men walked towards their car, al-Awatneh was hit in the right leg by a bullet. At this point al-Atawna motioned to Abu-Munshar to get to safety and at this moment he too was hit. Abu-Munshar died of his wounds shortly afterwards. The shot came from the vicinity of an Israeli military post near the Tel Rumeida settlement close to the old city of Hebron, which is situated in H2.⁵⁶

On the 7 January 2001, Fatima Jamal Abu-Jish was shot dead while returning to her village, Beit Dajan, from Nablus. The Israeli military had established a number of makeshift checkpoints on the main road leading in and out of Nablus and as a consequence, many Palestinian travellers would bypass the checkpoints by using dirt paths. On the evening of January 7th, Fatima Abu-Jish accompanied by her sister did just that. While in a slow moving line of traffic, Abu-Jish was killed by Israeli fire seemingly aimed at the tyre of the car she was travelling in.⁵⁷

⁵⁴ H1 is the area of Hebron under the direct control of the Palestinian Authority while H2 remains under Israeli control.

⁵⁵ Al-Haq field research report on the Killing of Fayeze Muhammad Husein Qeimari.

⁵⁶ Al-Haq field research report on the killing Munib Barakat Abu-Munshar.

⁵⁷ See Al-Haq affidavit 047/2001. See Ha'aretz Monday 1 October 2001, Amos Harel "Pure Aims Deadly Results." On 16 January 2002 it was reported in Ha'aretz that for the first time an IDF soldier was charged with causing the death of a Palestinian civilian in the current intifada. The case concerned Fatima Abu-Jish who was killed on the 7 January 2001. According to the charge sheet as reported in Ha'aretz, the soldier aimed his rifle at a Palestinian car travelling near an IDF road bloc near the village of Beit Furiq. He shot and killed Ms. Abu-Jish who was sitting in the back seat of the car. According to the

Jessica Saqer, four years old, was visiting her father at work accompanied by her uncle when shooting erupted. She was seriously injured. Her father, 'Abd-al-Ahad 'Isa 'Abd-al-Ahad Saqer, gave the following testimony to Al-Haq:

On 2 April 2001, at exactly 3:30 p.m., I was in the Saqer car maintenance garage near the 'Aida Refugee Camp and Rachel's Tomb when my child Jessica (four years old) with my brother (Usama Saqer) came to the garage. At that time, there were no clashes or confrontations but as soon as my daughter and her uncle entered the garage shooting started... I closed the garage, and I left with my daughter and my brother as the firing was around the Paradise Hotel and we were far from it except that the noise was very loud. I started my car and my daughter went with my brother in his car.

My car was first and my brother was following me with the child in his car on the road to 'Aida refugee camp near Deir al-Rahbat. As the two cars were at a distance of 150 meters from Rachel's Tomb, I was taken by surprise when shooting erupted in our direction. There was no shooting in this area before. Heavy and random fire hit my car and thank God I was not hurt. I ran from the car and hid myself next to a wall to protect myself. My brother stopped about 50 meters behind me and stayed with the child in his car. The Israeli army opened fire at us another time. The car was hit by several shots and my brother and daughter were inside. Jessica was hit by shrapnel in her pelvis and head. When we heard the girl screaming my brother carried her out of the car. He was injured by shrapnel in his head. The girl was also injured by shrapnel in her right eye. I saw all of this and could not reach them. In addition, the bullets they were using were heavy calibre ammunition and when

military prosecutor, the soldier acted without authority, contrary to open fire orders in force at the time, and without taking the necessary precautions. See "Soldier indicted for killing Palestinian woman," by Amos Harel, Ha'aretz 16 January 2002.

they hit something they turn into shrapnel. Jessica and my brother were injured by this type of shrapnel. Jessica and my brother were on the ground and I crawled towards them. We went to my own car, and the firing continued as we left the area. I arrived at Dr. Charlie Qanawati, an eye specialist, who said that Jessica had lost an eye. My brother was carried to a care centre to be given medical attention. After that we carried the girl to the Eye Hospital in Jerusalem. She underwent surgery on her right eye where the shrapnel had penetrated. The eye was removed. During the whole incident, there was no firing at Rachel's Tomb from our side, but the Israeli soldiers were firing heavily in all directions and at everything that moved⁵⁸

The following incident was witnessed by one of Al-Haq's field workers while on a routine trip to Nablus on 19 August 2001. According to Yousef Mahmoud Qawariq:

On August 19th, Israeli soldiers blocked the Tel road not too far from Nablus. In order to pass, people had to use a path through the Burin Mountain. The path through the mountain is about 2 km from an Israeli military camp. There were a number of people taking this path. Suddenly, without warning, Israeli soldiers who were standing on a hill about 1 km from us opened fire. Six people were injured. The most seriously injured was a man called Mu'in Abu-Lawi. After the shooting stopped, many people ran to help the injured. They were taken by ambulances, which arrived about 15 minutes after the incident. Abu-Lawi was taken to hospital by ambulance but was dead upon arrival. He had been shot in the head just under the left ear. The others were lightly injured. There was absolutely no reason for the soldiers to shoot at us. At the time, we were all very scared.⁵⁹

⁵⁸ Al-Haq affidavit 103/2001.

⁵⁹ See Al-Haq affidavit 277/2001.

Open Fire Regulations

The Israeli security forces appear to be operating under an extremely permissive open fire regime that transgresses their own official open fire regulations. The orders on the use of force also appear to change, depending on the circumstances and the over all political context at a given time.⁶⁰ According to the official IDF open fire regulations, *“A soldier will use a weapon in the event of immediate danger to life, his own or that of others, and when it is impossible to effectively defend oneself from the assailant other than by the use of a weapon. The firing is intended to hit the assailant alone, in the measure necessary for preventing the danger. No shooting should be done except while the danger still exists.”* On the dispersal of riots, the Regulations stipulate that *“In order to disperse a riot, there must first be a call to the rioters to disperse, if the riot does not end within a reasonable period of time, it is permitted to employ means for dispersing demonstrations according to the following steps:*

- *Means such as tear gas, water jets, blasting cap, stun grenades.*
- *Warning shots in the air.*
- *Firing rubber ammunition.*

The passage from one stage to the next will be done only if the previous one did not lead to the ending of the riot. A stage may be skipped, if certain means are not at the disposal of the force or if they are not applicable in the circumstances of the event.

The use of means for dispersing the riot and the passage from one stage to the next, will be done according to the orders of the commander.”

In October 2000 the Israeli military authorized its commanders in the

⁶⁰ See Amira Hass, “Don’t shoot till you can see they’re over the age of 12,” Ha’aretz November 20 2000. In the article in which Israeli journalist Amira Hass interviewed an Israeli sniper, the sniper noted that in the immediate aftermath of the lynching of two Israeli reservists in Ramallah on October 12, the open fire rules were considerably relaxed. The soldier also noted that the open fire regulations differed from area to area depending on the intensity of the confrontations.

West Bank and the Gaza Strip to order their soldiers to open fire at stone throwers if they considered their troops to be under threat. According to the Israeli military, “there is a certain relaxation” in the orders on opening fire issued by the head of Central Command, Major General Yitzhak Eitan. What was apparently new about the aforementioned order was that army commanders were being explicitly told that a stone could pose a threat to life. This decision gave army personnel greater leeway to respond to stone throwers with live ammunition.⁶¹

The Israeli security forces palpably failed to abide by their own official open fire regulations when confronted with Palestinian demonstrators. From the evidence that has been assembled over the past year of the current intifada, excessive lethal force has been used in circumstances where there was no immediate danger to life. Little time was given to assess whether one stage in the process of dispersing demonstrators was effective before moving on to the next stage, which led to a particularly rapid escalation in the use of force. Even rubber coated metal bullets were used improperly causing great injury and even fatalities. The IDF open fire regulations prohibit the firing of rubber coated metal bullets from less than 40 meters and at ranges less than 23 meters rubber coated metal bullets can be fatal. It is also prohibited to fire on children.⁶² Both rules were not adhered to. Moreover, other means such as water canons were not deployed and a particularly aggressive military posture was taken to quell disturbances.

Israeli military officials themselves have privately acknowledged that soldiers have used excessive force against the Palestinian civilian population⁶³ and according to a senior officer, “nobody can convince me that we didn’t needlessly kill dozens of children.”⁶⁴ As a possible indication

⁶¹As reported in Ha’aretz, “IDF relaxes live-fire orders, stone throwing can pose life-threatening situation,” Amos Harel, 15 October 2000.

⁶² On 22 October 2000, Wa’el ‘Imad (14) from Jabaliya in the Gaza Strip was shot in the brow between the eyes by a rubber-coated-metal bullet as he was about to throw a stone at IDF soldiers. He died shortly afterwards.

⁶³ As reported in the Irish Times by David Horovitz, “Israel admits using excessive force,” December 13 2000.

⁶⁴ See Amos Harel, “Wildly Throwing Punches,” Ha’aretz December 12 2000.

of an intentional policy to kill or seriously maim, Major General Giora Eiland, in a letter to Neta 'Amer, an attorney working with the Association for Civil Rights in Israel, stated, "A large part of those wounded by live bullets are those we indeed wanted to not only injure but to kill. These are people who shoot at us with live ammunition. The fact that most of them are wounded in the upper body and head is a positive thing." In response to the comment by Major General Eiland, B'Tselem observed "these comments are grave on their own, especially since Major General Eiland relates only to some of the wounded and does not explain the injuries by live ammunition suffered by persons that the soldiers did not intend to injure."⁶⁵ Moreover, it is clearly the case that a great many of the wounded and dead shot by live ammunition were unarmed.

Nonetheless, there have been instances where Israeli soldiers engaging demonstrators came under fire from Palestinian gunmen shooting from behind unarmed protestors. Such actions drew Israeli response fire, which greatly endangered demonstrators. Samer Zayed, 14 years old from al-Jalazon refugee camp was injured while near a Palestinian gunman. He gave the following testimony to Al-Haq:

On October 13, 2000, after the Friday prayer, clashes started at the northern entrance to al-Bireh between Palestinian youths and Israeli military forces. I was in the area and I was throwing stones. At the beginning I was hiding behind the building facing the pharmaceutical company that is about 200 meters from the soldiers. After that, I came out into the street and I was hiding behind a car. A youth with a gun came from behind and started to fire towards the

⁶⁵ IDF spokesmen have repeatedly announced that the open fire regime is restrained, and that they only open fire in life threatening situations. According to a statement made by an IDF spokesman on 2 October 2000, "every incident in which IDF soldiers used measures to disperse demonstrations or live ammunition was a precise reaction towards sources of fire and toward elements threatening to cause harm to human lives." On the 3 October 2000 General Giora Eiland announced, "We are restrained in our use of weapons, and open fire only in life threatening situations." The evidence collated on the ground fails to bear out the IDF assertions, particularly in the case of numerous children who were killed.

soldiers and when the shooting stopped he escaped and I stayed throwing stones. At that moment, the soldiers opened heavy fire and the tank on the hill next to Beit El started to fire with a heavy machine gun. I was injured by a bullet in the knee and by shrapnel in my right hand. The bullet broke my foot totally and completely destroyed my knee. I remember when I was injured the exchange of fire was minimal and I had been participating for only 15 minutes.⁶⁶

In view of the fact that Israeli soldiers have a right to defend themselves, it is regarded as legitimate for soldiers in this context to fire on the source of threat. A response action, however, must be strictly proportional and aimed specifically at the source of threat. It most certainly does not justify sporadic or indiscriminate fire that would endanger unarmed demonstrators and bystanders.

Analysis of Pattern

The high death and injury rate among demonstrators in this intifada appears to be due to an operational decision to kill or seriously maim protestors. This position is strongly supported by overwhelming circumstantial evidence. This policy is facilitated by an open fire regime that allows for the resort to gunfire in circumstances where demonstrators are not a threat to life or limb. This has been despite official open fire regulations that are in theory intended to limit the circumstances in which lethal force can be used. This policy is clearly evident in the operational tactics used, which have been described by experts as more conducive to battlefield operations rather than measures for crowd control. The infliction of wounds to the upper body as well as the noticeable pattern of wounds to thighs are indicative of a policy to kill or seriously maim.

A very important additional note concerns military and police investigations, or the lack thereof, into killings and the wrongful use of weaponry. The Israeli authorities have justified this lack of investigative enquiries into shooting incidents that have resulted in deaths and injuries on the grounds that the intifada is an armed conflict and thus investiga-

⁶⁶ Al-Haq affidavit 084/2001.

tions will only be carried out in cases that are deemed by the authorities to be exceptional. This has led to a “culture of impunity,” whereby members of the security forces can transgress their own official open fire regulations with impunity without sanction from higher authorities. Such a state of affairs effectively condones and abets misconduct on the part of the Israeli security forces.⁶⁷

The Use of Force in Demonstrations: The Legal Context:

From the beginning of the current crisis, Israeli forces have violated their basic obligations to protect the life of Palestinian civilians. Live ammunition was used consistently and heavy weaponry normally reserved for military warfare was applied in several instances against civilians. The intentional lethal use of force, indicated by the type of weaponry used, as well as by the pattern of conduct applied in “policing” Palestinian demonstrations, has claimed the lives of many protestors. Israel, the Occupying Power, is obliged to respect the obligations and restraints of international humanitarian law and prevent and abstain from any action that endangers the right to life and physical integrity of protected persons.

With regards to the use of force and firearms by law enforcement officials or in circumstances akin to Israel’s occupation where military or para-military personnel take on a law enforcing function, the Code of Conduct for Law Enforcement Officials and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials provide the main principles and obligations aimed at the protection of the right to life.⁶⁸ Whenever force is used the principle of proportionality must be

⁶⁷ According to the Principles On The Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions of 1989 in its principle 9, “There shall be a thorough, prompt and impartial investigation of all suspected cases of extra-legal, arbitrary and summary executions, including cases where complaints by relatives or other reliable reports suggest unnatural death in the above circumstances.”

⁶⁸ According to the official commentary to the code “the use of firearms is considered an extreme measure. Every effort should be made to exclude the use of firearms, especially against children. In general, firearms should not be used except when a suspected offender offers armed resistance or otherwise jeopardises the lives of others and less ex-

strictly applied without exception.⁶⁹ The restrictions of the principle of proportionality oblige every law enforcement official to “act in proportion to the seriousness of the offence and the legitimate objective to be achieved,”⁷⁰ and to “use force only when strictly necessary.”⁷¹ The principle of proportionality implies that the force used should not exceed the level required to stop the threat and must be in proportion to the harm threatened. Generally, in the performance of their duty, law enforcement officials are always required to “respect and protect human dignity and maintain and uphold the human rights of all persons.”⁷²

The Israeli security forces have repeatedly acted outside the sphere of the principle of proportionality. On 29 September 2000, the Israeli security forces used rubber coated metal bullets and live ammunition in response to Palestinian worshippers throwing stones. The lethal response by the Israeli security forces to stone throwing Palestinian civilians, that claimed the lives of four Palestinians, was disproportionate to the seriousness of the offending Palestinians and to the need to restore public order. In another incident, on 24 October 2000, a delegation from American Physicians for Human Rights witnessed Israeli soldiers firing live ammunition at Palestinian civilians on the outskirts of Ramallah when there was no evidence of Palestinians using firearms. This pattern of conduct, of employing disproportional use of force by the Israeli security forces against Palestinian demonstrators has been a consistent pattern from the beginning of the current intifada.

The use of force and firearms by law enforcement officials is permitted only in extremely exceptional circumstances. Accordingly, governments and law enforcement agencies “should develop non-lethal incapacitat-

treme measures are not sufficient to restrain or apprehend the suspected offender.”

⁶⁹ Please note that the principle of proportionality is used here in a policing context.

⁷⁰ Principle 5 (a) of the 1990 Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁷¹ Article 3 of the Code of Conduct for Law Enforcement Officials.

⁷² Article 2 of the Code of Conduct for Law Enforcement Officials.

ing weapons for use in appropriate situations,” in order to “increasingly restrain the application of means capable of causing death or injury to persons.”⁷³ In the case of dispersing violent assemblies, law enforcement officials “may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary.”⁷⁴ It is a generally accepted principle that a primary function of law enforcement officials is to protect life. Given this responsibility, the Israeli security forces are under an obligation to use non-lethal means of crowd control when confronting Palestinian demonstrators and before any use of firearms can be justified.

The type of weaponry used by the Israeli security forces, which is suitable in combat situations, reflect the Israeli authorities’ disregard for the lives and physical integrity of the Palestinian demonstrators.⁷⁵ The weapons used were “potentially lethal, suitable for combat situations, and not for policing violent demonstrations. Crowd control weaponry is different from that required by the army in combat situations. Sometimes the use of such weapons leads to an unintended person being killed. This may be a result of inaccurate or poorly targeted fire, use of highly penetrative or high velocity rounds killing people at a distance beyond those

⁷³Principle 2 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁷⁴ Principle 14 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁷⁵ One of the primary weapons used by the Israeli military against Palestinian civilians has been the M-16 rifle. The M-16 fires a high velocity round which travels at around 1.2 km/second. Damage is inflicted through wave and cavitation effects, as well as traditional laceration. The laceration damages vital organs and major blood vessels, which have been directly hit. In addition, the shock wave effect, which is similar to that from a detonated bomb, can result in injury to parts of the body remote from the trajectory of the bullet. Finally cavitation means that when, for example, a muscle is hit, the small blood vessels supplying it are damaged as well as the muscle protein, thereby causing a gradual ischaemia or death of the muscle. The severity and complexity of injuries resulting from the use of these high velocity bullets would test the resources of the most sophisticated medical units. -Statement by Dr. Peter Kandela cited in *A Nation Under Siege*, p 48. Al-Haq 1989.

targeted, or indeed in their homes beyond the disturbance.”⁷⁶

As of 29 September 2000, the use of force and firearms were in many instances applied immediately, excluding the required proportional use of non-lethal means. The use of firearms is regarded as an extreme measure. This implies that every effort must be made to exclude the use of firearms, especially against children. Thus, firearms shall only be used “in self-defence or in defence against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life...and only when less extreme means are insufficient. Furthermore, “intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”⁷⁷

If the right to self-defence is invoked, two concepts, necessity and proportionality are to be considered. Necessity means that no choice of means and no moment for deliberation is left. Moreover, before self-defence becomes legitimate, the action taken in pursuance must also be proportional, implying that it must not be unreasonable or excessive “since the act, justified by the necessity of self-defence, must be limited by that necessity and kept clearly within it.”⁷⁸ In most incidents, the Israeli security forces were well defended, located at a distance from demonstrators and in good cover. Stones-or even petrol bombs cannot be said to have endangered the lives of members of the Israeli security forces in these circumstances.

Whenever force and or firearms are used to disperse demonstrations, the risk of endangering uninvolved persons must be minimised. This is a simple conclusion *a majori ad minus*, confirmed by the principle stating that, even in the case of non-lethal incapacitating weapons, their development and deployment “should be carefully evaluated in order to mini-

⁷⁶ Amnesty International, Excessive use of Lethal Force in Israel and the Occupied Territories, an assessment by Dr. Stephen Males, 19 October 2000 p 9.

⁷⁷ Principle 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁷⁸ International Law, Malcolm Shaw (Cambridge University Press) 1997, p 787.

mise the risk of endangering uninvolved persons.”⁷⁹ This clearly indicates that any indiscriminate use of force or firearms must be avoided.

C. Beatings by Members of the Israeli Security Forces

Over the first year of the uprising, Al-Haq received a number of testimonies from Palestinians who had suffered physical abuse at the hands of Israeli security personnel in the Occupied Territories. The physical assaults were often accompanied by a tirade of verbal abuse. The extensive deployment of Israeli military personnel throughout the territories increased the daily friction between the population and the Israeli army. Abuse was reported to be very common at the various checkpoints that now dot the territories and where the population and army come into direct contact.

Al-Haq found very little evidence of a concerted policy of beatings that was reminiscent of the policy pursued by Yitzhak Rabin in his capacity as Defence Minister during the first intifada.⁸⁰ Rather, physical assault by Israeli soldiers against the local population seems to have been a random affair depending very much on the whim, mood and personality of the soldiers and border policemen involved. However, beatings and humiliation of the local population is extremely common, and often goes unpunished by the responsible authorities. Beatings are also rarely reported by the population who have largely come to accept such physical violations as one of the miscellaneous features of occupation to be endured. This has obviously added to the general atmosphere of impunity that the Israeli security forces effectively enjoy in their conduct towards the local population. A bus driver from al-Khader gave Al-Haq the following testimony on an incident that occurred on 22 April 2001:

I was waiting for passengers by the checkpoint at the entrance of al-Khader near by-pass road no. 60. The area

⁷⁹ Principle 3 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials.

⁸⁰ On 18 January 1988 Defence Minister Rabin announced a policy of “force, might and beatings” in order to try to suppress the intifada. This effectively gave licence to the IDF to commit grievous bodily harm to demonstrators and others.

was quiet until an Israeli soldier came to the bus and started to hit me with his M-16. I shouted at him to stop beating me. At this point another soldier came and he also started to hit me with his M-16. When these two soldiers left another one appeared and smashed the lights and windscreen of the bus. One of the soldiers used extremely abusive language at me.⁸¹

A beating of a boy and his mother at the al-Khader checkpoint:

On 9 December 2000 I was going to my house in al-Khader with my mother. We passed through the checkpoint. There was a military jeep present there. The jeep was about 15 meters away from us. One of the soldiers called out to me. I didn't respond and continued on my way. Then two soldiers came towards me and started to drag me towards the jeep. They then started to beat me with their guns. My mother then intervened and the soldiers started to kick her. There were four soldiers. We were eventually taken to the hospital in the village.⁸²

Amin 'Abdallah Sharif 'Arar, 24 years of age and a worker from Qarawat Bani Zeid, gave the following testimony to Al-Haq:

I was in Ramallah and in the afternoon I decided that I would return to my house in Qarawat Bani Zeid about 30 km north of Ramallah. The village has more or less been sealed by the Israeli military since the beginning of the intifada. There are many checkpoints along the road to the village.

When I arrived at the junction before the village, there were clashes going on between the youths and soldiers. I got out of the service⁸³ and started to walk. I was then shot in

⁸¹ Al-Haq affidavit 109/2001. Name withheld from publication upon request.

⁸² Al-Haq affidavit 107/2001. Name withheld from publication upon request.

⁸³ A "service" is a public taxi.

the hand by a rubber coated metal bullet. I actually went up to the soldier and asked him why he shot me. He then slapped me in the face. When I turned around another soldier kicked me from behind and I fell down smashing my left arm on a rock. I must have fallen unconscious as I woke up in hospital. ⁸⁴

Hisham Ibrahim Ahmad ‘Awwad, 25 years of age and a teacher from Awarta, gave the following testimony to Al-Haq:

On Sunday 24 June 2001, at 2:30 I was returning to Awarta from Nablus. I was travelling in a service. We soon arrived at a checkpoint. There were many people around. Israeli soldiers were standing to the south of the checkpoint. As we were standing by the checkpoint one of the soldiers told me to “fuck my mother.” He started to insult a number of people. He tried to push me back, but I stood firm. Then four soldiers came and tied my hands behind my back and started to punch and kick me. I was then pushed into a military vehicle and was taken to Huwwara military camp where I spent four days. ⁸⁵

Ala’-al-Din ‘Abd-al-’Aziz Khatib, 26 years of age and a worker from al-Jalazon refugee camp, gave the following testimony to Al-Haq:

On 2 June 2001, at seven in the morning, I was going to my work, which is located in Ramallah. I was travelling by service along the Birzeit-Ramallah road. We came upon an Israeli checkpoint near Surda village. I saw many Palestinian cars being stopped. The soldiers were not letting any one pass. I got out of the service and sat on the roadside. After about ten minutes one of the soldiers came and shouted at me to move. I refused, and told him I was not disturbing him. The soldier then pushed me and I then started to defend myself. He then started to drag me.

⁸⁴ Al-Haq affidavit 118/2001

⁸⁵ Al-Haq affidavit 210/2001

Another soldier came by. I then tried to leave. I was then shot in the knee. I fell to the ground. A soldier came and grabbed me from the shoulder and placed his weapon to my head. The people present began to throw stones at the soldiers.⁸⁶

The following affidavit was taken by Al-Haq from Muhammad Yousef Muhammad Salamin, a taxi driver from al-Sammou' village. The incident in question involved the beating of nine men from two taxis, which were forced by Israeli soldiers to park in an olive grove. The women, the elderly and children travelling with the men were told to leave before the soldiers began to severely beat those who remained:

At around 11.45 on 23 July I was driving my car with a group of passengers to al-Sammou' village. There were eight passengers, three girls, a baby and the others were men aged between 20 and 30. This was my second journey of the day. We made use of a by-pass road that had just recently opened after being closed because of the intifada.

When I was near the village of Karma not far from the UNWRA school I saw a military jeep and Israeli soldiers near the jeep. I was stopped by one of them who pointed a gun in my direction. Two soldiers approached me from some olive trees and one of them asked me for my ID. He was very aggressive and spoke to me in Hebrew. He ordered me to drive the car in between the olive trees. Due to the rocky ground, and the damage this would cause to the car, I told him it was impossible. The soldier told me that I had two options, either to drive the car in between the olive groves or become a Hebron martyr. He told me in Arabic that I would be breaking news on al-Jazeera television. He then proceeded to smash my left mirror using his gun. I was worried that something bad would happen. I saw in between the olive trees the taxi of a friend of mine, Khaled

⁸⁶ Al-Haq affidavit 211/2001

Rawashda. I drove the car towards the olive trees. The car was damaged as a result. One of the soldiers came and opened the door from the right side in order for the people to get out of the car. I tried to speak with him but he started to insult the passengers. Another soldier came and opened another door. He grabbed me from the back of my neck and pushed me to the ground. He hit me on my head and another one got on my back. At this moment, I felt as if I was suffocating. I heard the soldier on my back say to the others that "I am comfortable and I want to light a cigarette." The other soldiers laughed. I then heard someone driving my car. I was still on the ground and one of the soldiers had his foot on my head. The other soldier got off my back. The soldier had his foot on my head for about fifteen minutes. Each time I tried to speak to him he pushed my head. I saw my car being driven over the stones and rocks. I pushed of the soldier's foot and ran towards my car. I took the keys from the car and threw them away. The soldiers were surprised. Two of them started to beat me with the butt of their guns. I was beaten all over my body. I felt pain in my back and in the rest of my body. A soldier then gave me a knife and ordered me to slash my tyres. I refused and he then started to beat me and proceeded to puncture the tyres of my car.

I also saw one of the soldiers who was in my car taking all the money. He put the money in his pocket. A soldier behind me started to search me, and took from my pocket some papers and a thousand shekels. He put the money in his pocket and threw away all the other papers. He wouldn't allow me to look at him and beat me in my back. I could see the soldiers beating the other passengers.

Two of the soldiers took me to where the others were standing. I saw one soldier beat one man in the head with his gun. I saw blood stream from a wound near his ear.

Another man, Khaled, tried to help the injured man but a soldier beat him to the ground. Another soldier beat me from the back. I became dizzy. He grabbed me from the scruff of the neck and pushed me up against a wall with the other men. Khaled came and stood by me. One of the soldiers ordered me to raise my hands and open my legs. I was so exhausted that I couldn't keep my hands up and dropped my arms after two minutes. I was subsequently beaten and ordered to raise my hands.

After a few minutes, I heard the sound of broken glass. One soldier grabbed me from the back and said "look! This is your car." One of the soldiers was smashing the car windows. The soldiers then started to beat all of us from behind. This continued for about ten minutes. After this, they started to throw stones at us. Two of the stones hit me in my back. I understand some Hebrew, and over heard a soldier say, "I have a baton, we can use it." The other soldiers said no. They continued to throw stones. They then said that each of you must beat each other. I saw some of the others beat one another. One of the guys refused to hit another guy and the soldiers pointed their guns at his head and told him "either you beat or you'll be killed." This happened to another guy also. All the guys beat me in the face because they were ordered to do so by the soldiers. I refused to beat anyone, so the soldiers beat me from behind and I fell down.

I heard the soldiers speak to Khaled. The soldiers told him they would give him everyone's IDs if he hit all the others exactly where the soldiers told him. Khaled started to beat the people. After this the soldiers gave Khaled our IDs and some of them started to leave. As they did so some of them started to throw stones at us. We started to run away and I fell because I was so tired. After about fifteen minutes I

phoned a friend and eventually an ambulance came and took us to hospital....⁸⁷

Force may only be used by the occupying authorities in circumstances of self-defence and must be in proportion to any harm threatened. Moreover, any physical force inflicted upon members of the civilian population for purposes of effecting an arrest must be limited to that which is both necessary and proportional to the situation. The physical assault of a protected person in any other context by a state agent would be a breach of humanitarian law and in certain cases, such as grievous bodily harm, would be a grave breach.

D. Attacks on Medical Personnel

During the first year of the intifada, the Israeli army repeatedly fired on medical personnel attempting to evacuate the wounded. Shooting directed towards medical personnel hamper attempts to treat the wounded and may have contributed to additional deaths.

Bassem Bilbaysi, an ambulance driver with the Palestinian Red Crescent Society, was killed while attempting to aid the injured in the Gaza Strip on September 30 2000. On 1 October 2000 three volunteers from the Union of Palestinian Medical Relief Committees were injured by Israeli sniper fire while they were attending the injured near the City Inn Hotel in al-Bireh. The injured volunteers were trapped by Israeli fire for sometime before they were evacuated by an ambulance.⁸⁸

According to the Union of Palestinian Medical Relief Committees, 42 of its first aid workers were injured, including two doctors, while the Palestine Red Crescent Society reported that 114 Emergency Medical Technicians were injured while on duty. The Palestinian Red Crescent Society also reported that 60 of its ambulances were damaged by Israeli fire or by stones thrown by settlers in 147 separate attacks. All ambu-

⁸⁷ Al-Haq affidavit 398/2001

⁸⁸“Health Care Under Siege II, The health situation of the Palestinians during the first 7 months of the intifada (September 28 2000-April 28 2001)”, Health Development, Information and Policy, p9.

lances are clearly marked as such and all medical personnel wear clearly identifiable attire and insignia. The extent of attacks on medical teams indicates that the Israeli military personnel on the ground are not respecting medical neutrality. This is either an operational policy, though there is no indication that this is so, despite individual cases where soldiers did intentionally fire on medical personnel; or it indicates the lack of discrimination in the use of force by the Israeli army and a general lack of discipline among soldiers operating in the Occupied Territories. During the reporting period the weight of evidence points to the latter.

Under international humanitarian law, all medical personnel and health facilities are to be free from attack. Medical personnel operating in an occupied territory must be allowed to carry out their duties and should be respected and protected at all times. This injunction prohibits attacks and reprisals against doctors, dentists, nurses, ambulance drivers etc who are providing medical treatment and services to the population.⁸⁹

Muhammad 'Irsan Yousef Hawwari, 24 years of age and a medic from 'Azzoun, gave the following testimony to Al-Haq:

On 1 October 2000, while I was in the office of the Red Crescent Society, we received a call to go to the Ballou' area in al-Birih. There were clashes going on at the time between Palestinian youths and Israeli soldiers. We arrived in the area at about 10 in the morning. The soldiers were shooting heavily, and they were using a lot of tear gas. Our superior told us that there was an injured person near the office of the Palestinian Central Bureau of Statistics. The person had been injured in the head by a live bullet. We were able to evacuate him. As I was closing the ambulance door I saw a child lying on the ground. We were able to evacuate him also. It wasn't easy as the Israelis were shooting indiscriminately. As we proceeded to the hospital we could hear bullets hitting our vehicle. As we passed the City Inn

⁸⁹See articles 16, 20, 21 and 23 of the Fourth Geneva Convention and article 21 of Additional Protocol I.

an Israeli soldier fired at us. The bullet scraped my head. I felt a strong pain in my head. I could feel the blood seeping on my hands as I held it to my head. My colleagues administered first aid to me on the way to the hospital. At the hospital I had to undergo surgery.⁹⁰

Ahmad Muhammad Kheir-al-Din Ramadan, 36 years of age and an ambulance driver from Ramallah, gave the following testimony to Al-Haq:

On 3 November 2000, we went to the City Inn area in al-Bireh where there were clashes going on between Palestinian youths and Israeli soldiers. The clashes were particularly intense. When we arrived to evacuate an injured person, there was strong shooting in the area. We were, however, able to evacuate the wounded person. As we were making our way to the hospital, a tear gas canister was shot into the ambulance. We all suffered from the effects of tear gas inhalation. Despite this, we continued on our way to the hospital. I felt the soldiers intended to hurt us even though we are medical personnel.⁹¹

‘Abd-al-Hamid Mustafa Jibril, 27 years of age and a medic from the Balata refugee camp near Nablus gave the following testimony to Al-Haq:

On 18 January 2001, at about 11:30p.m., I and my colleague ‘Abd-al- Ra’ouf al- ‘Amoudi took the ambulance and went from Nablus to bring a sick person from the village of Hares. While we were on our way to the village, an Israeli border police vehicle stopped us near the village of Huwwara, to the south of Nablus. The policemen shouted at us and ordered us to switch off the motor. The policemen began to strike the ambulance with their feet. One of the policemen took the keys from me and ordered me to open the door. He then shouted at my colleague – the driver-

⁹⁰ Al-Haq affidavit 352/2001.

⁹¹ Al-Haq affidavit 353/2001.

and asked, "Why were you driving fast?" My colleague told him that we were going to bring a sick person to the hospital. However, the policeman was not convinced of that justification and began insulting us. He then took our ID cards and searched the ambulance. He asked me where I lived. I told him that I live in Nablus, but he again asked where exactly. I answered, in the Balata refugee camp. He immediately shouted at me and hit me with a torch that he had in his hand. He said, " You usually make troubles." I told him that I work as a first aid officer and that I was on duty. But he beat me and insulted me again. He then asked whether I was married or not. I replied, no, I am not married. He then said " do not marry as you would die before that." He added that the ambulances must not use their sirens and drivers must not drive fast and if they did, he would punish the personnel. They finally released us after about one hour's delay.⁹²

Naser 'Abd-al-Ghani Jamjoum, a volunteer for the Palestinian Medical Relief Committees, gave the following testimony to Al-Haq:

I am responsible for a team of stretcher-bearers. During protests we position ourselves just behind the stone throwers to be on the lookout for anyone who is injured. Our job basically is to get the injured away from the line of fire and administer first aid. All of the volunteers are clearly marked by distinctive vests.

I was injured on the 2 March 2001 near the City Inn hotel in al-Bireh. At the time, I was responsible for 17 volunteers. One of the stone throwers lay injured behind a group of old cars that the demonstrators use for cover. The soldiers were approximately 35 to 40 meters away. As I got up with the rest of my team to evacuate the injured, I was shot in the face by a rubber coated metal bullet. The other

⁹²Al-Haq affidavit 048/2001.

volunteers brought me to an ambulance. The person who took my place as leader of the team was injured shortly after I was. She was shot in the shoulder. I have been injured three times now while attempting to evacuate the wounded. Volunteers are routinely injured while attempting to aid the wounded.⁹³

The Death of a Medic in Beit Sahour:

On the night of 16 September 2001 Yihya Sabiya and two other colleagues were called out to evacuate the injured after Israeli troops had shelled al-Qarya al-Seyahya. Israeli tanks positioned on Jabal Abu-Ghneim had shelled the village. When they arrived at al-Qarya al-Seyahya the area was quiet. However, as they were about to enter the village, an Israeli tank resumed its shelling. Sabiya and his colleagues were caught in the barrage. Sabiya himself was struck directly by a shell and was killed instantly while his two colleagues were seriously injured. Due to the Israeli shelling, they were left unattended for over an hour. Like medics all over the Occupied Territories their vehicle as well as their attire were clearly marked.

Mu'taz Mahmoud Hasan 'Isa, 25 years of age and an ambulance driver from Dheisha refugee camp, gave the following testimony to Al-Haq:

On the 16 September 2001, at approximately 11:30 in the evening, I was in my office when I was told that there were many injuries in al-Qarya al-Seyahya after the Israelis had shelled the area. The shooting had started at about 10:30. Two others and myself left for the area in our ambulance. When we arrived near the "tourist tent" there was quiet. We stopped the ambulance but left the lights flashing. When we entered al-Qarya al-Seyahya on foot the shelling resumed. A shell fell about half a meter from us and I was injured. Another shell fell and my colleague was blown to pieces. After this they started to fire automatic weapons.

⁹³ Interview with Al-Haq researcher, June 2001.

Our ambulance was completely destroyed. When we arrived in the area there was no exchange of fire, the area was quiet.⁹⁴

Report on the shooting at a medical vehicle:

On 11 April 2001, at 9:05 in the evening, an ambulance from the Palestinian Red Crescent Society was making its way to the Abu-Sneinah area of Hebron, as there were reports of Israeli shelling. The ambulance arrived at Abu-Sneinah at about 9:15. At this time the shelling had stopped. There were five people in the ambulance at the time. Israeli soldiers positioned in the al-Ma'aref School, which had been turned into a military outpost, opened fire on the ambulance forcing the medical team to flee. The shooting continued for about five minutes, which resulted in the injury of three of the five medics. The injured were eventually evacuated by another ambulance.⁹⁵

E. The Use of Force in Residential Areas

Al-Haq has documented a number of cases where individuals were killed or injured due to Israeli fire directed into residential areas. While there were numerous instances where Israeli fire was in response to shooting by Palestinian gunmen, from testimonies taken from eyewitnesses, Al-Haq has taken the view that on a number of occasions the Israeli response was disproportionate, and that many Palestinians were killed due to random or reckless fire directed into heavily populated residential areas. Damage to houses in the front line was extensive, particularly in Beit Jala facing the Jewish settlement of Gilo, and in Rafah and Khan Younis in the southern Gaza Strip.

The IDF often used heavy weaponry in response to Palestinian fire including the General Purpose Machine Gun and the .50 Calibre Browning Machine Gun. The Israeli military has also made use of the M203

⁹⁴ Al-Haq affidavit 310/2001.

⁹⁵ Al-Haq field report on the shooting at medical personnel, April 2001.

and Mark 19 Grenade launchers when firing at targets in residential areas.⁹⁶ Amnesty International documented the case of Hani Yousef al-Soufi (15), who was killed by a grenade fired from Israeli positions near Rafah in the southern Gaza Strip, which hit a wall in a narrow alley way and exploded, and Mu'iz Ahmad Muhammad Abu Hadwan (11) who may have died from shrapnel from a grenade on 31 December 2000 in al-Sheikh area of Hebron.⁹⁷ In circumstances following suicide attacks that resulted in considerable Israeli civilian casualties, the IDF often responded with the use of Apache helicopters and F-16 fighter jets directed at Palestinian National Authority security buildings. These buildings were more often than not located amidst civilian dwellings and empty of all occupants. One of the exceptions to this was the Israeli attack on the Nablus Prison on 18 May 2001. The prison was bombed by an F-16 fighter jet killing eleven policemen. The attack came in response to a Hamas suicide bombing in Israel which left five people dead. It is widely believed that the intended target of the attack was Mahmoud Abu-Hnoud, a senior Hamas operative who was being held in the prison at the time of the attack. Abu-Hnoud survived the bombing, but was subsequently killed by Israeli forces in November 2001.

Muhammad Mahmoud Darraj, 41 years of age and a worker from al-Bireh, gave the following testimony to Al-Haq about his son's death on 2 March 2001:

I was with my wife and children in our apartment. The apartment is on the fifth floor of a building in the al-Jinan Quarter of al-Bireh. The apartment faces the Psagot settlement located on al-Tawil Mountain. At around two in the afternoon I was in Obay's room painting near the window. Obay was playing with his toys in the middle of the room. At approximately 2:30 Soldiers in Psagot opened fire with heavy machine guns. The shooting continued for

⁹⁶ See "Broken Lives – A Year of the Intifada," pp 30-32, Amnesty International, November 2001.

⁹⁷ Amnesty International, "State Assassinations and other Killings," February 2001, pp 20-21.

about twenty minutes. Then suddenly, Obay shouted “Dad something entered my chest.” When I looked I saw blood pouring from his chest. I was shocked. I ran down to the supermarket and called an ambulance. After that I lost my mind.⁹⁸

Jamal al-Darawish, sixteen years of age and a student from Doura, gave the following testimony to Al-Haq:

On 27 March 2001, I was in the company of friends playing cards in the house of Isma’il al-Darawish. There were children and women in the house. Suddenly, we heard shooting but thought it was the usual firing which we had become accustomed to during the intifada. Then we realised that this was the first time we had ever heard shooting coming from the al-Majnoun military camp which is located about 4 kilometres from the house. We tried to find a hiding place. I then heard Isma’il (9) shouting that he had been hit. We didn’t know whether he was joking or whether he had really been hit. We could not tell at first. We took off his clothes. I saw a hole in his chest. It was as if he had been burnt by a cigarette. There was no way we could get out of the house. I just watched his chest changing to a black colour slowly and then he fell unconscious. We finally managed to get out and rushed him to Hebron for medical aid but unfortunately the boy died before we made it to hospital. He died without a good reason. It was terrible news for the family and those who knew him. There was no fire exchange or clashes or shooting in the area. I still do not know why they fired at the house.⁹⁹

‘Abd-al Karim ‘Awad Shihda Abu-Sneina, 47 years of age and an employee of the Hebron municipality, gave the following testimony to Al-Haq:

⁹⁸Al-Haq affidavit 059/2001.

⁹⁹ Al-Haq affidavit 227/2001.

