



Provocation to Kill

The Use of Lethal Force as a
Response to Provoked Stone throwing
A Case Study of Qarawa Beni Zeid

By
Lena Johansson

Al-Haq, 2003

West Bank affiliate of the International Commission
of Jurists - Geneva

In special consultative Status with Economic and
Social Council of the United Nations

ACKNOWLEDGMENTS

The author extends her special thanks to everyone at Al Haq who helped in researching and preparing this case study, in particular Manaf Abbas and Sky McLaughlin. The photos were taken by Manaf Abbas and the author.

ABOUT THE AUTHOR

The author works as a legal researcher with Al-Haq since July 2002. She holds an L.L.M. (jur kand) from the University of Uppsala, Sweden, specialised in International Law. She has also completed an internship at the International Criminal Tribunal for the Former Yugoslavia.

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Palestine. Ramallah, Al-Ersal Area, Beit Assia Bldg. Tel: +972 2 2988 488/7 , Fax: +972 2 2988 489
e-mail: info@ougarit.net

Introduction

On the morning of June 23rd, 2002 Israeli forces entered into the village of Yamoun in the Jenin district. Three men from the village, Mustafa Samoudi, Thaer Samoudi, and Iyad Samoudi left the village together as the incursion began in an attempt to make their way to safety in the neighboring village of Kferit. While the men were walking between the two villages they were confronted by a group of Israeli soldiers and Iyad was killed, Mustafa shot, and Thaer beaten. The following case study looks at three affidavits, one each from Mustafa and Thaer Samoudi and a third from the doctor who examined Iyad's body. The purpose of this study is to attempt to reconstruct the events that led to the killing of Iyad and the injury of his two companions. The affidavits given below detail breaches of Israel's open fire regulations, the excessive use of force, the beating of Thaer Samoudi, and the willful killing of Iyad Samoudi.

Although the beating of Thaer and the killing of Iyad both stand out for their brutality, this story has been chosen for this case study because it is representative of the abuses suffered by numerous Palestinians throughout the Intifada, and especially during the incursions into Palestinian cities during the last year. The incursion into Yamoun came during the first week of Israel's latest campaign in the Occupied Palestinian Territories, which has become known as "Operation Determined Path". "Operation Determined Path" began only one and a half months after the completion of "Operation Defensive Shield". Both of these attacks followed months of brief incursions into Palestinian cities that began in earnest on October 18, 2001 when Israeli forces first surrounded and entered into Palestinian cities across the West Bank. During these attacks hundreds of Palestinians have been killed and thousands have been rounded up and arrested.

Between April and the writing of this report alone, more than 7,000 Palestinians were detained and more than 1,500 were placed in administrative detention. In following these events Al-Haq has received regular reports and gathered affidavits concerning killings, beatings, and abuse suffered by Palestinians at the hands of Israeli soldiers.

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

Case Summary

On the morning that the events recorded below occurred the Voice of Israel Radio reported that one man was killed and another injured when they were caught violating a curfew imposed over the village of Yamoun. This claim is contradicted by information collected by Al-Haq's fieldworker who found that the curfew on Yamoun was not imposed until after Iyad Samoudi was killed and Thae Samoudi was beaten. Al-Haq's fieldworker also collected the following summary information on the case.

During the early hours of June 23, 2002 three cousins from the village of Yamoun, Mustafa, Thae, and Iyad Samoudi, met together at the home of Iyad Samoudi before leaving the village on foot for the nearby village of Kferit. The three men were motivated to leave their homes by an Israeli incursion into the village that began around 5:00 am. Iyad Samoudi was a member of the Palestinian police force's anti-drug squad in Ramallah. He was afraid that he might be arrested if he stayed in the village during the incursion due to his connections with the Palestinian police, and asked his two cousins to accompany him out of Yamoun. According to his cousins, when he left the village Iyad was carrying a pistol he used for work. However, when his body was collected his pistol was missing along with three cell phones and his money.