On 12 August 2001, at about 5:30 p.m., I was in my house. I thought my children were either in their rooms or watching TV. I have 7 boys and 3 girls. There was shooting on that day in Hebron. I live in the Abu-Sneina neighbourhood. Suddenly, my daughter Sabrin was hit on the roof where she was playing with her brothers and sisters. There was blood pouring out of her head. I carried her thinking that she had already died. She was taken to the al-Muhtaseb Hospital which is only 500 meters away from where I live. Later, she was transferred to Hebron Government Hospital in an ambulance where she was declared dead. I was not aware that my children were on the roof playing. It was a surprise. I live in a zone under Israeli control and I thought we were safe. After my daughter was hit, I am sure that there is no house in Hebron that is safe whether there is shooting or not.¹⁰⁰

Fatima al-Sabatin, 46 years of age and a housewife from Husan, gave the following testimony to Al-Haq:

On 9 May 2001, I was admitted to the Hebron Government Hospital due to health problems. On 20 May I was in my bed with an infusion in my arm. I was tired and I felt dizzy. At about midnight, I heard people screaming in the room. I tried to focus and I saw Majdolin al-Ra'i, 23, who was opposite my bed lying on the floor. She was screaming that she had been hit. I realized that Israeli bullets had managed to penetrate the room. There was shooting all evening in Hebron. I thought, however, that the hospital was a safe place and I never thought that the Israeli soldiers would direct their shooting at the hospital however cruel they may be but I guess I was wrong. I forgot about my pains and got up from my bed and I cut the rubber tube that was connected to my arm. I was petrified thinking

¹⁰⁰ Al-Haq affidavit 261/2001.

that I would be hit by the bullets and die. My feet could not hold me; I was so dizzy that I bumped into the wall and then into the room's door. I managed to make it to the corridor and then I lost consciousness and fell to the floor. When I regained consciousness, I found myself in the intensive care unit undergoing treatment. I asked the doctor what happened. He told me not to worry and he tried to calm me down, but I was still worried and frightened, especially when I was sent back to the room where I saw bullet holes in the room and the broken window. I saw Majdolin and I saw the effect of the bullet that had penetrated her body and almost killed her.¹⁰¹

Ahmad Salah, 33 years of age and a mechanic from al-Khader village, gave the following testimony to Al-Haq:

I was with my family in our house, which is located in the Balou' neighbourhood near the old city of al-Khader in the Bethlehem district. There was no firing by any of the sides in the area except for an armed clash in the vicinity of Solomon's ponds, far away from the house. Suddenly, two shells fell in a plot of land next to my house. The shells came from an Israeli post located on a hill overlooking al-Khader village near road 60. The shells did not cause any damage, but the explosions brought about 60 villagers to the scene to see what was happening. At this moment, we heard that an Israeli unit had clashed with Palestinian policemen on the main road, which separates Area A from Area C. This was about 200 meters away from my house. The same troops on that hill fired 7 shells directly hitting the first and the second floor of the house but the ground floor (thank God) remained intact. There were more than 60 individuals, mostly family and neighbours near the ground floor when the house was shelled. We were

¹⁰¹ Al-Haq affidavit 064/2001.

surprised by the shelling because we're in a zone which is totally under Israeli security control and there were no signs of armed Palestinian men in the vicinity of the house. Five shells also hit the house of my neighbour, Hasan Sbeih.¹⁰²

A student gave the following testimony to Al-Haq:

On 2 April 2001, at 3:30 p.m., I was at home and I heard shooting from the Israeli side and the news reached me that there were 60 children at the 'Aida Youth Club about 200 meters from my house opposite Rachel's Tomb. I heard that these children were trapped in the club, which was under fire. The children were scared. When I went with a group of youths from 'Aida refugee camp to evacuate the children from the club, the shooting was still going on. The children were between four to seven years of age. We evacuated them from the rear doors of the club, and took them to one of the neighbouring houses. Our movements during the evacuation were visible to the Israeli soldiers.... When the soldiers saw us evacuating the children they opened fire on us. Bullets hit the walls of the neighbouring houses.... Amal 'Atabi, 9 years old, was injured in the leg and buttocks by shrapnel. She was taken to hospital. The soldiers were about 100 meters away and they saw that we were evacuating the children but they increased their fire when they heard the children screaming. We do not know if the soldiers had been exposed to fire from the direction of the refugee camp.¹⁰³

¹⁰² Al-Haq affidavit 161/2001.

¹⁰³ Al-Haq affidavit 080/2001, name withheld from publication upon affiant's request.

Legal Context

The presence of individuals shooting from within a residential area does not deny the population the protections to which they are entitled. In the event of exchanges of fire in residential areas, methods of combat must be adopted by both sides that would minimize the risk to civilian life and damage to property as much as possible. Thus, an Israeli military response to Palestinian fire emanating from residential areas must be proportionate, and must clearly discriminate between the site of fire and the surrounding buildings.¹⁰⁴

Moreover, in circumstances where it is not particularly clear that a civilian facility is being used for military purposes, then that facility should be accorded the protection granted to civilian infrastructure.¹⁰⁵ Hence Israel's bombardment of Palestinian police facilities in response to suicide attacks is clearly punitive and thus unlawful, and it cannot be argued that such action is required by military necessity.

It is clear from the available documentation that Israeli firing into residential areas was often indiscriminate. Some affiants described their properties being hit when shooting was a considerable distance away or when there was no shooting at all. Explosive ordnance such as grenades were used in heavily populated areas causing death and serious injury. According to Amnesty International, in reference to Israeli response fire to Palestinian shooting, "it did not seem to matter to the IDF whether the Palestinian attack involved a lone or several armed Palestinians. In some

¹⁰⁴ Article 50 (3) of Additional Protocol I of the Geneva Conventions stipulates: The presence within the civilian population of individuals who do not come within the definition of civilians does not deprive the population of its civilian character.

¹⁰⁵ Article 52 (2) of Additional Protocol I defines a military objective: ... military objectives are limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage. Article 52 (3) of the Additional Protocol I of the Geneva Conventions stipulates: In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

cases the IDF response lasted for several hours, well after the Palestinian attack had ceased.”¹⁰⁶ According to Amnesty, “In some areas the IDF appears to be targeting residents in an attempt to create a no-go area on the edge of a town or settlement.”¹⁰⁷

¹⁰⁶ Opcit Broken Lives p 31.

¹⁰⁷ Opcit State Assassinations and Other Killings, Amnesty International, February 2001, p 19.

Appendix 1-A

The Killing of Aysar Hasis, 14 years of age and a car washer boy from the Jenin refugee camp: ¹⁰⁸

On November 24, 2000, at 4.30 p.m. Aysar Hasis was participating in clashes against the Israeli border police at the northern entrance of Jenin. The border policemen were approximately 200 meters from Jenin and 220 meters from the Palestinian checkpoint. They were taking cover behind their military jeep and were firing tear gas canisters and rubber coated metal bullets at the stone throwers. In the company of Aysar Hasis was Nidal 'Izzat Nayef al-Dhoun, 31 years of age and a worker from the Jenin District. He gave the following testimony to Al-Haq:

“During the clashes, Aysar and I were throwing stones at the soldiers and after an hour Aysar was injured by a rubber bullet in his right leg and started jumping around. He refused to be given first aid or to be taken to the hospital and continued to throw stones. The distance between the soldiers and us was 40 meters. The clashes continued and the youths moved forward towards the soldiers. Aysar was at the front of the youths. At 6.30 p.m., I was 20 meters from Aysar when a soldier advanced towards the youths. He was carrying an M-16 machine gun and was wearing green fatigues. He was at a distance of at most 10 meters from Aysar and I saw him aiming his gun equipped with a sniper’s viewing glass. He was in a kneeling position. I felt that he was aiming towards Aysar, and the youths and I started shouting at Aysar to be careful. Aysar and the soldiers were visible to us and after two minutes while the

¹⁰⁸ Al-Haq affidavit 118/2000.

soldier was still kneeling, I heard the sound of a single bullet coming from the direction of the soldier. I saw Aysar falling to the ground with blood streaming from his head. I want to add that the bullet entered his left eye and exited his head from the back. We carried Aysar to an ambulance and he was transported to Jenin hospital. He was given first aid and after a couple of minutes they decided to send him to Rafidya hospital in Nablus. Five hundred meters from the hospital on the road to Nablus, Aysar died.”

Appendix 1-B

The Killing of Bashir Shalawit 17 years of age from Qalqiliya:¹⁰⁹

On October 27, 2000, at 12:30 p.m., a demonstration left Qalqiliya towards the north entrance of the city, and when the demonstrators arrived 200 meters before the checkpoint, Israeli soldiers started firing tear gas canisters. Some youths advanced towards the soldiers and started throwing stones to which the soldiers on the ground and those positioned on a tower inside a military camp next to the checkpoint responded by firing live bullets. Some youths were injured by live ammunition mostly in their legs. Soon after the soldiers resumed firing tear gas canisters and most of the youths ran away.

Anis Samir Yousef Shanti, 20 years of age and a worker from Qalqiliya, gave the following testimony to Al-Haq: “Bashir was behind an overturned car in the middle of the street at a distance of 20 meters from the soldiers present at the checkpoint. When Bashir was standing behind the overturned car, he came within sight of the soldiers and when he crouched he was hidden. I was standing behind Bashir at a distance of 50 meters. When Bashir stood with a slingshot in his hands to hurl stones at the soldiers, a soldier positioned on the military tower inside the military compound opened fire towards Bashir and he was injured in his chest. I saw the soldier that opened fire at Bashir. The tower is approximately 20 meters from where Bashir was. Bashir fell on the ground. At first we did not realize he was injured because he did not shout and he had been for a long period getting up and then down, hiding from

¹⁰⁹ Taken from Al-Haq affidavit 132/2001 and 133/2001.

the soldiers. After a while I looked at him and he was making strange movements. I started running towards him and there were emergency medical technicians from the Red Crescent who started running with me when they saw me running towards Bashir. Bashir had been injured in his chest and we carried him on a stretcher to the ambulance that brought him to the UNRWA hospital in Qalqiliya. Bashir was dead upon arrival at the hospital.”

Appendix 1-C

The Killing of Mu'ayyad Jawarish, 14 years of age, a ninth grade student from Beit Jala:¹¹⁰

On October 16, 2000, Mu'ayyad left his house in the morning to go to school. He told his family before going that he would participate in a children's demonstration organized by the school that day. 'Mu'ayyad never returned from school. At around 3 p.m., an eyewitness saw him near the Bilal Ben Rabah mosque in Bethlehem where violent clashes between Israeli soldiers and Palestinian youths were occurring. He related the following to Al-Haq:

“Mu'ayyad was returning home from school, his schoolbag was with him and he was not throwing stones. When heavy Israeli fire started I hid myself with the other youths behind a wall, and 'Mu'ayyad was coming towards us because he did not know what was going on in the area. I was standing behind the wall and I grabbed 'Mu'ayyad by his clothes to bring him to us so he wouldn't get injured. At that point 'Mu'ayyad fell on the ground without anyone hearing a sound (...) I grabbed him by his foot and I shouted at him, but his brains had spilled out on the ground. The youths gathered around me to see what had happened. The first youth who reached us carried 'Mu'ayyad and went towards the ambulance and while he was carrying 'Mu'ayyad the Israelis fired at him.”

¹¹⁰ See Al-Haq affidavit 09/2001. Name withheld from publication upon request of affiant.

Appendix 1-D

The killing of Walid Hamida, 17 years of age, from Taqou':¹¹¹

From the beginning of the Intifada there have been frequent clashes between Israeli soldiers and students from the Taqou' Secondary School for Boys near Bethlehem. The school is only 100 meters from a by-pass road used by Israeli settlers in the area.

On the early morning of November 30, 2000, Husein Suleiman entered his house located 100 to 150 meters from the school and found himself facing Israeli soldiers who pointed their guns at him. They asked him to leave the house and prohibited him from returning. The soldiers also told him that the reason for their presence in the house was to kill youths.

Relatives of Husein Suleiman reported the presence of soldiers in the house to the director of the school Salem Abu-Mifreh, and he spread the news among all the students of the school through the loudspeakers. At 10.30 a.m., Husein Suleiman went to see the director and told him all he had seen and heard. At 11.25 a.m., two classes of fifth graders were allowed to leave and when passing the house occupied by the soldiers, they were frightened by sound bombs fired at them and returned to the school. After that, the director helped the students to go home, and as he felt the situation was dangerous, he made the students leave gradually, telling them to go as fast as possible. Only the eleventh graders and the final year students were left. At 2.05 p.m., the final year students left, and the last students

¹¹¹ See Al-Haq affidavit 058/2000 and 059/2000. See also report by Director of the Taqou' Secondary School for Boys to the Ministry of Education, 157/1/17, 3 December 2000.

to leave were six eleventh graders. Walid was walking with three other students. Ra'ed Hamed Ahmad al-Dadan, 18 years of age and from Bethlehem, gave the following affidavit to Al-Haq:

“ At approximately 2.30 p.m., I was leaving the Taqou' Secondary Boys School with Walid and there were no clashes in the area. When we arrived at the water tank, 200 meters from the school, with other students, the Israeli soldiers, hiding in the house, 50 meters from the school, fired a sound bomb at us. As Walid turned towards the direction of the sound, Israeli soldiers sniped at him and he was injured in his chest. Walid started rolling on the street and we hid in a rainwater pipe under the street close by and then we tried to help Walid who was sprawled on the street. When we tried to get close to him the soldiers started firing bullets at us and Fathi was injured with a live bullet in his chest and he hid on the side of the street. When a fourth student, Maher, tried to approach Walid to help him, the soldiers fired at him, and there was a silencer on the gun, and he was injured in his stomach. The soldiers didn't want anyone to reach Walid to help him. They wanted to kill us because the students of the school were always throwing stones at settlers' cars on the road close to the school. When the director of the school came and tried to carry Walid in his car to the hospital, the soldiers fired at his car. The shooting went on for half an hour.”

Appendix 1-E

The Death of Murad Sharay'a, 21 years of age and Sha'aban Sa'id Salloum 'Ayesh 29 years of age, both workers from the Balata refugee camp:¹¹²

On 30 March 2001, during Land Day demonstrations in the Nablus region, a number of Palestinian demonstrators were killed by live ammunition fired by the Israeli security forces. According to the Al-Haq field investigator for the Nablus region who witnessed the demonstration, the protests were largely peaceful and he was unaware of any Palestinian fire aimed in the direction of the Israeli soldiers charged with handling the protestors. Nonetheless, Israeli soldiers shot at the demonstrators with live rounds and according to Al-Haq's account Sha'aban Sa'id Salloum 'Ayesh and Murad Sharay'a died from gun shot wounds to their heads. An eyewitness gave the following affidavit to Al-Haq:

“On the 30 March a big demonstration started from the centre of Nablus after the afternoon prayers. It was a large demonstration and we marched to the southern entrance of Nablus near the village of Kufr Qalil. There must have been more than 1,500 people. After we passed the Palestinian checkpoint, Israeli soldiers started to shoot and very quickly people were injured by Israeli fire. Later in the day, I hid with Sha'aban and Murad behind an old damaged car. I would say that we were approximately 40 meters away from the Israeli soldiers. We were looking at an armoured vehicle on the east mountain. At this moment

¹¹² See Al-Haq affidavit 135/2001. Name withheld from publication.

Murad and Sha'aban were behind me. We were simply looking and talking. Suddenly, I heard a sound and looked back and saw a terrible sight. Sha'aban was shot in the head from the direction of the armoured vehicle. I rushed to get an ambulance. I left for just a few seconds. Another bullet was fired which hit Murad.”

Appendix 1-F

Eyewitness to the killing of Ra'fat al-Malhi, 24 years of age and a driver from the Shu'fat refugee camp:

Nidal 'Adwan 'Ali, 31 years of age and a worker from Beit Liqiya gave the following affidavit to Al-Haq: ¹¹³

“At 6 a.m. on Wednesday 13 September 2001 I was travelling from my village, Beit Liqiya, to Lod. My two children were with me. I came across a barrier, which was manned by Israeli soldiers, and I was allowed to pass. After I passed through I saw a yellow plated car approach the barrier. There was only the driver in the car. There was a military jeep positioned about 50 metres from the barrier. Once the car passed through the barrier, the soldiers started to shoot heavily at the car. The driver was driving normally as he passed the jeep. We didn't hear the soldiers asking him to stop. They started shooting the minute he reached the barrier. The soldiers were outside the jeep and shot at the car from behind.

The car stopped after 40 to 50 metres. The military jeep drove off as if nothing had happened. I went with a group of young men towards the car. When I arrived I saw a young man behind the wheel. He was conscious. He then fell to one side and I saw the wounds to his back. He was bleeding heavily. I helped him out of the car. He was able to walk for about four meters. I then helped him to lie on the ground on his stomach. I then called the emergency services on my mobile and reported the incident. After six minutes an Israeli police car arrived and stopped 30 meters from where the man was lying. The police looked on from a far but did

¹¹³ See Al-Haq affidavit 309/2001.

nothing. I went up to them, and using my mobile called the emergency services again. I asked the woman on the phone to send an ambulance. The police told me that a Palestinian shot the man. When I gave the policeman the man's ID, and when he saw that the man was from Jerusalem, he called for an ambulance. But the ambulance never arrived. All that time the young man was lying there on the ground. We then decided to take the man to hospital in a private car. On the main road we went to the Khawaja petrol station, which is approximately 2 km away from the incident. The young man died. This was 45 minutes after the incident. A police car arrived at the petrol station and asked us for the young man's body. We then had an argument with the police about who would take the body and where. Finally we agreed that the Israelis would take body on the grounds of the necessity to perform an autopsy. The police asked me to take my children home and return in order to give a statement. I did as they asked and gave them a statement that illustrated the sheer callousness of the police. There was an opportunity in saving this man. The soldiers didn't try to help him either."

Appendix 1-G

THE KILLING OF A YOUTH BY THE MILITARY

Al-Haq gathered the following information from eyewitness testimonies surrounding the shooting of 'Ala' Muhammad Mahfouz. Below is a reconstruction of the events:

On October 6, 2000 there was a confrontation in al-'Arroub refugee camp between Palestinian protestors and Israeli Forces. Tear gas, rubber bullets and live ammunition were being used by the Israeli Forces. 'Ala' was throwing stones from his rooftop when he hit an Israeli soldier lightly wounding him. Another Israeli soldier witnessed the incident. 'Ala's father was afraid that the soldier would take revenge on 'Ala' so he ordered him into the house. An Israeli soldier waited for Ala to appear.

The clashes continued for several hours. Later, 'Ala' went out on his porch with a cup of tea and was shot in the head by an Israeli soldier. 'Ala's father was standing nearby when the shooting took place and quickly took 'Ala' to al-Ahli Hospital. 'Ala' was unconscious and bleeding heavily.

At around 7 p.m. that same day, an Israeli soldier stopped a young man, Naser al-Badawi and spoke to him in Hebrew. The soldier asked Naser where he was going and Naser replied that his friend was seriously injured and that he was now returning from the hospital. The Israeli soldier replied that he was the one who shot 'Ala' because he was throwing stones. The soldier was certain that 'Ala' would die from the injury. 'Ala' remained in the al-Ahli hospital for 4 days and was transferred to Saudi Arabia where he died on October 26, 2000.

Naser Ibrahim al-Badawi, 33 years of age and a worker from the al-Arroub refugee camp gave the following affidavit to Al-Haq. The statement is presented here in abbreviated form:

“After Friday prayers, clashes erupted between Israeli soldiers and Palestinians. I was on a roof opposite Mohammad’s (‘Ala’s father) home. I heard ‘Ala’ shouting about the fact that he had injured a soldier with a stone. About three hours later I heard that Ala had been shot. I rushed to help, and some of us were injured as we tried to take him to hospital. I was injured by two rubber bullets in my legs. I returned from the hospital at about 7 in the evening.”¹¹⁴

Based upon an investigation into the shooting of 14 year-old ‘Ala’ Muhammad Mahfouz from al-Arroub refugee camp, north of Hebron, Al-Haq concluded the following:

1. The Israeli soldier’s life was not in danger when he shot ‘Ala’.
2. The soldier in question was not acting in accordance with IDF Regulations. The IDF Open Fire Regulations stipulates that a soldier will only use a weapon in the event of an immediate “danger to life.”
3. The Israeli soldier was acting with the deliberate intent to kill.

¹¹⁴ Al-Haq affidavit 021/2000. See also Al-Haq affidavit 022/2000.

Appendix 1-H

The Death of a Taxi Driver

On 3 July 2001, taxi driver Radwan Ibrahim Yousef Shtayya was killed while dropping off passengers at a roadblock in al-Najama area near Nablus. Radwan was shot by soldiers located at a military outpost approximately 150 meters from the roadblock. There were no clashes reported in the area and Mr. Shtayya was unarmed.

Mr. Shtayya, thirty-seven years old and a father of four, lived in the village of Salem near Nablus. He worked driving an unregistered taxi between Salem and other nearby villages. On the afternoon of 3 July Mr. Shtayya drove a load of four passengers to the junction of the main road leading to Beit Dajan, Beit Foureek, and Salem. At this point the road was blocked with a pile of earth and cement blocks. All of his passengers had to exit the taxi, climb over the barrier, and continue in a second taxi. According to information gathered by an Al-Haq fieldworker, after the passengers in Shtayeh's taxi had begun to walk across the roadblock he noticed that one of them had left a bag of vegetables in the car. She was only 50 to 100 meters away from him, and he called out to her to stop. Mr. Shtayya then got out of his car with the bag and proceeded to place it beside the road. Soldiers at the nearby checkpoint immediately opened fire hitting him in the torso and the legs. A man living near the checkpoint ran towards Shtayya, reaching him at the same time as several Israeli soldiers. He was blocked from approaching Shtayya for approximately five minutes by the soldiers, but was eventually allowed to bring Shtayya to Rafidiya Hospital in Nablus.

According to an eyewitness, the Israeli soldiers stationed at the checkpoint made no attempt to inquire into what Shtayeh was doing, no verbal warning was given, and no warning shot was fired.¹¹⁵

¹¹⁵ See Al-Haq affidavit 192/2001.

CHAPTER II

ISRAEL'S POLICY OF ASSASSINATIONS

According to figures from Al-Haq's database, during the first year of the uprising the Israeli security forces deliberately targeted and killed 44 Palestinian activists. It is estimated that a further 20 individuals were killed as a result of being in close proximity to persons targeted. The individuals who were targeted were deemed by the Israeli authorities to have either carried out, planned or coordinated armed attacks against Israeli security personnel and settlers within the Occupied Palestinian Territories as well as against civilian targets within Israel. However, in virtually all the cases of individuals killed under the policy in question during the reporting period, they did not pose a clear and present danger to the lives of Israeli soldiers or civilians.

The policy began under the premiership of Ehud Barak and has continued since Ariel Sharon came to power. Senior Israeli political and military officials have acknowledged and condoned the policy of extra-judicial executions publicly. Former Israeli Deputy Defense Minister, Ephraim Sneh, stated when interviewed on the policy, "I can tell you unequivocally what the policy is. If anyone has committed or is planning to carry out terrorist attacks, he has to be hit...It is effective, precise and just."¹¹⁶ In an interview on Israel radio on 21 December 2000, an Israeli officer referred to the policy of extra-judicial executions as "pre-emptive operations." The officer stated that the main method used to kill Hamas, Islamic Jihad and Fatah activists deemed to have carried out armed attacks against Israeli security personnel and citizens was by sniper fire, but other means were also used. The officer also stated that the IDF went to great lengths to ensure that there was no harm caused to civilian bystanders.

¹¹⁶ Keith B. Richburg, "Israelis confirm wider policy of assassinations," Washington Post, 7 January 2001.

The Chief of Staff of the Israeli Defence Forces, Shaul Mofaz, in reference to a legal opinion on the said policy issued by the Israeli military advocate General Menachem Finkelstein, stated that in exceptional cases it was permitted to kill “Palestinian terrorists.” “This is not routine, but an exceptional method whose goal is to save human lives in the absence of an alternative. It is used against people who have definitely been identified as having worked, and are working to commit attacks against Israel.”¹¹⁷ According to former Israeli Prime Minister Ehud Barak, “we are at war, if people attack us and kill us, then our alternative is to attack them. A state facing the threat of terror has to wage a struggle.”¹¹⁸

On 4 July 2001, Israel’s security cabinet voted to give the army almost complete freedom of action to kill anyone it suspected of being involved in armed activity. This decision effectively widened the scope for extra-judicial killing. The Israeli authorities had initially justified a policy of extra-judicial killing on the grounds that the policy targeted only those suspects who were on their way to carry out shooting incidents or were preparing to lay a bomb. The shift announced after the security cabinet meeting effectively gave the army the green light to kill anyone on its list. Israel’s influential religious establishment also gave the policy of extra-judicial execution its blessing. The Ashkenazi Chief Rabbi, Israel Meir Lau, invoked religious law stating “Jewish religious law gives its..full support to the policy of active killings which the government and security forces maintains today in order to prevent terrorists from planning and carrying out attacks in Israel.”

¹¹⁷ Gideon Alon, “Mofaz: IDF jurists approved killings,” Ha’aretz, 11 January 2001.

¹¹⁸ Akiva Eldar, “Liquidation sale for the peace process,” Ha’aretz, 4 January 2001.

The Rationale of the Policy

Israel's policy of extra-judicial killing has focused on individuals accused by the Israeli authorities of carrying out armed attacks on its armed forces stationed in the Occupied Territories as well as against settlers residing in the said territories and Israeli citizens within Israel's sovereign borders. The policy has also been pursued as a preemptive measure against individuals who are suspected of planning to carry out such operations or who ordered others to carry them out. The policy was also seemingly conceived as a way of "taking care of" individuals wanted by Israel. The fact that a number of individuals who were wanted by Israel were killed within the ambit of the policy indicates that this rationale played a part in the minds of those who planned the policy. The Israeli security forces have also used the assassination of leading Palestinian activists as a form of deterrence.

The assassination of leading Palestinian activists has also been used as a means of retaliation. For example, the decision to kill Hussein I'bayat, the first to fall victim to the policy on 9 November 2000, was seemingly influenced by his alleged involvement in shooting incidents on Gilo settlement. Israel has also justified the assassination policy on the grounds that the wanted individuals were resident in areas under the control of the PNA, whose security apparatus often refused to apprehend the suspects. The Israeli authorities also charged that those suspects who were arrested were released soon after in what was described as a revolving door policy on the part of the PNA by Israeli spokesmen.

The Legal Context:

The Israeli position on assassinations was expressed in a legal opinion by its Attorney General, Elyakim Rubenstein, as follows:

The laws of combat, which are part of international law, permit injuring, during a period of warlike operations, someone who has been positively identified as a person who is working to carry out fatal terror attacks against Israeli targets. These people are enemies who are fighting

against Israel, with all that implies, while committing fatal terror attacks and intending to commit additional attacks—all without counter measures by the Palestinian Authority.¹¹⁹

International humanitarian law does give substantial leeway to an occupying power to safeguard public order and safety, as well as to ensure the security of its personnel. However, whatever measures are taken, they must not infringe upon the rights that protected persons are entitled to as enumerated in article 27 of the Convention. If a protected person is suspected of hostile activity deemed to be a security concern for the occupying power, the occupying power is entitled to attempt to arrest and detain. According to article 5:

..Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the occupying power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.

In each case, such persons shall nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the state or occupying power, as the case may be.

According to the article, the right which is derogated by an individual who is suspected of engaging in hostile activity against the occupying power is that of communication, and the occupying power is essentially under an obligation to attempt to arrest and detain a suspect.

Even if individual protected persons take part in armed hostile activity against the occupying forces, they nonetheless retain their civilian sta-

¹¹⁹ See note 38 at p 43.

tus and only lose their protective status under international humanitarian law for the duration of their participation in armed action. Article 51(3) of Protocol I Additional to the Geneva Conventions stipulates:

Civilians shall enjoy the protection afforded by this section, **unless and for such time** as they take a direct part in hostilities (Emphasis added).

Thus, a protected person engaged in sporadic armed resistance can only be lawfully incapacitated during an active engagement and when posing an immediate danger to the occupying forces. As they are not combatants, they cannot be incapacitated when not engaged in armed hostile activity. Moreover, there is no legal foundation under international humanitarian law for killing protected persons on the basis of suspicion or even on the basis of evidence of their supposedly threatening activities or possible future actions. As indicated above, article 27 of the Fourth Geneva Convention provides for the respect of persons and article 32 explicitly prohibits killing.¹²⁰

The manner in which those suspected of hostile activities were assassinated, in contravention of fair trial standards, with Israeli security officials and senior politicians acting as judge, jury and executioner is in complete disregard for the humanitarian principles inherent to the Convention. The occupying power is under an obligation to apprehend and try individuals guilty of a crime and provisions for this possibility are laid out in articles 71, 72, 73 and 75 of the Convention. Article 68 places certain restrictions on the use of the death penalty whose utilization within the context of the Convention would require a prior judicial trial. The purported lack of cooperation on the part of the PNA in arresting some of the suspects could not possibly be a justification for extra-judicial killing, particularly in light of the fact that many of those targeted, as illustrated below, could have been arrested.

The individuals who were accused of threatening the security of the occupying power and its citizens, of planning for the commission of

¹²⁰ Opcit UN report of the Human Rights Inquiry Commission E/CN.4/2001/21, p 24.

such actions, or of ordering their implementation were obviously not availed of these safeguards. The assassinations that were committed by the Israeli security forces were carried out without due regard for the basic guarantees provided by the relevant provisions of international humanitarian law. There was no attempt to arrest and detain, no credible evidence was furnished to the public domain for judicial scrutiny, those killed were not made aware of the charges against them, nor were they ever given the opportunity to refute the allegations that resulted in their deaths.

Moreover, there are a number of principles integral to international law that should govern the conduct of an occupying authority. These are the principles of proportionality, discrimination and necessity.¹²¹ Linked to the principle of proportionality is that of immediacy, which implies that the level of immediate threat should be taken into consideration before acting. Adherence to these principles by members of the Israeli security forces were clearly lacking in a number of cases where individuals were extra-judicially executed. The fact that a number of bystanders were killed along with targeted individuals clearly indicates that disproportionate force was used. The individuals who were executed did not pose a clear and present danger to Israeli soldiers or civilians and the killings were not necessary in the sense that means were available other than killing such as arrest, which in some cases could have been carried out and without undue risk to the Israeli soldiers involved.

The international community has strongly condemned Israel's policy of assassination. The Government of the United States has repeatedly expressed a critical position in regards to the assassination policy, and the European Union has described the policy as being contrary to the rule of law. Israel's policy of extra-judicial killing has also been condemned by the Civil Rights Committee of the Israel Bar Association. According to the Committee Chairman, attorney Yossi Arnon, "this policy is illegal

¹²¹ The principle of proportionality is used here under law enforcement standards rather than in a strictly military sense.

and against the laws of war and international law that define liquidation as a serious war crime.”¹²²

It is clear that the relevant provisions of international humanitarian law prohibit without exception, the extra-judicial killing of protected persons. It is within this context that it must be clearly understood that Israel’s policy of assassination is an extremely serious crime under international law. Israel’s assassination policy clearly amounts to intentional or wilful killing of protected persons. Wilful killing constitutes a grave breach of the Fourth Geneva Convention and is subject to international criminal prosecution.

¹²² Ha’aretz, News Briefs, “Israel Bar condemns assassination policy,” Monday 25 December 2001.

Appendix 2-A

Jamal 'Abd-al-Razeq, 29 years of age and from Rafah:

On November 22, 2000, Israeli security forces in Rafah in the Gaza Strip killed Jamal 'Abd-al-Razeq. 'Awni Idheir, Na'el Liddawi and Sami Abu Laban were also killed in the same incident. According to information available to Al-Haq, Razeq and his passenger 'Awni Idheir, were on their way from Rafah to Khan Younes. The moment their car stopped at a military check post located on the road leading to the Morag settlement, a plain-clothes member of the Israeli security forces fired a barrage of bullets from his machine gun at the car. A military vehicle parked at the check post also opened fire. Shooting continued unabated for about one minute. The individuals in question were killed. A taxi behind Razeq's car was hit in the barrage of fire and Sami Abu Laban and Na'el Liddawi were also killed. Nahed Fojo was injured and then arrested by the Israeli security forces following the incident. Fojo gave the following testimony to Amnesty International:

“I got up early in the morning and made various runs, taking children to school. I worked till 9.45 am and found two young men; I later knew they were Sami Abu-Laban and Na'el Liddawi. They asked me to take them quickly to buy some fuel for the bakery where they worked. I went towards Khan Younes, past the Palestinian check point, I was going at 60 km an hour, when near the junction to the Morag settlement a lorry pulled out in front and I had to jam on the brakes. Suddenly there was intensive shooting-I could not see from where and against whom as I flung myself down as low as possible and lay as though unconscious. After some time an Israeli soldier carrying a body bag

opened the door. He thought I was dead-it was though he was about to put me in a body bag. Then “he shouted one is still alive!” He laid me down, handcuffed and with a blindfold and took me to Gush Qatif. I did not know if the other passengers were dead or alive. I heard soldiers, I was blindfolded, I felt bad, I tried to vomit. After three hours I was taken, still handcuffed and with my legs tied to Ashkelon prison. They took of my clothes and doctors examined me; I had a high temperature. They gave me prison clothes and I was interrogated by four intelligence officers. I told them the exact same story, they asked me some questions about six times: “Was there a Kalashnikov in the car?” I said, “no, the people only had empty kerosene cans and their clothes were covered in flour.” They said they would release me if I said there were weapons in the car but I insisted there weren’t. They spat in my face, insulted and humiliated me, trying to get me to change my story.”¹²³

¹²³ Opcit “State Assassinations and Other Unlawful Killings,” Amnesty International, p 8.

Appendix 2-B

Anwar Mahmoud Ahmad Humran, 28 years of age, a student from ‘Arraba:

On December 11 2000, the Israeli security forces assassinated Anwar Mahmoud Ahmad Humran. He was killed about 20 meters away from the main building of the al-Quds Open University in al-Dahya Neighborhood of Nablus. Members of the Israeli security forces fired from the Jarzim Mountain opposite the University. Humran was struck by two bullets in the head and by several bullets in other parts of his body. According to the Israeli army, Humran was killed in an exchange of fire.¹²⁴ However, according to eyewitness accounts, there was no shooting in the area and Humran had been apparently looking for a taxi when he was gunned down.

Mayada Subhi Abd-al-Latif Jum’a, a student living in Nablus, was an eyewitness to the killing of Humran and gave the following testimony to Al-Haq:

“While I was laying a carpet on my balcony I saw students coming and going from the al-Quds Open University which is about 20 meters from my house. I noticed one person in particular; he was on his own and was about 15 metres from the University. Then I heard gunshots and saw this man fall to the ground. He was shouting “There is only one God and his prophet is Muhammad.” He shouted this repeatedly. At the same time the other students were shouting at him to move to safety, but he was unable to move. The shooting continued for about a minute. The

¹²⁴ Amos Harel, “Man Killed as shooting erupts in the West Bank and Gaza,” Ha’aretz, 11 December 2000.

shooting came from the direction of the Jarzim Mountain which is to the south of the city of Nablus.

When the shooting stopped, people ran to the man in order to give help, but he soon died. After about 15 minutes an ambulance arrived. I didn't know who the man was until I heard the students repeating his name."¹²⁵

¹²⁵Al-Haq affidavit 371/2001.

Appendix 2-C

‘Abbas ‘Uthman Ahmad al-’Weiwi, 27 years of age, a worker from Hebron:

On December 13 2000, the Israeli security forces assassinated 'Abbas 'Uthman Ahmad al-'Weiwi, an activist in Hamas, in the center of Hebron. 'Weiwi was shot while waiting for a taxi. 'Abd-al-Rahman Ahmad Bader, 47 years of age and a mechanical engineer from Hebron gave the following testimony to Al-Haq:

“At around 12:30 in the afternoon of 13 December 2000, while I was working in my office on Wadi al-Tufah Street, I heard a noise that sounded like fire crackers. I got up from my seat and looked towards the direction from where the noise was coming from. I saw a young man who I knew, 'Abbas al-'Weiwi lying on the street with his hands clutching his stomach. I ran from my office to the scene. When I arrived there were a number of people already there. They placed him in a car. After a few minutes I heard from some people that he had died. I was unsure of the direction of the shots. He was a well known member of Hamas.”¹²⁶

¹²⁶Al-Haq affidavit 243/2001.

Appendix 2-D

Hani Husein Hasan Bakri, 31 years of age, a taxi driver from the Gaza Strip:

On December 14 2000, members of the Israeli security forces in the south of the Gaza Strip assassinated Hani Husein Hasan Bakri. Bakri was a Hamas activist and was killed near the Gush Qatif junction. Several individuals who were riding in Bakri's taxi when he was killed testified to the events they witnessed. They stated that an Israeli soldier ordered Bakri to stop his taxi at the side of the road after he had passed through an Israeli checkpoint. Five soldiers approached the taxi and one of them asked Bakri to get out. Shortly after Bakri opened the door to get out of his car the five soldiers opened fire, hitting Bakri in the head and chest. He was killed instantly. There was no evidence to suggest that Bakri was armed. Nonetheless, in a statement on the killing, the Israeli security services described Bakri's death as a result of a clash with the IDF. The IDF statement contradicts eyewitness accounts, which indicate that there was no exchange of fire and that Bakri was unarmed. During the assassination of Bakri, 40-year-old 'Abdallah 'Isa 'Abdallah Kan'an who was a passenger in the taxi, was critically wounded. Kan'an died on 23 December 2000.¹²⁷

¹²⁷ Opcit Amnesty: "State Assassinations and Other Killings" pp 13-16.

Appendix 2-E

Dr. Thabet Ahmad Thabet, 48 years of age, from Toulkarem:

On December 31 2000, Members of the Israeli security forces in Toulkarem assassinated Dr. Thabet Ahmad Thabet a member of the Fatah Higher Committee and General Director of the Palestinian Ministry of Health's Toulkarem offices. According to information available to Al-Haq, Israeli soldiers stationed at a checkpoint about 300 meters away from Thabet's house opened fire upon him as he was reversing his car from his home. Thabet was hit by four bullets, which entered his back, chest and abdomen. He died moments after reaching the Toulkarem hospital. According to an Israeli army spokesman in reference to the killing, the soldiers were responding to shooting in the area and that Dr. Thabet was an unfortunate casualty of these clashes. However, according to people present in the vicinity at the time of the incident in question, there were no armed clashes in the area. The Israeli authorities had also claimed that Thabet had been responsible for coordinating a number of shooting incidents in the Toulkarem area against Israeli targets. In the wake of the Thabet killing, in a meeting of the Knesset Foreign Affairs and Defence Committee, an Israeli security official claimed that:

“We attack terrorists who set out to shoot at civilians; we identify the heads of squads and district commanders, and attack them. This activity frightens and quiets a village; and as a result, there are regions in which operatives are afraid of undertaking activities.”¹²⁸

¹²⁸ Amira Hass, “Top Fateh official gunned down. IDF neither admits nor denied he was targeted; Palestinians vow revenge,” Ha'aretz, 1 January 2001.

The Israeli authorities failed to present evidence linking Thabet to armed activity in the Toulkarem area.

Moreover, the Israeli authorities could conceivably have arrested Thabet if they were suspicious of his activities. In a detailed testimony given to LAW, The Palestinian Society for the Protection of Human Rights and the Environment, Thabet's widow stated that her husband used to go every Friday to pray at a mosque located in the vicinity of Far' on village, which is located in an area under Israeli security control.¹²⁹

Dr. Thabet was a respected man in the Toulkarem district and had been an outspoken activist against the Israeli occupation. He also had substantive contacts with the Israeli peace movement and had been involved in a number of activities concerned with Palestinian-Israeli reconciliation.

¹²⁹ See Report to the United Nations Commission of Inquiry: Grave Breaches and other Serious Violations of International Humanitarian Law: War Crimes, LAW-Palestinian Society for the Protection of Human Rights and the Environment, p 10.

Appendix 2-F

Mustafa Yasin, 27 years of age and from 'Anin:

On 23 July 2001, Mustafa Yasin was killed by members of the Israeli security forces in front of his family in the village of 'Anin. According to Israeli sources Yasin was thought to have been involved in armed activity and a member of the Islamic Resistance. The following testimony was given to Al-Haq by his wife who witnessed Yassin's death.

Iman 'Abdallah Hamed Yasin:

“On 23 July at around four in the afternoon I heard a noise around the house where we live and I told my husband Mustafa. It was the noise of conversation and movement. My husband looked out of the window. There were soldiers around the house. When the soldiers saw my husband looking out of the window they asked him to come outside the house. The moment he opened the door I heard the sound of shooting. I dressed and hurried to the door where I saw my husband lying on his back directly in front of the door. He was bleeding. I was standing by his body. There were soldiers all around. My husband murmured “I am gone Iman.” I started to scream and then the soldiers took me into the house. I asked them “What did they do.” They told me not to worry. I repeated my question and got the same answer. They then started to search the house. They asked me where is the gun. I answered there is no gun here. They went on searching the house for half an hour. I looked out of the window and saw them dragging my husband from the front door. They left him under the sun for an hour and a half.”¹³⁰

¹³⁰ Al-Haq affidavit 230/2001. (Joint testimony)

The following testimony was given by Rahma Ahmad Yasin, Mustafa's mother:

"Mustafa's wife called me at around 4 and said "Mustafa," her voice was not normal and hung up immediately after. I ran to Mustafa's house. When I was near the house I saw three soldiers carrying Mustafa, one from the front and two from behind. His head was towards the ground. They carried him like an animal. They dumped him on the ground and there were about seven soldiers surrounding him. When I tried to come closer the soldiers prevented me."¹³¹

¹³¹ See also Al-Haq affidavit 230/2001.

Appendix 2-G

Mustafa Zibri (Abu-'Ali Mustafa):

Abu-'Ali Mustafa (Mustafa Zibri), head of the Popular Front for the Liberation of Palestine (PFLP), was assassinated by Israeli forces on 27 August 2001. Israeli Apache helicopters fired two missiles into the offices of the PFLP in the al Irsal neighbourhood of Ramallah. Five other people in the office were reported wounded in the incident. Mr. Zibri, from 'Arraba near Jenin, is the highest political leader to have been killed by the Israeli security forces in the intifada. He became the head of the PFLP in July 2000 and had been living in the Occupied Palestinian Territories after returning from exile two years earlier. Though the Israeli authorities stated that Mr. Zibri was responsible for armed activity, like in other instances of extra-judicial executions in the current intifada, they had failed to furnish to the public arena suitable evidence linking Zibri to armed hostile activity.

Appendix 2-H

**Jamal Mansour, 41 years of age and Jamal Salim, 42 years of age.
Both were from Nablus.**

On 31 July 2001, an Israeli helicopter gunship fired two missiles at the “Arafat building” in the centre of Nablus. The building is both a residential and office complex. The intended targets of the Israeli assault were Jamal Mansour and Jamal Salim, both senior activists in the Hamas movement. The office targeted was that of the Nablus based Palestinian Centre for Information run by Mansour. As a result of the assault eight people were killed, including Mansour and Salim. Two children, Ashraf and Bilal Khader, age six and eleven respectively, and two journalists were also killed in the incident. Fifteen others were injured.

The Israeli authorities had charged that Mansour was a senior military official in the military wing of Hamas, a charge denied by Hamas itself as well as by Palestinians who knew Mansour. The Israelis failed to offer any proof supporting their assertions. The Centre was frequented by journalists, and the two killed in the incident, Muhammad Bishawi and ‘Uthman Qatnana, were interviewing Mansour at the time of the attack. The two children were killed while apparently playing outside the building. This was the largest loss of life in a single assassination carried out by the State of Israel in the first year of the intifada.

Rif’at Sulieman Yasin is a resident of the building and gave the following testimony to Al-Haq:

At ten to two I was washing my clothes. Suddenly, I felt the building shake. My daughter who was with me came from the kitchen and said “mummy they are shelling us.” I

began to leave the building with my daughter who was carrying the baby. We left by the stairs. I saw all the neighbours leaving their homes shouting and screaming. At this time we didn't know that it was the Palestinian Centre's office which had been hit. While on our way down we passed the third floor where the Centre's office is located. Smoke was bellowing from the floor. All the doors were blown off their hinges. I entered the floor with my daughter shouting "is anyone still alive?" We saw burnt and dismembered bodies as well as a severed head. There was blood all over the floor. Because of this scene we stayed a short while. I was screaming and shouting. I was taken to hospital because I was in shock. I was released after a few hours."¹³²

Qasem Jawdat Mahmoud Shammout who owns a shop on the ground floor of the building shared the following observations with Al-Haq:

"When the explosions occurred I was at the back of my shop. They fired two missiles one after the other. After the explosions I went to the street. I couldn't see much because of the smoke and dust. I then went to the other side of the street and started to shout. I looked up and saw that it was the Palestinian Centre that had been hit. I then looked at where my shop was located. The dust and smoke had settled somewhat. I saw two children covered in debris. The children were not moving. I shouted at the people to call an ambulance. An ambulance arrived about a minute later."¹³³

¹³² Al-Haq affidavit 252/2001.

¹³³ Al-Haq affidavit 253/2001.

CHAPTER III

SETTLER ATTACKS DURING THE INTIFADA

Settler attacks against the local Palestinian population occurs within the context of *de facto* tolerance on the part of the Israeli authorities. This has effectively created an atmosphere of impunity whereby the settlers are able to commit criminal acts against the local population without fear of prosecution or too stiff a sentence if apprehended. Al-Haq has documented a number of cases of settler attacks on the civilian population which has included the use of firearms, beatings, arson to homes and commercial property, destruction of crops as well as stone throwing at Palestinian vehicles that have occurred during the first year of the current uprising.

Settler attacks against the local population has been particularly prevalent in the H2 zone of Hebron, especially during periods of curfew. The extent of settler attacks in H2 is particularly marked considering the sizable Israeli military presence in the area.

The following testimony was given to Al-Haq by Waf'a 'Arafat Husni al-Husieni, 30 years of age and a housewife:

On 7 September 2001 at about 4:30p.m., a group of Jewish settlers attacked our house that is located in the al-Qasaba neighbourhood in Hebron. The settlers came from the settlement that is near the vegetable market in the city. My house is only 20 meters away from the settlement. The area where we live was under curfew when the settlers attacked us. My two and half years old brother, Khaled, usually likes to play on the roof of our house. When I heard the explosions of the shock grenades that the settlers had

thrown I went to the roof of the house. I found Khaled swimming in a pool of blood. I shouted and asked my other brother for help who came at once. Khaled was taken to hospital, but he was dead on arrival. The day after some soldiers came to our house and expressed their regret for the death of my brother saying “we are sorry for that.” On 3 November 2001 I heard some settlers talking to my mother. They asked her about the picture of Khaled that was hanging outside our house. They asked whether he was dead or not. They also asked about the picture of another person called Imad who was also dead. They then told my mother that they killed them and asked whether we wanted to die? They were speaking in Arabic and I could tell that the ring leader was about 20 years old.¹³⁴

The fact that settlers have easy access to weapons, being either army regulars or serving in the reserve units, has increased the danger they pose to the Palestinian population. In addition, many testimonies taken by Al-Haq indicate that soldiers were often present when Israeli settlers attacked Palestinian civilians, but did little to prevent them from causing harm to persons or damage to property. According to the head of the Israel police for the Shai District (West Bank), Major-General Shahar Ayalon, “... In the first months [of the intifada], the idea of “venting anger,” as they called it (IDF) – allowing the settlers to let off steam – was accepted.”¹³⁵ For example, during the night of the 1 and 2 April 2001, Israeli settlers from the adjacent “Avraham Avino” settlement came to the old city of Hebron. First, the Israeli settlers started to loot several Palestinian groceries, stealing most of their commodities, while Israeli soldiers stood by. Once the commodities were stolen, the shops were set on fire. In all, five shops were destroyed. The first shop was a grocery store encompassing an area of 132 square meters belonging to Muhammad Ibrahim Muhammad Abu-Hadid. Among the products sto-

¹³⁴ Al-Haq affidavit 397/2001.

¹³⁵ See “On the beat in Hebron,” by Baruch Kra, Ha’aretz Magazine, 4 January 2002 p 15.

len by the settlers were 400 gallons of self-made olive oil, 85 gallons of Syrian olive oil, 100 kg of garlic and a considerable amount of cigarettes. Similarly, the second shop, a supermarket belonging to Nidal Khalaf Mahmoud Abu-Hadid, was looted and destroyed. The third shop, which included a bakery owned by Marwan 'Azmi Shweiki, was also destroyed with an estimated loss of half a million NIS. As far as the fourth shop was concerned, the owner, Feisal Mahmoud Muhammad Abu-Hadid specialized in chicken and other poultry. The settlers stole the chicken, rabbits and 13 gallons of olive oil before burning down the whole shop with some animals still inside. The fifth establishment that was destroyed belonged to the barber Raja 'Abd-al-Ra'ouf Mahmoud Nader. Israeli soldiers present did not halt the settlers from looting and destroying Palestinian property.¹³⁶

On Thursday 21 June 2001, settlers blocked a number of major roads in the Hebron District. In the morning five cars driven by settlers blocked the entrance of Bani N'eim village. Eight cars carrying settlers blocked the Sa'ir junction and ten cars blocked the entrance of Halhoul. A group of settlers also took up positions near the 'Arroub refugee camp. All of the settlers were armed with automatic weapons. The settlers then proceeded to block the roads to all Palestinian traffic and were later joined by military personnel who did little to interfere with the settlers' activities. The roads were blocked to Palestinian traffic from 5-8 in the morning. Before leaving, the settlers blocked the road leading to Sa'ir with debris, which was not cleared until the following day. Both soldiers and settlers blocked the entrance to Bani N'eim until twelve in the afternoon.¹³⁷

The increase in settler attacks against the local population and the general lawlessness of their behaviour, such as blocking roads, occurs despite an Israeli procedure for the enforcement of law and order on Israeli offenders in the Occupied Territories. According to the procedure, the

¹³⁶ Al-Haq field report no.005/2001.

¹³⁷ Al-Haq Field Report on settler activity in the Hebron District, July 2001.

Israel police bear the responsibility for law enforcement in Israeli settlements and the IDF is responsible for the areas surrounding the settlements. Significantly, if the IDF reaches the scene of an incident involving a settler it is responsible for public order until the Israel police arrive. If there is prior information of an offence, the Israel police would bear primary responsibility for law enforcement.¹³⁸ From the affidavits taken by Al-Haq involving settler violence, it appears that the procedure is not being followed consistently, at least by the IDF, judging by numerous reports where soldiers actively assisted or acquiesced in settler violence towards the local population.

The issue of settler violence and the ineffectiveness and general unwillingness of the Israeli law enforcement agencies to deal with the phenomenon has been the concern of two major government investigative commissions in the last twenty years. The Karp Commission of 1981 investigated criminal offences by Israeli settlers against the Palestinian population of the Occupied Territories, and the Shamgar Commission, which investigated the events surrounding the massacre of 29 Muslim worshippers at the al-Ibrahimi Mosque in Hebron in February 1994 by Jewish settler, Baruch Goldstein. The Karp Commission headed by then Deputy Attorney General Yehudit Karp, concluded that the Israeli law enforcement authorities had failed to honour a commitment that was made to the High Court of Justice to show due diligence regarding events in sensitive locales and prevent unlawful actions. The Commission also found that the Israel police were lenient with settlers who refused to cooperate while being questioned and that the police themselves were ambivalent in their investigations of reported abuse. "The Inquiry Team's findings point out deficiencies in police performance in investigating events growing out of neighborly relations between Israelis and local residents in Judea and Samaria, and complaints of local residents against Israelis."

¹³⁸ See the Procedure for the Enforcement of Law and Order on Israeli Offenders in Judea and Samaria, and the Gaza Strip, September 1998.

The Karp Commission was particularly concerned by the fact that of 70 cases that it had perused, 53 were closed on grounds of “offender unknown” or “lack of evidence.” The concluding remarks of the Karp Report stated, “ [The Inquiry Team’s] initial impression is that the number of cases in this sphere whose handling ended in closure of the case – on the ground of offender unknown – exceeds the number acceptable in other spheres.” According to the Karp report, “The real situation points to a vicious circle in which occurrences aren’t investigated for the lack of a complaint, while complaints aren’t submitted because of a lack of investigation.”

According to a study carried out by then Member of the Knesset Dedi Zucker, which was disclosed in a Knesset inquiry in March 1992, of forty police investigations into offences carried out by Israeli civilians against Palestinians, suspects had been tried in only five cases. In addition, the government inquiry headed by Meir Shamgar, which was established to investigate the events surrounding the Hebron Massacre, found that law enforcement against settlers had failed and that for many years measures had not been taken to improve the situation. The inquiry also noted instances of police dereliction when investigating incidents involving settlers and the failure to implement the judicial processes against them. According to the Israeli human rights organisation B’Tselem, all Israeli law enforcement authorities- the army, the police, the State Attorney’s Office and the judiciary- implement an undeclared policy of leniency, compromise and failure to fully prosecute Israeli civilians who harm Palestinian residents of the Occupied Territories. In homicide cases involving the killing of a Palestinian by a settler, more often than not, if apprehended, the settler is sentenced for manslaughter and given a light sentence disproportionate to the gravity of the crime. In some cases of alleged settler killings the Israeli authorities had failed to even undertake an investigation.¹³⁹

¹³⁹ See B’Tselem: “Tacit Consent: Israeli Law Enforcement on Settlers in the Occupied Territories,” March 2001, pp 34 - 35.

The State Comptroller, Eliezer Goldberg, in his latest report found that more than 75 percent of cases involving complaints of the disruption of public order by Israelis that were still open in 1999-2000 were closed for “lack of evidence and insufficient public interest, without any indictment being filed. Our review found that the prosecution begins to deal with an investigative file five to 18 months after the file reaches the unit; therefore, when the police asked to complete the investigation, they encountered difficulties due to the time that has passed.”¹⁴⁰

The responsibility of an Executive Commander to ensure protection for the local population

As an occupying power, Israel is prohibited from settling its citizens in occupied territory and is obliged to ensure the safety of the protected population. Both the West Bank and Gaza Strip Area Commanders have a specific responsibility towards the local indigenous population due to their command responsibility over an occupied area. Under international law Area Commanders of occupied territory or Executive Commanders incur liability for failing to repress violations against the local population particularly where those violations are deemed to be crimes under international law. The responsibility of a military commander to the local population in the Occupied Territories was recognised by the Israeli High Court of Justice in H CJ/358/88 where it opined “The regional Commander is responsible for security and public order in the region, over which he has command... Establishing and maintaining order and security in practice are, under public international law, among the primary functions of the military administration.”¹⁴¹ Al-Haq’s own documentation during the first year of the intifada indicates that in the West Bank at least, the Area Commander had failed to discharge his responsibilities towards the protected population.

¹⁴⁰ Opcit “On the beat in Hebron,” p 15.

¹⁴¹ H CJ/358/88, The Association for Civil Rights in Israel v. OC Central Command.

Appendix 3-A

Testimony relating to the death of Farid Mousa 'Isa Nasasra, 29 years of age and from Beit Fouriq:

“Tuesday morning, 17th October 2000, I went to the hills with my family in order to harvest our olive crop. We worked for three hours in our field located 50 meters away from Israeli caravans established for the settlers. We were careful as we saw a group of settlers wandering around. At about 10 a.m., a settler standing near the caravans started shooting at us. We were really surprised as everything happened suddenly. Then, we heard a man named Abu Malek shouting that his son had been injured.

First we thought that the settlers wanted to scare us. But then, we realized that they were shooting to kill people as the firing increased. I started to shout in Hebrew to the settler to stop. Then he started shooting at me heavily. When he did so, I ran away and was injured in the shoulder. I kept running until I bumped into my uncle Raja Qasem Nasasra who helped me down the hill. There we met other cousins and we found out that Malek, Khaled and Farid were wounded. When I arrived I saw Farid bleeding from his chest and I realized that he was seriously injured. We took the wounded in private cars and we reached the checkpoint at the entrance of our town. The Israeli soldiers did not allow us to go through in order to reach the ambulances waiting on the other side of the checkpoint. The ambulances were not allowed to get through either. After 20 minutes we were allowed to leave. We went straight to al-Itihad hospital in Nablus. Farid died ten minutes after we reached the hospital.”¹⁴²

¹⁴² Al-Haq affidavit 095/2001. Name withheld from publication.

Appendix 3-B

Testimony given by Mifleh ‘Abd-al-karim Ahmad Ahmad, a carpenter from al-Sawiya:

“On June 5, 2001, at around 7 a.m., I saw an Israeli military jeep with 4 soldiers parked in front of my house. One soldier stepped out of the jeep and ordered me to get in. I spent one hour with the soldiers in the military vehicle during which I was subjected to an intensive interrogation in Hebrew. The soldiers asked me to give the names of people who usually threw stones near my house, and other similar questions. Finally they released me after one hour.

At 11:30 p.m. the same day, the same jeep and the same soldiers came back to my house and warned me that if anyone threw stones from within the area around my house, they would destroy it. At around midnight we were informed that a curfew had been declared for nine days. The next morning at around 7 a.m., I saw the jeep parked in front of my house once again. I said to my children not to go out because of the curfew and also because of the jeep. At the same time, I saw tens of cars and 5 buses full of Israeli settlers from the Shilo settlement arriving. They were of different ages, young and old. They were singing “this is the land of Israel.” The first thing they did was to talk to the soldiers. At that time there were ten soldiers. When the discussion was over, the soldiers left and the settlers started walking in the direction of my house. I could not see what kind of arms they were carrying. When they reached my house they destroyed my shop and burnt the small warehouse next to it, where wheat, coffee and olive oil were stored. My shop was partly burnt also and my tools were stolen.

I saw the soldiers coming back. They had been standing at a distance and observing the settlers from the beginning. They tried to disperse the settlers but without success. The presence of the soldiers did not stop the settlers. They later broke the main door of my house and entered. They went to the kitchen and ransacked it. They destroyed the fridge and the oven, and broke the plates and dishes. Then, approximately twenty settlers went up to the roof. Up there, they destroyed the rabbit pen and set up a kind of tent. Five soldiers went up with them. They occupied the roof together for at least two hours. After that, the soldiers ordered the settlers to leave, which they did.

My family was scared. I have 13 children, and 9 of them were present during the attack. Since this incident my youngest daughter, Ahlam, who is 3 years old, is afraid. She was deeply shocked. Since the attack she has nightmares every night. She is always asking me: “where are the settlers?, when will they come back?”

The settlers left the house and went in the direction of al-Lubban village around 2 km from my house. My house was the only one attacked by the settlers that day. They also burnt grape vines and the al-Sawiya girl school.”¹⁴³

¹⁴³ Al-Haq affidavit 124/2001.

Appendix 3-C

Testimony given by Dr. ‘Abdallah Mousa ‘Abdallah Abu-’Id, Professor at An-Najah University in Nablus:

“On Sunday, March 11, 2001, at around 11 a.m. I was on my way back to Nablus from a family visit in Beit Jala. When I arrived close to Doma village situated approximately 18-20 km from Nablus, I saw a brown car with a driver and a passenger coming from the opposite direction. Approximately three meters before this car reached mine I saw a hand coming out of the window and suddenly a stone struck my windscreen and hit me in my left shoulder. I did not lose control of my car and managed to park a few meters further down the road. I stepped out of the car. I saw a minibus coming towards me. I told the people inside to stop. The driver stopped for a few seconds and said to me that I should get going otherwise they would start once again. As I was getting into my car I noticed two small holes on the front door. The door handle had been crushed also by what I guessed were bullets. The noise of the bullets had been covered by the sound of the stone breaking the glass. I drove on and after a few minutes I arrived at the entrance of Nablus where there is an Israeli checkpoint. At the checkpoint I asked the two soldiers, aged approximately 25 and 35 if I could enter because I needed to go to the hospital. The soldiers reported my request to the commander who refused to let me in. He said that according to their information I live in Beit Jala, so I should go to the Beit Jala hospital. I told them what had happened to me on the road and that I wanted to lodge a complaint. The soldiers told me that without the plate-number I could not file a complaint. I also told them about the bullets in my door, but I did not get any answer. As I was not allowed

to enter Nablus through the main road I had to take a dirt road. I went to the Rafidiya hospital where I was x-rayed. My left shoulder was bruised all over but no bones were broken. I have kept the stone and weighed it; it weighs approximately 600 gr.”¹⁴⁴

¹⁴⁴ Al-Haq affidavit 067/2001.

Appendix 3-D

Testimony given by Muhammad Musleh, head of the Um Safa village council:

“On June 18, 2001, at 10:00 p.m. 300 armed settlers blocked the main entrance of the village and started shooting in the air as well as throwing stones at houses located at the entrance of the village. They also threw stones at cars parked in front of the houses. They destroyed a car smashing the windows, lights, doors etc. They also smashed the windows of a few houses. All of these activities took place in front of Israeli soldiers who did not intervene to stop the settlers. When young Palestinians decided to defend themselves and their properties, throwing stones at the settlers to make them go away, only at that moment did the soldiers intervene. They ordered the settlers to leave and shot tear gas canisters and rubber bullets at the young Palestinians. The confrontation between the Israeli soldiers and the Palestinians lasted approximately two hours. The settlers stayed at the scene, watching the confrontation from a distance. After two hours, some Israeli soldiers together with settlers brought a bulldozer to the main road and dug trenches.”¹⁴⁵

¹⁴⁵ Al-Haq affidavit 203/2001.

Appendix 3-E

Yousef Ibrahim ‘Abed Abu-Sbha is a Bedouin from the vicinity of Yatta in the Hebron District. Settlers destroyed his property on 3 July 2001:

“At around four in the afternoon, while I was in my tent, eight settlers arrived near where I was camped. They were young and armed. They entered my goat pen and started to butcher the goats. Two of them would hold a goat while a third would slit its throat. They killed twenty goats in this way. I stood and watched. There was very little that I could do. After killing the goats they then destroyed four water tanks and destroyed my wheat sacks scattering their contents in the process. They also broke our water pump. They then came into our tent. I thought they would kill my children. I have ten and three are disabled. They mixed our food, sugar, salt, oil etc together. They also stole the tent from over our heads. They then ordered me to leave the area.

I have now moved to a site which is a few hundred meters away. I have tried to return to the original site but the settlers always threaten me, even to kill me. I have been to the police eight times already, but they do nothing, they don't even protect me. I now have a fence around my current site. I have constructed a new tent from some old sacks. Before living in a tent I used to live in a cave, but settlers destroyed that also.”¹⁴⁶

¹⁴⁶ Al-Haq affidavit 332/2001.

Appendix 3-F

Al-Tmeizi Family from Ithna Village:

In one of the most shocking incidents of the current intifada, settlers attacked eight persons from the al-Tmeizi family with automatic weapons as they were on their way home from a wedding. Approximately 36 bullets were found in the al-Tmeizi family car. Muhammad Hilmi Msallam al-Tmeizi (21), Diya Marwan Hilmi al-Tmeizi (3 months) and Muhammad Salameh Msallam al-Tmeizi (24) were all killed in the incident. The other passengers in the car suffered light to moderate injuries.

Testimony given by “M”:

“On Thursday July 19, 2001, at approximately 9:15 p.m. I was on my way home from a wedding party with seven other members of my family. Muhammad Hilmi was driving our Peugeot 305. When we reached an intersection we saw a white car coming towards us. We stopped to give it way but the driver of that car made signs to give us way. Then the white car stopped. Muhammad Hilmi decided to drive on. A few seconds later the white car approached us and people in the car started shooting at us. The only thing I can remember is the noise of the bullets going in every direction. I was injured in my left leg, my right hand and my shoulder. I also received glass fragments in different parts of my body including my face. I felt I was going to die. People, including members of our family living approximately 30 meters from the scene, arrived and helped us. As for the other car, it continued on its way towards the Tarqoumiya checkpoint. I was taken to al-Ahli hospital in

the car of Ziyad al-Tmeizi a member of my family.”¹⁴⁷

Testimony given by Musleh Msallam al-Tmeizi, 52 years of age, a farmer from Ithna:

“On July 19, 2001, in the evening, I was in my house, located in al-Lyeh, north of Ithna and situated close to the main road between Hebron and Israel. Around ten friends of mine and other relatives were gathered at my house. At approximately 9:20 p.m. we suddenly heard heavy shooting close to the house. It lasted a few seconds, probably 5 seconds. First of all, we all tried to hide, as we were afraid of being hit by bullets. After the firing stopped, I heard a call for help. I did not recognize this voice. We went quickly in the direction of where the voice was coming from. When we got closer, we saw a car at the right side of the road. I saw a young man stepping out of the car. I shouted: “who are you?” He answered: “I am Hilmi!”

Then I understood it was Hilmi Najib Hilmi, one of my relatives. He pointed to a car that was fleeing in the direction of the Tarqoumiya checkpoint. As we approached the car I looked inside it and found out that the passengers were all members of my family. The driver, Muhammad Hilmi al-Tmeizi did not move. I saw that his head and chest had bullet wounds. Muhammad Salamah al-Tmeizi was sitting next to him. He also did not move. At the back of the car were sitting the girls, and also Diya, the 3 months old baby. I could see that most of them were injured. We started to help the injured by taking them out of the car. At that moment, an Israeli military jeep arrived. Hilmi went to talk to the soldiers. As he was pointing to the fleeing car, he told them in Hebrew that this car had shot at our family. He asked the soldiers to do something in order to stop the

¹⁴⁷ Al-Haq affidavit 205/2001. Name withheld from publication.

car at the checkpoint and to arrest the passengers. The jeep left without the soldiers taking a look at what had happened or helping us with the injured people.”¹⁴⁸

¹⁴⁸ Al-Haq affidavit 228/2001.

CHAPTER IV

DETENTION & TORTURE

During the course of the intifada, the Israeli authorities have conducted a widespread arrest campaign against suspected Palestinian activists. Many of those arrested were suspected of throwing stones at Israeli military personnel and or settlers in the Occupied Palestinian Territories or engaging in armed hostile activity or for being members of political factions. Many of those detained were arrested during clashes or during night time raids by the Israeli military on towns and villages. Al-Haq received reports and took affidavits from Palestinians who were severely maltreated during the arrest procedure. For example, Israeli soldiers seriously assaulted Munther Saleh, who is married and has three children, during his arrest. According to his affidavit, he was apprehended at al-Ram Junction on the outskirts of Jerusalem where he was brutally beaten until he fell unconscious. Saleh was held in detention for 40 days.¹⁴⁹

A. Incommunicado Detention

Numerous detainees were held *incommunicado* and a considerable number of the detainees were prohibited from receiving visits from their relatives. Sufyan 'Abd-al-Rahman 'Abdallah from Qatana village was arrested on 14 June 2001 and was held at the Russian Compound Detention Centre in Jerusalem. On 28 June an order was issued by the authorities prohibiting him from seeing his lawyer. He was held *incommunicado* for 26 days. Naser Mas'oud 'Ayyad from the Gaza Strip was arrested on 29 January 2001 and was detained at Shikma Prison where he was held *incommunicado* for a total of 42 days. Kamal Farouq Kaloti from Bir Nabala was arrested on 11 September 2001 from his home and was detained in the General Security Service's Interrogation Unit at the

¹⁴⁹ See Al-Haq affidavit 356/2001.

Russian Compound Detention Centre. Kaloti was denied legal representation, and his detention was extended for 14 days on 16 September by the Beit El Military Court,¹⁵⁰ which convened a hearing at the Russian Compound Detention Centre. Kaloti was not represented at the hearing. It was only on 26 September that Kaloti was allowed to meet with counsel.¹⁵¹

The authority to issue an order prohibiting meeting with counsel is vested in section 78 (g) of Military Order 378 (Order Concerning Security Regulations). The provision contained in the order grants a military commander the authority to detain an individual up to eight days prior to an appearance before a judge. The period of detention can be extended three times by a judge for a period up to 30 days. A military judge can extend the periods of detention up to 30 days each time up to a period of three months. A detainee can be deprived of his or her right to meet with counsel by an interrogator for an initial period of 15 days which can be extended for an additional 15 days. It should be noted that evidence against a detainee is often submitted in secret effectively conferring guilt until the opposite is proven.

During the current intifada many Palestinian detainees were denied the opportunity to meet with counsel for periods ranging from just a few

¹⁵⁰ A belligerent occupier is entitled under article 66 of the Convention to establish "properly constituted non-political courts." The establishment of military courts and the publication of penal provisions are sanctioned under international law as methods by which an occupant enforces law and order in an occupied territory. The Military Courts that operate in the West Bank and Gaza are founded in part on the Defence (Emergency) Regulations, Proclamation No.3 and its annexed Security Provisions Order issued by the Area Commanders. Military Courts are empowered to try all security offences as defined in Military Orders. Military Courts can also try criminal offences that may become security offences such as the incitement to riot. See Justice? "The Military Court System in the Israeli-Occupied Territories," by Paul Hunt, Al-Haq/Gaza Centre for Rights and Law, February 1987. See also Inquiry into the Israeli Military Court System in the Occupied West Bank and Gaza, report of a Mission by the International Commission of Jurists, 1990; See also A Nation Under Siege, Chapter six-"The military Justice System," pp 233-284, Al-Haq 1990.

¹⁵¹ See "Order of Meeting Prohibited by Israel's Security Services *Incommunicado* Detention Second Petition," Public Committee Against Torture In Israel, 6 October 2001.

days to weeks. The Israeli courts, usually on the grounds of “security,” often uphold *incommunicado* detention orders.¹⁵²

B. Administrative Detention

During the first year of the uprising over thirty Palestinians were held in administrative detention. Prior to the uprising, it was estimated that between four to seven Palestinians were in administrative detention. Administrative detention or internment is the imprisonment of an individual without charge or trial by an administrative procedure. In the Occupied Territories, executive authority is held by the Area Commander who has the power to authorize administrative measures against residents. The Israeli government abandoned administrative detention in 1982 but revived the practice on 4 August 1985 in the wake of the “iron fist” policy of then Defence Minister Yitzhak Rabin. An administrative detention order is usually issued for an initial six-month period, is subject to review and can be renewed indefinitely.

Administrative detention in the West Bank is based on Military Order 378 and its subsequent amendments.¹⁵³ An unnumbered order from 1970 similar to order 378 exists in the Gaza Strip. Military Order 378 is in its turn based on articles 108 and 111 of the British Mandate Defence (Emergency) Regulations 1945. Paragraph A of article 87 of Order 378 gives the military commander the powers to issue detention orders as follows:

If the area commander has reasonable cause to believe that reasons relating to the security of the area or public safety require that a particular person be detained he may, by order

¹⁵² *ibid.*

¹⁵³ For example amendments to Military Order 378 enacted in 1970 provided for procedures to appeal a judge’s decision to the President of the Military Courts (art. 87e) and detention orders were made subject to periodic review every three months by a judge (art. 87c). Note that during the first intifada on 17 March 1988 (Military Order 1229), the provisions governing administrative detention were amended granting any military commander in the Israel Defence Forces the authority to issue an administrative detention order. The last amended order on administrative detention is order 1466 of 6 June 1999.

under his hand, direct that such person be detained for a period stated in the order, provided that it shall not exceed six months.

Paragraph B gives the military commander the authority to extend the order indefinitely:

If the area commander has a basis for believing at the end of the period stated in the order issued according to subparagraph (a) (hereafter “the original detention order”), that reasons related to the security of the area or public safety continue to require the detention of that person, he may, by order signed under his hand, order from time to time the extension of the period of the original detention order for a period not exceeding six months, and the extension order shall be considered for all purposes as the original detention order.

Currently, before an administrative detention order can be issued, a detainee must be brought before a judge who reviews classified evidence against the suspect. The judge must weigh the evidence against the suspect before the decision to administratively detain is made. If the decision to administratively detain is in the affirmative, the detention order can be reviewed every three months.

‘Abd-al-Rahman al-Ahmar from the Dheisha refugee camp was arrested by members of the Israeli security forces on 24 May 2001. He was subsequently issued with an administrative detention order, which was renewed on 14 November 2001.

The human rights lawyer Daoud Dar'awi was arrested on 10 September 2001. On 25 October, the West Bank Area Commander issued a six months administrative detention order against him. Mr. Dar'awi was detained in Megiddo Prison in Israel. Ra'ed Ahmad Hani Qadri from Nablus was arrested on 20 June 2001 and was interrogated for 43 days at the Pitah Tikva Detention Centre in Israel. On 1st August he was issued with an administrative detention order for six months. Walid Hamdan Sulieman al-Froukh was arrested by the Israeli security forces on 3 June 2001

from his house in Sa'ir village and was administratively detained for six months.

Haytham Zakaria Abu-Rish, a seventeen year-old minor from Eizariyya on the outskirts of East Jerusalem was arrested on 6 September 2001 and was taken to Beit El settlement where he was held for three days. He was then issued with a six month administrative detention order which was reduced to four months. He was subsequently held in Megiddo Prison and is the youngest person so far to have been held under an administrative detention order during the current uprising.¹⁵⁴

Administrative Detention & International law

The freedom from arbitrary arrest and detention is an integral part of international human rights law and is enshrined in both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights. Article 10 of the Universal Declaration enunciates an individual's right to due process:

Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.

However, article 78¹⁵⁵ of the Fourth Geneva Convention does permit internment for imperative reasons of security. Nonetheless, protected persons accused of offences, and those convicted, must serve their period of detention in the occupied territory. This is based on the fundamental principle forbidding deportations as laid down in article 49. Moreover, internment should not be used as an instrument for punishment and is deemed to be an exceptional measure.

¹⁵⁴ Interview with Advocate Saher Francise, Adameer, 12 December 2001.

¹⁵⁵ According to article 78 (1) of the Convention, "If the occupying power considers it necessary, for imperative reasons of security, to take safety measures concerning protected persons, it may, at most, subject them to assigned residence or internment." Article 76 (1) stipulates "protected persons accused of offences shall be detained in the occupied country, and if convicted they shall serve their sentences therein....."

It is highly questionable whether the internment of many of the individuals currently in detention could be justified under article 78. The fact that most of the detainees are being held inside Israel is already an infraction of article 76 and concomitantly of article 49. The detention inside Israel of Palestinians protected by the Convention constitutes “unlawful confinement” within the meaning of article 147 and is thus a grave breach of the Convention.

Both Daoud Dar'awi and Abd-al-Rahman al-Ahmar are noted human rights activists, and in the case of Dar'awi, also an accomplished lawyer. Both are well known among the human rights community and it is extremely unlikely that they were engaged in activities that warranted the use of such an exceptional measure against their person.

C. Torture

Until September 1999 when the Supreme Court sitting as the High Court of Justice banned the use of torture, the practice was used systematically by the General Security Service (GSS) against Palestinians undergoing interrogation.¹⁵⁶ The methods of torture encompassed both physical and psychological aspects and included: confinement in tiny cells; forcing the body to adopt painful and unnatural postures, often for long periods of time (shabeh); pulling out of body hair; deprivation of sleep, food and medical care; beating and kicking of the body often with particular emphasis on the genitals; asphyxiation; the use of electric shocks; prolonged exposure to extreme temperatures; violent shaking and threats against the detainee and his family and on occasion sexual assault. For a considerable period of time, the Israeli government had maintained that the aforementioned practices did not in fact constitute torture, but were rather

¹⁵⁶ See “The Case Against Torture in Israel: A Compilation of Petitions, Briefs and other Documents Submitted to the Israeli High Court of Justice,” first edition, edited and translated by Advocate Allegra Pacheco, Public Committee Against Torture in Israel, May 1999. See also “Palestinian Victims of Torture Speak out: Thirteen Accounts of Torture during Interrogation in Israeli Prisons, Al-Haq 1993.

“unpleasant” methods of interrogation justified due to the circumstances in which the state found itself. As a result of these interrogation methods, a number of Palestinians died while in custody.

The Israeli interrogation practices were widely condemned internationally. The United Nations Committee against Torture in a 1997 hearing evaluating Israel’s adherence to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment concluded:

The methods of interrogation, which were described by non-governmental organisations on the basis of accounts given to them by interrogees and appear to be applied systematically, were neither confirmed nor denied by Israel. The Committee must therefore assume them to be accurate. These methods..... are, in the Committee’s view, breaches of article 16 and also constitute torture as defined in article 1 of the Convention. This conclusion is particularly evident where such methods of interrogation are used in combination, which appears to be the standard case....

The Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment defines torture as:

...any act which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishing him for an act he or a third person committed or is suspected of having committed or intimidating or coercing him or a third person, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

During the early years of the occupation, successive Israeli governments

denied the systematic use of torture by state agents during the interrogation of Palestinian detainees. However, from 1987, under the euphemism of “moderate physical pressure,” torture was effectively legitimized and condoned in Israel by the Landau Commission, a special Ministerial Committee established by the government to examine GSS practices. Though reports of torture started to rise steeply during the intifada from 1987 to 1993, there is strong evidence to suggest that the practice has been utilised systematically throughout the period of Israel’s occupation of the West Bank and the Gaza Strip. In 1977, The Sunday Times published a detailed article on allegations of torture during interrogation that was based on interviews with 44 former detainees. The Sunday Times article concluded that:

Torture is organized so methodically that it cannot be dismissed as a handful of “rogue cops” exceeding orders. It is systematic. It appears to be sanctioned at some level as deliberate policy....¹⁵⁷

In a diplomatic cable that was written in 1978 and leaked to the press, the American Vice-Consul, Alexandra Johnson, reported:

The post has assembled a body of first hand testimony indicating that Israeli torture of Arab prisoners may be a systematic practice...¹⁵⁸

Two widely reported scandals led to the establishment of the Landau inquiry into GSS practices. The first was the so-called “bus 300 affair” and was related to the extra-judicial killing of two Palestinians involved in the hijacking of an Israeli bus in 1984. The second concerned the conviction of an IDF officer on the basis of a false confession extracted under torture, the “Nafsu affair.”

¹⁵⁷ “Israel Tortures Arab Prisoners: Special Investigation by Insight,” The Sunday Times 19 June 1977.

¹⁵⁸ “Jerusalem 3239,” reprinted in Journal of Palestine Studies, Vol IXX, No.2 (Winter 1980), p 98.

On 30 October 1987, a government-appointed Inquiry Commission headed by former Supreme Court President Moshe Landau issued a report with recommendations consisting of two parts. The first part dealt with GSS practices concerning “Hostile Terrorist Activity” (HTA), the giving of false testimony about confessions extracted under torture by the GSS and the justification of “moderate physical pressure” during interrogation. The second part related to GSS interrogation methods and included a secret annex dealing with a set of guidelines for permissible interrogation practices. The Commission revealed that successive Heads of the GSS, their interrogators and legal advisors had since 1971 lied under oath during court proceedings in which Palestinian detainees had alleged they had been ill treated or tortured. Despite concluding that members of the GSS had committed perjury, criminal assault, and blackmail, the Commission recommended that no criminal prosecutions should be brought against any member of the GSS.

Moreover, the Landau Commission went on to effectively sanction the interrogation methods of the GSS and regarded such methods “to be defended, both morally and legally.” It concluded that the use of “moderate physical pressure” against those suspected of “Hostile Terrorist Activity” was unavoidable in order to save lives.

The Landau Commission Report recommended and justified the use of moderate physical pressure as follows:

The means of pressure should principally take the form of non-violent psychological pressure through a vigorous and extensive interrogation, with the use of stratagems, including acts of deception. However, when these do not attain their purpose, the exertion of a moderate measure of physical pressure cannot be avoided.

According to the Commission, the guidelines on the levels of force permitted during interrogations were laid out in the secret annex of its report.

The State of Israel claimed that “moderate physical pressure” was only used in extreme and exceptional circumstances, in order to prevent im-

minent armed hostile activity. The claim that “moderate physical pressure” was only used in exceptional circumstances was not, however, borne out by the facts. In a random survey initiated by Al-Haq in 1990-1991, of a total of 708 former detainees interviewed, (474 detained plus 234 interrogated), 636 persons were subject to torture or ill treatment.¹⁵⁹

During the period under which the GSS operated under the guidelines of the Landau Commission, torture was used systematically in order to obtain confessions about crimes already committed, to collect general information, and to intimidate and terrorize the general population. In many cases, those interrogated and tortured by the GSS were not even charged with any offence or where charged with offences such as stone throwing.

The Landau Commission adopted the position of the GSS that effective interrogation was impossible without using “moderate physical pressure.” The legal justification for this assertion was found in the defence of necessity provision laid down in article 34 (11) of the Israeli Penal Code. According to the article:

A person shall not bear criminal liability for an act which was immediately necessary in order to save the life, freedom, person or property, be it his own or that of another, from a concrete danger of severe harm stemming from the conditions existing at the time of the act, and having no other way but to commit it.

Thus, under certain conditions, exemption from criminal liability may be granted if someone who committed a criminal offence, for example a grievous assault, acted in defence of self or of others. By analogy, the Landau Commission interpreted that the State, personified by the GSS interrogators, could resort to the same legal argument when applying “moderate physical pressure” in order to prevent a “greater evil” and

¹⁵⁹ See “Torture for Security: The Systematic Torture and Ill Treatment of Palestinians by Israel,” Al-Haq, 1995.

protect its citizens from “Hostile Terrorist Activity.” The archetypical case brought forward was the “ticking bomb”; someone captured who had information about a bomb about to explode in a densely populated area.

The use of torture permitted by the Landau Commission under the euphemism of “moderate physical pressure” was not only a gross violation of international law, but was also argued to be inconsistent with Israeli law. According to Section 277 of the Israeli Penal Code, the use of force by public servants to extract information is punishable with imprisonment for three years.¹⁶⁰ The defence of necessity was utilised in order to obviate the proscribed practices enumerated in section 277 and grant GSS interrogators immunity from prosecution under the Israeli Penal Code.

The High Court Decision & Torture During the Intifada

On 6 September 1999, the Israeli Supreme Court sitting as the High Court of Justice outlawed specific interrogation techniques that had been widely used by the GSS and which amounted to torture. The prohibited methods included violent shaking, hooding, shabeh, playing loud music, and sleep deprivation. After years of effectively condoning torture, it was a welcome relief that the High Court, albeit belatedly, had decided to prohibit the practice. However, the ruling was not an equivocal prohibition on the practice of torture by the GSS and other organs of the Israeli security establishment. The prohibited methods were not explicitly defined as torture, and thus indirectly upheld the euphemisms which

¹⁶⁰ According to Section 277: A public servant who does one of the following is liable to imprisonment for three years:

- 1) uses or directs the use of force or violence against a person for the purpose of extorting from him or from anyone in whom he is interested a confession of an offence or information relating to an offence;
- 2) threatens any person, or directs any person to be threatened, with injury to his person or property or to the person or property of anyone in whom he is interested for the purpose of extorting from him a confession of an offence or any information relating to an offence.

were used by the security establishment to label the methods that were used systematically against Palestinian detainees.

Despite the ruling, torture could be used in exceptional circumstances and interrogators would enjoy immunity from criminal liability on the basis of the defence of necessity. Sleep deprivation and prolonged shackling were not prohibited as long as they were merely necessary for the interrogation process. The Court also indicated that the practices it deemed illegal would be accepted if specifically authorized by new legislation.

However, despite the High Court ruling, cases of torture have been reported by individuals detained during the current intifada. 'Abd-al-Rahman al-Ahmar, who was arrested on 24 May 2001 and was subsequently held in administrative detention, was reported by his lawyer Allegra Pacheco, to have been tortured. On 6 June 2001 Ms. Pacheco discovered that al-Ahmar had been shackled in tight handcuffs to a slanting chair for an entire day.¹⁶¹

Tareq 'Ukush from Jerusalem was arrested on 23 June 2001 while he was travelling along the Jerusalem-Ma'ale Adumim road. He was accused of being a member of Hamas and of carrying money and letters for the organisation from Jordan. He was eventually detained in Ashkelon Prison. According to 'Ukush, he was interrogated for almost 70 days, and was only allowed to see his lawyer after being held for 40 days. For the first three weeks Mr. 'Ukush was interrogated while being held in shabeh and was threatened with death if he didn't confess. The interrogators also threatened to arrest his family.¹⁶² At one point Mr. 'Ukush was placed in a cell with collaborators who threatened to kill him if he continued to refrain from making a confession.

Adnan al-Hajar, the legal co-ordinator of the al-Mizan Human Rights Centre based in the Jabaliya Refugee Camp in the Gaza Strip was ar-

¹⁶¹ See press release from the Palestinian Human Rights Monitoring Group and the Public Committee Against Torture In Israel, "Military Recommends Extending Administrative Detention," 6 November 2001.

¹⁶² Al-Haq affidavit 357/2001.

rested on 23 April 2001 at the Rafah border crossing by members of the Israeli security forces. Adnan al-Hajar was subsequently taken to Ashkelon Prison where he was held for a month. According to al-Hajar, he was interrogated on average five days a week for twenty hours each day. He was held in shabeh- made to sit on a low stool for twenty hours at a time with his hands and feet cuffed. He was interrogated about purported links to a variety of political factions and was encouraged to make a “confession.” Adnan al-Hajar was released on 23 May without charge.

Walid Abdel F'th 'Amer was arrested on 28 September 2001 from his home in Beit Ummar village. He was taken to the Ashkelon Detention Centre and then subsequently to the Russian Compound Detention facility in Jerusalem. In an affidavit to his lawyer, 'Amer stated he arrived at the Ashkelon Detention Centre at 6.30 in the evening of his arrest where he was medically checked and then taken to the interrogation room. An interrogator calling himself “Carmel” accused 'Amer of being a leading figure in the Popular Front for the Liberation of Palestine and of carrying out attacks against Israelis. Another interrogator calling himself “Tony” threatened to arrest his wife and told him if he didn't cooperate he would lose his baby. 'Amer reported that for most of his interrogation he was kept in shabeh and for the first three days was allowed to sleep for only six hours. He reported being prodded by the interrogators and stated that at one point he was kept in a cell without windows where there was a loud ventilator. The cell had only a hole for a toilet and there was no toilet paper. He was kept in this cell for three days before his interrogation recommenced. On 19 November 'Amer was issued with an administrative detention order and was detained in Megiddo Prison in Israel.¹⁶³

¹⁶³ ibid

D. The Ill-Treatment & Torture of Minors During the Intifada

According to Defence for Children International: Palestine Section, approximately 600 children were arrested in the West Bank and 160 were detained in Israeli prisons and detention centers during the first year of the uprising. Two female children were detained in Ramle Prison, 80 to 85 male children were held in Telmond Prison and Al-Haq listed 52 male child prisoners held in Megiddo Prison with adult detainees. One of the male child prisoners detained in Megiddo is in administrative detention. Once arrested, children are often victims of ill-treatment which includes beatings and torture during interrogation. Many are deprived of a fair trial and spend their period of detention either with juvenile criminal prisoners or with adult security prisoners inside the territory of the State of Israel.