The three men left the village at approximately 5:20 am and headed south towards the village of Kferit. After they had traveled between one and two kilometers the men were confronted by a group of Israel soldiers and were ordered to stop and raise their hands. As soon as they complied with this request the Israeli soldiers opened fire at them. Mustafa was injured in the shoulder during this initial barrage of fire, but all three men managed

to flee the area. Mustafa was able to hide himself and was not found by the Israeli soldiers. However, Iyad and Thaer continued to flee on foot while being chased by the soldiers. After they had run only a short distance Iyad was shot in the back and Thaer was quickly caught. Sometime during the next hour Iyad was shot once more in the back of the head and killed while he lay on the ground and Thaer was severely beaten.

More details are given in the following testimonies.

Affidavits

Al-Haq Affidavit From:

Name: Mustafa Ibrahim Yousef Samoudi Employment Status:

Unemployed,

From: Yamoun Village Age: 36

At approximately 5:00 am on the 23rd of June 2002 I was awakened by the sound of planes passing overhead and soldiers moving in Yamoun near the Samoudi quarter where I live. Soon after I awoke I left my house and went next door to my cousin Thaer Samoudi's house. After I met Thaer the two of us went together to the house of Iyad Samoudi who is also my cousin. Iyad had called us earlier and asked us to leave Yamoun with him and to walk to Kferit, which is south of Yamoun.

The three of us quickly left Iyad's house and began the two hour walk between the two villages. After we had traveled about one kilometer into the mountains near the village I heard someone yell at us in Arabic to stop and raise our hands. We then spotted about 25 soldiers crouching behind a nearby stone wall, so we complied with their order. The distance between the soldiers and us was about 80 meters, and the soldiers had their guns aimed at us.

As soon as we had complied with the soldiers' orders to stop and raise our hands the soldiers began shooting at us. It was at this point that I was

shot in the left shoulder. As soon as the shooting began I started yelling at Iyad and Thaer that they should try to escape because I thought the soldiers wanted to kill us. We all started to run. Iyad was in the front running much faster than me and after a brief period I couldn't see him. After I had run only three hundred meters I fell, broke my leg, and was unable to continue. The soldiers were yelling at us to stop, were still shooting at us, and several had begun to chase after us. However, I managed to crawl out of sight and hid between a large rock and tree. After I fell Thaer continued running until he disappeared from my view.

The soldiers continued to follow Thaer and Iyad. Shortly after I hid myself a group of soldiers passed nearby without spotting me. As they passed me they continued to shoot. I think that there were about ten soldiers who chased after us. From my hiding place I could also see another group of soldiers about 500 meters from where I was hiding. Some of these soldiers were shouting in Arabic with Lebanese accents. They were saying “*Wakf walla*¹”. I also heard one soldier tell another over the radio, “Morris, where are you going?” I heard all of this while I was hiding.

After I heard the soldiers talking, the group of soldiers that I had seen standing 500 meters from me stayed where they were for another half hour. During that time a soldier with a wireless radio on his shoulder came and stood about ten meters from me. I could hear the sound of shooting throughout all of this period, and more soldiers came and joined the group on the hill.

I hid where I was from about 5:45 until 10:00 am at which point people from the village came and took me to see Dr. Burhan in Yamoun. From Yamoun I was transferred by Ambulance to the Jenin Hospital. It wasn't until later that I learned of Iyad's death and Thaer's beating. From Jenin I was transferred to Rafidia Hospital in Nablus where I underwent surgery before being transferred back to Jenin where I remain in the hospital.