The use of intimidation and ill-treatment by the Israeli military starts with the child's arrest in his house, most often at night. A large number of soldiers would usually enter the child's house sometimes wearing masks or with their faces smeared with camouflage grease. The child is then ordered to follow them, sometimes slapped, and usually no reason is given for the arrest. The parents are not allowed to accompany their child nor are they told where he is being taken. The following affidavit was given to Al-Haq by Ibrahim Za'oul (16):

On the night of 19 January 2001, and more specifically after midnight, I was in my house sleeping when I suddenly heard heavy knocking on the door. My father Ibrahim 'Ayed Za'oul, went to open the door but before doing so he said: "who is it?" From outside someone answered in a heavy Arabic accent: "We are the army, open the door." My father opened the window on our door and weapons were pointed at his face. Someone ordered him to be quicker in opening the door. My father opened the door and switched on an external light that is above the door. At that moment, one of the soldiers shot it out. Three people entered the house.

They were wearing civilian clothes and their faces were hidden by black masks. I remember one of them wearing black pants and a white T-shirt with the inscription in English "Fox." He introduced himself to my father as "Moshe" and said to my father: "Who are your sons?" My father answered Ashraf, Ibrahim, Muhammad and 'Umar. "Moshe" asked: "Where is Ibrahim?"

My father pointed at me, and "Moshe" came towards me and told me that I had 5 minutes to change my clothes or else he would carry me away in my nightclothes. I would like to be precise, after the three people entered the house, they were followed by no less than 15 soldiers wearing military fatigues and carrying guns, and they entered all the rooms of the house, spreading fear among my sisters. I changed my clothes and then the officer "Moshe" took my ID from my father. I was pressing my mother's hand who in her turn said: "Last week you arrested my son Ashraf, and today Ibrahim, why?" "Moshe" responded: "If he was two years old, we would not have arrested him." The conversation with my mother was in Arabic. When the discussion ended two soldiers came towards me and grabbed me by my arms and took me out of the house. Outside the house there is an iron gate at the main entrance and as we reached it they pushed my head against the gate, and I felt a strong pain in my head. We continued walking and as we arrived at the jeep a soldier hit me violently with his foot in the middle of my right leg. I fell down and he pulled me up by force and I found myself standing in front of a white jeep. I saw something coming and going in the area and I think it might have been the vehicle of the intelligence officer responsible for the village. Inside the middle of the jeep, a person was sitting on a car tyre lying on the floor of the jeep with his eyes blindfolded and his hands shackled behind his back. The soldier took a piece

of white cloth and blindfolded me and tied my hands behind my back with a plastic rope. He slapped my face and they pushed me onto the other person sitting in the jeep.¹⁶⁴

Salem Za'oul had a similar experience:

On 25 October 2000, at exactly midnight, I was sleeping in my house in Husan village when I was surprised by two soldiers who were inside my room. They had painted their faces with colours. I pretended to be asleep when one of the soldiers hit me with his gun twice in my stomach. I was lying on my bed and jumped up. The Arab soldier said in Arabic "Come to me" and a third soldier came with a masked face and the Arab one said to me in Arabic "What's your name?" I said Salem. Then he looked at a paper that he had with him and shook his head and then talked in his walkie-talkie. Then he said "Put on your clothes" and after I dressed the two soldiers grabbed me and I asked "where are you taking me?" and then a third soldier, maybe he was the officer, said "We will talk with you for an hour, then we will bring you back." Then my father entered the room and said "Go with them and you will come back." As I was going down the stairs of our house, one of the two soldiers pushed me and I rolled down the whole staircase. There was pain in my hands as they were tied behind my back. The masked officer was inside my room talking with my father and after I passed the door of the house and stopped, a soldier tied a blindfold over my eyes. They put me in a small police bus which I saw before they blindfolded me. After the bus moved soldiers started beating me all over my body. I asked on the way "Where I am going?" and a person in the police bus said in Arabic "You will go to Ramallah and we will kill you."¹⁶⁵

¹⁶⁴ Al-Haq affidavit 209/2001.

¹⁶⁵ Al-Haq affidavit 181/2001.

The Use of Torture Against Child Detainees in Detention Centres

After their arrest, Palestinian minors are brought to detention centers where they are interrogated. It is usually during the child's interrogation in detention centers that he is subjected to torture and other cruel, inhuman or degrading treatment prohibited by article 37, paragraph a, of the Convention on the Rights of the Child and by article 32 of the Fourth Geneva Convention as well as by the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment.

Palestinian children are exposed to psychological methods of pressure on the part of Israeli interrogators. These methods include verbal threats, including death threats and threats of physical violence, and various types of verbal abuse. Moreover, physical methods of pressure are used including:

- Repeated beatings all over the child's body for prolonged periods, using sometimes wooden sticks, rifle butts, wires or other objects
- Repeated slapping and kicking
- Stamping on the child's body
- Emptying cold water buckets on the child's head
- Pushing the child's head down the toilet bowl
- Pouring alternatively cold and warm water in the child's ears
- Removing part of the child's clothes and forcing him to stay outside in cold and rainy weather
- Firing plastic pellets from a gun into the child's face after proffering death threats
- Placing a bad smelling sack on the child's head and pulling the rope to tighten it around the child's neck

A fifteen-year-old Palestinian boy gave the following description to Al-Haq of his experience with Israeli interrogators at the Gush Etzion Police Station, recorded in affidavit 178/2001:

When I got out of the car inside Gush Etzion I was hand

cuffed...There were three people in civilian clothes, one of them was called Captain "Ayoub." I didn't know the names of the other two. "Ayoub" is of middle height, with a small beard, a little fat and he was blond. They made me enter a room, and started asking me "Did you throw stones?" and "Who was with you?" When I did not confess the three of them started beating me with a wooden stick all over my body for an hour or two hours during which they interrogated me. One of them hit me with the cross and butt of a gun on my back. Then the three of them carried me and put my head inside the toilet bowl. They emptied two buckets of cold water over my head and then one of them brought a spray bottle used for cleaning and started spraying cold and hot water in my ears after they took my head out of the toilet bowl. Then "Ayoub" said "Your prophet Muhammad who descended on al-Aqsa is the brother of a prostitute." He ordered me to confess but I did not admit to anything. "Ayoub" and the two other persons with him threw me on the ground and stamped on me. This continued for about eight to twelve hours inside that room. They used these methods of alternating cold and hot water and putting my head inside the toilet bowl for an uncountable number of times. Then they took me out of the room and made me enter the room of two persons called "Shawkat" and "Moshe." My eyes were blindfolded all the time. They interrogated me on the subject of stone throwing and threatened me and frightened me but they did not beat me. It lasted for an hour, and then they took me to a military jeep and I was taken to the Al-Majnouna military camp in Hebron.

Palestinian children have also been subjected to degrading treatment while being held for interrogation in the Gush Etzion Police Station as described by this 16 year old boy in affidavit 177/2001 taken by Al-Haq:

"Moshe" made me enter a bathroom and there were three others with me. We were all shackled and blindfolded and

there was a very bad smell and there was no window there. For a long time, until sunset, we were standing around in the bathroom. A person entered and made us stand against the wall and sat himself on the toilet to use it for half an hour. If one of us moved, we would be beaten. After he finished using the toilet, we tried to flush it. He hit us, left and locked the room. The smell was very bad. We stayed inside the bathroom until 7 a.m.....

Conditions of Detention

Whereas child detainees are upon their arrest brought to detention centers inside the Occupied Territories, and do sometimes spend long periods of detention in these centers, they are subsequently transferred to prisons inside the territory of the State of Israel in violation of article 76 of the Convention. These practices have grave consequences on the possibility for the child to receive family visits. Family visits to detention centers are effectively prohibited. Since the beginning of the intifada, families have encountered tremendous difficulties in visiting their children detained in prisons in Israel because of the closures imposed on the Palestinian territories and due to the recurrent denial of permits to enter Israel. For example, all visits to Palestinians detained in Megiddo Prison were effectively prohibited, denying Palestinian minors detained there the possibility of receiving family visits. This amounts to cruel treatment, particularly in cases of prolonged detention. Palestinian lawyers have also experienced difficulties in visiting child detainees.

Another matter of grave concern is the placement of Palestinian child detainees arrested for “security reasons” with criminal prisoners in Telmond Prison. This has resulted in these children being subject to ill treatment, theft of their belongings and threats and verbal abuse from their fellow detainees. Sexual harassment and attempted rape have also been reported by some children detained in Telmond. Despite this, the Israeli prison authorities continue to mix security and criminal child detainees.

An Affiant gave the following testimony on the conditions of detention

in Telmond prison in Al-Haq affidavit 178/2001:

A policeman called Ofer received me and said “I will send you to your cousins (...) in section two”, they then put me in the section for criminal prisoners. I was there for five months (...). I was constantly exposed to harassment from the criminal prisoners. I was threatened with razor blade cuts to my face and was insulted (...) and there was an attempt to steal the clothes I was wearing. There was an attempted rape on..... and on..... in two separate incidents. For the incident with.....I remember that these people took..... inside one of the rooms of the section and put a razor blade to his face and threatened him that if he did not allow them to rape him they would cut him with it, but he refused and shouted. The police came and took him out of the room. As for., they took him inside a room and threatened to hit him if he did not let them rape him. He shouted and the policeman came and took him out of the room. I witnessed these attempts with my own eyes as I was in the room opposite where the incident happened. As for..... the same thing happened to him and I was in the room opposite and at a distance of two meters. The incident took place in the same room and I do not remember the date. It is difficult for a human being to describe the sufferings and the life among those criminals. We are of a young age and our number is small, the number of “security” prisoners was less than twenty detainees distributed between the sections.

A child can be detained like any other protected person. A child can be detained for having committed a breach of penal law in the occupied territory or having committed acts prejudicial to the security of the occupying power. However, as noted in article 77(4) of Protocol I, a detained child must be held in quarters separate from adult detainees except where families are accommodated as family units. Moreover, it does appear that the children held by the Israeli authorities were detained largely because of allegations of stone throwing. There is precious little

evidence to suggest that detained minors were guilty of acts that could legitimately be construed as being prejudicial to the security of the occupying power. The scope of the arrest campaign against children, and the numerous reports of ill treatment and torture suggest more sinister motives were behind the round up of minors, such as intimidation, attempts to coerce information from individuals and an attempt on the part of the Israeli authorities to deter minors from participating in demonstrations and stone throwing.

Torture: A Grave Breach of International Humanitarian Law

Article 32 of the Convention requires the Occupying power to treat protected persons in its hands in a humane manner. This is further augmented by the prohibition of certain acts considered to be absolutely incompatible with the notion of humane treatment. Among the acts explicitly prohibited by article 32 are torture and any measures of brutality that may cause physical suffering.

The prohibition of torture spelt out in article 32 is absolute. According to the Commentary to the Convention it covers all forms of torture, “whether they form part of penal procedure or are quasi- or extra-judicial acts, and whatever the means employed.”¹⁶⁶ Article 31 prohibits the exertion of any sort of coercion on protected persons for the purpose of collecting information:

No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.

The prohibition covers both physical and psychological forms of pressure. It applies to all cases of coercion, whether direct or indirect, and includes for example threats to subject other persons to severe measures. Under article 147 of the Convention, torture and inhuman treatment are amongst the acts defined as “grave breaches” entailing individual liability for those who ordered and directly committed the prohibited act.

¹⁶⁶ Opcit Commentary to the Fourth Geneva Convention p 223.

Appendix 4-A

The Detention and Torture of Human Rights Lawyer Daoud Dar'awi

Advocate Daoud Dar'awi was arrested at the Allenby Bridge as he returned from Jordan with his wife and daughter. Pursuant to his arrest, Dar'awi was taken to the Shikma Detention Centre in Ashkelon where he was held in a cell 1.5 metres by 2 metres for fifteen days. The cell was infested with cockroaches and mice.

Considerable pressure was placed on Dar'awi by the interrogators to confess. He was told that he would be held in interrogation for 180 days and that he would be sentenced to 15 years imprisonment. One interrogator told him that he would leave the interrogation paralysed.

Mr. Dar'awi was handcuffed and his feet manacled while seated in a chair which itself was secured to the floor. He was held in this position for a considerable period of time. The handcuffs were tightened until Mr. Dar'awi's circulation began to be impaired. He was not permitted to sleep, and due to being held in unnatural positions for long periods at a time, Mr. Dar'awi began to experience pain in his back and right leg.

In a court appearance on 24 October, pursuant to a review of his case, the judge ordered the release of Mr. Dar'awi but conditioned his release on the substantial payment of bail by his family members. Upon the court ruling, the prosecution produced an administrative detention order for six months against Mr. Dar'awi to take effect on 25 October 2001.

Mr. Dar'awi was accused of being a member of the Students

Workers Front while a student at al-Quds University. According to the Israeli authorities, the Students Workers Front is an affiliate of the Popular Front For the Liberation of Palestine. The Students Workers Front is one of many organisations on Palestinian University campuses that organize social events and participate in student government at universities. Such organisations are a key part of student life and most students are affiliated to such organisations while pursuing their studies. Many of these organisations are affiliated to political parties and movements outside of a university context. The accusations against Mr. Dar'awi revolve around his membership of the Student Workers Front and from purported evidence gathered from two detainees questioned in 1996.

Appendix 4-B

The Detention and Torture of Munther Daoud Hasan Saleh, 33 years of age and a teacher from Bitouniya:

“At around 4.20 p.m. in the afternoon of 9 November 2000, I was arrested at al-Ram Junction on the road between Ramallah and Jerusalem. At the time of the arrest, I was in my private car which was being driven by my wife. When we arrived at the junction, a military jeep from the opposite direction drove towards our car. Soon after, about five to six soldiers jumped from the jeep. They opened the doors of the car and pulled me out. I was forced to lie on the ground. They then started to beat me all over my body. They then bound my hands behind my back with plastic cuffs. They also placed a sack over my head. Then, the next moment, I was on the floor of the military jeep. After a while I was taken from the jeep with my hands bound and the sack over my head. I was left outside for about an hour. Then someone came and checked my clothes and took everything, my papers, money etc. I was then taken back to the jeep. I was on the floor of the jeep, with my face to the floor. One of the soldiers sat on my back. I felt I was suffocating. The jeep drove for about twenty minutes and then I was transferred to another vehicle. One of the men in the jeep told me he was an officer in the Shabak (GSS). He asked me my name and replaced the sack with a piece of cloth, which was tied around my head. I was taken to a detention centre. I think it was the Russian Compound. I was given a medical examination and the cloth around my eyes was replaced with a pair of dark glasses. My legs were then manacled and I was taken to a cell where I stayed for about two hours. I was then taken with my limbs bound to a car. The car journey was for

about two hours. As we drove I saw a sign on the road saying “Ashdod.” I then realised that I was being taken to the Ashkelon detention centre. When I arrived I went through the usual security check. I was given new clothes and the nurse told me that the time was eleven o’clock. I was then taken to a room where I was forced to sit on a small chair with my hands cuffed behind my back and my legs manacled to a fixture to the floor.

An interrogator called “Robert” told me he was an officer in the Shabak and said that I was at the Ashkelon detention centre. He gave me a cigarette, coffee, a sandwich and allowed me to go to the toilet.

During the first eight days, the interrogation was intensive, and lasted around twenty hours each day. At one point during the interrogation, one of the men sat me on the toilet and sprayed cold water all over my body. I felt so cold. I was shivering. They also switched on the air conditioner. I remember once they left the air conditioner on for about eight hours. I began to feel a pain in my body. In all the interrogation rounds my hands and legs were bound. After eight days, my detention was renewed for 25 days. The interrogation rounds continued. The only respite was on Fridays and Saturdays. At one point during the interrogation, the interrogator placed his foot on my chest and applied pressure.

I was also held in shabeh repeatedly. I was forced to sit on a chair in a corridor with my hands bound to the back and chained to a pipe and my legs bound to a fixture in the floor. The dark glasses were left on my face. I was held in shabeh for perhaps nine hours in total. I was also placed in solitary confinement for about twelve days.

I was interrogated for a total of 54 days. After this I was

issued with an administrative detention order for six months which I spent in Megiddo Prison. I was released on 25 May 2001.”¹⁶⁷

Appendix 4-C

List of Administrative Detainees (September 2001)

Name	Detained since
Hasan Khader Muhammad Shtayya	1 December, 2000
Tha'er Sa'id Saleh Younes	22 May, 2001
'Abd-al-Qader al-Ahmar	24 May, 2001
Majdi Ibrahim Mahmoud 'Alawna	5 June, 2001
Ra'ed Ahmad Hani Qadri	20 June, 2001
Ra'ed Rajeh Mahmoud Hanani	20 June, 2001
Mustafa 'Isa Mousa	26 June, 2001
Nayef 'Asi	30 June, 2001
Ayoub Sha'rawi	8 July, 2001
'Umar 'Abd-al-Halim Muhammad Khanfar	18 July, 2001
Naser Ahmad Yousef Shura	19 July, 2001
Mousa Ibrahim Mousa Zahran	24 July, 2001
Mahmoud Rafiq Mahmoud Qawariq	26 July, 2001
Naser Abu-Qabeita	26 July, 2001
Walid 'Ali	30 July, 2001
Majdi Ahmad Muhammad al-Tarif	9 August, 2001
Salim Taha Mousa 'Ayyash	16 August, 2001
Muhammad al-Hawamda	6 September, 2001
Haytham Zakaria Abu-Rish	6 September, 2001

¹⁶⁷ Al-Haq affidavit 356/2001.

CHAPTER V

PROPERTY DESTRUCTION

Throughout the first year of the intifada, the Israeli military authorities destroyed private homes and public buildings, including police stations, uprooted hundreds of olive trees and swept large swathes of agricultural land. Much of this destruction was justified under the rubric of military necessity or done in reprisal.

If a hierarchy of destroyed objects in relation to basic human needs were to be established, the demolition of individual family dwellings would probably be regarded as the most symbolic representation of dispossession and of the utter disrespect for the human person that has characterized Israel's response to the Palestinian uprising. The upholding of human dignity is a central commitment of the High Contracting Parties to the Fourth Geneva Convention of which Israel is a state party.

The destruction of family dwellings was most marked in the Rafah and Khan Younis districts of the Gaza Strip. Most of these homes were little more than shacks belonging to refugees from the 1948 Arab-Israeli war. According to UNRWA:

In the Gaza Strip by the end of September [2001] the total number of houses that have been demolished as a result of Israeli military operations since the start of the crisis reached a total of 196. These had accommodated 291 families; totaling 1,541 persons - 154 of these houses had accommodated 240 refugee families, totaling 1,235 persons.....¹⁶⁸

¹⁶⁸ Source: UNRWA Emergency Appeal Tenth Progress Report: September 2001.

During the current uprising Palestinian dwellings close to Jewish settlements have been the primary targets of destruction. As Amnesty International notes:

In the name of security Israel appears to be planning to create a “no-go” area of between 70 and 500 meters wide around every settlement and every military installation. Many demolitions are also carried out as collective punishment in reprisal for attacks on Israelis.¹⁶⁹

In its own investigation into property destruction in the Gaza Strip, B’Tselem observed that around the border of the Netzarim settlement the IDF had destroyed a 500 to 700 metres wide strip of land. The IDF had also constructed a one-and-half kilometres long road for settlers and had uprooted trees and destroyed crops on both sides of the road. Around the Morag settlement B’Tselem noted that more than 600 dunums of land from the settlement to the main roads surrounding it had been destroyed and at the Kfar Doram settlement 200 dunums of land surrounding the settlement had been destroyed.¹⁷⁰

In some cases, the IDF destroyed Palestinian homes based on the pretext that these houses were used as “bases” for gunmen shooting at Jewish settlements or IDF installations protecting those settlements. Arguments of “legitimate self-defense” as well as “security” have been proffered often without providing convincing evidence. One of the cases documented by Amnesty International concerning the demolition of Palestinian homes in Khan Younes illustrates very well Israeli practice on the ground:

At 11:20 p.m. on 10 April 2001 a number of tanks accompanied by three bulldozers crossed over al-Tuffah checkpoint in the Gaza Strip from the Gush Qatif settlement bloc. The incursion took place without warning and according to news agencies there was a six-hour barrage

¹⁶⁹ Opcit “Broken Lives-A Year of Intifada,” pp 84-5.

¹⁷⁰ See B’Tselem: “Israel’s demolition of Houses and Destruction of Agricultural Land in the Gaza Strip,” February 2002, pp 7-8.

of fire on homes before the bulldozers started to demolish houses near the checkpoint. A total of 28 houses were bulldozed and totally demolished; others were partly demolished and damaged. Two people, including a local resident, were killed. Twenty-six people, including four ambulance workers evacuating the wounded, were listed as wounded by shrapnel during the operation, which forced at least 240 Palestinians from their homes.¹⁷¹

Jihad Abu-Lawz, whose tent was pitched by the ruins of his former house, told Amnesty International:

There was the noise of tanks and bulldozers. Some people coming from the sea said they saw bulldozers and heard tanks moving. We were expecting something to happen, because people said the Israelis might raze our houses... At 10 p.m. the only thing we could do was to flee the area... We took our children and escaped from our home, we and the people of the area... We saw bulldozers coming in ... They began razing our houses, there were two airplanes firing at people... tanks firing... and the bulldozers razing the houses. So we escaped into the refugee camp... Nearly until 4 a.m. the demolition was continuing and the firing. Afterwards they began to withdraw. While they were doing so they continued demolishing houses... They swept away our houses though we did nothing wrong...¹⁷²

Some apartment blocks near al-Tuffah checkpoint had been used to fire bullets or mortars into the settlements, but these were no longer inhabited and were not destroyed in the incursion. The houses demolished, previously visited by Amnesty International delegates in January 2001, were poor one-storey structures inhabited by refugees.

The IDF recorded the incident as follows:

¹⁷¹ Opcit "Broken Lives," Amnesty International, pp 85-86

¹⁷² *ibid* p 86.

Following the continuous shooting attacks that have recently occurred in the area of the community of Neveh Dekalim, including mortar bomb fire, the IDF operated last night to destroy the Palestinian buildings from which shootings were perpetrated in order to prevent further terror attacks against civilians and soldiers. During the operation, fire was opened towards IDF soldiers and mortar bombs were fired towards communities and positions in Gush Qatif. IDF forces returned fire towards the sources of the shooting. Our forces did not suffer casualties. The IDF spokesperson clarifies that yesterday's operations are a part of the IDF's continuous operations intended to directly strike the parties responsible for terror. The IDF will not permit attacks upon civilians and IDF soldiers, and will take all necessary steps to protect their well-being.¹⁷³

On July 10 2001 the IDF destroyed eighteen houses in the Rafah refugee camp making over 200 people homeless. The IDF justified the destruction "because of the immediate need to protect soldiers moving along the road."¹⁷⁴

Israeli Defense Minister Ben Eliezer, when questioned by Meretz MK Ra'an Cohen on IDF practices regarding the destruction of Palestinian property in Gaza and the West Bank, replied that "from the beginning of this intifada, the IDF demolished 300 houses and 175 agricultural housing facilities in the Gaza Strip. The Israeli military uprooted 5,500 dunums of trees and 4,500 dunums dedicated for the cultivation of vegetables." Ben Eliezer unequivocally indicated that military personnel had a right to uproot trees and bulldoze the land, a right bestowed on every field officer and commander of the Israeli military. Questioned on incidents of settler violence, Ben Eliezer retorted "there had been 140 incidents of settlers disrupting public order in the West Bank and 10 incidents in the Gaza Strip. The question raised if settlers' houses had

¹⁷³ *ibid* pp 85-7.

¹⁷⁴ See IDF press release 10 July 2001.

been demolished in reaction to “disrupting public order” elicited the reply: “I do not know of any demolished houses of settlers or if any file concerning criminal conduct by Israeli settlers against the Palestinian civilian population has been opened.”¹⁷⁵

Ben Eliezer’s reasoning is clearly outside the legal ambit protecting property in an armed conflict or in instances of belligerent occupation. During the course of the intifada, the wanton destruction of Palestinian property has found strong support as illustrated by mainstream Israeli political discourse describing Israeli actions as ‘retaliatory acts’, and illustrated by official Israeli statements employing the phrases “in response to” or “in reaction to” Palestinian violence – commonly referred to by Israeli officials as “Palestinian terrorism”, a terminological shift that has gained increasing currency since the attacks on September 11 in the U.S. – exhibiting the retaliatory intention and implicit threat of the use of force aimed at both civilians and their property. It is submitted here that during the first year of the intifada, Israeli destruction of Palestinian property could not be legally justified when measured against the standards set down in the Fourth Geneva Convention. Moreover, a thorough examination of Israeli practice with regards to property destruction indicates the systematic commission of grave breaches as enumerated in article 147 of the Convention. In Al-Haq’s view, the destruction has been both wanton and illegal and cannot be justified on the grounds of military necessity as understood within the parameters of the Convention. As Von Glahn notes:

[L]ittle doubt can be found today for the view that military necessity cannot set aside the laws and customs of war and that a military commander cannot evade responsibility for his acts through a plea of necessity if there exists a *positive* prohibition, in customary or especially in conventional law, against a certain practice.¹⁷⁶

¹⁷⁵ See Al Ayyam, “Response to the questioning by Member of Knesset,” 7 December 2001, p.5.

¹⁷⁶ Gerhard Von Glahn, “The Occupation of Enemy Territory... A commentary on the Law and Practice of Belligerent Occupation” (Minneapolis: 1957) p 226.

Legal Provisions

Articles 33 and 53 in conjunction with article 147 of the Fourth Geneva Convention are the most relevant provisions aimed at the protection of property located in occupied territory.¹⁷⁷ In the context of the current conflict, it is essential to interpret article 53 in conjunction with article 33, which prohibits collective punishment and reprisal.

Article 53 of the Fourth Geneva Convention stipulates that:

Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or co-operative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

The reservation of the prohibition, commonly referred to as *military necessity*, to destroy real or personal property constitutes the possible legal justification upon which the Israeli military may claim its right to destroy Palestinian property. Both requirements and implications of military necessity with regards to property destruction will be analysed below.

The mere use of the term occupation lacks a crucial additional paradigm which would illustrate more accurately the reality that has been established by Israel in the West Bank and Gaza Strip in total disregard of the stipulations of international humanitarian law. In addition to occupying, Israel has been in the process of actively colonizing the Palestinian Territories with a vast and continuously expanding colonial structure best exemplified by the settlement enterprise. Over 300,000 Jewish settlers are living in approximately 200 Israeli settlements, which effectively prevent Palestinian territorial contiguity. Israel's ongoing attempt to fully integrate Israeli settlements into the infrastructure of the state also re-

¹⁷⁷ Article 6 (b) of the Charter of the International Military Tribunal of Nuremberg describes, "the wanton destruction of cities, towns or villages or devastation not justified by military necessity" as a war crime.

quired the development of an extensive by-pass road network that also encircles and dissects Palestinian communities. Hence, the colonial structure that has been established in the Palestinian territories not only reflects Israel's annexationist imperative to transform the demographic character of the territories permanently in order to annex them, but also acts as a permanent reality pre-empting any possibility for the fruition of the right to self-determination of the occupied population.

It is within this context that the violation of article 53 in conjunction with article 147 of the Fourth Geneva Convention must be judged. Israel has often claimed a security imperative in destroying Palestinian property. The security imperative more often than not, does not relate to the security of the occupying forces or to that of its administration, but to that of the settlers. Military necessity cannot be invoked to defend violations of the Fourth Geneva Convention, such as Israel's implementation and maintenance of the acts proscribed in article 49 of the Convention. To turn violations into rights and consequently invoke the underlying principles of the Convention such as military necessity to legitimise and even defend the establishment and expansion of the violation with full military means is an affront to international law in general as well as to the Fourth Geneva Convention in particular. Moreover, rights granted to the occupying power must not be abused by strengthening a violation of the Convention.

Among the violations of the Fourth Geneva Convention listed as grave breaches in article 147 is "the extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly." For the destruction of property to be classified as a grave breach according to article 147, the destruction must be "extensive," meaning that an isolated incident would not be enough.¹⁷⁸ Given the almost daily destruction of Palestinian property during the first year of the intifada, depriving and dispossessing Palestinians of their homes, bulldozing a considerable number of roads and sweeping vast amounts

¹⁷⁸ Opcit Commentary to the Fourth Geneva Convention p 601.

of agricultural lands etc., which ultimately affects the civilian population as a whole, the argument that Israeli operations can only be categorized as “isolated incidents” would belie the facts. Moreover, as suggested below, whenever the destruction of Palestinian property conflicts with the prohibition of collective punishment and reprisal of article 33, the mental requirement of “*carried out wantonly*” in accordance with article 147 is undoubtedly fulfilled.

Finally, it is inherent in the proper use of international law that the classification of an action, which potentially constitutes a wrongful act, cannot and should not be left to the State concerned, but must be deduced from the objective circumstances and the practices on the ground. It is not what the Israeli military claims to do, what matters is what it actually does.

Military Necessity and the Destruction of Property

An essential distinction is drawn between the prohibitions set down in both the Hague Regulations and the Fourth Geneva Convention with regards to apparently legitimate transgressions of a specific legal provision. There are so-called absolute prohibitions, which admit of no exceptions and are not subject to any reservations. The humanitarian values protected in these prohibitions are of such importance that no reference to any reservation on behalf of the occupying power’s conduct is allowed. On the other hand, several of the provisions within international humanitarian law contain “a clause that while certain acts are forbidden, their commission may be undertaken in case of military necessity.”¹⁷⁹ Both with respect to the Hague Regulations and the Fourth Geneva Convention, the drafters of the provisions prohibiting the destruction of property recognized the need for a derogatory clause.

Article 23 (g) of the Hague Regulations stipulates that:

¹⁷⁹ Opcit Von Glahn p 224.

It is especially forbidden...to destroy or seize the enemy's property, except when such destruction or seizure be imperatively demanded by the necessities of war.¹⁸⁰

Similarly, the prohibition on the destruction of property enumerated in article 53 of the Fourth Geneva Convention is subject to a reservation, derogating the article's applicability "where such destruction is rendered absolutely necessary by military operations." Hence, the occupying forces may undertake destruction of private or public property in occupied territory "when imperative military requirements so demand."¹⁸¹

Inevitably, one may rightly question under what circumstances military conduct resulting in destruction of property located in occupied territory is to be regarded as necessary and how the limits of military necessity can be defined, so that the occupying power remains *intra legem humanitariam* and does not abuse its power of discretion. Given the fact that it is the occupying power that judges when the circumstances would render article 53 inapplicable, J. Pictet notes that:

It is therefore to be feared that bad faith in the application of the reservation may render the proposed safeguard valueless; for unscrupulous recourse to the clause concerning military necessity would allow the Occupying Power to circumvent the prohibition set forth in the Convention. The Occupying Power must therefore try to interpret the clause in a reasonable manner: whenever it is felt essential to resort to destruction, the occupying authorities must try to keep a sense of proportion in

¹⁸⁰ Jean Pictet notes in his authoritative ICRC commentary to the Fourth Geneva Convention that Article 23 (g) of the Hague Regulations is placed in the section entitled "hostilities" and therefore covers all property in the territory involved in a war. He concludes, "Its scope is therefore much wider than that of Article 53 of the Fourth Geneva Convention, which is only concerned with property situated in occupied territory." See Commentary p. 301.

¹⁸¹ *ibid* p 302.

comparing the military advantages to be gained with the damage done (emphasis added).¹⁸²

The term “necessity” implies that an exception to the prohibition must be based on a demand of genuine military emergency linked with the achievement of an immediate military objective.¹⁸³ This view concurs with the ICRC’s interpretation of article 53 of the Fourth Geneva Convention, with particular reference to the expression ‘military operations’:

In the opinion of the ICRC, the expression “military operations” must be construed to mean the movements, manoeuvres and other action taken by the armed forces *with a view to fighting*. Destruction of property as mentioned in article 53 cannot be justified under the terms of that article unless such destruction is absolutely necessary- i.e. materially indispensable- for the armed forces to engage in action, such as making way for them. This exception to the prohibition cannot justify destruction as a punishment or deterrent, since to preclude this type of destruction is an essential aim of the article. This has always been the ICRC’s interpretation, based on both the wording and the origin of the article.¹⁸⁴

When writing on military necessity with regards to the destruction of property, Gerhard Von Glahn concluded that:

[F]ew if any of the measures likely to be undertaken by occupation authorities in enemy territory will reasonably contribute decisively to the end of the conflict, to the surrender of the enemy, or will be invested with supremely

¹⁸² *ibid.*

¹⁸³ *Op cit* Von Glahn pp 225, 227.

¹⁸⁴ Cited in “A thousand and one,” Occasional Paper No. 11, Al-Haq, Israel’s Demolition and Sealing of Houses in the Occupied Palestinian Territories, p 23, issued in Geneva, 25 November 1981, by J. Moreillon, Director of the Department of Principles and Law at the ICRC. Jean Pictet, editor of the Commentary of the Fourth Geneva Convention approved the interpretation.

vital character; in other words, necessity proper will be almost impossible to prove, except in a few minor situations during the initial combat phases of the invasion of the enemy territory. It must be remembered that practically all measures of real importance undertaken by an occupant in hostile territory fall in a period of time when the military phase of active hostilities has passed from the occupied territory and when the occupant attempts to establish an orderly administration. Hence, there is an absence of nationally vital necessity and a lack of real necessity which would enable a successful employment of the defence in question.¹⁸⁵

Furthermore, when invoking military necessity in relation to article 53, the destruction of certain property, such as livestock, homes and agricultural lands of the occupied civilian population, which in and of itself conflicts with other protective provisions of the Fourth Geneva Convention, must be weighed against the immediate military objective and serve as further restrictions upon the occupying power's judgment to destroy the property in the first place.¹⁸⁶

As noted above, to protect the overall normative consistency of the Fourth Geneva Convention, military necessity cannot be invoked to justify and protect acts that *ab initio*¹⁸⁷ constitute violations of the law. This applies particularly to the Israeli Government's continuing implementation of the very acts prohibited by article 49 of the Convention, the establishment of civilian settlements in occupied territory. Israel has effectively expanded the term military necessity as implying "necessary" for the preservation and perpetuation of the colonial structures in place. Moreo-

¹⁸⁵ Opcit Von Glahn pp 226-7.

¹⁸⁶ In this regard special consideration should be given to articles 27 and 32 of the Fourth Geneva Convention, which explicitly prescribe respect for fundamental rights and humane treatment and the obligation of the Occupying Power to preserve the dignity of the protected persons. Pictet notes on p. 204 of the ICRC commentary, "to grant protected persons humane treatment is in truth the *leitmotiv* of the four Geneva Conventions."

¹⁸⁷ *ab initio*: From the onset.

ver, if military necessity would or could override any or all provisions aimed at protecting the civilian population, military necessity as a qualification would not have been enumerated in several articles of the Convention.¹⁸⁸

The legal principle *ex injuria jus non oritur* is supportive of the aforementioned argument. *Ex injuria jus non oritur* reflects the doctrine of non-recognition, implying that legal rights cannot be derived from an illegal situation.¹⁸⁹ Thus, whenever there are strong reservations as to the morality or legality of the actions that have been adopted in order to bring about the factual situation, the factual situation will not be recognized.¹⁹⁰ In accordance to and illustrative of this reasoning is the common stance of the international community regarding Israeli settlements as being contrary to international law. Considering that military necessity is an exception to a prohibition, not a legal right *per se*, and, as pointed out by *Oppenheim's International Law*, “[I]ike all exceptions, it is to be strictly applied,” the principle *ex injuria jus non oritur* exerts even more convincing normative strength when applied to the destruction of civilian property based on military necessity within occupied territory for the protection of colonial structures.

Moreover, the Israeli claim that genuine military emergency overrides and invalidates the prohibition of destroying Palestinian civilian property necessary for protecting colonial structures not only amounts to a blatant disrespect for the Fourth Geneva Convention, but is an unprecedented abuse of the governing rules and standards of international law. Israeli policies and practices carried out in the name of military necessity (often termed security) are linked more with suppressing Palestinian resistance to Israeli annexationist programmes –the establishment and maintenance of Israeli colonial structures- than with safeguarding the personnel of the occupying power or Israeli society. The observation

¹⁸⁸ This view is in accordance with Von Glahn’s observation that “...if necessity would or could override any or all provisions of the Regulations, necessity as a qualification would not have had to be spelled out in Article 23 (g).”

¹⁸⁹ See *Oppenheim's International Law*, 9th edn, (London: 1992), pp. 183-41

¹⁹⁰ *Opcit Shaw* p 315.

of leading international legal scholars, Richard Falk and Burns H. Weston, voiced ten years ago appears to gain increased validity:

[I]nterference with legally protected rights imposes a heavy burden upon an occupying power to connect its use of force and other suppressive policies with the requirements of occupation [not colonization] *per se*. Having remained in the Occupied Territories for more than twenty years, refusing to confirm Palestinian sovereignty rights (as recognized in, for example, United Nations General Assembly Resolution 181 of 29 November 1947), and undertaking such practices as the appropriation of land and water and the transfer to the West Bank and Gaza of Israeli Jews with promises of permanent settlement, virtually invalidate any Israeli claim for any reason other than the discriminating and proportionate requirement of direct defence against attack.¹⁹¹

In short, Israel's selective application of rights and privileges granted to the occupant are at odds with the duties and obligations imposed by international humanitarian law. The justificatory claim of military necessity cannot and must not be invoked for the purpose of furthering the political interests of the occupying power at the expense of the legitimate rights of the occupied civilian population.

Linked to Israel's determination to pursue its official policy of maintaining, protecting and even expanding settlements within the Occupied Palestinian Territories is the violative behaviour of Israeli settlers against Palestinian civilians and their property, and the question of attributable responsibility. Settler violence against Palestinian civilians and their property has been a feature of the occupation and as illustrated in Chapter III is an alarming feature of the current uprising. Moreover, in many incidents, Israeli settlers demolished and looted Palestinian property while

¹⁹¹ Opcit Playfair et al. International Law and the Administration of Occupied Territories, "The Relevance of International Law to Israeli and Palestinian rights in the West Bank and Gaza", Richard Falk and Burns H. Weston, p139.

the Israeli army was assisting in their actions or at least allowing the violations to take place. Thus, in cases where evidence prevails that the Israeli military was in a clear position to prevent Israeli settlers from destroying and plundering Palestinian property, besides the individual responsibility for criminal behaviour of the settlers themselves, direct responsibility can be attributed to the Israeli military for its acquiescence or assistance in the settlers' violative conduct.

Reprisal and Collective Punishment

'It is inadmissible for any State to take the law into its own hands through reprisal and retaliation.'

*No government, even under extreme provocation, [is] justified in taking the law into its own hands.*¹⁹²

Before focusing on the provisions relevant within the Fourth Geneva Convention, a succinct analysis of general international law regulating the use of force seems adequate to fully grasp the degree of responsibility with regards to Israeli retaliatory conduct that causes extensive destruction to Palestinian property.

According to General Assembly Resolution 2625 (XXV),¹⁹³ known as the Declaration on Principles of International Law Concerning Friendly Relations, "States have a duty to refrain from acts of reprisal involving the use of force." This unambiguous and absolute statement outlawing self-help motivated by reprisal can be deduced from article 2 (4) of the United Nations Charter. A wide array of UN resolutions as well as interpretations by international jurists enhance the position that the general prohibition of the threat or use of force stipulated in article 2 (4) contains an implicit reference to the illegality of the employment of retaliatory force.¹⁹⁴ Though the United Nations is deemed to provide the exclusive framework for evaluating and managing the use of force with the only possible exception of incidents of self-defense, the Israeli Government has consistently refused to consider any kind of UN involvement implementing restraining conditions put on its own use of force

¹⁹² See 1954 Yearbook of the United Nations, where Denmark, France, New Zealand, Turkey, the UK, the United States and China put these arguments forward.

¹⁹³ UN Resolution 2625 was adopted on the 24th of October 1970 as G.A. Res. 26/25, UN GAOR, 26th Sess., Supp.28, at 121, UN Doc. A/8028. In the *Nicaragua* case, the ICJ has referred to this resolution as 'reflecting and contributing to the development of customary international law.'

¹⁹⁴ See *e.g.* Bowett, "Self-Defense in International Law" (Manchester: 1958), pp. 13-14; Brierly, "The Law of Nations, An Introduction to the International Law of Peace", 6th ed. (Oxford: 1963), pp 401-415.

against civilians and their property inside of the Occupied Palestinian Territories.

To legally justify acts that unequivocally constitute reprisal and collective punishment, an expansive use of the term self-defense- mostly combined with, yet sometimes separated from the extensively abused security doctrine- is intended to exhibit Israel's conduct as being in line with the lawful use of force. Even if the claim of self-defense ¹⁹⁵ were to be considered, in most cases of extensive destruction of property, Israeli arguments would fail the required test of "immediacy of danger posed to the State" and the "lack of alternative means." As the vast amount of extensive destruction of Palestinian property was carried out close to Israeli settlements with the clear aim of providing security for and maintaining these structures, it was clearly not the "State of Israel" that was exposed to "immediate danger." With regards to the second precondition for lawful action in self-defense, the requirement that there should exist "a lack of alternative means," public international law requires that in the case of armed defence the use of force must not only be generically inevitable (it is not possible not to react), but also specifically inevitable (it is not possible to react in any other way).¹⁹⁶ Given the repeated calls for international intervention sanctioned by the United Nations as well as the consistent and longstanding view of the international community- with the sole exception of Israel - that the Israeli Government should abide by the protective provisions of the Fourth Geneva Convention, the claim that "no other means" could be pursued and thus it was "not possible to react in any other way" would be short of convincing. In this context, whenever states have used recourse to reprisal or collective punishment, they themselves tried to vindicate their conduct by qualifying it as self-defense.

¹⁹⁵ Article 51 of the U.N. Charter states: "Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

¹⁹⁶ *Opit Cassese* pp 100-101.

The general prohibition on the use of force in retaliation is set within a context of two opposing states with mutual territorial sovereignty.¹⁹⁷ Within the context of the Israeli occupation of the West Bank and Gaza, there exists an enormous disparity in power: An occupied civilian population with no army, navy or air force is exposed to a State with an organized army and heavy weaponry at its disposal, including F-16 warplanes, Apache attack helicopters and tanks. Thus, if in general, international law prohibits reprisals, *a fortiori* the asymmetrical power relation between the Israeli military and the occupied Palestinian civilian population resulting in increased vulnerability places an even higher responsibility on Israel to abstain from retaliatory and punitive measures of force.

Article 33 of the Fourth Geneva Convention and its relevant authoritative commentary supports this conclusion. Article 33 provides:

No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or terrorism are prohibited... Reprisals against protected persons and their property are prohibited.¹⁹⁸

The underlying central principle of the prohibition of collective punishment is anchored in personal liability, meaning that a person is only liable for offensive conduct personally attributable to him or her. Following this reasoning, the ICRC commentary states that collective punishment is in “defiance of the most elementary principles of humanity” and hence “responsibility is personal and it will no longer be possible to inflict penalties on persons who have themselves not committed the acts complained of.”¹⁹⁹

¹⁹⁷ The UN Charter was drafted on the assumption that force was primarily inter-state and that it governed inter-state relations.

¹⁹⁸ It is worth noting, as mentioned in the ICRC commentary, that article 33 is deduced from article 50 of the 1907 Hague Regulations, which states: “No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly or severally responsible.”

¹⁹⁹ Opcit Commentary to the Fourth Geneva Convention p 225.

Following the prohibition of “collective penalties” in article 33 of the Fourth Geneva Convention, the second part of the second sentence of the article ends conjunctively “and likewise all measures of intimidation or of terrorism are prohibited,” highlighting some of the unlawful use of collective punishment. Refining the contents of the prohibition on collective punishment, the ICRC commentary attempts to clarify the misleading logic behind the use of intimidation and terrorism against a civilian population:

During past conflicts, the infliction of collective penalties has been intended to forestall breaches of the law rather than to repress them; in resorting to intimidatory measures to terrorise the population, the belligerents hoped to prevent hostile acts. **Far from achieving the desired effect, however, such practices,** by reason of their excessive severity and cruelty, **kept alive and strengthened the spirit of resistance.** They strike at the guilty and innocent alike. They are opposed to all principles based on humanity and justice...²⁰⁰ (emphasis added)

Collective punishment and reprisals are thematically intertwined with each other and the latter can best be described as the logical “sequitur” of the former.²⁰¹ In general terms, reprisals can be defined by referring to their inherent aim: to penalize and obtain immediate compensation for damage done. Yet, as one scholar notes, if retaliatory use of force serves as a sanction for an unlawful act, which has already taken place (and which actually constitutes one of the legitimating preconditions for it), then resort to military violence is no longer the only reaction possible (a necessary precondition for the right to self-defence).²⁰² The element of immediacy - the required temporal relation between the threat and the measure used to prevent it- constitutes the main distinguishable feature delimiting the right to self-defence from the use of reprisals.

²⁰⁰ *ibid* p 226.

²⁰¹ See Al-Haq’s Occasional Paper No. 11 p. 29.

²⁰² *Opcit* Cassese p101.

Whereas the right to self-defence is based on necessary and proportionate measures to protect oneself against an imminent future threat, in case of reprisals the threat has already transformed into a violation. Since the damage done is no longer irreversible or inevitable (it has already taken place), reaction by force would no longer be deemed justifiable because the values at stake would not be equivalent.²⁰³

Historically, reprisals were regarded as “an exception to the general rule of equity, that an innocent person ought not to suffer for the guilty” and thus justified in circumstances of forcing the enemy to halt illegitimate acts of warfare.²⁰⁴ The 1949 Geneva Conventions on the other hand provided an absolute prohibition on reprisals directed against the civilian population and their property. The ICRC commentary emphasizes the “absolute and mandatory character” of the prohibition stating that:

The solemn and unconditional character of the undertaking entered into by the State Parties to the Convention must be emphasized. To infringe this provision with the idea of restoring law and order would only add one more violation to those with which the enemy is reproached.²⁰⁵

In the case of reprisals resulting in property destruction, such as the destruction of basic public infrastructure like roads and water wells, dwellings and livestock, the very basic needs of the occupied civilian population are targeted. Thus, it is self-evident that the aim to sanction an allegedly unlawful act by resort to force is marginalized and therefore not justified because of its blatant disregard for the central purpose of the Convention.

Though in some cases it is argued that a reprisal may be necessary to prevent a greater violation of humanitarian law, the above stated reasons for its prohibition are supported by an increasing number of legal scholars that view reprisals as absolutely impermissible as a justifiable resort

²⁰³ *ibid.*

²⁰⁴ *Opcit* Commentary to the Fourth Geneva Convention p 226.

²⁰⁵ *ibid* p 228.

to force.²⁰⁶ Similarly, the ICRC commentary stresses:

The principle of the prohibition of reprisals against persons has now become part of international law in respect of all persons, whether they are members of the armed forces or civilians protected by the Geneva Conventions.²⁰⁷

Referring to Israel's longstanding and repeated practice of demolishing Palestinian homes in the Occupied Territories on the pretext of punishing the individual suspected of a certain offence and thereby "detering" future hostile acts, Al-Haq's report 'A Nation Under Siege' pointed out: "When an entire family is punished for the merely suspected deeds of one of its members through the destruction of the home, and no other members are accused of any offence, there can be little doubt that the punishment is a collective one, primarily affecting people whose only crime is to be related to a person suspected of an offence."²⁰⁸

There is little doubt that the punitive and retaliatory intent that often guides Israeli conduct fulfil the elementary mental requirement for constituting a grave breach regarding property destruction as defined by article 147 of the Fourth Geneva Convention.

²⁰⁶ See for example Leah M. Campbell, 'Defending Against Terrorism: A Legal Analysis of the Decision to Strike Sudan and Afghanistan' 74 *Tulane Law Review*, at pp.1067, 1076. Campbell notes "In customary law, conventional law, and *opinio iuris*, the practice of reprisals through the use of unilateral force has been denounced."

²⁰⁷ *Opcit* Commentary to the Fourth Geneva Convention p 228.

²⁰⁸ *A Nation under Siege: Al-Haq Annual Report on Human Rights in the Occupied Palestinian Territories 1989 (Ramallah: 1990)*, p 348 cited in Al-Haq's Occasional Paper No. 11, pp 30,31.

Appendix-5

Regarding the source of information, most of the cases concerning the area of the West Bank are based on information collected by Al-Haq's fieldworkers, some are in the form of affidavits. Some additional documentation stems from reports issued by PA Ministries.

A. [PA Ministry of Public Works, Hebron Directorate Works, report covering the period from the beginning of the intifada until 15 November 2001] At the end of March 2001, the Israeli military bulldozed and destroyed the road in Deir Salah, located in Area A, to implement the decision to prevent Palestinians from moving out of their towns. The road is the main north-south route leading from 'Beidiyya to Beit Sahour serving as the only connection between Deir Salah and Beit Sahour. As a result, the village of Deir Salah was completely cut off. The estimated costs for rebuilding the road was estimated at approximately 1,250,000 US\$. The PA Ministry of Public Works rebuilt most of the road, with the exemption of the stretch located in Area C under full Israeli control.

B. [Al-Haq field report no. 027/2001] On the 18 June 2001 at approximately 5:30 p.m. an Israeli settler car driving on the bypass road was shot at by a Palestinian when passing the east of Um Saffa village. The bypass road, which passes the main entrance of the village, connects the settlement of Ateret with Israel. Following the incident, the Israeli military blocked the main entrance of Um Saffa and began to detain Palestinian villagers returning from work to their homes. Shortly after, Israeli soldiers started to close off the village. Israeli settlers from Ateret attempted to physically attack the group of detained Palestinians. One of the Israeli settlers tried to shoot at the Palestinians, but Israeli soldiers stopped him from doing so. At 2 o'clock in the morning the detained Palestinians were set free, but two of them were arrested. At about 10 a.m. the next day 300 armed Israeli settlers from Ateret came to the entrance of Um Saffa and fired shots into the air. They threw stones at Palestinian houses and cars. One car was totally damaged and several houses had their windows smashed. When Palestinians began to throw stones at the Israeli settlers, Israeli soldiers, who observed what was

happening from a distance, approached the area and protected the settlers. After two hours of clashes, Israeli soldiers started to intervene and tried to push the settlers out of the village. Subsequently, military bulldozers, Israeli soldiers and Israeli settlers arrived at the entrance of the village and started to bulldoze the road connecting Um Saffa to Burham. This road is used as the main traffic route between Palestinian villages west of Ramallah and Ramallah proper. Two weeks before this incident, the now destroyed road had been repaired.

C. [Al-Haq field report no. 040/2001] 'Aboud, a predominantly Christian Palestinian village in Area C, located in the district of Ramallah, has had its agricultural land repeatedly destroyed and its trees uprooted. It is estimated that since the beginning of the intifada, about 800 dunums of 'Aboud's land was bulldozed and a large number of its olive trees uprooted. 'Aboud is surrounded by three Israeli settlements, Ofrim, Beit Arie and Neve Ya'ir. Next to 'Aboud there is a bypass road linking the Israeli settlements located in the Nablus area with Ramallah and ultimately to Jerusalem. Several military posts were set up near 'Aboud and Israeli settlers established a "defence-outpost" on a hill overlooking the village. The destruction was carried out on the pretext that Palestinians were frequently shooting at Israeli settlers and using the olive trees as a hideout. On 18 May 2001, Israeli soldiers and settlers came with military bulldozers and destroyed 15 dunums of agricultural land, uprooting about 150 olive trees. Military bulldozers destroyed another 15 dunums on the 10 June 2001, while fifty soldiers and a considerable number of Israeli settlers were present. On the 16 July 55 olive trees and 35 grape trees were uprooted.

D. [Al-Haq affidavit no. 184/2001, 5 July, Muhammad Ahmad Abu-'Aram]

'Destruction of cave dwellings and water wells in Janaba area'

"At 7 a.m. I was in my home in the Janaba area, located about 15 kilometres to the southeast of Yatta village. Our area was placed under cur-

few on Tuesday, 3 July, because one Israeli settler was killed.²⁰⁹ I saw several military cars and bulldozers approaching our area, we lived in caves and tents. My own family and my brothers' family lived here before I was born which was in 1968. The Israeli soldiers ordered us to empty the caves. We replied that we needed time to do so, but they refused and said "Get the people out" while pointing their weapons at the people. So I took my 8-member family out of our home. Our women tried to take some of the furniture with them, but the soldiers screamed and pointed their weapons at them. After that the Israeli soldiers began to dig into the ground with special military bulldozers and destroyed our cave, tent and the water well. The water well we use for ourselves as well as for our sheep. A small cabin for the chickens was destroyed as well. In all it took about two hours to destroy the cave. All our furniture, food-supplies and food for our animals were destroyed. Then the soldiers ordered us to leave the area, but we did not leave and stayed under the sun."

E. [Al-Haq affidavit no. 173/2001, Hazem Abd-al- Aziz Jaradat]

"Destruction of car tyres and windows by Israeli soldiers in Hebron"

"On the 26th of June 2001 at about 9:30 a.m. I was in my car on the way to Hebron. A friend of mine was with me and we were driving on the road from Bani N'eim. At the entrance of Hebron City there was a military checkpoint. The soldiers there told us to pass because we work as traders. As we were in the vicinity of Kiryat Arba' settlement a military jeep approached us and stopped us. One of the soldiers took our ID cards and car keys while the other one damaged the tyres in the front on the left side of the car and smashed the window on the right side. This incident happened just a hundred meters away from the military checkpoint and we told the soldiers that their comrades at the military checkpoint allowed us to pass. After one hour they gave us the keys and our ID cards back. It took us more than 1 hour to fix the car before we could go on. While on our way we saw three or four Palestinian cars with

²⁰⁹ The closest Israeli settlements to Janaba area are Sosiya and Mahaun.

damaged windows and tyres. According to the people affected, the description of the soldiers that damaged our car coincided with the soldiers that damaged their cars as well.”

F. [Al-Haq affidavit no. 117/2001, Ni ma Husein Taleb]

“Demolition of Palestinian home after an Israeli settler was killed”

“In 1999 we built our house after receiving the required Israeli building permit. The first floor of the house is used as a storage room, the second floor contains several apartments and the third floor was still under construction. On the 28 February 2001 at 6 a.m., Israeli soldiers with eleven military jeeps came and told us that they had an order to destroy our house.²¹⁰ The soldiers told us that we would have two hours to empty the house and get our “stuff” before they would demolish it. We told them that two hours is not enough and we would require the help of our neighbours as well. However, our pleas were in vain and they told us to hurry. When we asked why the house had to be destroyed, they replied that there had been an order from the Chief of Staff, Shaul Mofaz, who wanted the house to be demolished. We did not manage to bring all our things outside during the two-hour deadline, so the cement and tiles that were stored in the first floor as well as hens and other poultry were still inside the house. Then two bulldozers started to destroy our house. We showed them the building permit, but the military commander told my husband: “Put it in the water and drink it.”

²¹⁰ According to Al-Haq’s fieldworkers, the night before the house was destroyed an Israeli settler was killed while driving on the bypass road that passes the Palestinian village of Rafat leading to the Israeli settlement of Modi’in. It was alleged that Palestinian gunmen were shooting from the house.

G. [Al-Haq affidavit no. 034/2000, 18 November 2000, Zeina Muhammad Yousef Khalil]

“Destruction on the pretext that those whose property is destroyed were indirectly involved in shooting attacks”

“Shooting incidents took place close to our home in the village of Sinjel.²¹¹ So we locked the doors of our house and turned off the lights. Then ambulances came to the area at about 8 o’clock in the evening. At about 9:30 p.m. Israeli soldiers came to our house and started to question my husband outside of the house. At about 10 p.m. the soldiers left and my husband went inside again. Then the soldiers returned again and questioned the children, while their father was with them. The soldiers asked one of our children if their father had seen a car parked close to our house and if he had offered the driver coffee or tea. Shortly after midnight on the 5 November 2000 my husband was detained. On the following day soldiers returned with intelligence officers and wanted to enter our house, but my children and myself refused to let them pass, telling them that questioning can take place outside our house. They asked me if I had seen a car or any suspicious person the previous day. One of my daughters was asked the same question and both our answers were recorded. At midnight on 13 November 2000 Israeli soldiers came with military bulldozers. They destroyed the fence made out of stone surrounding our house and garden. About 100 olive trees owned by my husband and his friend were uprooted. The cement and sand we had placed in our garden was mixed by the soldiers making it useless for further use. My husband is still being held in Beit El. He is the only one working to support our 8-member family.”

H. [Al-Haq field report no. 026/2001] On 21 November 2000 at 11 p.m. about 150 Israeli settlers escorted by two military jeeps started to shoot and throw stones at the windows and doors of the mosque of Huwara. The mosque is on the main road leading from Ramallah to Nablus. The settlers, who came from the settlements of Elon Moreh and Itamar, tried

²¹¹ Sinjal is located on the main road between Ramallah and Nablus.

to remove the main door of the mosque. For more than forty minutes the settlers, always in the presence of the Israeli soldiers, remained at the entrance of the village next to the mosque. Also a house next to the mosque was damaged, shrapnel injured one Palestinian woman and several water tanks located on top of the houses were demolished. This incident occurred following a previous one, when, on 1 October 2000, Israeli settlers set the same mosque on fire, destroying valuable Quran editions and other religious texts. In addition, approximately 60 meters of high quality carpets were burnt as well.

I. [Al-Haq field report no. 55/2001] According to Al-Haq's fieldworker in Hebron, throughout the first year of the intifada, damage done to Palestinian cars by Israeli settlers and soldiers was a recurring pattern and was particularly common during the months of July and August 2001.²¹² Just within these two months 256 Palestinian cars were partly or totally damaged. Israeli settlers burned some of the cars and some were targeted by soldiers shooting from military posts placed on the hills around Hebron. During Israeli tank incursions into Palestinian controlled areas, cars were completely run over, while the destruction of tyres and windows following or during Israeli random road checks was a common and often repeated occurrence.

J. [Al-Haq field report no. 039/2001] On 11 July 2001 Israeli tanks destroyed the building complex of the National Security Forces in Nablus. The police structure is located next to the road leading to Ramallah at the southern entrance of Nablus. The Israeli authorities justified the destruction claiming that Palestinian shooting close to the police structure had injured Israeli settlers and the suspected gunmen had escaped to Nablus.

²¹² Al-Haq's field worker in Hebron notes that at the beginning of the intifada it was difficult to report on all the damage that occurred, either some car owners did not report the damage done to their cars or due to the high number of cases it was impossible to keep track of all of them. Given these constraints, Al-Haq nevertheless has continuously collected data related to damage done to Palestinian cars.

CHAPTER VI

RESTRICTIONS ON MOVEMENT

Since September 29 2000, the State of Israel has imposed sweeping movement restrictions on the civilian population in the Occupied Territories which has had the effect of isolating individual communities. In broad terms, these restrictions fall into two categories, closure and curfew.

A. Closure

With the Israeli withdrawals from the major urban centres in the West Bank, a series of internal boundaries were effectively created which divided the West Bank into 227 separate areas under partial or full Palestinian control. The vast majority of these areas were less than 2 km sq.²¹³ There was however, greater territorial contiguity in the Gaza Strip, with the Palestinian Authority in control of approximately 80 percent of the area. Israel did however retain control over key areas enabling its military forces to effectively dissect the Strip into three zones, which is precisely what has occurred on a number of occasions during the intifada.

On account of the Israeli withdrawals from the major Palestinian towns in the West Bank during the interim period of Oslo, there thus emerged an extremely fragmented geographic dispensation with areas of Palestinian administration divided by large swathes of land remaining under direct Israeli control. As the Israeli military authorities no longer had direct control in the major Palestinian towns, closure rather than curfew became the most prevalent form of enforced isolation.

²¹³ Geoffrey Aronson, "Recapitulating the Redeployments: The Israeli-PLO Interim Agreements," Washington, Centre for Policy Analysis, Brief no.32, 27 April 2000.

A Closure is imposed through the placing of checkpoints or other types of manned or unmanned barriers around a locale with the aim of either prohibiting movement between that locale and other areas, or making movement from that locale to other areas as tedious as possible. Closure affects Palestinian society on a number of levels. As will be illustrated below, due to the economic dependency deliberately induced by Israel over the 35-year period of the occupation, the Palestinian economy is heavily reliant on access to Israeli markets in terms of employment and material. Any measure that inhibits that access is bound to have a deleterious effect on the Palestinian economy, and thus on the society in general. Moreover, any prohibition on movement, particularly if strictly enforced, severely affects those in need of emergency care, and can impair humanitarian relief efforts. This has certainly been the case during the current intifada.

Closures can be divided into three distinct forms of restriction, general closure, comprehensive closure and internal closure:

General Closure:

In 1972, the Israeli authorities issued a General Exit Permit which permitted Palestinians from the Gaza Strip and the West Bank to enter Israel and Jerusalem without getting a permit beforehand. During the Persian Gulf Crisis in 1991, the General Exit Permit was suspended and in March 1993 this was made permanent whereby any Palestinian wishing to enter Israel and Jerusalem needed a personal permit to do so. The general closure effectively cut the Palestinian Territories into three areas, the West Bank, the Gaza Strip and East Jerusalem. The general closure had a catastrophic impact on the Palestinian economy, particularly in East Jerusalem, which until that point, had served as the centre of Palestinian economic and cultural life.

The Oslo accords had “recognised” the Gaza Strip and the West Bank as a single entity and in October 1999 the “safe passage” was opened linking the two areas. According to article XI (1) of the Interim Agreement on the West Bank and the Gaza Strip, “The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and

status of which will be preserved during the interim period.” The use of the route was however made subject to Israeli security control and during the intifada the safe passage has been totally inoperative.

Comprehensive Closure

During periods of unrest, or on the eve of Jewish holidays, the Israeli authorities would cancel permits that had been issued to residents of the Palestinian territories to enter annexed Jerusalem and Israel. There is thus no movement of the Palestinian population in and out of the territories except for those who are registered as being residents of occupied East Jerusalem.

Internal Closure

The internal closure is very much a product of the territorial dispensation of the Oslo era and was first applied in March 1996 following a series of suicide attacks in Tel-Aviv and Jerusalem. The internal closure is put into effect by the erection of barriers between towns and villages. The imposition of an internal closure, which is usually carried out in conjunction with other forms of movement restriction, is akin to a siege and has been described as such. The population is effectively imprisoned in their respective towns and villages and communities are cut off from one another. However, the impact of the internal closure on particular communities is dependent on the topography of the area and on the number of alternative routes accessible to residents and non-residents alike. The main impact of the various closures is the disruption of productive activity and the paralysis of the Palestinian economy.²¹⁴

The closures were justified on security grounds. The efficacy of the policy as a security tool has not, however, been uniformly accepted within Israel's security establishment. In a recent internal IDF report prepared by Colonel Michal Yitzhaki Shoshani, head of the military Audit De-

²¹⁴ For the description of the different forms of closure see B'Tselem “Civilians under Siege” January 2001, pp 4-6.

partment, the report's authors argued that the checkpoints used to enforce the closures failed to prevent Palestinian attacks on Israeli targets in Jerusalem and in Israel itself.²¹⁵

²¹⁵“Checkpoints don’t work, says internal IDF report,” Ha’aretz staff, November 2 2001.

The Economic and Humanitarian Impact of Closure:

Background

In order to appreciate the significance of Israel's closure policy on the Palestinian population it is essential to understand the economic relationship that developed between the Palestinian territories and Israel. For the past 35 years, the State of Israel has pursued measures that have effectively subordinated the Palestinian economy to its own. This subordination has been so complete that a specific term has been coined to describe the situation: de-development. De-development is a structural relationship between a stronger and weaker economy where the development process is not only distorted but is in fact undermined. In other words, the structure of the economic relations makes development in the weaker economy almost impossible and is in fact designed to do so.²¹⁶ According to Sara Roy, the de-development of the Palestinian economy was advanced by a range of policies that taken together precluded the kind of economic and institutional change necessary for structural transformation and capital accumulation.²¹⁷ Such policies included Palestinian alienation from land and water through the concerted modalities of expropriation and stringent restrictions on usage as well as the control of town planning and measures aimed at stifling independent institutional development. Low levels of public investment in the local economy and infrastructure further compounded the situation. All of these measures had the effect of stifling the development of a robust productive capacity and re-orientating Palestinian labour away from domestic production towards work in the lowest sectors of the Israeli economy. In this regard, a statement made by Defence Minister Yitzhak Rabin in 1985 was revealing, "There will be no development in the territories initiated by the Israeli government, and no permits given for

²¹⁶ See "De-development Revisited: Palestinian Economy and Society since Oslo," Sara Roy, *Journal of Palestine Studies* Vol. XXVIII, No.3, Spring 1999, Issue 111, p 64.

²¹⁷ *ibid.*

expanding agriculture or industry which may compete with the State of Israel.”²¹⁸

The Palestinian economy also developed an over reliance on Israel for commercial access to international markets and approximately 90 percent of Palestinian trade was with Israel. A trading structure gradually developed the contours of which insured unimpeded access of Israeli products to Palestinian markets while considerably impeding Palestinian access to Israeli markets. Thus, on the eve of the general closure in March 1993, the Palestinian economy was dependent on Israel for the vast majority of its trade, and the Israeli economy absorbed thousands of Palestinian workers which meant millions of dollars per annum in remittances. This economic arrangement was predicated on more or less open borders between the Occupied Territories and Israel.

The imposition of the general closure in March 1993 was thus a tremendous blow to an already precarious economic situation due to the reduction in the number of Palestinians working in Israel. During the first three years of closure, the unemployment rate rose from 11 percent to 28 percent.²¹⁹ When the Israeli authorities imposed a total closure on the Palestinian territories between March-April 1996, 66 percent of the Palestinian labour force was either unemployed or acutely underemployed.²²⁰ In June 1997 the Palestinian unemployment rate averaged 20.5 to 17 percent in the West Bank and 25 percent in the Gaza Strip.²²¹ As the Palestinian Authority established itself, a considerable number of the population was absorbed into its bureaucratic and security ranks. By the end of 1999, it was estimated that the Palestinian Authority employed

²¹⁸ Jerusalem Post 15 February 1985. See also “Financial Administration of the Israeli-Occupied West Bank,” by Hisham Jabr in *International Law and the Administration of Occupied Territories* Playfair et al pp 377-398. See also *Israel’s Economic Policies in the Occupied Territories: A Case for International Supervision*, Hisham Awartani, Playfair et al pp 399-417.

²¹⁹ *ibid* p 69.

²²⁰ The World Bank: “The West Bank and Gaza Country Overview,” 10 March 1998, p 4.

²²¹ *Opcit* Roy p 70.

some 100,000 persons, which accounted for one fourth of total domestic employment. The wage bill amounted to 12.5 percent of GDP.²²²

In 1996 closure had resulted in losses amounting to 39.6 percent of GNP in Gaza and 18.2 percent of GNP in the West Bank.²²³ The closure had also precipitated the development of localized economic units as the West Bank, the Gaza Strip and East Jerusalem were more or less severed from each other. Further, 21 percent of the Palestinian population as a whole and 25 percent of children were described as living below the poverty level defined as 2.10 U.S. dollars a day in annual consumption in 2000.

The Economic Impact of Closure During the Intifada

The Israeli response to the intifada has in part been characterised by a combination of international border closures, comprehensive closure as well as the internal closure. This has been the most severe movement restriction that has ever been imposed on the Occupied Palestinian Territories. According to the United Nations Special Co-ordinator for the Occupied Territories (UNSCO), the Palestinian economy lost approximately 500 million in the first 60 days of the uprising and unemployment was running at about 40 percent of the general population. Many of those who were unemployed were workers with jobs inside Israel. According to World Bank estimates, 125,000 Palestinians work in Israel. The figure includes those who work legally and illegally.²²⁴

²²² The World Bank: "Country Brief: West Bank and Gaza," August 2000, p 2. Gross Domestic Product (GDP) is defined by the World Bank as the sum of gross value added by all resident producers in the economy plus any product taxes and minus any subsidies not included in the value of the products. It is calculated without making deductions for depreciation of fabricated assets or for depletion and degradation of natural resources. Data are in current US dollars. Dollar figures are converted from domestic currencies using single year official exchange rates.

²²³ *ibid.* Gross National Product (GNP) as defined by the World Bank is the per capita dollar value of a country's final output of goods and services in a year, divided by its population. It reflects the average income of its country's citizens.

²²⁴ The World Bank: "The Impact of Prolonged Closure on Palestinian Poverty," November 1 2000. According to the World Bank report the figures are based on a "Base Case" paradigm taking its "norm" as the situation in early September 2000. The "Base Case"

According to UNSCO, over the first year of the uprising, the value of domestic economic losses or internal losses ranged between 1.87 to 2.67 billion US dollars. Accordingly, the daily domestic loss averaged between 6.0 to 8.6 million dollars per business day.²²⁵ A survey undertaken by the Palestinian Federation of Chambers of Commerce found that total imports into the West Bank and Gaza declined by 56.1 percent compared to pre-crisis levels. Large declines were particularly observed in capital goods (83.7 %), vehicles (79%), household equipment (63.3%), construction materials (52.7%), and consumption products (48%). Imports from the Arab world declined by 62.2% from Israel by 44% and from Europe by 41.5%. As far as exports were concerned, total exports from the West Bank and Gaza to Israel and other countries declined by 50.3% compared to pre-intifada levels. Palestinian agricultural exports declined by 52.6% while industrial exports fell by 49.6%.²²⁶ As a result of the economic situation, an estimated 72,000 private sector jobs were destroyed.²²⁷

The number of people in need of official humanitarian assistance was also an indication of the severity of the crisis. Assistance was mainly in the form of food aid. According to the United Nations Special Coordinator for the Occupied Territories, from October 2000 to January 2001 more than 32 percent of the population—more than one million persons were reported to have received some form of emergency aid from national and international organisations. Approximately 42.5 percent of the registered refugee population in the Occupied Territories received assistance from UNWRA. Such widespread emergency distribution was described as unprecedented. Under UNWRA's emergency appeal launched on 8 November 2000, 127,000 refugee families in Gaza received food aid, while in the West Bank 90,000 families received emer-

assumed 1) access to Israel for about 60,000 workers with permits and 65,000 without and 2) the movement restrictions as they stood on 1 September 2000.

²²⁵ See *Impact on the Palestinian Economy of Confrontation, Border Closures and Mobility Restrictions: 1 October 2000 to 30 September 2001*(UNSCO) p 6.

²²⁶ *ibid* pp 9-10

²²⁷ *ibid* p 14.

gency food aid and food cash subsidies up to March 2001.²²⁸ Under the ongoing Protracted Relief and Recovery Operation, the World Food Programme provided food assistance to a total of 104,000 beneficiaries in the West Bank and Gaza Strip. The beneficiaries were classified as special hardship cases.²²⁹ During September 2001, UNWRA distributed cash payments to 711 families in the Gaza Strip totalling US \$ 218,050 and to 472 families in the West Bank totalling US \$ 58,215.²³⁰

The Impact of Closure on Access to Health Care & Emergency Treatment

The closure impaired the ability of medical personnel as well as the sick and wounded from reaching hospitals and clinics. This has been particularly the case for those in need of medical care but who are resident in outlying villages. According to a survey by the Palestine Central Bureau of Statistics, 43.3 percent of those sampled reported that they had faced difficulties in receiving medical services due to the closure.²³¹ Health providers faced great difficulties in distributing medical supplies to towns and villages and UNWRA reported a considerable increase in home deliveries and a decrease in the number of women attending post-natal care.²³² Moreover, according to UNWRA, in its Fourth Progress Report spanning the period 1 February to 31 March 2001, a number of medical clinics expanded their stock reserves of essential medicines as deliveries from the Central Pharmacy became increasingly irregular on account of the closure. In the same publication the UN agency reported restrictions on its delivery of medical supplies to the Gaza Strip and difficulties in transporting food commodities by truck to its distribution points within the Strip due to Israeli measures.²³³

²²⁸ WFP "Emergency Assistance to victims of civil strife in the Palestine territory," 1 September 2000 - 1 February 2002, p 3.

²²⁹ *ibid* p 4.

²³⁰ UNWRA Emergency Appeal Tenth Progress Report covering September 2001, p.5.

²³¹ Palestinian Central Bureau of Statistics, Census on the Impact of the Israeli Measures on the Palestinian Families' Economic Conditions, third round, July 2001.

²³² See UNWRA Emergency Appeal Fourth Progress Report, 1 February to 31 March 2001, p 6.

²³³ *ibid*.

Throughout the period of the intifada human rights organisations documented numerous cases where individuals in need of urgent medical attention were denied passage through road blocs manned by Israel soldiers or were seriously delayed due to attempts to find circuitous routes around unmanned earthen or concrete barriers placed in the middle of roads. A number of individuals in need of urgent medical attention died as a result of these delays. The Palestine Red Crescent Society, in a petition submitted to the Israeli High Court by Physicians for Human Rights, submitted a list of 121 cases in which medical personnel were delayed while transporting the sick and wounded between 29 September 2000 and 18 February 2001.²³⁴ In a press release on 28 February 2001, the International Committee of the Red Cross noted, there have also been incidents where vital medical assistance was denied, or delayed, thereby causing serious aggravations of individual medical conditions.

According to the IDF, there are directives issued to the soldiers in the field on what to do with individuals in need of urgent medical care. According to the Procedure for the Handling of a Resident of Judea and Samaria Arriving at a Checkpoint in a Case of Medical Urgency: As a rule, the Commander of the checkpoint shall enable the crossing of a person at the checkpoint for the purpose of obtaining medical treatment, even if the person doesn't have the required permit, if the case is an urgent medical emergency. The IDF has consistently stated that in cases of medical emergency, medical personnel, the sick and wounded would be allowed to pass manned checkpoints. These assertions have not been borne out by the facts. Moreover, the IDF directives do not deal with unmanned earthen and concrete barriers, which are numerous and in themselves cause great delay to ambulances as they seek alternative routes.

²³⁴ H CJ 9242/00, Physicians for Human Rights v. Minister of Defense, as quoted in B'Tselem's "No Way Out: Medical Implications of Israel's Siege Policy," p. 4.

The delay of medical emergency cases at checkpoints

On 14 October 2000, 'Ala' Hamdan 'Abd-al-Aziz, nine years old, died from a pulmonary infection because Israeli soldiers prevented her family from evacuating her to a hospital. The following testimony was given to Al-Haq by Jamal Yousef Khader Ahmad, the taxi driver who tried to help 'Ala' Hamdan's parents:

On 13 October 2000, I was in my house, which is about 100 meters from the Hamdan home. At around 9:30 p.m., the father of the child asked me to take them in my car, a black BMW, year 1983, and we placed the child in the car. Her health was very bad, and we wanted to take her to Nablus in order so that she could receive medical care, but we ran into an Israeli checkpoint at the main entrance of our village. We said to him (a soldier), there is a child in need of medical attention with us and her condition is bad. He was talking to us in Hebrew and we told him in Hebrew "Look at the child" and that she is sick and that we want to take her to the hospital, but the soldiers refused to let us pass and we continued the conversation with them for 10 minutes but without results. We returned from where we came.

In the morning of 14 October 2000, at 8:30 a.m., the father of the child asked me to take her to Dr. Riyad al-Hilo in Qabalan, which is about 5 kilometres from our village. We took the child, myself, her father and her mother, and the condition of the child was very serious. I thought she was going to die in the car, and as we arrived at the doctor's practice the child died.²³⁵

On 24 November 2000 13 year – old 'Ali Salah Hamdan was injured during clashes between youths and Israeli soldiers in the village of Deir Ibzi'. Hamdan was bleeding heavily after he was hit in the shoulder by a

²³⁵ Al-Haq affidavit 430/2001.

rubber coated metal bullet. An ambulance from Ramallah travelled to the village in order to evacuate Hamdan. While on its way the ambulance encountered a concrete bloc near the village of al-Janiya, west of Ramallah. The driver was forced to find an alternate route. The ambulance then encountered an Israeli military jeep and was held up for about 20 minutes. While on its return journey to Ramallah with the injured patient the ambulance encountered another Israeli military patrol and was ordered to turn back. When the nurse tried to explain the seriousness of the child's condition one of the soldiers replied, "you have only one minute to go to where you came from or else we will damage the ambulance and its wheels and beat you." The ambulance was forced to take a circuitous route that prolonged the journey by an hour. The journey from Deir Ibzi' to Ramallah usually takes fifteen minutes.²³⁶

'Arafat Jabarin, a 17 year old student from Sa'ir was shot in the head on 22 December 2000. It usually takes 7 minutes by car to reach the hospital from where he was shot. Due to the closure it took approximately 2 hours to take him to the hospital. In his testimony to Al-Haq, Dr. Nasim Jaradat, who was an eyewitness to the incident, stated:

On Friday 22 December 2000, at about 2p.m., I was in my house in the village of Sa'ir in Hebron. I learned that a child from the village was shot near my house by the occupation forces. I prepared myself to provide medical aid for him. When his friends brought him to my clinic he was in a critical condition. He had been struck in the head by a bullet and needed urgent hospital treatment. I provided first aid and called an ambulance from Hebron but we were informed that the ambulance could not enter the village due to the soil piles that blocked all the entrances of the village. We were also informed that another ambulance would try to enter the village through the hills. This ambulance would take him to the checkpoint where there would be another ambulance on the other side waiting to

²³⁶ Report of the Operations Room on Assaults on Medical Personnel, Palestine Red Crescent Society, 29 September to 26 January 2001, p 32. (Arabic)

receive him. We waited for about 45 minutes until the ambulance arrived. We took him to the barrier that closed the southern entrance of the village. There, we carried him on a stretcher and walked for about 25 metres. We put him in the other ambulance. I asked the driver to drive fast, but after two minutes driving we encountered another checkpoint at the entrance of Hebron. The soldiers there held us for about 7 minutes to check our ID cards. They saw the injured child and I explained to them how serious his condition was, yet they did not care. Ten minutes after we reached the hospital the child was pronounced dead.²³⁷

‘Imad Muhammad Hasan Salem, 29 years of age and a worker from Hebron, gave the following testimony to Al-Haq concerning the case of Bajes Abd-al-Hamid Nimer Isleimiyya, 43 years of age and from Ithna:

On Wednesday, 6 June 2001, at about 6:15, I was standing in front of my house in the village of Ithna. At that moment I saw an ambulance (Palestinian Red Crescent ambulance) parking near my house. I went to the place where it was parking and looked inside. I saw Bajes Abd-al-Hamid Nimer Isleimiyya whom I knew well. He was unconscious. His brother Khaled was with him. I got into the ambulance with them. Ithna is located just 12 kilometers to the east of Hebron and it usually takes 10 minutes to drive to the hospital. Due to the closure, the ambulance travelled along an alternate route. We went through a one-kilometer long mountainous road to reach the main road that connects Ithna with Hebron. We drove until we encountered a checkpoint near the Jewish settlement of Adora. There, the soldiers asked us to show our ID cards. Khaled did not have his ID card with him as he cared about his brother more than the ID card. The soldiers delayed us at the checkpoint despite the fact that Bajes’ condition was critical. They held us for

²³⁷ Al-Haq affidavit 044/2000.

about 25 minutes. When we were about to reach Hebron, we found out that all the roads leading to it were closed. The ambulance driver phoned another ambulance to meet us at one of the entrances. Ten minutes later, the other ambulance arrived. We carried Bajis on a stretcher and took him to the other ambulance which was waiting at the other side of the soil pile. It took about ten minutes to carry him from one ambulance to the other. The first aid officer did his best to save Bajes' life. We continued on our way to the al-Ahli Hospital which was only two kilometers away from the earthen barrier. When we arrived at the hospital the doctors told us that he had been dead ten minutes. Bajes was a father of 8 children.²³⁸

Bassam Mahmoud Suleiman Amara, 39 years of age and an accountant from al-Nabi Saleh, gave the following testimony to Al-Haq concerning the case of Maryam Muhammad Ibrahim Amara from the village of al-Nabi Saleh near Ramallah:

On Sunday 1 July 2001 at about 7p.m., I was in my mother's house in the village of al-Nabi Saleh. I was sitting near my mother Maryam. Outside two Israeli military vehicles entered the village and clashes erupted with the youths of the village. The youths stoned the soldiers while the soldiers responded with live ammunition, rubber coated steel bullets, tear gas and shock grenades. The soldiers left the village one hour later. However, my mother was tense and worried. I tried to calm her down. I stayed with her until 11p.m. then I went to my apartment which is near her's. At about 11:50 I heard my father calling me and saying that my mother was sick. I rushed to my mother's room and asked her about her health. I could see that she was suffering from pain in her chest. I decided to take her immediately to doctor Basem al-Rimawi in the nearby village of Beit

²³⁸ Al-Haq affidavit 250/2001.

Rima. The village is only 3km away from our village. Doctor Rimawi checked my mother and told me to take her to the Ramallah Hospital immediately.

Ramallah is 24 kilometers away from our village. I asked my cousin to take her to the hospital in his taxi. On our way to the hospital we encountered a checkpoint near the al-Nabi Saleh junction. This checkpoint has been there for five months. We did not dare to pass. We thus stopped near the checkpoint for about ten minutes until a soldier came and asked us about what was going on. I explained my mother's condition to him in Hebrew. He looked at my mother and went to the other soldiers. He then came back accompanied by another soldier and took our ID cards. We gave them the cards quickly to save time. I told one of the soldiers that he could keep the ID cards with him until we came back, but he ignored me and checked our ID cards. He then told us that Arabs were not allowed to use the road and told us that we should use the other road. He meant a road that would extend our journey up to 2 hours. We would have to pass 13 villages to reach Ramallah if we had used that road. I begged the soldier to allow us to pass. The soldiers discussed the matter among themselves. One of the soldiers agreed to let us pass but the other one refused. We stayed there for about 25 minutes. While the soldiers were arguing amongst themselves, we drove pass. When we reached Bir Zeit, just a few kilometers to the north of Ramallah, we encountered another checkpoint. The soldiers stopped us and asked how we managed to use the road. They stopped us for about 25 minutes also. My mother's condition was getting worse. The soldiers then allowed us to pass.

When we reached the village of Surda, an Israeli military jeep stopped us and the soldiers checked our ID cards. They

held us for about 10 minutes and then allowed us to continue on our way. I felt that my mother's breath and heartbeat were getting weaker. We reached the Ramallah Hospital at 2 a.m. Doctors there tried to help my mother but she died 15 minutes later. She died because of a heart attack. The doctor told me that if we had reached the hospital earlier, they could have saved her. I took my mother in an ambulance and went back to the village to bury her. On our way back we faced the same difficulties we faced while we were going to the hospital. Whenever the soldiers stopped us on our way back to the village I told them this is my mother whom you delayed and now she is dead. But they did not say a word.²³⁹

Births at Checkpoints

During the period under examination, a number of women were obliged to give birth at or near checkpoints because they were forbidden to pass by soldiers. Suha Zuhr Sharaka from the Jalazon refugee camp gave the following testimony to Al-Haq:

At around 9 a.m. on September 30 2001 I was travelling to the Ramallah hospital because I was in labour. I was with my mother-in-law and we were travelling along the Bir Zeit road. The soldiers usually check people at the Surda checkpoint from 7 to 10. So we were stuck in a traffic jam at the checkpoint. We were there for about an hour and a half. It was very hot and my situation was getting worse. Someone called an ambulance but it could not reach our car so they brought the stretcher to the car. I was in pain and felt that I was about to give birth. The ambulance stopped at the side of the road and the medical staff attempted to deliver the baby. After the birth I felt much better, but the baby was blue. The ambulance was

²³⁹ Al-Haq affidavit 202/ 2001.

eventually able to get through and we arrived at the hospital where we received medical attention.²⁴⁰

Dr. ‘Abd-al-Naser Saleh Daraghma gave the following testimony to Al-Haq about Firyal Idris:

On July 10 2001, Firyal Idris from al-Malha area came to the Shifa clinic in Toubas. She was bleeding as she had recently given birth. She was in bad physical condition as she had given birth at the Tayasir checkpoint. She was stuck at the checkpoint for about two hours and had given birth in a truck. She arrived at the clinic in a taxi. Her baby died soon after its birth.