¹ “*You Stop*” in Lebanese dialect

Al-Haq Affidavit From:

***Name: Thaer Khalil Saleh Samoud Employment Status: Unemployed
From: Yamoun Village Age: 26***

At around 5:15 am on Sunday the 23rd of June 2002 my cousin Mustafa came to my house in the Samoudi quarter of Yamoun so that we could go together to our cousin Iyad's house. Iyad had called both of us earlier and had asked us to leave Yamoun with him to walk to Kferit. Iyad worked for the anti-drug branch of the Ramallah police and had a pistol for work. He wanted to leave the village because of the Israeli incursion and because he was afraid that if his house was searched and his pistol was found he might be arrested for owning a weapon and for his connection to the Palestinian police.

At around 5:20 am Mustafa and I left my home and went to Iyad's house which is next door. From there we started off by foot on the one-hour trip to Kferit. Just after we passed the last building connected with our village, about one to two kilometers from where we had started, we heard someone order us in Arabic to stop and raise our hands. At that time I was standing between Mustafa and Iyad. Mustafa was on my left and Iyad was on my right. We immediately complied with the order and raised our hands.

As we were raising our hands I saw approximately 20 soldiers come out from behind a nearby stone wall. The soldiers immediately began to shoot at us. Mustafa screamed that he had been injured and that we should try to escape because the soldiers wanted to kill us. Iyad was in the front about 15 to 25 meters ahead of me as we ran. I saw Mustafa fall behind me and begin to crawl to the right, but Iyad and I continued to run. From that point on I don't know where Mustafa was or what happened to him.

Iyad and I continued running for about another 500 meters while the Israeli soldiers gave chase. They were shooting at us the whole time and shouting in Arabic for us to stop. Iyad fell onto his stomach and I stopped to ask him

what was the matter. He told me,

“Pull me along, there is a bullet in my back.”

I then told him that I couldn't carry him. I said he should stay where he was and try to hide. I also said that I would run over to the next hill to try to draw the attention of the soldiers away from him. I thought that if I was able to draw the soldiers' attention to myself Iyad might have a chance to find a place to hide. The soldiers were continuing to chase us and getting closer, so I quickly left Iyad and ran towards a hill about twenty meters away, across from where Iyad lay. When I reached the hill I was stopped by a group of five soldiers who surrounded me. I could still see Iyad's location clearly from where I was stopped. The soldiers didn't say anything to me, but immediately started to kick me and beat me with their guns.

Despite the fact that I was being beaten I paid attention to what was happening around Iyad. Soon after I was stopped I saw about six soldiers surround him and I could hear them speaking with him, but couldn't hear what was being said clearly. However, I could distinguish that they were speaking a mix of Arabic and Hebrew. The soldiers surrounding Iyad all had their guns pointed at him. Soon after that I heard the sound of one bullet being fired very close to me. I am sure that this is when the soldiers shot and killed Iyad, but I didn't actually see one of the soldiers pull the trigger. When Iyad first fell I know that he had been shot in the back and I saw the blood on his shirt, but there were no other bullet wounds or bleeding on his body. When people from Yamoun later collected his body they found that he had been shot in the head.

I heard the shot while the soldiers were beating me and yelled at them, “Haram ala'ak, why did you kill him? » After I said this the soldiers started to beat me even more viciously. They took stones and began to hit my face,

head, and shoulders with them while continuing to hit me with their guns. Four of them then took a hold of me, each one taking a hand or a leg. They lifted me up, threw me into the air, and let me fall to the ground onto my face and stomach. The whole time I was screaming with pain. After the soldiers threw me they picked me up again and threw me into the air another five times. When they dropped me the fifth time I landed face first on a branch from an olive tree and one of the branches entered into my eye, gouging it from the socket. At that point I lost consciousness.

Sometime later I regained consciousness and found that I was surrounded by a group of about 25 to 30 soldiers. One of them was an officer and I heard him shouting at the soldiers in Hebrew, which I understand. He said, “What are you doing, you are liars, he is not a terrorist.” I then saw and heard him speak on a mobile phone, and believe that he called for an ambulance. After making his call the officer came to me and began to cut off my clothes and wiped the blood away from my face with my shirt.