I tried to stop her bleeding. She was in the clinic for about two hours. Afterwards we took her to her tent and I visited her twice during the following week. I should say that when she arrived at the clinic the umbilical cord was tied around the baby. The baby died because it did not receive the necessary medical treatment due to the mother being held up at the checkpoint. The Israeli soldiers at the checkpoints don’t care too much about these types of situations. ..²⁴¹

²⁴⁰ Al-Haq affidavit 341/2001.

²⁴¹ Al-Haq affidavit 505/2002.

B. Curfew

Unlike the previous intifada where curfews were widely used by the military authorities in its attempts to suppress the uprising, during the current intifada in the period under investigation, curfew was not utilised as systematically. This is due to the fact that a considerable number of the population live in areas that are now under the direct control of the Palestinian Authority.

According to article 89 of Military Order 378, the authority to declare a curfew is vested in local military commanders. According to the article:

A Military Commander may issue an order requiring every person within a specified area to remain indoors during the hours set by the order. Anyone who is found out of doors without a written permit issued by or on behalf of a Military Commander, in the area or during the hours set by the order, shall be guilty of an offence under this order.

The Israeli authorities have traditionally maintained that curfews are imposed for “security reasons,” the “pursuit of terrorists” and for “the restoration of public order.” The law of belligerent occupation does not, however, make an explicit reference to curfew regulations, but it is generally accepted that curfews may be imposed on a civilian population in order to ensure public order and social life, so long as fundamental humanitarian safeguards are strictly adhered to. Thus, the imposition of a curfew derives its legitimacy from the possibility that an even greater disruption of civil order would ensue in its absence. There has however, been a consistent pattern in the Palestinian territories whereby curfews have usually been extended way beyond what could reasonably be argued to be legitimate security related concerns.

As in the previous intifada, curfew has been imposed in the current uprising on certain locales as a policy to collectively punish the population as well as a measure to protect settlers from the residents of nearby towns or villages. The H2 zone of Hebron which is under direct Israeli control is the most glaring example. In H2, curfew was repeatedly imposed on the Arab residents of the town, while the approximately four hundred Jewish settlers were exempt. When the military authorities were forced

to justify the frequent resort to curfew in the town, it was often stated that the curfew was imposed in response to shooting incidents. The shootings incidents invariably emanated from H1 and not H2. Thus the Arab population was continuously punished for incidents originating from Palestinian controlled H1 and paying the price for the security of the settlers whose presence is illegal under international law (See General Annex D).

The village of Huwwara was placed under curfew for a considerable period due to the fact that it is the only access point for settlements in the area. Among other effects, the curfew paralysed the educational system as the schools in the village were forced to close disrupting the education of approximately 1,647 students. Hamoked – Center for the Defence of the Individual appealed to Brigadier General Beni Gantz, the then Area Commander for the West Bank, on 8 November 2000, to lift the curfew on the village. In its letter, Hamoked wrote: “Assuming that the curfew on residents of Huwwara aims to assure safe passage on the road passing through the village for the settlers in the area, this measure is discriminatory – and a most extreme measure was chosen in a case where reasonable alternatives can be found. Reduction of the travel time for Israeli vehicles on the road leading through Huwwara, for example, and provision of IDF protection, would achieve the same goal without incurring a continuing tragedy upon an entire population.” In response the IDF justified the curfew by stating: “in light of the occurrence of large scale public disturbances that included among other things, the throwing of stones and Molotov cocktails at Israeli and IDF vehicles; blocking road 60 – a central route - to traffic by burning tyres; and even firing shots at soldiers and Border Police.”²⁴² In the same light, the village of Silat al-Daher in the Jenin District near the Jewish settlement of Homesh was placed under curfew on a number of occasions. In order to travel to the settlement it is necessary to use a road which is in the vicinity of the village.²⁴³

²⁴² Hamoked letter and IDF response as quoted in B’Tselem’s “Illusions of Restraint,” Human Rights Violations During the Events in the Occupied Territories 29 September – 2 December 2000, p 23.

²⁴³ *ibid.*

Legal Context

In assessing the legality of the imposition of closure and curfew account must be taken of the duration and extent of the measures imposed; the reasons invoked by the occupying power for the restrictive measures; the proportionality of those measures to any stated security related rationale, and the effects of the measures on the population affected.

Though the military authorities have repeatedly stated that the imposition of the closure and curfew are for reasons of security, it does appear that the main thrust behind the policy has been to collectively punish the civilian population. Enforced confinement, either in the guise of closure or curfew has been routinely employed by the military authorities in their attempts to control the population. A complimentary motive has also been to protect the settlers. The security imperative integral to humanitarian law refers only to the security of the occupying power, its soldiers and administration. Measures taken to ensure the security of the settlers, whose presence is illegal, and at the expense of the protected population has no legitimacy under international law.

Under the law, an occupying power is obliged to facilitate the distribution of food stuffs, medical supplies and other essential items and to ensure the normal functioning of medical services. Article 55 of the Convention requires Israel to ensure “the food and medical supplies of the population and article 56 requires that “medical personnel of all categories shall be allowed to carry out their duties.” In a public statement issued in November 2000, the ICRC stated that “as an occupying power, Israel may restrict the freedom of movement of the resident population, but only when and in so far as military necessity so dictates. Restrictions on movement by means of curfews or the sealing off of areas may in no circumstances amount to collective penalties, nor should they severely hamper the daily life of the civilian population or have dire economic consequences. Moreover, the occupying power has the duty to ensure an adequate level of health care, including access to hospitals and medical services, and may not obstruct the circulation of food supplies. All institutions devoted to the care and education of children must be allowed to function normally. Religious customs must be respected, which implies

access to places of worship to the fullest extent possible.”

In February 2001 the ICRC asserted in a statement that Israel’s policy of closures and blockades was in violation of its commitment under the Convention: “The ICRC views the policy of isolating whole villages for an extended period of time as contrary to international humanitarian law (IHL), particularly with respect to those aspects of IHL, which protect civilians in time of occupation. Indeed, stringent closures frequently lead to breaches of article 55 (free passage of medical assistance and food stuffs), article 33 (prohibition on collective punishments), article 50 (children and education), article 56 (movement of medical transportation and public health facilities) and article 72 (access to lawyers for persons charged) of the Fourth Geneva Convention. While accepting that the state of Israel has legitimate security concerns, the ICRC stresses that measures taken to address these concerns must be in accordance with international humanitarian law. Furthermore, these security measures must allow for a quick return to normal civilian life. This, in essence, is the meaning of the Fourth Geneva Convention which is applicable to the Occupied Territories.”

Al-Haq’s own documentation augmented by those of other human rights organisations clearly illustrates the deleterious effects that movement restriction has had on the very fabric of Palestinian society. The scale of the policy is clearly disproportionate to any security advantage that could be reasonably anticipated. Those in need of medical care have been delayed, with some patients dying as a result, the economy has been severely dislocated, and education and other facets of life have been disrupted to the extent that the policy has breached articles 33, 50 and 56 of the Convention. According to the authoritative Commentary on the Convention, an occupying power is under an obligation to maintain at a reasonable level the material conditions under which the population lives.²⁴⁴ It is clearly the case that the closures have done nothing other than to undermine the material well being of the local population.

²⁴⁴ Opcit Commentary to the Fourth Geneva Convention p 310.

The ICRC correctly notes the legitimacy under international humanitarian law of movement restrictions in certain circumstances, but fails to take note of the prevailing situation in the Palestinian territories where collective and punitive measures are often imposed on the population in order to ensure the security of the settler population.

Moreover, the military authorities clearly bear responsibility for the deaths recorded at checkpoints throughout the intifada. The responsibility would amount to an omission, due to the lack of diligent care taken in ensuring that soldiers in the field were fully appraised of the procedures concerning civilians in need of emergency medical care.

CASE STUDIES

Assault on 'Arraba

The following case study is based on affidavits taken from three individuals who were inside the village of 'Arraba when it was attacked and placed under siege during the early hours of September 12 2001. During the attack, three Palestinians were killed and seven injured. A fourth Palestinian, Sufiyan 'Arda, died after Israeli soldiers took him into custody while he was being transported to hospital. The summaries below detail Israel's excessive use of force during the attack, the abuse and humiliation of medical personnel, attacks upon medical personnel, as well as the refusal by Israeli soldiers to let seriously wounded patients travel to hospitals.

The assault on 'Arraba followed incursions by Israeli forces into the West Bank towns of Jenin, Toulkarem, Qalqiliya, and Salfit on September 11th. The towns were placed under siege, with all travel to or from the towns prohibited. Over the coming days, the sieges were expanded to encompass many of the villages (including 'Arraba) surrounding these towns, and to include the towns of Ramallah, Jericho, Nablus and their surrounding villages. Additionally, reinforcements were sent to strengthen the already existing siege on the Hebron district. In Jenin, the town's water supply was cut off for five days and Israeli shelling left half of the city without electricity. Food supplies were not allowed into closed areas, and medical personnel were unable to transport patients to hospitals. In the one-week period from the 11th to the 18th of September, 29 Palestinians were killed by Israeli forces. On September 14th, Israeli Defense Minister Binyamin Ben Eleizer stated, "it is a fact that we have killed 14 Palestinians in Jenin, Qabatiya and Tammoum, with the world remaining absolutely silent." Following President Arafat's unilateral declaration of a ceasefire on September 17th, Israeli forces partially lifted the restrictions that they had imposed around the major Palestinian towns. However, despite Israel's declarations to the contrary, many smaller towns and villages remained closed off.

Al-Haq's fieldworkers gathered the following affidavits as a part of their

routine work investigating and carefully documenting human rights violations. While the testimonies below are dramatic, they are not unique. Unfortunately, these affidavits are but a representative sample of the hundreds of affidavits gathered by Al-Haq over the period of the intifada.

Summary of an affidavit taken by Al-Haq from Khaldiya ‘Arda, (resident of 'Arraba and mother of Sufiyan, Haytham, and Balqis ‘Arda) ²⁴⁵

Khaldiya lived together with her 14 year-old daughter Balkis approximately one kilometre away from a home shared by her two grown sons, Sufiyan and Haytham. On Wednesday September 12th, shortly after 3:30 a.m., she received a phone call from her son Haytham who stated that Israeli soldiers were attacking the village and that he had been shot in his left arm and leg. He told her that shortly before, he had been woken up by the sound of gunfire and had gone to look out his door in order to see what was happening. While he was looking out his door, his house came under fire and he was injured by two bullets. After being shot, he first called for an ambulance from his cell phone, and then called his mother.

After finishing her conversation with Haytham, Khaldia woke up her daughter Balqis, and together they began to walk towards Sufiyan and Haytham’s house. As they were walking, Israeli soldiers stopped them and told them to return home. Khaldia recounted that as she and Balkis returned to their house they could hear the sounds of intensive shooting and shelling coming from the direction of her sons’ home, and that they saw two helicopters firing missiles into her son’s neighbourhood.

As morning broke, Khaldia and her daughter were finally able to reach Sufiyan and Haytham’s home. They found Haytham injured and bleeding inside the house, but did not locate Sufiyan. After a brief search, they found him outside in a neighbouring olive grove. He had been shot in the stomach, but told Khaldia that he was OK and not to worry. Khaldia and Balqis began to help him. Shortly thereafter, an Israeli helicopter

²⁴⁵ Taken from Al-Haq affidavit 342/2001.

that had been hovering overhead, fired a missile towards the house. Pieces of shrapnel from the missile hit Balqis in the chest and head, killing her instantly. Somewhere around 5 a.m., two ambulances arrived to help the wounded and to take away the dead. One of these ambulances attempted to bring Sufiyan to hospital in Nablus, but was stopped by Israeli soldiers who took Sufiyan into custody. The next day Khaldia was informed that Sufiyan had died, and his body was returned.

The other two Palestinians who died were As'ad Daqqa from Toulkarem and Wa'el 'Assaf from 'Arraba. Both were staying with Sufiyan as guests, and both were wanted by the Israeli authorities. Additionally, Sufiyan was a known member of Islamic Jihad. His mother believes that his home was targeted by the Israeli military because As'ad Daqqa and Wa'el 'Assaf were staying with him, and because of his connection with Islamic Jihad.

Summary of an Affidavit taken by Al-Haq from Ambulance Driver Mahmoud Husein Najib Ba'jawi ²⁴⁶

Mahmoud Husein works with the Palestinian Red Crescent Society in Jenin. On September 12th he was working as the driver and emergency medical technician of a medical team in 'Arraba. Normally his would have been the only ambulance in 'Arraba, but by chance another ambulance and its crew from Ramallah were staying overnight in the 'Arraba headquarters of the Palestine Red Crescent Society after having been refused entry into Jenin earlier in the day.

At approximately 3 a.m., Husein received an emergency call, which notified him that the village was under attack, and that several people had been injured. No other information was given, but he left the Red Crescent headquarters in the hope that he could by chance find those who had been injured. He immediately headed towards the western quarter of 'Arraba where the incursion was reported to be occurring, turning on his lights and siren to identify himself as a medical aid worker. At the entrance to the western quarter of the village, he was stopped by a group

²⁴⁶ Taken from Al-Haq affidavit 343/2001.

of Israeli soldiers at an improvised roadblock that had been established by placing a dirt pile across the roadway. The soldiers ordered him to get out of his ambulance, and then they made him take off his clothes and lie on the ground. While he stripped, he could see the red dot from one of the soldier's laser gun sights moving across his body. After he had complied with their orders, one of the soldiers came over and stood next to him with one foot on his back. The other soldiers proceeded to search his ambulance. After approximately one and a half hours, the soldiers returned his clothes and told him to leave, warning him that if he returned they would kill him. They kept all of the medical supplies (medicine, bandages, cotton swabs, etc.) that had been stored in the back of his ambulance.

As he left he could hear intensive shooting coming from the western quarter of 'Arraba and saw people from other parts of the village coming out to try to figure out what was happening. While returning to headquarters, he met the ambulance from Ramallah, as it was attempting to reach the area under fire. He advised it to turn around, and both ambulances then returned to the Red Crescent headquarters, arriving there around 3:45 a.m. While at the headquarters, Mr. Husein heard that Haiytham 'Arda had been injured, but he was not able to reach the 'Arda home until 5 a.m. When he did reach the home, he found three people dead and seven injured. Among those injured was Sufiyan 'Arda, who had been shot in the stomach and was bleeding profusely. He was seriously injured and screaming from intense pain, but when asked questions he answered them and appeared fully conscious. Mr. Husein quickly hooked Sufiyan up to an IV of glucose, attempted to stop his bleeding, and then helped the others who had also been injured.

At approximately 5:30 a.m., Sufiyan was placed in the second ambulance, which made its way to Nablus. Mr. Husein learnt later that the ambulance was stopped by a group of Israeli soldiers as it travelled on a dirt road running between 'Arraba and the village of Fahma. The soldiers questioned Sufiyan and the crew of the ambulance, and then ordered the ambulance staff to move off to the side to wait until an Israeli ambulance arrived to take Sufiyan away. After Sufiyan had been trans-

ferred to the Israeli ambulance, the ambulance that had previously held Sufiyan was ordered back to 'Arraba.

Mr. Husein then continued to help the injured who had remained behind. At 6:30 a.m., he placed another of those who was seriously injured into his ambulance and left for Toulkarem. Just outside the village he was also stopped by a group of Israeli soldiers, and was ordered by them to drive off the road into a group of trees. He and his crew were then taken from the ambulance, had their hands bound, and were forced to kneel on the ground. The ambulance's CB radio and their cell phones were also confiscated. They were detained for approximately four hours. During this time, three ambulances attempted to reach them from outside 'Arraba, but were denied entry, and the injured man received no treatment. Part way through their period of detention, the second ambulance that had held Sufiyan, arrived at their location, and its crew was also detained and bound.

Upon their release, both ambulances drove towards Toulkarem, but were stopped at a second roadblock. A pile of dirt had been placed across the road, and several Israeli soldiers were standing guard. On the other side of the dirt pile several ambulances were waiting to receive the wounded from 'Arraba. The distance between the two sides was no more than six meters. However, the Israeli soldiers at the checkpoint, would not allow them to transfer the wounded to the other ambulances, but instead ordered them back to 'Arraba. The soldiers told Mr. Husein that the road was closed and that they could not allow anyone through, no matter the reason. The two ambulances were forced to return to 'Arraba where they contacted the International Committee of the Red Cross to help them negotiate with the Israeli authorities free passage to hospitals in Jenin and Toulkarem. After intensive negotiations, the ambulances were eventually able to bring some of the injured to the hospitals. The rest of the injured were transported to the hospitals the next day.

At 5:30 p.m. September 13th Mr. Husein also retrieved Sufian's body through the ICRC who had received it from the Israeli authorities. According to Mr. Husein, Sufiyan should not have died. He reported that although Sufian's condition had been serious, he was stable, and that

with adequate attention he could have lived. However, after carefully examining Sufiyan's body, Mr. Husein did not find any indication that Sufiyan had received medical attention while in the care of the Israeli soldiers who had detained him. He also stated that it appeared that the glucose drip he had set up for Sufiyan had been removed.

Summary of an Affidavit taken from Ambulance Driver "A"²⁴⁷

"A" told Al-Haq that on Tuesday September 11th he left Ramallah early to pick up a patient and her husband in Nablus for transport to Jenin Hospital where she was to be treated. At 6 p.m., they reached a checkpoint south of Jenin manned by several Israeli soldiers and two tanks. One of the tanks was obstructing the road, and the second tank was in the middle of a nearby intersection. Although he received no signal to stop, "A" halted before reaching the checkpoint and requested to be let through to Jenin in Hebrew over the ambulances' loudspeaker. There was no verbal response from the soldiers at the checkpoint, but the tank blocking the road turned its turret so that its main gun was facing the ambulance. The machine gunners in the tank also aimed their weapons at the ambulance. For several seconds nothing happened. Then, without warning, the soldiers on the tank opened fire towards the ambulance. After the shooting stopped, the tank began moving quickly towards the ambulance. "A" responded by quickly turning his ambulance around and fleeing the scene. As he was driving away the Israeli soldiers on the tank continued firing.²⁴⁸

The patient in the back began screaming as they fled, and "A" thought she had been hit. After approximately three kilometres, "A" stopped at the al-Shuhada Junction to check on his patient and her husband. He found that they were both uninjured but scared. He also found that three bullets had hit the ambulance. He wanted to make another attempt to reach Jenin from a second entrance, but his patient protested and asked

²⁴⁷ Taken from Al-Haq affidavit 319/2001.

²⁴⁸ In addition to the affidavit given to Al-Haq by "A," Al-Haq received other documentation corroborating "A"'s account of the attack on the PRCS ambulance from PRCS's headquarters in Ramallah.

him instead to take her to the home of her relatives in 'Arraba. After dropping of his patient at her relative's house, "A" went to the local Red Crescent Society headquarters where he was given a bed for the night.

At 3 a.m. "A" was woken up and informed that 'Arraba was under attack. He and the other ambulance then attempted to reach the area under attack, but were unable to get through. It was only until 5 a.m. that they were able to reach the home of Sufiyan and Haytham 'Arda. At the house, they found three people already dead and a number of wounded. Of those wounded, Sufiyan's wound was the most serious. "A" took him and set off for Nablus along a back road. As they were driving, a group of Israeli soldiers in face paint and camouflage suddenly jumped out of the trees in front of the ambulance and ordered "A" to stop. They then proceeded to search the ambulance and asked Sufiyan a number of questions. "A" was ordered out of his ambulance and the soldiers informed him that they wanted to take Sufiyan with them. "A" protested saying that if he was detained Sufiyan was likely to die from his injuries. One of the soldiers informed him that that was not his problem. After more protests "A" attempted to call the Red Crescent Society in Ramallah to inform them of what was happening. However, one of the soldiers stopped him and told him that all he was allowed to tell his headquarters was that Israeli soldiers had detained him and that he couldn't talk. After one and a half hours an Israeli military ambulance arrived, Sufiyan was transferred into it, and taken away, and "A" was released. He asked to be allowed to continue on to Nablus anyway, but he was told that nobody could leave 'Arraba. The next morning "A" was informed that Sufiyan 'Arda had died.

"A" picked up a new patient who had suffered a heart attack and set off for Toulkarem. He knew that he probably would not be able to leave 'Arraba, but had arranged for another ambulance from Toulkarem to meet him at the Kufra Ra'i checkpoint just outside of 'Arraba. As he drove towards the arranged meeting point, a group of Israeli soldiers stopped him and ordered him to drive his ambulance off the road into a group of trees where Mr. Husein's ambulance had already been detained. He was forced out of his ambulance and bound, but the nurse who was with him

was allowed to stay inside with the patient. They were detained for three hours during which time the patient's condition deteriorated.

After they were released, both ambulances drove towards the Kufr Ra'i checkpoint where they were stopped by Israeli soldiers. The ambulances that "A" had called for were waiting on the other side of the checkpoint, but the soldiers refused to let them pass, telling both "A" and Mr. Husein that they must return to 'Arraba. "A" told them that they had just been stopped by another group of soldiers, that their patients were in desperate need of treatment, and that he had coordinated his trip with the District Co-ordination Office (DCO). One of the soldiers informed him that he did not work with either the soldiers at the other checkpoint or with the DCO, and that he didn't care what arrangement had previously been made. He said that nobody could leave as the area was closed and travel was forbidden. Even carrying the patients across the checkpoint was forbidden. Both ambulances were then forced to return to 'Arraba where they contacted the ICRC to ask for its assistance. Early in the evening they were finally given permission to leave and he was able to get the heart attack victim to the hospital between 6 and 7 p.m. Early the following morning "A" returned to Ramallah.

Education & the Intifada

According to article 50 of the Fourth Geneva Convention, the occupying power is obliged to “facilitate the proper working of all institutions devoted to the care and education of children.”

The right to education is a fundamental and inalienable right of all children, and thus in territories under foreign military occupation, educational institutions must be protected and respected by the occupying power as noted in article 56 of the Hague Regulations and in article 50 of the Fourth Geneva Convention. However, in the first year of the current intifada, the Israeli authorities have not abided by the prescription of the law, and have taken measures that have effectively disrupted the Palestinian educational system.

Internal closures imposed on the Occupied Palestinian Territories prevented students and teachers from reaching their schools. In areas under direct Israeli control, schools were closed by military orders and in the old city of Hebron, three schools were turned into military compounds. Some schools located in areas immediately accessible to Israeli forces were put under siege, pupils and teachers harassed on a regular basis, and school property destroyed. Schools located in areas under the control of the Palestinian Authority were exposed to indiscriminate Israeli shooting. In total, 95 educational institutions were damaged due to Israeli fire directed into Palestinian civilian neighborhoods during the first year of the intifada.²⁴⁹

²⁴⁹ Palestinian Ministry of Education, Summary of the Israeli violations of Palestinian Education, during the scholastic year 2000/2001.

Impact of Internal Closure

The internal closure has caused a tremendous disruption in the educational process as many teachers and students were unable to reach their respective places of employment and learning. The Palestinian Ministry of Education registered 10 to 90 percent non-attendance rates at schools by originally assigned teachers. The Ministry tried to minimize the impact of closures by encouraging teachers who could not reach their workplaces, to teach in the closest school, and by asking employees from the Ministry, retired teachers and qualified volunteers to replace absent teachers. The director of each governmental school was given extended powers to take the measures necessary to cope with the situation.²⁵⁰

The impact of internal closures on education was far graver in the West Bank than in the Gaza Strip, as the cumulative number of school days lost in the different directorates of the West Bank reached 280 days between 28 September 2000 and 25 May 2001, compared to 14 days in the Gaza Strip.

Closures of schools by military orders

The following six schools were closed by the Israeli military for various periods which affected some 3,000 students:

- Al-Khader Basic School for Boys, 386 students and 21 teachers
- Al-Khader Secondary School for Boys, 686 students and 22 teacher
- Al-Khader Secondary School for Girls, 696 students and 30 teachers
- Al-Khader Basic School for Girls, 559 students and 19 teachers
- Huwwara Secondary School for Boys
- Al-Sawiya, al-Luban Secondary School for Boys, 412 students and 25 teachers

The four al-Khader schools in the Bethlehem district were closed by an order issued by the Etzion Brigade Commander on 31 October 2000 for

²⁵⁰ Israeli violations of the Rights of the Child to Education, <http://www.moe.gov.ps/intifada/intehakat.htm>

a period of 30 days, and the order was extended for an additional 15 days. The schools were closed until 15 December 2000. The Huwwara School was closed for a period of 21 days. The al-Sawiya, al-Luban School was closed by the Israeli army from 6 February 2001 to 13 February 2001, from 26 February 2001 to 29 February 2001 and from 24 March 2001 to 5 April 2001.

Directorates	Percentage of non-attendance by teachers	Percentage of non-attendance by students	Number of school days lost
Jenin	4	3	9
Nablus	15	6	34
Salfit	4	4	9
Toulkarem	13	6	30
Qalqiliya	10	5	23
Ramallah	14	10	32
Around Jerusalem	7	10	16
Jerusalem	10	6	25
Bethlehem	4	4	9
Jericho	13	12	32
Hebron	20	18	45
South of Hebron	5	4	11
Qabatiya	2	3	5
Total in the West Bank			280
Total in the Gaza Strip	6	4	14
Total in the Palestinian Territories			294

Source: Palestinian Ministry of Education, Table No 3, Attendance in the Educational Process during the Intifada and Size of the Catch-up Demanded for the Period 29/9/2000 – 25/5/2001.

Schools turned into military compounds

Three schools in the old city of Hebron were turned into Israeli military compounds and the students were forced to relocate to other schools. These schools were:

- Usama Ben Munqith School, 584 students and 13 teachers
- Al-Ma'arif Boys School, 871 students
- Jawhar Girls School, 388 students and 13 teachers

The seizure of schools and their use for military purposes is prohibited by article 56 of the Hague Regulations.

Attacks on schools and harassment of teachers and students inside and around schools

According to the Palestinian Ministry of Education, there are 275 schools located in areas close to Israeli settlements or Israeli military installations. During the first year of the intifada, at least 23 Palestinian schools were attacked by Israeli forces with live ammunition, rubber coated metal bullets, tear gas canisters and sound bombs.²⁵¹ A school teacher gave the following affidavit to Al-Haq:

On December 15 2000, at 10 a.m., I was in al-Zir Elementary School for boys where I am a teacher. The school is close to a bypass road. On the day in question, two jeeps entered the playground. There were no disturbances. Nonetheless, the soldiers shot tear gas into one of the classrooms. All the boys were six years of age. The boys started to scream, cry and shout. We took the boys from the classroom. One week before, four military jeeps came to the school. The soldiers told the Principle that the boys had been whistling at the soldiers and that this was forbidden. They had threatened to kill a student if this continued.²⁵²

²⁵¹ *ibid.*

²⁵² Al-Haq affidavit 087/2001.

Some of the schools have been targeted repeatedly such as the schools located in the old city of Hebron, the Kufr al-Dik Secondary Girls School in the Ramallah district, the schools in al-Khader village and the Taqou' Secondary Boys School in the Bethlehem district. For example, the al-Khader Secondary Boys School in the Bethlehem district reported a number of incidents involving the destruction of school property and the harassment of students and teachers. Between October 2000 and February 2001, the school director reported no less than seven separate incidents of this type and the school was closed by the Israeli military for 45 days during the same period.

Appendix:

The director of the al-Khader Secondary Boys School reported the following incidents to the Bethlehem Directorate of the Palestinian Ministry of Education:

- October 15, 2000: At 8:15 a.m., Saleh ‘Ali Hasan al-Batha, who is a teacher, stopped his car next to the school. At this point, Israeli soldiers started breaking all the windows of the car as well as the lights. Other cars present in the area were also damaged. The soldiers also opened fire on two students. These incidents caused an atmosphere of panic among the students.²⁵³
- October 30, 2000: During the frequent clashes which take place around the school, windows of the school were broken by Israeli fire. The main doors were damaged as soldiers in an army jeep tried to enter the schoolyard by forcing the doors.
- October 31 until December 15: the school was closed by military order from the Israeli Etzion Brigade Commander.
- January 3, 2001: On the morning January 4, 2001, the school personnel found all 120 windowpanes on the south and east side of the school broken. According to students’ testimonies, a group of Israeli soldiers entered the school compound on the evening of January 3, 2001, and broke the windows.²⁵⁴
- January 8, 2001: At 11 a.m., Israeli soldiers fired tear gas canisters and live bullets at the school as the students were taking exams in their classrooms. January 12, 2001: In the evening, Israeli soldiers broke the windowpanes of the school’s kitchen as well as the kitchen utensils.²⁵⁵

²⁵³ Report from the director of the Al-Khader Secondary Boys School to the director of the Bethlehem Directorate of Education, on 15 October 2000, No 1/23/20

²⁵⁴ Report from the director of the Al-Khader Secondary Boys School to the director of the Bethlehem Directorate of Education, on 4 January, 2001, No 2/23/20

²⁵⁵ Report from the director of the Al-Khader Secondary Boys School to the director of the Bethlehem Directorate of Education, on 13 January 2001, No 3/23/20

- February 1, 2001: At 11:30 a.m. an Israeli jeep forced the entrance doors on the east side of the school, damaging the doors, which were closed. The jeep entered the courtyard and three soldiers got out and started pacing in front of the classrooms spreading panic among the pupils.²⁵⁶
- February 12, 2001: A teacher from the school, ‘Abdallah Mahmoud Jouda Sbeih, was thrown to the ground by three Israeli soldiers who were passing next to the school. The soldiers insulted the teacher and threatened to kill him. He was released when a group of teachers gathered around them.²⁵⁷

²⁵⁶ Report from the director of the Al-Khader Secondary Boys School to the director of the Bethlehem Directorate of Education, on 3 February 2001, No 5/23/20

²⁵⁷ Report from the director of the Al-Khader Secondary Boys School to the director of the Bethlehem Directorate of Education, on 12 February 2001, No 6/23/20

PART III

**THE LEGAL MECHANISMS
FOR PROTECTION**

Introduction

The enforcement of international humanitarian law is critical not only for the protection of a civilian population living under occupation, but also in preserving prospects for peace and security. One of the cardinal aspects of the Israeli occupation of the Palestinian territories over the last 35 years has been the failure of the international community of states to ensure Israel's adherence to the applicable law. What is more, efforts mounted by a handful of states, human rights groups and prominent individuals intended to ensure that Israel acts *intra legem humanitariam* have foundered on the contention that a law based approach would be deleterious to a political resolution of the conflict.

The Oslo era and the eruption of the current intifada does however illustrate the costs of the non-implementation of international law. The transfer and permanent settlement of an alien population in occupied territories, and other unlawful practices causing considerable harm to the protected population, and contrary to international law, cannot be treated as solely political matters without destroying the integrity of the Convention and thus jeopardising the protective mechanism that is essential for a civilian population that finds itself in a belligerent context. It is only through the enforcement of international humanitarian law that the temptations of an occupying power to annex occupied territory and abuse a vulnerable population can be arrested.

The Legal Imperative of Article 1

Article 1 of the Fourth Geneva Convention is unambiguously clear in its wording:

The High Contracting Parties undertake to respect and to ensure respect for the present Convention in all circumstances.

The authoritative commentary on the Fourth Geneva Convention by Jean Pictet states, "...the Contracting Parties should not be content merely to apply its provisions themselves, but should do everything in their power

to ensure that the humanitarian principles underlying the Convention are applied universally.” In this regard, article 1 must be viewed as an integral and indispensable part of the intended system of protection for the occupied civilian population. Due to Israel’s denial of the applicability of the Convention to the Occupied Territories, the Protecting Power mechanism envisaged by the Convention in Articles 9, 11 and 12 is inoperative, as it requires the agreement of both parties to the conflict for its proper implementation. Thus, the obligation to safeguard the provisions of the Convention by other states is the last protective mechanism against the commission of grave breaches by the occupying power against a vulnerable civilian population. As widely documented by both local and international human rights organizations, the reckless disregard for human life has formed the core of Israeli violations of the Convention during the current uprising. Hence, the invocation of the inter-state obligation of article 1 as a last remedy for the protection of Palestinian civilians against the unlawful practices of the occupying power is clearly a long overdue imperative.

To *ensure* that other States abide by the provisions of the Fourth Geneva Convention implies that the character of its obligations are deemed to be *erga omnes* (binding on all). This is underlined by specific provisions of the Draft Convention on State Responsibility prepared by the International Law Commission. In article 40 Paragraph 2 e iii it categorises, *inter alia*, the criteria for the meaning of *injured state* by stipulating that “injured State means if the right infringed by the act of a State arises from a multilateral treaty [...], any other State party to the multilateral treaty [...], if it is established that the right has been created or is established for the protection of human rights or fundamental freedoms.” Moreover, paragraph 3 of the aforementioned article stipulates that *injured State* includes all other States, “if the internationally wrongful act constitutes an international crime.” If, according to article 19 of the Draft Convention on State Responsibility, “the establishment or maintenance by force of colonial domination” is regarded an international crime entailing a multilateral relationship of responsibility to arrest its continuation, *a fortiori* the flagrant and widespread violations of international humanitarian law by the Israeli military authorities, such as wilful kill-

ings, wilfully causing great suffering or serious injury to body or health or the extensive destruction of property- all of which have been widely documented- undoubtedly meet the criteria for international crimes.

Furthermore, the inherent purpose of article 1 takes into account the asymmetrical power constellation between an occupying power and an occupied civilian population deprived of the right to self-determination or the protection of an ousted sovereign. As the responsibility for protecting the rights of a people who are under alien domination rests with the international community, it can be inferred that a prolonged occupation with an abusive framework depriving the Palestinian people of the most fundamental rights adds further normative strength to article 1.

The obligation to “ensure respect” is further augmented by reference to relevant rules and principles of international law as well as state practice as indicated by UN resolutions.

The Convention rests on the principle *pacta sunt servanda*,²⁵⁸ which finds expression in article 26 of the Vienna Convention on the Law of Treaties which states that “every treaty in force is binding upon the parties to it and must be performed in good faith.” Good faith requires performing legal duties in fact as well as in law. The conduct of the occupying power with regards to the occupied civilian population must be guided by the main purpose of the Fourth Geneva Convention-the protection of civilians in time of war.

Moreover, several United Nations Resolutions have continuously reaffirmed the applicability of the Convention to the Occupied Palestinian Territories with the most recent being Security Council Resolution 1322. In addition, a considerable number of UN General Assembly Resolutions have repeatedly referred to article 1 of the Fourth Geneva Convention as reflecting an obligation on the High Contracting Parties to bring Israel into compliance with its legal duties enumerated in the Convention.

States parties to the Convention could enforce their article 1 obligation through a number of measures intended to force Israel into compliance

²⁵⁸ *Pacta sunt servanda*: Treaties are to be observed.

with the law. States could for example cancel scientific and other cooperative ventures with Israel. States could also sever diplomatic relations, or impose an arms embargo. The states of the European Union could for example suspend the EU-Israel Association Agreement until Israel complies with its obligations under international humanitarian law. In short, the High Contracting Parties could utilise elements of their bilateral relationship with Israel or make use of multilateral institutions to ensure that Israel abides by the Convention pending a political resolution of the conflict.

Given the prolonged nature of the Israeli occupation, as well as the systematic commission of grave breaches, the continuing non-enforcement of article 1 strikes at the very core of international humanitarian responsibility: to prevent and repress grave violations of international humanitarian law.

The Grave Breaches System and Individual Liability

That international law imposes duties and liabilities upon individuals as well as upon States has long been recognized...individuals can be punished for violations of international law. Crimes against international law are committed by men, not by abstract entities, and only by punishing individuals who commit such crimes can the provisions of international law be enforced.

International Military Tribunal Nuremberg

International humanitarian law imposes liabilities upon individuals who order or directly commit grave breaches of the Convention. In 1950 the International Law Commission issued a report entitled "Principles of International Law Recognised in the Charter of Nuremberg and in the judgement of the Tribunal." According to its Principle 1:

Any person who commits an act which constitutes a crime under international law is responsible therefore and liable to punishment.

In regards to grave breaches, the Convention establishes *ratione personae*²⁵⁹ the responsibility of the direct authors of those grave breaches and that of their superiors. The scope of application is wide and encompasses both civilian and military personnel. The International Military Tribunal at Nuremberg and Tokyo; the Statutes of the International Criminal Tribunals for Rwanda and former Yugoslavia as well as the Statute of the International Criminal Court all establish that there is no immunity for persons who are responsible for a crime under international law.

Furthermore, a state party to the Convention is not permitted to absolve itself or any other High Contracting Party of any liability incurred by itself or by another contracting party in respect of grave breaches. Like the article 1 obligation, the grave breaches system is an integral part of the Convention, and is aimed at criminalizing conduct that falls below the minimum human rights protection prescribed in the Convention. All contracting parties have an obligation to enact enabling legislation in their domestic juridical systems to provide penal sanctions for perpetrators of grave breaches and have an obligation to seek out those who are liable. Grave breaches as defined in the Convention in its article 147 include wilful killing, torture or inhuman treatment, wilfully causing great suffering or serious injury to body or health, and the extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly.

The Legal Aspects of Command Responsibility

The key aim of the grave breach system, which relies on states to provide and enforce penal sanctions, is to deter military commanders and their subordinates with the threat of prosecution if they commit or facilitate the commission of grave violations of humanitarian law. Thus, the grave breaches system brings to the fore not only questions of individual liability, but also questions of command responsibility. Under the theory of command responsibility, a commander is liable for a crime if a) he

²⁵⁹ *Ratione personae*: In reference to the individual – by the essence of its individual character – meaning the direct application towards the individual.

ordered the criminal act b) if he failed to take action to prevent the occurrence of the act that he could reasonably foresee to be a violation of international humanitarian law or c) if having discovered the commission of violations of international humanitarian law by his subordinates, he failed to take disciplinary action or punish them to prevent future occurrences. Thus, command responsibility includes two different concepts of criminal responsibility; 1) Direct responsibility for a commander's orders which may be unlawful; 2) Imputed criminal responsibility for a subordinate's unlawful conduct which is not based on the commander's orders.²⁶⁰ The principle of Command Responsibility *strictu sensu*²⁶¹ forms part of customary international law.²⁶²

Every state's defence structure has an integrated civilian and military component. The defence structure is hierarchical, built on a vertical scale, which seeks to effectively filter the dictates of the decision makers down to the soldiers in the field. The vertical scale encompasses four general levels of command. The first of these is the policy command, which determines policy objectives. The political echelon of the state usually exercises this form of command responsibility. The second level of command is the strategic command, which comprises the top-level commanders of the armed forces. The strategic level of command is charged with producing viable military plans to achieve policy objectives. Military plans at this level are usually drawn up with senior government officials and are presented to the senior political echelon for authorization. The third level of command is the operational level, and includes

²⁶⁰ M. Cherif Bassiouni, *Crimes Against Humanity in International Law* (Martinus Nijhoff Publishers 1992) p 368. See also "Command Responsibility for War Crimes," *The Yale Law Journal* vol 82: 1274, 1973. See also Lyal S. Sunga, "Individual Responsibility in International Law for Serious Human Rights Violations," *International Studies in Human Rights* (Martinus Nijhoff Publishers – 1992), particularly chapters' II, III, V and VII.

²⁶¹ *Strictu sensu*: In the strictest sense, without ambiguity.

²⁶² See *Prosecutor v. Delalic et al (Celebici)* International Criminal Tribunal for Former Yugoslavia. This was the first case in the Yugoslav Tribunal to deal with the issue of Command Responsibility. The Trial Chamber concluded that a superior, whether military or civilian, may be held criminally liable for acts of subordinates on the basis of a *de facto* or *de jure* position of authority.

military officers who are in charge of mid level groups of military forces. The fourth and final level of command is that of tactical commanders who exercise direct control over troops in the field. Commanders of occupied territories are known as Executive Commanders and have responsibility for soldiers placed under their direct command as well as indirect subordination over civilians in the occupied area. The authority of Executive Commanders is co-extensive with their area of command.²⁶³

Within the framework of the command structure, the liability for the acts of others is established through the element of authority over subordinates. There thus exists a chain of command with responsibilities extending as high as any officer who knows or should have had reason to know that his subordinates were committing war crimes.²⁶⁴

Executive or Area Commanders are granted supreme governing authority in the occupied area. The Executive Commander is fully responsible for upholding the rights of the occupied civilian population. The respon-

sibility of Executive Commanders to protect and ensure the welfare of the civilian population in occupied territory is a crucial element in the *actus reus* definition of their command responsibility.²⁶⁵

In circumstances where a grave breach has occurred, it is essential to determine the extent of knowledge about the criminal act a commander may have had. The term “knowledge” could be defined as an awareness as to the existence of a circumstance or having an awareness of it occurring.²⁶⁶ Where there is an absence of direct evidence of knowledge, like documentation attesting to a specific order that led to an illegal occurrence, then constructive knowledge may be established through circum-

²⁶³ This typology of a military command structure was taken from “The Contemporary Law of Superior Responsibility,” by Ilias Bantekas, in *The American Journal of International Law* vol. 93, no.3, July 1999 pp 3-7. The typology is quoted more or less *verbatim*.

²⁶⁴ See “Crimes of War: What the Public Should know,” *Command Responsibility* by Nomi Bar-Yaacov edited by Roy Gutman and David Rieff, p 99.

²⁶⁵ *Opcit* Bantekas: “The Contemporary law of Superior Responsibility” p 8.

²⁶⁶ *ibid* cited p 9 refers to ICC prep com, 11-21 February 1997, Decisions taken by the Preparatory committee, UN doc. A/AC.249/1997 ILS Art. H (March 12 1997).

stantial evidence. This could be achieved through examining features of subordinate criminal activity and arriving at an inference that the superior who is accused was aware of the illegal conduct. According to the Akayesu Case from the International Criminal Tribunal for Rwanda, there is no requirement that the order be in writing or in any particular form, it can be expressed or implied²⁶⁷ and the commander can be presumed to have had knowledge of illegal acts. According to the International Criminal Tribunal for the former Yugoslavia in the Tadic case:

A person may only be criminally responsible for conduct where it is determined that he knowingly participated in the commission of an offence and that his participation directly and substantially affected the commission of that offence through supporting the actual commission before, during, or after the incident.²⁶⁸

Therefore, intent can be inferred from a certain number of facts, as concerns crimes against humanity and war crimes, for instance, from their massive and or systematic nature.²⁶⁹ Intent can thus be inferred from a certain number of presumptions of fact and a commander could be presumed to have known.²⁷⁰ Moreover, in order to establish the *mens rea* of the superior who orders, plans or instigates, it is necessary to prove his direct or indirect intent.

²⁶⁷ See The Prosecutor Versus Tihmor Blaskic, International Criminal Tribunal for Former Yugoslavia, Para 281, quoted from Case No. ICTR-96-4-T The Prosecutor Versus Jean-Paul Akayesu-International Criminal Tribunal for Rwanda.

²⁶⁸ See para. 692 The Prosecutor Versus Dusko Tadic, Case No. IT-94-1-T-7 May 1997, International Criminal Tribunal for Former Yugoslavia.

²⁶⁹ See The Prosecutor Versus Jean-Paul Akayesu – International Criminal Tribunal for Rwanda, para. 478, Case No. ICTR-96-4-T.

²⁷⁰ Legal scholars contest the knowledge test for a commander in cases of direct orders, omissions or negligence where direct evidence is unavailable. However, the Statute of the International Criminal Court and post world war II case law confirms the existence of a “presumption of knowledge” in circumstances of systematic and wide spread abuse of

According to the German High Command Trial:²⁷¹

It is not considered under the situation outlined that criminal responsibility attaches to him merely on the theory of subordination and over all command. He must be shown to have had knowledge and to have been connected to criminal acts, either by participation or criminal acquiescence.

This ruling established the standard of knowledge by which a military commander could be held criminally liable. The High Command Case also established the “should have known test.”

In regards to occupied territories, according to the Military Tribunal in the Hostages case:

A commanding general is charged with the duty of maintaining peace and order, punishing crime, and protecting lives and property within the area of his command. His responsibility is coextensive with his area of command. He is charged with notice of occurrences taking place within that territory. He may require adequate reports of all occurrences that come within the scope of his power and, if such reports are incomplete or otherwise inadequate, he is obliged to require supplementary reports to apprise him of all the pertinent facts. If he fails to require and obtain complete information, the dereliction of duty

protected persons. Under the Statute of the International Criminal Court, a military commander is liable for crimes that he knew or should have known about under the circumstances at the time, and only for those crimes committed by forces under his effective command and control. He is liable if he failed to take all necessary and reasonable measures to prevent and repress such crimes that subordinates were committing or about to commit or for failing to report such crimes to the proper authorities.

²⁷¹ United States Military Tribunal-Nuremberg, Case No.72, The German High Command Trial, Trial of Wilhelm Von Leeb and Thirteen Others, 30TH December 1947-28th October 1948.

rests upon him and he is in no position to plead his own dereliction as a defense.²⁷²

Legal findings and conclusions

After an investigation into Israeli practices during the first year of the intifada, Al-Haq has come to the conclusion that the State of Israel has not only been in breach of international humanitarian law and human rights principles, but its agents in the field have also been responsible for the commission of a number of grave breaches listed in article 147 of the Convention. This in turn raises the question of individual liability for those breaches. Possible liability in this context may encompass both the political and military levels of the state apparatus. The political level, principally the Prime Minister and Defence Minister, determines policy objectives and would have policy command responsibility. The Defence Minister in particular, has the cabinet responsibility for the Occupied Territories and would conceivably incur liability for systematic breaches of international criminal law that occurred in the area. Israel's policy objective during the intifada has been to suppress the uprising with excessive force and the use of collective penalties. A large part of the rationale for such policies has been to ensure the security of the settlers. This would imply that elements of the political echelon have engaged international criminal responsibility for creating and overseeing a policy response to the uprising which has included the systematic commission of grave breaches in order to maintain an illegal state of affairs.

Like all modern states, Israel has a modern complex military and security apparatus with varying levels of command and subordination. The Military High Command is charged with the responsibility of producing plans to achieve the strategic objectives set by those with policy command responsibility and have what is known as strategic command responsibility. If the rationale of the policy command level is the suppression of the uprising with overwhelming force in order to secure the set-

²⁷² The Hostages Trial," Trial of Wilhelm List and Others, United States Military Tribunal, Nuremberg, 8th July 1947 to 19th February 1948.

lements, *a fortiori* the various levels of the military hierarchy would also be liable for grave breach prosecution. The key figures in a position to devise military policy would include the Chief of the General Staff, the Head of the Plans and Policy Directorate, the Head of the Operations Division and the regional commanders, Southern for the Gaza Strip and Central for the West Bank. The Deputy Chief of Staff serves as head of the General Staff Directorate and has overall responsibility for the Operations Directorate, the Plans and Policy Directorate and the Training and Doctrine Division. Some of the individuals in these posts may have particular responsibility in view of their command and their contribution either directly or indirectly to illegal conduct in the field. The regional commanders are subordinate to the Chief of the General Staff who in turn answers to the Defence Minister. The territorial commanders have responsibility for the security of their region and have played an important role in attempting to suppress the uprising alongside the West Bank and Gaza Strip Area Commanders.

The Defence Minister is assisted in his responsibilities for the Palestinian territories by a co-ordinator for the West Bank and the Gaza Strip, and senior members of the military/ security establishment regularly attend meetings of the security cabinet, comprising the Prime Minister, Defence and Foreign Ministers, as well as sessions of the full cabinet. It is within these meetings, particularly that of the security cabinet, that policy towards the intifada is discussed, determined and reviewed.

Extra-judicial killings

There is a consensus among human rights organisations that investigated Israel's policy of extra-judicial execution, known to the Palestinian population as assassinations and to the Israeli establishment as targeted killings, that the policy was illegal, and, in the case of Amnesty International and the United Nations Commission of Inquiry, a grave breach of the Fourth Geneva Convention. A number of states, particularly those of the European Union, voiced their opposition to the practice and held the policy to be illegal under international law. Al-Haq's own legal reasoning came to the conclusion that the assassination policy

amounted to a grave breach of international humanitarian law entailing criminal liability. Israel has often resorted to extra-judicial killings in the Occupied Territories and the practice was well documented during the first intifada by Al-Haq and the Palestine Human Rights Information Centre.²⁷³ The first victim of the policy in the current intifada was Husein I'bayat who was killed on 9 November 2000. The Israeli authorities maintained that those targeted were "ticking bombs" on their way to an attack. As illustrated in chapter II of this report, the Israeli assertion was not borne out by the facts. Many of those executed could have been arrested, and Israel was clearly under a legal obligation to attempt to arrest and detain those individuals who were suspected of engaging in armed hostile activity.

The policy began during the tenure of former Prime Minister Ehud Barak, who also held the Defence Portfolio in his cabinet. The Defence Minister holds ministerial responsibility for the West Bank and the Gaza Strip. Therefore, as the Prime Minister and Defence Minister, Barak was effectively in a position to dictate the systematic execution of suspected hostile individuals. "Suspected" is the operative word, as very little if any evidence of their culpability was presented to a public or judicial audience for scrutiny. As Deputy Defence Minister in the Barak government, Ephraim Sneh was also in a position that entailed policy command responsibility, and Sneh repeatedly admitted the existence of the policy of assassination and condoned such conduct. Both Ehud Barak and Ephraim Sneh share policy command responsibility and may be criminally liable for the extra-judicial killing of Palestinians suspected of armed attacks on Israeli targets from November 2000 until 7 March 2001, when Ariel Sharon became head of Government. As with Barak, Prime Minister Ariel Sharon and his Defence Minister Benyamin Ben-Eliezer share policy command responsibility and may be criminally liable for the extra-judicial killings that occurred from March onwards.

²⁷³ See "Wilful Killing: A Sustained Policy in the Occupied Territories," Al-Haq, Human Rights Focus, 21 November 1992. See also "Targeting to Kill: Israel's Undercover Units," Palestine Human Rights Information Centre, May 1992.

Individuals with strategic command responsibility who may be liable for the policy in question would include Chief of the General Staff, Shaul Mofaz as well as Avi Dichter, head of the General Security Service. The General Security Service played an important role in intelligence gathering on the suspects before they were killed. The individual soldiers or pilots who carried out the killings may also be criminally liable.

The use of force against demonstrators

Israel's use of excessive force against Palestinian demonstrators has been exhaustively documented by most human rights organisations and inquiry missions, and was condemned by various UN bodies. However, very few organisations assessed the systematic killing and injury that resulted within the parameters of humanitarian law. Unlike the policy of assassination there were no official statements of explicit intentions to kill or seriously maim protestors. However, as noted in the Akayesu Case from the Rwandan Tribunal, intent can be inferred from a certain number of facts, for instance from their massive and or systematic nature. Reports from various investigative bodies, including those of journalists who reported on the clashes often overlapped. All testified to a large number of dead with bullet wounds to the upper body or head with many permanently disabled due to wounds to the thighs. All the reports indicated a systematic practice. The pattern of thigh injuries for example was so pronounced that it prompted Dr. Stephen Kirschner of American Physicians for Human Rights to remark that the injuries were the tell tale signs of torture by gunshot. Dr. Stephen Males who accompanied Amnesty International's delegation to the Palestinian territories in October 2000, as noted earlier, described Israel's crowd control tactics as akin to warfare.

What was particularly pronounced in the early days of the uprising was the clear lack of threat posed by the demonstrators to well armed soldiers often in bunkers or positioned at a distance from stone and Molotov cocktail throwers. Interviews given by Israeli reservists who served in the Palestinian territories confirmed what was already evident from the considerable circumstantial evidence available. A group of reserv-

ists in an interview to the Israeli newspaper Yedioth Ahronoth as reported in the International Herald Tribune told of incidents where Israeli troops opened fire on children and other civilians who posed no apparent danger to their lives.²⁷⁴

Another indication of the intent to kill or seriously maim was the reported use of sniper fire against demonstrators. Though justified as a protective measure of last resort for the soldiers directly confronting demonstrators, it does however appear that sniper fire was used against “ring-leaders” or randomly against anyone who the sniper literally felt like shooting rather than in circumstances of self-defence.

Based on its own documentation and that of other organisations, Al-Haq has come to the conclusion that Israel’s “crowd control methods” amounted to the commission of grave breaches on two counts, the systematic commission of wilful killing and the commission on a large scale of wilfully causing serious injury to body or health. The individuals who have operational responsibility for the policy vis-à-vis demonstrators include, among others, Shaul Mofaz and the Central Region Commander Yitzhak Eitan in view of their command responsibility, and Giora Eiland of the Plans and Policy Directorate for his role in shaping IDF policy towards demonstrators. Eiland was responsible for the planning of army conduct to deal with a Palestinian uprising in the wake of the tunnel disturbances of September 1996. One of the central planks of the policy was that snipers would take position above rioters and target ringleaders, armed individuals and those with Molotov cocktails.²⁷⁵ Ehud Barak and Ephraim Sneh may also bear criminal liability due to their policy command responsibility.

If on the other hand it could be convincingly argued that Israel’s “crowd control methods” were not predicated on an intent to kill or cause grievous harm to demonstrators, the military commanders responsible for the

²⁷⁴ See International Herald Tribune, “60 Israeli Veterans Refuse to Serve: Petition by Reservists Condemns West Bank and Gaza Occupation,” Lee Hockstader, 29 January 2002. See also “Legal targets,” Amira Hass, Ha’aretz (English edition), January 30 2002.

²⁷⁵ Matt Rees, “Fields of Thorn”, Time Magazine, Monday May 21 2001 p 3.

policy may still incur liability, but on the grounds of an omission or negligence. In other words, in this context, they may bear responsibility for failing to alter a policy that was resulting in needless deaths. The deaths and injuries were on a sufficient scale throughout the occupied area, and hence one could have presumed knowledge on the part of the commanders that the policy was in fact resulting in illegal conduct, and they were obliged to arrest it as soon as they were aware of its deadly consequences. The fact that Israel's "crowd control methods" have always resulted in needless death and injury as evidenced in the first intifada, may contribute to a finding of negligent conduct of the commanders responsible.

Al-Haq, as noted above, views the policy as deliberate, but the latter argument, however, illustrates that even if one could conclude that the evidence indicating a deliberate policy to kill or maim was inconclusive, the commanders may still be criminally liable for the knowledge that they had or should have had in view of their command responsibility and their failure to act to arrest the illegal conduct.

Property destruction

The destruction of property during the intifada has been extensive and has been carried out both for the security of the settlements and in reprisal. As such, as argued in chapter V, the policy could not be legitimately justified within the parameters of the Convention and therefore, amounts to the extensive destruction of property not justified by military necessity and carried out unlawfully and wantonly and is thus, a grave breach. In the case of the Gaza Strip, Doron Almog may be criminally liable along with the Strip's Area Commander, while in the West Bank Yitzhak Eitan may be criminally liable alongside that of the Area Commander. Shaul Mofaz, being the overall commander, may incur liability as well as elements of those with policy command responsibility, such as Defence Ministers Barak and Ben Eliezer. The head of the Civil Administration, Dov Tzadka may also incur liability for his role in the destruction of civilian property. In an interview in the army journal *B'mahaneh*, Tzadka stated, "it isn't as if everyone gets up, chops, de-

molishes, and breaks. The request comes to me. I check whether its justified, pass it on to the legal advisor, and only then do we recommend to the Major General that he approve such an action."²⁷⁶

Torture

As noted in chapter IV, Al-Haq has considerable evidence to suggest that despite the High Court ruling of 6 September 1999, the State of Israel continues to sanction torture by elements of its security establishment, principally the General Security Service. As head of the General Security Service, Avi Dichter may be criminally liable for the torture of Palestinian detainees who were interrogated by his organisation. The head of the General Security Service reports directly to the Prime Minister and is directly accountable to him. This would mean that the Prime Minister of the day may be criminally liable for the actions of the GSS. Thus both Ehud Barak and Ariel Sharon may also be liable for the actions of the GSS, along with Dichter.

²⁷⁶ B' mahaneh, 28 December 2001 as cited in B'Tselem: opcit The Demolition of Houses and the Destruction of Agricultural Land in the Gaza Strip, p 8.

Rank	Name	Position
Lt.Gen.	Shaul Mofaz	Chief of the General Staff
Maj.Gen.	Moshe Ya'alon	Deputy Chief of the General Staff
Maj.Gen.	Yitzhak Eitan	GOC Central Command
Maj.Gen.	Doron Almog	GOC Southern Command
Brig.Gen	Beni Gantz	Area Commander: West Bank: September 2000- December 2000
Brig.Gen	Gershon Yitzhak	Area Commander: West Bank - Dec. 2000 -
Brig.Gen	Yom Tov Samia	GOC Southern Command: September 2000- December 2000
Brig.Gen	Yisrael Ziv	Area Commander: Gaza Strip
Maj.Gen	Amos Gilad	IDF Co-ordinator- West Bank & Gaza Strip
Director	Avi Dichter	Head of the General Security Service
Maj.Gen.	Giora Eiland	Head of Plans and Policy Directorate

Individuals with Strategic Command Responsibility during the period Sept 2000- Oct 2001: Fig.1

Name	Position	Term of office coinciding with the intifada
Ehud Barak	Prime minister/ Defence Minister	September 2000- March 2001
Ephraim Sneh	Deputy Defence Minister	September 2000- March 2001
Ariel Sharon	Prime Minister	March 2001-
B. Ben-Eliezer	Defence Minister	March 2001-

Individuals with policy Command Responsibility during the period Sept 2000- Oct 2001: Fig.2

Conclusion

The inattentiveness of the international community in regards to the institutionalised violation of international humanitarian law in the Occupied Palestinian Territories is in stark contrast to efforts to remedy such abuses elsewhere. The last decade of the twentieth century witnessed a flurry of activity in dealing with the appalling abuses that occurred in the former Yugoslavia and Rwanda with the establishment of ad hoc tribunals under United Nations auspices to try perpetrators of war crimes and crimes against humanity not seen since Nuremberg, Tokyo and the trials under Allied Control Council Law no.10. There was also the almost unanimous agreement by the international community to establish a permanent international war crimes tribunal with its statute agreed upon in Rome in 1998. The Pinochet case brought to the fore a hitherto rarely used legal principle, universal jurisdiction, which generated much debate amongst legal scholars and human rights activists alike about war crimes prosecution. These have no doubt been stupendous achievements for the human rights movement. Nonetheless, despite the systematic nature of Israel's violations of some of those very same legal rules evident in other conflict areas, the Palestinian population remains largely unprotected in practice by those very same rules that were created to give a civilian population a modicum of protection in a belligerent context.

GENERAL ANNEXES

A.

The full text of United Nations Security Council Resolution 1322, 7 October 2000:

”The Security Council,

”Recalling its resolutions 476 (1980) of 30 June 1980, 478 (1980) of 20 August 1980, 672 (1990) of 12 October 1990, and 1073 (1996) of 28 September 1996, and all its other relevant resolutions,

“Deeply concerned by the tragic events that have taken place since 28 September 2000, that have led to numerous deaths and injuries, mostly among Palestinians,

“Reaffirming that a just and lasting solution to the Arab and Israeli conflict must be based on its resolutions 242 (1967) of 22 November 1967 and 338 (1973) of 22 October 1973, through an active negotiating process,

”Expressing its support for the Middle East peace process and the efforts to reach a final settlement between the Israeli and Palestinian sides and urging the two sides to cooperate in these efforts,

“Reaffirming the need for full respect by all of the Holy Places of the City of Jerusalem, and condemning any behaviour to the contrary,

1. “Deplores the provocation carried out at Al-Haram Al-Sharif in Jerusalem on 28 September 2000, and the subsequent violence there and at other Holy Places, as well as in other areas throughout the territories occupied by Israel since 1967, resulting in over 80 Palestinian deaths and many other casualties;

2. “Condemns acts of violence, especially the excessive use of force against Palestinians, resulting in injury and loss of human life;

3. “Calls upon Israel, the occupying Power, to abide scrupulously by its legal obligations and its responsibilities under the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949;

4. "Calls for the immediate cessation of violence, and for all necessary steps to be taken to ensure that violence ceases, that new provocative actions are avoided, and that the situation returns to normality in a way which promotes the prospects for the Middle East peace process;
5. "Stresses the importance of establishing a mechanism for a speedy and objective inquiry into the tragic events of the last few days with the aim of preventing their repetition, and welcomes any efforts in this regard;
6. "Calls for the immediate resumption of negotiations within the Middle East peace process on its agreed basis with the aim of achieving an early final settlement between the Israeli and Palestinian sides;
7. "Invites the Secretary-General to continue to follow the situation and to keep the Council informed;
8. "Decides to follow closely the situation and to remain seized of the matter."

B.

**CONFERENCE OF HIGH CONTRACTING PARTIES TO THE
FOURTH GENEVA CONVENTION**

GENEVA, 5 DECEMBER 2001

DECLARATION

1. This Declaration reflects the common understanding reached by the participating High Contracting Parties to the reconvened Conference of High Contracting Parties to the Fourth Geneva Convention. The Conference of 15 July 1999, recommended by United Nations' General Assembly Resolution ES-10/6 in an Emergency Special Session, issued a statement as follows:

“...The participating High Contracting Parties reaffirmed the applicability of the Fourth Geneva Convention to the Occupied Palestinian Territory, including East Jerusalem. Furthermore, they reiterated the need for full respect for the provisions of the said Convention in that Territory. Taking into consideration the improved atmosphere in the Middle East as a whole, the Conference was adjourned on the understanding that it will convene again in the light of consultations on the development of the humanitarian situation in the field.”

2. The participating High Contracting Parties express deep concern about the deterioration of the humanitarian situation in the field. They deplore the great number of civilian victims, in particular children and other vulnerable groups, due to indiscriminate or disproportionate use of force and due to lack of respect for international humanitarian law.

3. 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 Territory, including East Jerusalem and reiterate the need for full respect for the provisions of the said Convention in that Territory. Through the present Declaration, they recall in particular the respective obligations under the Convention of all High Contracting Parties (para 4-7), of the parties to the conflict

(para 8-11) and of the State of Israel as the Occupying Power (para 12-15).

4. The participating High Contracting Parties call upon all parties, directly involved in the conflict or not, to respect and to ensure respect for the Geneva Conventions in all circumstances, to disseminate and take measures necessary for the prevention and suppression of breaches of the Conventions. They reaffirm the obligations of the High Contracting Parties under articles 146, 147 and 148 of the Fourth Geneva Convention with regard to penal sanctions, grave breaches and responsibilities of the High Contracting Parties.

5. The participating High Contracting Parties stress that the Fourth Geneva Convention, which takes fully into account imperative military necessity, has to be respected in all circumstances.

6. The participating High Contracting Parties see the need to recall basic humanitarian rules with regard to persons taking no active part in hostilities, which shall be treated humanely without any discrimination, and to recall the prohibition at anytime and in any place whatsoever of acts of violence to life and person, torture, outrages upon personal dignity and of arbitrary or extra-judiciary executions.

7. The participating High Contracting Parties express their support for the endeavours of the humanitarian relief societies in the field in ensuring that the wounded and sick receive assistance, and for the activities of the International Committee of the Red Cross (ICRC), the United Nations Relief and Works Agency in the Near East (UNWRA) and of other impartial humanitarian organisations. They also express their support for the efforts of the United Nations High Commissioner for Human Rights and of UN Special Rapporteurs in order to assess the situation in the field and they take note of the reports and recommendations of the High Commissioner for Human Rights (E/CN/4/2001/114) and of the Commission of Inquiry (E/CN/4/2001/121).

8. The participating High Contracting Parties call upon the parties to the conflict to ensure respect for and protection of the civilian population and civilian objects and to distinguish at all times between the civilian population and combatants and between civilian objects and military objectives. They also call upon the parties to abstain from any measures of brutality and violence against the civilian population whether by applied by civil-

ian or military agents and to abstain from exposing the civilian population to military operations.

9. The participating High Contracting Parties call upon the parties to the conflict to respect and to protect at all times the fixed establishments and mobile medical units of the Medical Services and to facilitate the operations of the humanitarian relief societies in the field, including the free passage of their ambulances and medical personnel, and to guarantee their protection.

10. The participating High Contracting Parties call upon the parties to the conflict to facilitate the activities of the ICRC, within its particular role conferred upon it by the Geneva Conventions, the UNWRA and other impartial organisations. They recognise and support their efforts to assess and to improve the humanitarian situation in the field. They invite the parties to the conflict to co-operate with independent and impartial observers such as the Temporary International Presence in the City of Hebron (TIPH).

11. The participating High Contracting Parties call upon the parties to the conflict to consider anew suggestions made at the meeting of experts of High Contracting Parties in 1998 to resolve problems of implementation of the Fourth Geneva Convention and to respect and to ensure respect in all circumstances for the rules of international humanitarian law and to co-operate within the framework of direct contacts, including procedures of inquiry and of conciliation. They encourage any arrangements and agreements supported by the parties to the conflict on the deployment of independent and impartial observers to monitor, inter alia, breaches of the Fourth Geneva Convention as a protection and confidence building measure, with the aim to ensure effectiveness of humanitarian rules.

12. The participating High Contracting Parties call upon the Occupying Power to fully and effectively respect the Fourth Geneva Convention in the Occupied Palestinian Territory, including East Jerusalem, and to refrain from perpetrating any violation of the Convention. They reaffirm the illegality of the settlements in the said territories and of the extension thereof. They recall the need to safeguard and guarantee the rights and access of all inhabitants to the Holy Places.

13. The participating High Contracting Parties call upon the Occupying Power to immediately refrain from committing grave breaches involving

any of the acts mentioned in art. 147 of the Fourth Geneva Convention, such as wilful killing, torture, unlawful deportation, wilful depriving of the rights of fair and regular trial, extensive destruction and appropriation of property not justified by military necessity and carried out unlawfully and wantonly. The participating High Contracting Parties recall that according to art. 148 no High Contracting Party shall be allowed to absolve itself of any liability incurred by itself in respect to grave breaches. The participating High Contracting Parties also recall the responsibilities of the Occupying power according to art. 29 of the Fourth Geneva Convention for the treatment of protected persons.

14. The participating High Contracting Parties also call upon the Occupying Power to refrain from perpetrating any other violation of the Convention, in particular reprisals against protected persons and their property, collective penalties, unjustified restrictions of free movement, and to treat the protected persons humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

15. The participating High Contracting Parties call upon the occupying power to facilitate the relief operations and free passage of the ICRC, UNRWA, as well as any other impartial humanitarian organisation, to guarantee their protection and, where applicable, to refrain from levying taxes and imposing undue financial burdens on these organisations.

16. The participating High Contracting Parties stress that respect for the Fourth Geneva Convention and international humanitarian law in general is essential to improve the humanitarian situation in the field and to achieve a just and lasting peace. The participating High Contracting Parties invite the parties concerned to bring the conflict to an end by means of negotiation and to settle their disputes in accordance with applicable international law.

17. The participating High Contracting Parties welcome and encourage the initiatives by States Parties, both individually and collectively, according to art. 1 of the Convention and aimed at ensuring the respect of the Convention, and they underline for the parties, to follow up on the implementation of the present Declaration.

18. The participating High Contracting Parties express their gratitude to the Depository of the Fourth Geneva Convention for its good services and offices.

C.

AL-HAQ's presentation to Consular Officials in August 2001

The Assertion of Consular Jurisdiction Under the aegis of the Fourth Geneva Convention

This is a call for High Contracting parties that have consular representation in East Jerusalem to publicly act as monitors under the aegis of the Fourth Geneva Convention.

We have a situation whereby the government of Israel is unwilling to abide by the relevant provisions of the convention and in fact regards the convention as inapplicable to its belligerent occupation of the Palestinian territories. Attendant to this, the government of Israel has largely failed to enforce those laws and regulations which itself has issued to repress or prevent excesses by its military personnel and citizens against the protected civilian population. For example, the general lack of investigative enquiries into the deaths of Palestinians at the hands of the Israeli security forces during the current intifada. The situation is further compounded by the unwillingness of key third party states to act under their article 1 obligation to ensure Israel's respect for the convention's provisions in "all circumstances."

I would like to remind the High Contracting parties that International humanitarian law explicitly recognizes the role of third party states in protecting a civilian population against the violations of an occupying power. This is particularly the case where serious violations of the Convention are being committed by the occupying power or in circumstances where an occupying power, which is bound by the Convention, refuses to apply it de jure. Pending a resolution of the conflict, a clear responsibility rests with the international community to offer a modicum of protection to the civilian population particularly when all other means of restraint and deterrence are absent. The Fourth Geneva Convention provides basic levels of protection for the fundamental rights of the population of occupied territories pending a political settlement of the dispute. It protects the status of the territories, building on the customary prohibition on the annexation of territory by force by prohibiting the settlement or colonisation of the area by the Occupying Power or its nationals. In defence of the protected population it lays down prohibitions on all forms of collective punish-

ment, pillage, reprisals against persons or property, murder, torture and all other forms of brutality and deportation of protected persons outside the occupied territories. It sets out regulations regarding internment and various other humanitarian matters. In short the convention guarantees the protection of a minimal human rights standard, and criminalizes conduct falling below this standard (Grave Breaches).

The Convention itself does not envisage coercive enforcement; it contains internal mechanisms of enforcement, premised on cooperation, to give effect to the fundamental protections it provides. Its drafters however were obviously aware of the dangers of a state party refusing to comply with its requirements, and of the risk that a civilian population would therefore fail to benefit from its guarantees. It therefore sets the entire body of High Contracting Parties as guarantors that the Convention be respected wherever it applies, hence providing the codification of “international protection”.¹

Moreover, the convention contains prescriptions for a protecting power system to look after the interests of the parties to the conflict. (The protecting power system is contingent on the acceptance of the parties to the conflict) Article 9 of the convention states that the present convention shall be applied with the cooperation and under the scrutiny of the protecting powers whose duty it is to safeguard the interests of the parties to the conflict. According to the commentaries:

“The whole convention shows that it was intended to exclude any possibility of the protected persons not having the benefit of a protecting power or a substitute for such a power.”

If there is no agreement on which states should play the role of a protecting power, the convention provides for a substitute for the protecting power in the form of an international organisation, which offers all the guarantees of impartiality and efficacy. When there is no protecting power and no substitute in the form of an impartial organisation, the occupying power is obliged under article 11 to request a neutral state or an impartial organisation to perform the functions of a protecting power. Though the ICRC would be well suited to discharge such responsibility, the powers of the

¹ Quoted verbatim from Al-Haq/CIHRE Occasional Paper No. 13 “International Protection and International Diplomacy: Policy Choices for Third Party States in the Occupied Palestinian Territories”, p 18.

Red Cross has been considerably circumscribed by the State of Israel. The ICRC can only address matters, which the Israeli authorities define as humanitarian. This means that the ICRC cannot and does not perform the general monitoring and supervision of a protecting power.

In the absence of a protecting power or a formal substitute prescribed in the Convention, the High Contracting Parties themselves as a collective retain the duty, individually and collectively to ensure that the conduct of the occupying power is kept under review; that violations are detected; and that the well being of the protected population is monitored. As the protecting power prescription is inoperative, and taking into consideration the inability of the ICRC to monitor and investigate violations on behalf the High Contracting parties, the Consular representatives have a clear mandate to undertake monitoring functions in the Occupied Territories. Israel is obliged to permit your representatives to discharge their duties as monitors and investigators under the aegis of the convention. Article 143 of the Convention provides that:

Representatives or delegates of the protecting powers shall have permission to go to all places where protected persons are, particularly to places of internment, detention and work.

They shall have access to all premises occupied by protected persons and shall be able to interview the latter without witnesses, personally or through an interpreter,

Such visits may not be prohibited except for reasons of imperative military necessity and then only as an exceptional and temporary measure...

Israel's refusal to recognise the applicability of the Convention and its failure to implement the protecting power system should not be permitted by the High Contracting Parties to deny the population the protection of the Convention. The law requires Israel, as the occupying power, to permit observation and investigation by the High Contracting Parties or their duty appointed delegates.

Furthermore, the High Contracting Parties have a duty to investigate violations, which the occupying power it self fails to repress. This stems from two obligations, the article 1 obligation to ensure respect and the article 146 obligation to initiate criminal proceedings against those responsible for grave breaches, which are deemed international crimes, and subject to international prosecution.

After laying out the theoretical grounding, we can look at some practical modalities, which can be utilised by you to discharge your monitoring and investigative functions.

- I would like to draw to your attention Israel's policy of extra-judicial execution. The policy has been criticised internationally, and in fact constitutes a grave breach as it amounts to wilful killing. In the opinion of the UN commission of inquiry that investigated alleged violations of the rights of the civilian population, Israel's policy of targeted political assassinations represents a grave breach of the convention. According to the commission of inquiry, "the practice of targeted political assassination, which is fully acknowledged by the Government of Israel at its highest levels, violates a number of provisions of the Fourth Geneva Convention. It also represents a grave breach of the convention, which in article 147 refers to "wilful killing" in this connection". Further, according to the European Union, on the 13 February 2001, the policy of extra-judicial executions was "unacceptable and contrary to the rule of law". (Brussels, 13 February 2001, 5928/01(presse47)). Each consulate could for example write to the government of Israel requesting specific information on the circumstances of particular assassinations, the evidence that led to such a drastic recourse by the state of Israel and make clear to all those involved that such a policy may have legal consequences. It is worth noting that a number of individuals who have been extra-judicially executed could have been arrested:

1. Thabet Thabet killed on 31 December 2000-prayed Far'on village-under Israeli security control.
2. Hani Husein Hasan Bakri killed on 14 December 2000 near the Gush Qatif junction in the Gaza Strip. Killed at road bloc.
3. Jamal 'Abd-al-Razeq killed on 22 November 2000 at a military road bloc in the Gaza Strip. Three bystanders were also killed in the incident.
4. The killing of Mustafa Yasin in front of his wife and child near Jenin on 23 July 2001. Yasin was at home and opened the door of his dwellings to members of the Israeli secu-

rity forces. He was described as being dressed in bedroom attire and in no way was in a position to cause harm.

- A second area is Israel's use of force against demonstrators. There seems to be an operational policy to kill or seriously maim protestors. This would mean that there has been a wholesale policy amounting to wilful killings and wilfully causing great bodily harm and suffering. Both are grave breaches. Again, requests by consular officials in regards to Israel's operational tactics as well as a clear warning of possible legal consequences could act as a deterrent. It would also be advisable for High Contracting party representatives to visit locales where demonstrations took place accompanied by those who are familiar with the scene. The Neztarim junction in Gaza where many demonstrators have been killed is one site that could be visited.
- Consular officials could also visit areas that have been under sustained curfew such as the H2 zone of Hebron and the village of Huwwara.
- Another area of concern is the re-emergence of torture as a part of interrogations carried out by members of the security forces. Al-Haq as well as the Israeli human rights organisation B'Tselem have documented cases of torture of minors at the Gush Etzion police station. Consular representatives could for example write a detailed correspondence to the government of Israel on this matter and urging the government to investigate and put on trial individuals who ordered and committed such practices against minors.

To reiterate, the basic idea is for you to engage the government of Israel on policy that directly affects the protected population through detailed correspondence and field visits and for you to publicly announce that you will act as monitors of Israeli conduct under the aegis of the convention. The idea is that such a move would put Israel on notice that there may be repercussions for its violative conduct which may act as a deterrent and give a modicum of protection to the civilian population. We feel an open monitoring and investigative function would be particularly important in circumstances where serious human rights violations are reported to be occurring and where access is denied.

Talking points:

I would like to point out that there is a precedent for such action on the part of Consular representatives acting as investigators in cases of suspected egregious violations of human rights. During the course of 1989, consuls-general of the High Contracting Parties attempted to enter closed areas in order to monitor conditions of protected persons and visited scenes of suspected wilful killings.

Al-Haq is aware that the US state department as part of its annual survey of human rights violations submitted to the Israeli Foreign Ministry a list of names of Palestinians along with the dates they had been killed, asking for the circumstances of their killing. Where are also aware that the US submitted additional questions concerning aspects of Israel's conduct in regards the civilian population such as the imposition of curfews, sieges of Palestinian towns, arrests of Palestinians and the excessive use of force by the Israeli security forces. Al-Haq welcomes such endeavours but would like to see them sustained and grounded within IHL. Where violations point to the direction of grave breaches of the convention we feel it is important that the fact that criminal liability exists for such conduct should be pointed out. Further, we would like to see all the consulates taking this course of action and to do so publicly.

D.

UNOFFICIAL TRANSLATION

Supreme Court

Sitting as a High Court of Justice

H.C. 9382/00

1. Salaah Rushdi Murshid Abu Sneineh, ID No.934270232, resident of Hebron
2. Hijaazi Isma'eel Muhammad Al-Shuyoukhi, ID No. 948248414, resident of Hebron
3. Muhammad Aareef Aarif Muhammad Al-Shuyoukhi, ID No.973189442, resident of Hebron
4. Salaah Yousuf Muhammad Al-Shareef, ID No. 411639230, resident of Hebron
5. Abdallah Raatib Isa Abu Sneineh, ID No. 934437013, resident of Hebron
6. Hamoked-Center for the Defence of the Individual, EST. by Dr Lotte Salzberger, registered society 4 Abu Ubeida Street, 97200 Jerusalem

All represented by the attorney(s) Eliahu Abram and/or Yossi Wolfsohn from Hamoked-Center for the Defence of the Individual est. by Dr Lotte Salzberger, registered society 4 Abu Ubeida Street, 97200 Jerusalem

Tel: 02-6283555; Fax: 02-6276317

Petitioners

V

1. Commander of IDF in West Bank Region

Judea and Samaria Division Headquarters, Military Mail, 01149, IDF

Tel: 02-9970200; Fax 02-6276317

2. The Jewish Community of Hebron [Mehaddeshei Ha-Yishuv Ha-Yehudi be Hevron], registered society, P.O.B. 105,90100 Kiryat-Arba

Tel: 02-9965333; Fax: 02-9965304

Respondents

Petition for issuing an order nisi

Hereby a petition is submitted for the issuing of an order nisi for Respondent No.1 and his superiors to be accountable for the following:

1. Why he would not refrain from imposing a curfew on H2 area in Hebron during the days of (the Muslim) holiday of Id Al-Fitr that will be between 26 or 27 December until 28 or 29 December 2000, except if there was a substantial change in the security circumstances;
2. Why he would not allow the traffic of vehicles in H2 area in Hebron or, alternatively, why he would not impose the same restrictions on the use of vehicles on all residents of the area Jews and Arabs;
3. Why he would not refrain from imposing curfew on H2 area in Hebron in cases of shooting originating from outside H2 area;
4. Why he would not refrain from imposing curfew on H2 area in Hebron due to local frictions or breaches of public order between Jewish and Arab residents in the area or, alternatively, why in such circumstances he would not impose restrictions on movement on all residents of H2 area, both Jews and Arabs, in an equal way.

Request for urgent proceeding

1. The honourable court is requested to decide to proceed urgently with this petition for issuing an order nisi. As a first remedy, it is requested to allow the 30,000 (concerned) inhabitants of Hebron to carryout their duties and traditions during the days of the most important holiday of the Muslim year, which will start this year on 26th or 27th of December.
2. The honourable court is allowing “special urgency for petitions concerning curfew” (H.C. 5462/91 Abromovitz v. Commander of IDF in Judea and Samaria Region, not published, Taqdin-Elyon 91(4), p.395, copy attached and designated as C/1). The issue of this petition is the curfew that has been going on for around two months and three weeks, to be renewed again and again, which affects severely tens of thousands of residents on all levels of life.

Reasons for the petition:

General:

1. The issue of this petition is the curfew that has been disrupting since two months and three weeks the lives of the tens of thousands of Arab residents of Hebron living in the area subject to Israeli control. The curfew was prolonged continuously since the beginning of October, except for breaks lasting a few hours and except for a few days when the movement of pedestrians was allowed, after which the curfew was imposed again.
2. The city of Hebron is the urban centre of Southern Judea. According to the census carried out in 1997, its population was around 120,000 residents, almost all of them of Palestinian nationality.
3. Control over the city of Hebron is divided between Israel and the Palestinian Authority, according to the Protocol Concerning the Re-deployment in Hebron, from 15th January 1997. The areas called “H1” in the map attached to the protocol were transferred to Palestinian control. Israel continues to keep forces and to be responsible for internal security and for public order in the area designated as “H2”.
4. The H2 areas, which are under full Israeli control, include the historical centre of Hebron. Around one fourth of the city’s population, approx.30,000 people or more live in these densely populated neighbourhoods. Hundreds of factories and workshops are located in H2 area; dozens of pharmacies, clinics, medical institutions and 28 schools. Further, an industrial area with enterprises and oil presses is situated in H2 area. The cave of Machpela [Ibrahimi Mosque], sacred to Muslims and Jews alike, is situated in H2 area as well. The H2 areas are those subject to the curfew.
5. Besides approx. 30,000 Palestinians residents of H2 area, approx. 500 Jews are living in the area, residing in a couple of houses.

Petitioners

6. Petitioner No. 1 has been a lawyer since 24 years and is a resident of a house situated in H2 area, his office being in H1 area. He is married and the father of seven children, the oldest one being a 17-year-old 12th grade student and the youngest ones one-year-old female twins and a baby of three months. Also the mother of the petitioner,

80 years old and suffering from diabetes, lives together with him. His affidavit is attached at the end of the petition (printout and original) and is designated as Petition No.1.

7. Petitioner No.2, born in 1944, is also a lawyer and a resident of Hebron. He is the owner of an institute for complementary education situated in H2 area. He is married and the father of six children. His affidavit is attached at the end of the petition (printout and original) and is designated as Petition No.2.
8. Petitioner No.3 is the owner of a pharmacy situated in al-Shuhada Street in H2 area, and his home is located in H1 area of Hebron. He is married and the father of six children. His affidavit is attached at the end of the petition (printout and original) and is designated as Petition No.3.
9. Petitioner No.4, teacher by profession, is a resident of Hebron living in H2 area, married and the father of three children, the youngest one aged one year and a half and the oldest 19 years. The area where he is teaching is located in H1 area. One of his daughters studies in a school in H2 area; three other children study in schools in H1 area. His affidavit is attached at the end of the petition (printout and original) and is designated as Petition No.4.
10. Petitioner No.5, born in 1937, lives in a house in H2 area, together with his wife, four of his six children, the wife of one son and with three grand children. Two children and the three grand children are studying in schools in H2 area. The petitioner and one of his sons are supporting the family by driving a taxi. His affidavit is attached at the end of the petition (printout and original) and is designated as Petition No5.
11. Petitioner No. 6, Hamoked – Center for the Defence of the Individual, est. by Dr Lotte Salzberger, is a registered society aimed at defending human rights against ill treatment by government officials.

Respondents

12. Respondent No.1, Commander of IDF in West Bank Region, in charge of the security in the region generally, and for public order and relief in H2 area in Hebron, in particular.

13. Respondent No.2, according to the best (possible) examination by the representatives of the petitioners, is a registered society incorporating all Jewish residents of Hebron. Respondent No.2 is also enclosed in the petition due to the possible effect of the alternate remedies, as requested in paragraphs 2 and 4 at the beginning of the petition, on these residents.

Facts: The Curfew in Hebron

14. The violent disturbances that broke out in all parts of the (Palestinian occupied) territories on the eve of the year 5761 [29th September 2000] and have not abated yet left their marks also on Hebron and on H2 area. There were many incidents of shooting from the area under Palestinian control (H1) towards IDF positions and Jewish houses. The shooting incidents occurred mainly during the evening and night hours. Palestinian youngsters clashed with IDF soldiers in incidents of violence. The frictions between Jews and Arabs, which had occurred also prior to the recent incidents, continued as well.
15. Not long after the outbreak of the disturbances, in the beginning of October, Respondent No.1 imposed a full curfew on H2 area. The curfew went on continuously over the month of October. During the first ten days the curfew continued without break, and later breaks of a few hours were allowed after some days (of continuous curfew) for the purpose of provisions. Full (freedom of) movement for pedestrians was permitted on 31st of October 2000, but full curfew was imposed again two days later, after shooting towards one of the Jewish enclaves. Throughout the month of November, the area was under curfew. In the second week of the month of December, movement was permitted for pedestrians for a few days, but then curfew was re-imposed. On 17th or 18th of December, it was announced by the IDF that the curfew was lifted, but after a shooting incident in the night of 18th to 19th of December, the announcement was revoked. On 20th of December, movement of pedestrians was allowed again, but on 22nd December, curfew was re-imposed. According to news heard by the representatives of the Petitioners on Voice of Israel, the reason for the renewed imposing of the curfew was shooting incidents. At the time that these lines are being written [24th December], H2 area is under full curfew. For around two months and three weeks,

the H2 area therefore has been under curfew on an almost continuous basis. The lifting of the curfew from time to time is only a short break before it is imposed again.

16. Even on days when the curfew was lifted, the movement of vehicles was forbidden in H2 area.
17. The Jewish residents of Hebron have continued, and continue, to move freely in H2 area throughout the period the area was under curfew.
18. The petitioners have no information at all concerning a written order from respondent No.1 that decrees the imposition of the curfew or that permits the movement of Jewish residents during the time of curfew. The Petitioners don't know if the prohibition of movement of vehicles in H2 area is based on a written order, and whether there is an exemption for the Jewish residents in (such an order).

Facts: The consequence of the curfew

Deprivation of freedom

19. The full curfew continued, the days of break deducted, for more than 70 days. Dozens of thousands of people became prisoners in their own houses. Men, women and children are imprisoned (...) inside their houses for 24 hours a day. Children cannot go out to play in the streets, adults cannot go out to work, to study or attend to social meetings. The population is living under conditions of great density anyway, and the social and psychological implications of being kept inside four walls, under pressure, are severe. The continuation of the curfew and its repeated re-imposition after short breaks, has brought the residents into a regime in which the deprivation of freedom is general. Things to be done on a daily routine turned into privileges about which nobody knows if they would be possible another day or another hour.

The most severe consequences are related to the children and to family life. So, for example, soldiers prevent the small grandchildren of Petitioner No.5 even from playing on the roof of the house; the family members, nine persons living in four rooms, have been compelled to a routine of sleeping, endless TV watching and inactivity. As for the children of

Petitioner No.4, the stress caused by the curfew, and its psychological impact, resulted in pimples appearing on their faces.

Disruption of Health Services

20. The continuous curfew had an increasingly severe impact on public health-both on that of the people living in the area under curfew and on that of the residents of the other neighbourhoods of the town and its surroundings. For urgent medical cases, there are arrangements for evacuating sick persons by means of ambulances authorised to drive during curfew. Also these arrangements are not being applied fully, even though physical checkpoints erected by the IDF are never blocking the way of ambulances. But for urgent medical cases not enough is being done. In the area under curfew, there are a number of clinics, medical centres and pharmacies that serve a large public. The majority of these are totally closed due to the curfew. A small minority is working partially, doctors, staff and patients not being able to reach them. People whose condition is not critical can reach neither these clinics nor medical centres in H1 areas for check up and treatment. Babies, pregnant women, elderly and chronically sick people cannot go for check ups: e.g., the twin daughters of Petitioner No.1, babies aged one year and three months, are already 20 days in delay for receiving their last vaccination they need and 30 days in delay for the previous vaccination. His mother, an 80-year-old woman, suffering from diabetes, is unable to go for regular check-ups.

Due to the prohibition of movement of cars, the easing of the curfew was only a small consolation for those in need of medical services. For the people most in need of medical services-elderly, chronically sick, pregnant women, babies and the like-the medical services continue to be out of reach.

The longer the curfew and the driving prohibition lasts, the more severely public health will be affected.

Stop of work in education system

21. In H2 area there are 28 schools with around 11,650 pupils and 460 teachers on normal days, as well as three institutions for complementary education. For more than two months, regular lessons in all these schools have stopped, except for the days the curfew was lifted.

Pupils from H2 area studying in H1 area (there the schools are open) are prevented from reaching the schools. The children of Petitioners Nos. 1, 3, 4 and 5 (and the grand children of Petitioner No.5) have lost already nearly three months of lessons. Petitioner No.4, who serves as a substitute teacher in a school in H1 area, is almost not able to reach work. The evening school belonging to Petitioner No.2 is closed down.

Disruption of judicial services

22. The curfew paralyses the judicial system of Hebron and its surroundings. The Shari'a Court of the district is situated in H2 area and its activities have stopped. Also the Magistrate's Court has stopped working, and litigants, witnesses and attorneys from H2 area cannot attend their hearings.

Impact on economy, employment, trade and industry

23. In H2 area, the historical centre of Hebron and an industrial area are compromised. Many hundreds of small and big enterprises are located in the area subject to curfew: commercial shops, workshops, (shoemakers, tanners, and cloth, shoe and mattress workshops etc), gas stations, garages, flourmills and quarries. All these have stopped working and the income of their owners and workers have ceased, together with the services they normally provide to the population of the city and its surroundings. Most oil presses of Hebron are situated in the industrial area, which is under curfew, and olives picked have been pressed. Merchandise purchased is perishing in companies. Petitioner No.3 for example, owner of a pharmacy, has already lost around \$2,500 at his estimation, due to drugs and baby stored that passed their last date for consumption. Around 5,000 daily workers in the area under curfew are prevented from looking for work, including jobs initiated by the Palestinian Authority.
24. The prohibition of movement of vehicles is paralysing the supply for firms even when there is no curfew, and makes customers stay away from the firms in the area. The prohibition prevents the continuation of work of factories and workshops that depend on communications for the transport of raw material and merchandise. In fact, the prohibition of movement of vehicles, even if there is now total curfew, means the strangling of economic life in parts of Hebron that are under Israeli control.

The economic repercussions have made many residents dependent on the distribution of food by bodies of the Palestinian Authority and donors, while the situation deteriorates.

Religion and worship

25. During most of the days of Ramadan, the residents of H2 area were living under curfew. For them, the curfew prevented all holiday traditions: the visit of relatives, the sponsoring of the festive meals characterising every day of this month; the visit to cemeteries; public prayers in mosques, especially the night prayers during the month of Ramadan- the Taraweeh prayers. Petitioner No.1 violated the curfew in order to participate secretly in night prayer in an almost dark mosque, in order not to attract the attention of the IDF soldiers; Petitioner No.5 reports that he did not manage to reach a mosque to perform his Ramadan duties.

The Cave of Machpela [Ibrahimi Mosque], sacred for Jews and Muslims alike and located in H2 area, was open during all the days of the curfew for Jews only. Even when there was an easing of the curfew, Muslims could not reach its vicinity by vehicle, its accessibility being diminished for the elderly and disabled.

26. On 26th or 27th of December 2000, the holiday of Id al-Fitr will start and continue for three days (the final date is determined only in the last moment in accordance with the appearance of the moon).

After the freedom of worship of the H2 residents was denied during most days of Ramadan, the Petitioners fear that Respondent No.1 might also bring about a paralysis of the holy feast.

Facts: Demands of the Jewish residents

27. Respondent No.2 has worked out a position paper regarding their recommendations concerning restrictions of the freedom of movement of the Palestinians in Hebron, addressed to the commander of the [IDF] Brigade of the area [dated 1st of Nov, acc to Ha'aretz, 23rd Nov]. One of the copies of the document is attached to the affidavit of Petitioner No.1.
28. Respondent No.2 demands in the document far reaching restrictions on the freedom of movement of the Palestinians in H2 area. In paragraph (1) of the document, the prohibition of movement of vehicles

between the area of Hebron under Palestinian control and that under Israeli control is demanded, a prohibition to be backed up by a blocking of the passages. This recommendation has been implemented by Respondent No.1.

In paragraph (8) of the document, it is demanded that a permanent curfew be imposed on H2 area for 18 hours per day.

In paragraph (13), it is demanded that a full curfew be imposed as a means of punishment, and also the norms of punishment are determined: Attacks on Jews are to be punished with curfew during a whole week on all the population.

29. Studying the suggestions of Respondent No.2 reveals far-reaching goals: The Palestinian residents would be imprisoned in their houses during most hours of the day, the communication links with the rest of the world would be blocked, physical barriers blocking traffic even in emergency cases, certain streets would be forbidden for the movement of pedestrians even during hours when no curfew is imposed; a series of enterprises and market places would be closed down or even sealed. The religious presence of the Islamic Waqf would be eliminated by the closure of their offices and by the restrictions on the movement of Waqf employees in the Cave of Machpela [Ibrahimi Mosque].
30. The problem of law enforcement on the Jewish residents of Hebron was discussed in the report of the governmental inquiry into the massacre in the cave of Machpela [Ibrahimi Mosque], headed by his honour justice Shamgar. Also at the peak of the current curfew there were incidents of attacks by Jewish residents on Palestinian residents of Hebron that were reported in the media.
31. The one sided character of the restrictions of movement gives reasonable ground to fear that Respondent No.1 has aimed at granting maximal freedom of action to the Jewish residents of the area under his full control, also at the price of a total paralysis of Palestinian life in it. The preparedness of a small nucleus among Jewish residents of Hebron to break the law using violence raises the doubt that Respondent No.1 has conceded to the demands of the Jewish residents in order to prevent agitation in their midst and lest they try to reach their goals by means of violence.

Determination of proceedings

32. On 14th December 2000, Petitioner No.6 turned to Respondent No.1 with the request not to continue and prolong the curfew on H2 area of Hebron. Petitioner No.6 specified the implication of the curfew that prevents normal life in all thinkable aspects, and explained its arguments for the unlawfulness of the continuous curfew. As for the pressure exerted by the Jewish public in Hebron, Petitioner No.6 pointed out that “it is not the task of the military commander to please this or that public, and threats of violence must not make him an instrument for reaching political goals of an extremist group.” Petitioner No.6 expressed its particular fear of the possibility that the curfew continues during the holiday of Id al-Fitr.

The letter Petitioner No.6, sent by fax, is attached and designated as C/2.

33. On the day the letter of Petitioner No.6 was sent, there was a break of the curfew, but it was renewed (later). When the curfew continued, Petitioner No.6 turned a second time to Respondent No.1.

In its letter from 19th of December 2000, Petitioner No.6 requests Respondent No.1 to make an urgent announcement, whether the IDF intended to continue to impose and renew the curfew also in the near future. It stressed that the holiday of Id al-Fitr was imminent.

“It is still the duty of the IDF commander to ensure the daily routines and public safety of all residents. The time has come, before the holiday starts, to carry out this duty by lifting the curfew finally.”

The letter, also sent by fax, is attached and designated as C/3.

34. On 20th of December 2000, Respondent No.1 answered to the requests made by Petitioner No.6, through Lt. Gil Limon, Assistant Legal Advisor of Judea and Samaria Region. Respondent No. 1 argues in his letter that “since the beginning of the month of October, H2 area in Hebron represents a focal point of breaches of public order and of shooting incidents against IDF and against Israeli citizens,” and that in order to prevent real and severe danger to human life, it was “sometimes” necessary to impose a curfew on the residents of H2 area. In this letter, the Assistant Legal Advisor of Judea and Samaria Region says further that the curfew has been lifted the previous day, but if security reasons made it necessary, it could not

be excluded that the military commander would consider imposing it again.

The letter of Lt. Limon is attached and designated as C/4.

35. On 21st December 2000, the representatives of the Petitioners once more turned to Respondent No.1, through Lt. Limon. In his letter, the representative of the Petitioners corrects an inaccuracy in Lt. Limon's letter concerning the date of the lifting of the curfew. The representatives of the Petitioners also argues that it was not correct that H2 area was the focal point of shooting attacks against IDF and Israeli citizens since according to his understanding the shooting incidents are in H1 area.

The representative of the Petitioners points out the severe impact resulting from the prohibition of movement of vehicles, as well as the great uncertainty as to whether the curfew was lifted totally or if only a temporary break was permitted. In the conclusion of the letter, the representative of the Petitioners asked Lt. Limon to transmit to Respondent No.1 the requests, essentially congruent with the relieves requested in this petition, and asked for an urgent response.

The letter dating from 21 December 2000, also sent by fax, is attached and designated as C/5.

36. The last letter by the representatives of the Petitioners was not responded to until the date the petition was submitted. One day after letter C5 was sent, the curfew was imposed again on H2 area in Hebron.

Normative Framework

Authority

37. The authority of the Military commander of the area to impose a curfew is based on regulations in par. 89 of the Order Concerning Security Provisions (Judea and Samaria) (No. 378), 5730-1970, which states as follows:

“A military Commander may issue an order requiring every person within a specified area to remain indoors during the hours set by the order. Anyone who is found out of doors without a written permit issued by or on behalf of a Military Commander, in the area or dur-

ing the hours set by the order, shall be guilty of an offence under this order.”

38. To the Military Commander is also vested the authority to restrict the use of roads and of vehicles, by virtue of par. 88 of the above-mentioned Order Concerning Security Provisions, which states in its relevant part as follows:

“(A) A military Commander, or a person acting under the general or specific authority of a Military Commander, may through the issuing of an order or instructions, or otherwise:

1. Prohibit, restrict or regulate the use of certain roads or set the routes to be followed by vehicles or animals or persons generally or of any specific class;
2. (...)
3. Prohibit, restrict or regulate the movement of people in general, or of people of any specified class, or particular individuals, in airplanes.”

Purpose of the Authority:

39. The purpose of the authorities given to the Military Commander by virtue of the Order Concerning Security Provisions is to ensure the security of the area and to protect public order in it. The imposition of a curfew means keeping human beings in a limited area under house arrest. It implies the deprivation of freedom for a large public without trial. Therefore, it is suitable to compare the purpose of using the authority for curfews to that required for administrative detention. According to his honour President Shamgar in H.C. 253/88 Sajadiyya et al.v. Minister of Defence, P”DMB (3) 801, p.821:

“A deprivation of freedom not based on the decision of a judicial authority is, according to its essence, a far reaching step of great severity, allowed by the law only in circumstances when it is indispensable for unequivocal security reasons.”

The obligation to balance between the effects on the population and security needs:

40. The Military Commander is always obliged to balance between security needs and the effects of the freedom of individuals and the wide public, unavoidably caused by the imposition of restrictive

measures. His authority to impose a curfew and other restrictions of movement cannot serve for purposes of punishment and control affecting the life of a population severely, beyond the degree suitable in the factual circumstances given. According to the decision of his honour Justice Bach in the case of the night curfew in the Gaza Strip (H.C. 1139/90 Sa'eed Shawa v. IDF Commander of Gaza District, South Region, P"DMD (4) 590, 591):

"It is the duty of the military authority in occupied territories to care, to the degree possible, for the existence of normal life in the areas affected, and he must not use temporary means of prevention and deterrence at the disposition of the Commander, for purposes of punishment (see H.C. 660/88 [P"DMG (3) 673], PP677-678, AND regulation no.43 of the Appendix to the Hague Convention Respecting the Laws and Customs of War on Land, 1907). (...) The Respondent has periodically to weigh anew the necessity for imposing the orders mentioned, being aware of the hardship thereby caused to the population, for the purpose of examining whether and when it would be allowed to renounce this means or, at least, to ease its application."

His honour Justice Zamir came back to these principles, in connection with the curfew and other restrictions imposed on the freedom of movement and business, in H.C. 1759/94 Sarosberg et al. v. Minister of Defence (not published, Taqdin Elyon 94(2) 1247, attached and designated as C/6, in paragraph 3 of the verdict):

"In any case of imposition of such restriction, the competent authority has to weigh the degree of security necessity, when applying the powers vested in the authority, against the degree of the effects on the local population. (The competent authority has to abstain from imposing restrictions for the purpose of punishment and must not take severe and harmful steps beyond the degree suitable for the circumstances of the incident. This is a criterion for examining a decision to impose this restriction or another on a given date and in a specified location."

Dimension of time in a continuous curfew

41. The dimension of time serves as a consideration on its own in the judicial assessment of the discretion exercised by the Military Commander and is likely to justify the involvement of the honourable Court. Thus the honourable Court has shortened the validity of an

order that imposed a long and continuous curfew on the cities of Ramallah and al-Bireh and prescribed that the Military Commander would be allowed to issue a new order at the end of the validity only “for substantial reasons justifying it” (H.C. 5820/92 Father Samuel Fannous et. Al. v. Danny Yatom et al., not published, Taqdin ‘Elyon 92 (1) 270, attached and designated as C/7). The honourable Court emphasised (ibid., third clause):

“It is needless to say that the longer the curfew continues, the heavier is the burden for the Respondents to show the substantial military necessities that justify its prolongation.”

Assessment of adequacy:

42. The Military Commander is not entitled to use the powers vested to him by the security legislation in a way that impairs basic rights beyond what is requested for a specific purpose and that is in opposition to the clause of limitation in the Basic Law on Pride and Freedom of the Human Being. His honour President Barak has summed up the application of an assessment of the adequacy of the activities of a person with security powers, in connection with house demolition, H.C. [BDNG”Tz] 2611/96 Shareef v. Maj. Gen. Of Home Front Command, P”D N (4) 485, pp 490-491). With the necessary changes made, the arguments used there are also valid for the issue of curfews and restrictions of movement:

“[The person with the relevant powers] has to envisage a specific purpose. When determining the means of deterrence, the empowered person has to act “in a degree not exceeding necessity”. Thereby adequacy is assessed. The means chosen has to lead to the realisation of the specific purpose in a rational way; the means chosen must impair protected human rights – in our case the right to property – to the least degree possible for achieving the purpose. Only if it is not possible to effect the deterrence desired by less drastic means, taking severe measure of house demolition is allowed. The measure taken must stand in an appropriate relation to the purpose envisaged (see for this 6281/93 Bank Mizrahi United v. Migdal Kfar Shitufi [P”D MT (4) 221]. This is the interpretative induction emanating from the Basic Law. (...).”

The principle of parity:

43. The Military Commander, when exercising his security-related powers, has to uphold the principle of parity. He is not allowed to discriminate, not even in emergency situations, between two persons on the basis of nationality. A clear verdict was given in this issue in H.C. 168/91 Marcus v. Minister of Defence et al., P”D MH (1) 467,470-471:

“It is the obligation of the power holding an area in belligerent occupation to care for the security and safety of its civilian population (both Jews and Arabs)...The Military Commander has indeed to act with parity in the area. He is not allowed to discriminate between residents and (other) residents...We are living in a difficult period. When the cannons fire, the muses remain silent. But even when cannons fire, the Military Commander is obliged to uphold the law. The power of a society to withstand its enemies is based on the recognition that it is fighting for values worthy to be protected. The rule of law is one of these values. The obligation of the Military Commander to act with parity towards the residents of an area does not disappear, when the security tension rises. This is his continuous duty obliging him at any price.”

The status of H2 area as territory under belligerent occupation and the obligations of the controlling power to ensure normal life:

44. There is no disagreement about whether H2 area in Hebron is under effective control of the IDF and, therefore, is subject to the rules of international law regarding territories under belligerent occupation. For this see the verdict from 13th December in H.C. 8286/00 Association for Civil Rights in Israel v. IDF Commander of Judea and Samaria Region (not published yet, attached and designated as C/8.

45. Although the civil authorities in H2 area have been transferred to the Palestinian Authority, in accordance with political agreements, this does not diminish the powers and obligations of the Commander of the area according to international law. For this issue cf. H.C. 102/82 Tzemel et al. v. Minister of Defence et al., P”DLZ (3) 365,373-374:

“The powers and obligations of a military force that emanate from its effective control over a certain territory have established and subsist because of the actual military rule of the territory...and moreover, in any case, i.e. also under normal conditions of military rule, the military force

is allowed to decide, to which degree it exercises its powers in the area of civil administration by its direct delegates, and which areas it transfers to the authorities of the previous power, between local (authorities) and officials of the central power.”

46. Ensuing from the continuation of the status of H2 area in Hebron as territory held under belligerent occupation, the Commander of the area bears today still the responsibility for ensuring normal life for the residents of Hebron subject to effective Israeli military rule, in all aspects of life. This authority, which originates from customary international law, is wide. See the interpretations given to Regulation 43 in the Appendix of the Hague Convention Respecting the Laws and Customs of War on Land, 1907, in H.C. 398/82 Jam'iyat Iskan v. IDF Commander of Judea and Samaria Region et al., P”D LZ (4) 785,p. 798:

“.... [The authority] extends to public order and life in all their aspects. Therefore, this authority applies – besides security and military issues – also in various “civil circumstances, like economic, societal, educational, social, sanitary, medical, traffic-related and similar issues connected to life of man in modern society.”

See also H.C 202/81 Tabib et al.v. Minister of Defence et al., P”D L”W (2), 622.P629:

What does ensuring public order and life mean? The requested answer is: The exercise of a regular administration in all its branches operating today in a well-organised country, including security, health, education, relief, and also among others the quality of life and communications”.

See also the arguments of his honour Justice Bach (concerning the exercise of the authority to close places according to par. 91 of the Order Concerning Security Relations) in H.C. 660/88 Ins al-Usra et al. v. IDF Commander of Judea and Samaria Region, P”D MG (3) 673,p 677:

“One of the basic foundations that have to guide policy of a power in occupied territory is the will to enable to the degree possible the normal continuation of regular life, the existence of educational and charitable institutions like those whom to promote the association was founded, could contribute to this purpose in a natural way. And, to the contrary, the closure of such institutions, existing and working since a long time, is likely

to cause shocks and an increase of tensions, which does not contribute at all to the creation of normal life.”

47. The military power is not allowed to disregard its obligation to establish regular health, education, judicial, religious, economic and traffic systems among the population subject to its rule. The existence of these general obligations is based on customary international law and represents an indispensable consideration to be borne in mind by the Military Commander when deciding whether to exercise his authority regarding a curfew or restrictions of movement.

Legal argumentation

Absence of reasonable link between purpose and means

48. According to the notification of the State Attorney from 10th December 2000 in the framework of H.C. 8286/00 Association for Civil Rights v. IDF Commander of Judea and Samaria Region (par.17 of the announcement), the curfew on the city of Hebron is imposed “as long as severe incidents like shooting occur”. According to the same announcement (par.19 and 33), the shooting incidents occur almost “every night”. In order to compete with the shooting incidents, the IDF have established positions controlling the “places from where the shooting erupts” (par.13 of the announcement).

The announcement is attached and designated as C/9.

Lt. Limon points out in his letter to the representative of the Petitioners (C/4) that the background of the curfew are breaches of public order and shooting attacks against IDF and Israeli citizens.

49. A proper and indispensable purpose for the IDF is to prevent serious shooting incidents. (For the question) how the curfew is to prevent these shooting incidents, Respondent No.1 has solutions. To the best knowledge of the Petitioners, as emerges from their affidavits; the shooting erupts from H1 area, which is under Palestinian control, and not from H2 area. As emerges from the notification of the State (Attorney) (C/9), it erupts during night, and not during the hours when the curfew is the most burdensome. To imprison an entire civil population in their houses does not serve in anything the competition with the armed gangs carrying out shooting from known places, taken under fire by the IDF soldiers.

50. The more the curfew is intended to prevent breaches of public order; the more the curfew is likely to serve as an effective means of preventing a mass disturbance, wide and continuous, when normal means for dispersing demonstrations fail to be effective. It has not been claimed that breaches of public order of this kind have occurred in H2 area, and certainly not during the breaks of the curfew and during the last weeks.

In the long run, the continuous curfew frustrates all hope for the establishment of security in the area of Hebron as it increases the frustration and embitterment of the local Palestinian residents and strengthens the enmity towards the IDF in the city.

Lack of adequacy regarding the dimension of the effects:

51. Even if the curfew were to serve security purposes (and as a means to prevent sporadic incidents between Palestinian and Jewish residents or IDF soldiers), it would not stand an assessment of adequacy. A curfew imposed on tens of thousands of human beings, paralysing all their lives, cannot represent a permanent solution for ensuring public order. Incidents between settlers and Palestinian residents can be prevented by means of military escort for the movements of the settlers and by means of prevention of contact between the groups inside the Jewish enclaves, on one hand (as the situation has been for years), and on the roads not serving the Jewish population, on the other hand. The dangers emerging from violent incidents, which are likely to occur from time to time, are not balanced against the harm caused by the curfew to the freedom of the residents, to the psychological condition of children and students, to the income of families, to the economy, to the right of worship and to public health.

The critical point of the dimension of time:

52. The curfew and the restrictions of movement in Hebron have already passed the “critical point” [“point of breaking”], since this severe measure and its devastating effects on a large population are in no reasonable relation to any benefit the curfew is to achieve. The continuation and the repeated renewal of the curfew after short breaks brought the residents into a regime in which the deprivation of freedom is general. Things to be done on a daily routine turned into privileges about which nobody knows if they would be possible an-

other day or another hour. It is not possible to plan anything for the next day because of the uncertainty as to whether the curfew would be lifted or renewed. With small changes, the arguments used by the Supreme Court in its verdict concerning prolonged administrative detention of Lebanese captives are valid also here:

“Administrative detention cannot continue without end. The longer the period of detention lasts, the more necessary are weighty and substantial considerations in order to justify an additional prolongation of the detention. With the passing of time, the measure of administrative detention becomes so burdensome that it ceases to be adequate. Indeed, even if the authority is given for impairing freedom by means of a detention order, the use of this authority has to be adequate. It must not pass the “critical point” beyond which the administrative detention is not adequate any more.” (DN”P 7048/97 Anon. v. Minister of Defence, P”D ND (1) 721, 744).

Gross violation of the principle of parity:

53. The curfew and the restrictions of movement in H2 area are gross discriminations on the background of nationality. While the Palestinian residents are all confined to their houses, or only allowed to walk on foot, they can see their Jewish neighbours moving freely, by vehicle or on foot, wherever they feel like. Respondent No.1 has abstained from imposing any restrictions on the routines of daily life of the Jewish residents and has, opposed to this, frozen completely the routines of the daily life of the Palestinians. The basic rights of tens of thousands of Palestinians have been denied, in order to protect fully all interests of around 500 Jews. On this basis of national affiliation, the importance attached to the rights of every individual changes from one extreme to the other.

Collective punishment:

54. There is substantial factual basis to assume that the renewal of the curfew on 30,000 residents of Hebron subject to Israeli control after shooting incidents against houses of the Jewish community and against IDF positions, is destined to serve as a means of collective punishment and deterrence. The evidence lies, first, in the timing of the announcements of curfew renewal – immediately after reports about shooting incidents or at the same time. In the notification of

State Attorney (par.17 of the notification C/9), it is clearly stated that the curfew is imposed whenever a shooting incident occurs. Second, recently no real breaches of public order were reported inside H2 area; the reason for the curfew renewals is apparently limited to the shooting incidents. Third, as has been argued above, the curfew in H2 area cannot prevent shooting originating from areas under Palestinian control. Fourth, in the imposition of the curfew as a collective sanction, a “logic” of terror is implied: If the entire public of the Arab residents of Hebron suffers enough as a result of the disruption of regular life and of the confinement of the H2 area residents to their houses, so they would induce the Palestinian gunmen not to continue their shooting

55. In the position paper of Respondent No.2 addressed to the (IDF) Brigade Commander of the area, the request is made for a curfew renewal as an automatic sanction for any shooting incident – crime and punishment.

56. The measure is unfit. Curfew is not supposed to serve as a collective sanction against an entire population because of singular acts. As argued by his honour Justice Bach in above-mentioned H.C. 1113/90, the authority (to impose) a curfew must not be used “for purposes of punishment”. A general sanction affecting an entire public in order to punish or intimidate them, is totally forbidden in international humanitarian law. Relating to Article 33 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 1949, his honour Justice Dr. Levin, rules as (H.C. 591/88 Taha et al. v. Minister of Justice et al., P”D MH (2) 45, p.54):

“The prohibition to impose collective punishments emerging from it (as well as the prohibition of intimidation and terror) is absolute and without exceptions.”

57. The UN High Commissioner for Human Rights, Mary Robinson, related to this aspect of international law in specific connection with the current curfew in Hebron in the report dating from 29th November 2000 (par.96) [English]:

“Curfews should be imposed only in extreme circumstances and as a last resort. In no case should curfews be used a punitive measure.”

Freedom of religion and worship during the days of the feast:

58. Freedom of religion and worship is one of the basic principles of the Israeli legal system, and Respondent No.1 must abide by it. The obligation of Respondent No.1 to honour the freedom of worship of the residents of Hebron is based also in customary international law, in Regulation No.46 of the Hague Regulations, and in Art. 27 of the Fourth Geneva Convention. In the official interpretation of the Geneva Convention by the (International Committee of the Red Cross), J.S. Pictet writes, with regard to the protection of religious convictions and customs (p.203):

“Protected persons in...occupied territory must be able to practise their religion freely, without any restriction other than those necessary for the maintenance of public law and morals....

Article 27 reaffirms the provision in Article 46 of the Hague Regulations that occupying forces are bound to respect “religious convictions and practice.”

The obligation to honour the freedom of religion and worship, increases the importance of the need to lift the curfew during the days of Id-al-Fitr. The continuation of the curfew also during the holiday would prevent tens of thousands of Muslims from celebrating their feast, and would prevent the possibility to perform the prayers related to the feast in the Cave of Machpela [the Ibrahimi Mosque], and in particular, it would make impossible to fulfil the religious duty of visiting cemeteries during the holiday.

Violation of the obligation to ensure regular life:

59. The violence in the area, which began on the eve of the New Year 5761 [29th September 2000], taking on different forms, is demanding a blood tribute and has not come to an end yet. The dangerous shooting incidents in Hebron and in other places in the area are continuing on an almost daily basis, a severe and intolerable phenomenon. Respondent No.1 has the heavy task of confronting these phenomena and maintaining public order. But even in a difficult security situation an additional obligation is incumbent on him, no less indispensable: to care for the well being of the public subject to IDF control, for regular continuation of public life, essential services, education, health, justice, traffic, trade and economy. By imposing a prolonged curfew on 30,000 residents of Hebron for a period lasting nearly three months, by renewing the curfew in the recent time every second or third day for an unforeseeable length of time, Respondent No.1

totally disrupts the life of the population and violates his obligations towards them.

Therefore, the honourable Court is asked to issue an order nisi, as requested at the beginning of this petition, and, after receiving the response of the Respondents, to convert it to final order.

Date: 27th of Kislev 5761 (24th of December 2000)

(Signature)

(Signature)

Yossi Wolfsohn, attorney

Eliahu Abram, attorney

Representatives of the Petitioners

Supreme Court

Sitting as the High Court of Justice

Hearing date: 26.12.00

1. Salaah Rushdi Murshid Abu Sneineh
2. Hijaazi Isma'eel Muhammad Al-Shuyoukhi
3. Muhammad Areef Aarif Muhammad Al-Shuyoukhi
4. Salaah Yousuf Muhammad Al-Shareef
5. Abdallah Raatib Isa Abu Sneineh
6. Hamoked – Centre for the Defense of the Individual, est. by Dr Lotte Salzberger

Represented by the Attorneys Eliahu Abram and/or Yossi Wolfsohn

Tel: 6283555 Fax: 6276317

Petitioners

v.

1. Commander of IDF in Judea and Samaria Region
2. The Jewish Community of Hebron [Mehaddeshai Ha-Yishuv Ha-Yehudi be-Hevron]

Respondents

Affidavit in response (to petition)

Submitted by Respondent No.1

I, the undersigned, Col. Noam Tivon, hereby declare the following:

1. I serve as Commander of the [IDF] Hebron Brigade and I submitted this affidavit in response to the petition [above mentioned]

2. The issue of the petition is the curfew imposed on H2 in Hebron in accordance with se. 89 of the Order Concerning Security Regulations (Judea and Samaria) No. 378 (5730-1970) (hereafter "Order Concerning Security Regulations").

3. In the last two months, since the outbreak of the disturbances in the territories of Judea and Samaria, a curfew has been imposed on an intermittent basis, whenever security considerations made this necessary, after shooting incidents carried out by Palestinians from H1 area against Israeli residents of Hebron and against [IDF] soldiers.

Exhibit No.1 Attached copy of report concerning times of imposition and lifting of Curfew, indicated as Exhibit No.1.

4. As shown by the report [cf. Exhibit No.1], the curfew is not being imposed on a continuous basis, but only whenever it is required and necessary for unequivocal security purposes. After their termination, the curfew is lifted again.

In any case, an effort is being made to lift the curfew every 48 hours, for purposes of provisioning, for at least 6 hours or more, if the security situation allows it.

5. On days when no shooting is carried out against [IDF] soldiers and Israeli residents no curfew is imposed.

6. The reasons for imposing the curfew are as follows:

Every time when fire is opened against [IDF] soldiers or residents as described above, the mode of activity of the soldiers in the city changes from an activity aimed at preserving public order to an activity of actual combat in built-up areas. In this framework, the soldiers take positions and open fire against the origins of the shooting.

Under such circumstances it is clear that free and normal traffic of local residents cannot be permitted.

An additional reason for imposing the curfew is the necessity to protect the population. It is my duty as military commander to ensure the safety of all residents of Hebron, and it is obvious that during combat this cannot be achieved without imposing curfew.

I would like to point out that so far nobody has been killed in the H2 part of Hebron (neither Palestinian nor Israeli).

A third reason for imposing the curfew is the purpose of preventing breaches of the public order (throwing of burning bottles and stones), while IDF soldiers are engaged in combat or returning fire against the origins of shooting. With the lifting of the curfew, sometimes these breaches of the public order in the H2 area are renewed.

7. Curfew is imposed at the beginning of combat. The curfew continues for several hours (until around 12 hours after the cessation of shooting) and as long as there is reasonable possibility that the shooting starts anew. It must be pointed out that, according to my experience, the shooting incidents continue for several hours and are carried out from different locations, apparently in coordination.

During the past months I made various attempts to lift the curfew at different times (of the day), but unfortunately the shooting incidents continued at different times, at daytime as well as during the night.

8. Announcement of the curfew is made by means of verbal proclamation [loudspeakers], in order to make the curfew known to the population directly and in the most effective way. This is in accordance with my authority according to Sec. 1 (d) and (e) of the Order Con-

cerning Security Regulations.

C.F.: H.C. 469/83, **Autobus Company v. Minister of Defence** (not published)

9. During the curfew the population is entitled to move for urgent and humanitarian purposes. This is made possible either by the normal regulations that allow the soldiers and the commanders to exercise discretion on the spot, or by individual applications that any resident can make to the DCO, either directly or through the representatives of the Palestinian Authority.
10. As for the demand of the petitioners that the curfew shall not be imposed during the [Muslim holiday] of Id al-Fitr, in the light of the above-mentioned I would not be able to make such commitments, since the curfew is imposed when shooting is carried out and since unequivocal security purposes require it.

However, every effort will be made of course, with due regard to security considerations, to enable the residents to celebrate their holiday without interference.

11. As for the demand of the Petitioners concerning the movement of vehicles when there is no curfew, I would like to point out that in general there are no limitations on the movement of the vehicles, except for the following.

In accordance with my authority as outlined in Sec. 88 of the Order Concerning Security Regulations, I have ordered the closure of the part of Al-Shuhada Street close to the houses of the Israeli residents for Palestinian vehicles, due to concrete warnings concerning intentions to carryout terrorist attacks by means of car bombs in this place.

In addition, in the framework of the security measures taken in the city of Hebron, a number of passages between H1 and H2 were closed to vehicles by means of concrete blocs, in order to tighten the supervision and control over those entering from H1 area, which under Palestinian security and civilian control, to H2 area, which is under Israeli security control. This disrupts the traffic to some degree, but does not prevent passage by vehicles between H1 and H2.

12. As for the claims of the petitioners concerning discrimination in fa-

vous of Israeli residents, I would like to point out the following:

The description in par. 53 of the petition, according to which Israeli residents “move freely in vehicles and on foot wherever they wish (to go)”, is not correct, to put it mildly.

These residents, who are daily exposed to danger of life, move only on one single axis that was assigned to them for security reasons. They are not allowed to move in the rest of H2 areas, neither on foot, nor in vehicles. The routines of (daily) life of the residents are disrupted and they find themselves almost every night under fire, while sandbags protect the openings of their houses.

Therefore, there seems to be no room for expressing such claims of discrimination regarding limitations imposed on the movement of residents in Hebron.

13. As for the argument that curfew shall not be imposed on H2 area, when shooting is carried out from H1 area, the imposition of the curfew, as mentioned above, is necessary for reasons of security in H2 area. I would like to point out that the Palestinian Authority is responsible for security in H1 area.

14. An additional point that is important to stress. Despite the imposition of the curfew, in consideration of the needs of the population and by weighing them against security needs, normal life is possible in certain areas of the city of Hebron (Harat al-Ja’bari, the Industrial Area in the south of Hebron, southern part of Abu Sneineh neighbourhood situated in H2). This includes the opening of schools, factories and industrial areas.

15. In all areas of H2 where the curfew is imposed, daily humanitarian activities linked to health, cleaning, sewage and sanitation are possible, in coordination with the DCO.

In this regard, we are ready to consider any individual (or specific) applications brought before us, even in issues outside those mentioned above.

16. Whenever the curfew is lifted, all religious institutions are opened, including the Muslim side of the Cave of Machpela [the Ibrahimi Mosque], for purposes of worship.

(Signature No’am Tivon)

Attestation

I, the undersigned, Attorney Yehuda Shefer, hereby attest that on 25.12.00, Col. No'am Tivon, whom I know personally, was present in my office and that after I made him aware of the fact that he has to say the truth and that if he does not he would face punishment as stipulated by the relevant laws, he signed this affidavit before my eyes.

(Signature Yehuda Shefer)

E.

COMMISSION ON HUMAN RIGHTS
Report of the Fifth Special Session
(17-19 October 2000)

I. Draft decision recommended for adoption by the Economic and Social Council

Grave and massive violations of the human rights of the Palestinian people by Israel

The Economic and Social Council, taking note of Commission on Human Rights resolution S-5/1 of 19 October 2000, endorses the Commission's decisions:

(a) To establish, on an urgent basis, a human rights inquiry commission, whose membership should be based on the principles of independence and objectivity, to gather and compile information on violations of human rights and acts which constitute grave breaches of international humanitarian law by the Israeli occupying Power in the occupied Palestinian territories and to provide the Commission with its conclusions and recommendations, with the aim of preventing the repetition of the recent human rights violations;

(b) To request the United Nations High Commissioner for Human Rights to undertake an urgent visit to the occupied Palestinian territories to take stock of the violations of the human rights of the Palestinian people by the Israeli occupying Power, to facilitate the activities of the mechanisms of the Commission in implementation of the present resolution, to keep the Commission informed of developments and to report to the Commission at its fifty-seventh session and, on an interim basis, to the General Assembly at its fifty-fifth session;

(c) To request the Special Rapporteur on extra judicial, summary or arbitrary executions, the Representative of the Secretary-General on internally displaced persons, the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on religious intolerance, the Special Rap-

porteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on adequate housing and the Working Group on Enforced or Involuntary Disappearances to carry out immediate missions to the occupied Palestinian territories and to report the findings to the Commission at its fifty-seventh session and, on an interim basis, to the General Assembly at its fifty-fifth session.

II. Resolution adopted by the Commission at its fifth special session

S-5/1. Grave and massive violations of the human rights of the Palestinian people by Israel

The Commission on Human Rights,

Meeting in special session

Guided by the purposes and principles of the Charter of the United Nations and the various provisions of the Universal Declaration of Human Rights, the International Covenants on Human Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Discrimination against Women,

Recalling Security Council resolutions 476 (1980) 30 June 1980, 478 (1980) of 20 August 1980, 672 (1990) October 1990 and 1073 (1996) of 28 September 1996, and taking note of Council resolution 1322 (2000) of 7 October 2000,

Recalling also its previous resolutions on the situation of human rights in the occupied Palestinian territories, including Jerusalem, the most recent of which was resolution 2000/6 of 17 April 2000,

Taking note of the report of the Special Rapporteur, Mr. Giorgio Giacomelli (E/CN.4/S-5/3), submitted on 17 October 2000, regarding his mission undertaken in accordance with Commission resolution 1993/2 A of 19 February 1993

Condemning the provocative visit to al-Haram al-Sharif on 28 September 2000 by Ariel Sharon, the Likud party leader, which triggered the tragic

events that followed in occupied East Jerusalem and the other occupied Palestinian territories, resulting in a high number of deaths and injuries among Palestinian civilians,

Gravely concerned at the widespread, systematic and gross violations of human rights perpetrated by the Israeli occupying Power, in particular mass killings and collective punishments, such as demolition of houses and closure of the Palestinian territories, measures which constitute war crimes, flagrant violations of international humanitarian law and crimes against humanity,

Taking into account the principles of international law and international humanitarian law, particularly the Geneva Convention relative to the Protection of Civilian Persons in Time of War, of 12 August 1949 and Additional Protocol I to the Geneva Conventions of 1977, and the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials of 1990, which prescribe that such officials should, *inter alia*, “minimize damage and injury, and respect and preserve human life” and “ensure that firearms are used only in appropriate circumstances in a manner likely to decrease the risk of unnecessary harm”,

Bearing in mind the outcome of the Sharm al-Sheikh summit of 17 October 2000,

1. *Strongly condemns* the disproportionate and indiscriminate use of force in violation of international humanitarian law by the Israeli occupying Power against innocent and unarmed Palestinian civilians, causing the death of 120 civilians, including many children, in the occupied territories, which constitutes a flagrant and grave violation of the right to life and also constitutes a war crime and a crime against humanity;
2. *Calls upon* Israel, the occupying Power, to put an immediate end to any use of force against unarmed civilians and to abide scrupulously by its legal obligations and responsibilities under the Geneva Convention relative to the Protection of Civilian Persons in Time of War;
3. *Calls upon* the international community to take immediate effective measures to secure the cessation of violence by the Israeli occupying Power and to put an end to the ongoing violations of human rights of the Palestinian people in the occupied territories;

4. *Affirms* that the Israeli military occupation in itself constitutes a grave violation of the human rights of the Palestinian people;
5. *Also affirms* that the deliberate and systematic killing of civilians and children by the Israeli occupying authorities constitutes a flagrant and grave violation of the right to life and also constitutes a crime against humanity;

6. *Decides:*

- (a) To establish, on an urgent basis, a human rights inquiry commission, whose membership should be based on the principles of independence and objectivity, to gather and compile information on violations of human rights and acts which constitute grave breaches of international humanitarian law by the Israeli occupying Power in the occupied Palestinian territories and to provide the Commission with its conclusions and recommendations, with the aim of preventing the repetition of the recent human rights violations;
- (b) To request the United Nations High Commissioner for Human Rights to undertake an urgent visit to the occupied Palestinian territories to take stock of the violations of the human rights of the Palestinian people by the Israeli occupying Power, to facilitate the activities of the mechanisms of the Commission in implementation of the present resolution, to keep it informed of developments and to report to the Commission at its fifty-seventh session and, on an interim basis, to the General Assembly at its fifty-fifth session;
- (c) To request the Special Rapporteur on extra judicial, summary or arbitrary executions, the Representative of the Secretary-General on internally displaced persons, the Special Rapporteur on the question of torture, the Special Rapporteur on violence against women, its causes and consequences, the Special Rapporteur on religious intolerance, the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, the Special Rapporteur on adequate housing and the Working Group on Enforced or Involuntary Disappearances to carry out immediate missions to the occupied Palestinian territories and to report the findings to the Commission at its fifty-seventh session and, on an interim basis, to the General Assembly at its fifty-fifth session;
- (d) To request the High Commissioner to bring the present resolution to

the attention of the Government of Israel and all other Governments, the competent United Nations organs, the specialized agencies, regional intergovernmental organizations and international humanitarian organizations, to ensure the widest possible dissemination of the text of the resolution and to report on its implementation by the Government of Israel to the Commission at its next session;

7. *Decides* to consider this question at its fifty-seventh session under item 8 of its provisional agenda, as a matter of high priority;
8. *Requests* the Economic and Social Council to meet on an urgent basis in order to act on the proposals contained in the present resolution.

6th meeting 19 October 2000