About twenty minutes later two gray military jeeps and a military ambulance arrived at our location. The Israeli soldiers put me into the ambulance and took me to Yamoun where I was transferred to a Red Crescent Ambulance that took me to the Government hospital in Jenin. Later I was transferred to Shefa’t Hospital where I am still being treated...

Al-Haq Affidavit From:

Name: Dr. Ahmed Mahmoud Mohammad Hamoun

Employment Status: General Practitioner, Doctor

From: Yamoun Village Age: 32

At 9:55 am, Sunday June 23rd 2002 ‘Ala Auni Samouni and another man brought a man to my clinic in the center of Yamoun. I told them to put him onto the bed in my office and then started to check for a pulse to see if he was

alive. The man was not breathing, had no pulse and his skin was cold. It appeared that he had already been dead for more than three hours and there was nothing I could do. From my initial examination I could see that there was a bullet exit wound on the left side of his face.

Dr. Burham Islam soon arrived at my clinic together with Dr. Wissam, the government doctor in town, and with Yamoun's mayor. After they arrived Dr. Burham and I carried out a thorough check of the body. We removed the dead man's clothes and examined his whole body. We found one bullet entry wound on the back of his head near the top of his skull and another entry wound in his back near the shoulder. It took us about one hour to completely check his body. While we were examining the body I was informed that the deceased was Iyad Samoudi, that he was about 25 years old, and that he was from the Samoudi Quarter in Yamoun.

From the evidence I saw during the examination and in my opinion as a doctor it appears that he was shot in the shoulder first, fell to the ground, and was then shot in the head. I do not believe that if he had been treated the wound in his back would have proved fatal. After we finished checking the body it was transferred to the local government health clinic from where it was taken and buried. The body was not transferred to Jenin hospital or anywhere else for further examinations.

Legal Findings

The following is a summary of Al-Haq's findings in this case.

A. The Excessive Use of Force and Violations of the Israeli Military's Open Fire Regulations

Al-Haq found that there was no reasonable justification for the Israeli soldiers to open fire towards the three men.

Although Iyad was in possession of a pistol when the soldiers confronted the three men, according to the information received by Al-Haq it was concealed and not in his hands. Both Mustafa and Thaeer testified that there was no attempt on the part of Iyad to use his gun at any time throughout the events related above. Further support is given to the claim that Iyad did not attempt to use his pistol by the fact that the Israeli military and media released no information regarding the killing of an armed Palestinian following this incident as has often happened in other cases. Instead the Voice of Israel Radio claimed that Iyad was killed and Thaeer wounded due to their having broken the curfew imposed over Yamoun.

According to both Mustafa and Thaeer's sworn testimonies the men complied with the Israeli soldiers' requests to stop and to raise their hands. Additionally, the men were located at a distance from the Israeli soldiers from which they could not have posed a threat to the soldiers' safety. No warning was given before the soldiers opened fire. These actions show a blatant disregard for the lives of the three men and are in clear contravention of the Israeli military's open fire regulations.

According to the open fire regulations Israeli soldiers may only open fire using live ammunition if there is a specified threat to either their or another's life or safety, to disburse violent demonstrations, or to apprehend a dangerous suspect when no other option is available. As Iyad, Mustapha, and Thaeer could not have been deemed dangerous suspects and were not located near demonstrations, only the first of these justifications for opening fire is applicable. Accordingly,

“the regulations define life-threatening danger as ‘a real danger of loss of life or of severe bodily harm.’ When there is immediate danger to the shooter or another person, and when no other means of defense is available, it is permissible to fire at the assailant with the intent to strike him. The shots should be fired only in the direction of the assailant and limited to the degree necessary to prevent danger.”²

Soldiers are also required to give a verbal warning before firing and then are required to fire warning shots into the air before firing at their target.

If the definition of “life-threatening danger » used in the Israeli open fire regulations is applied to this case the soldiers were in clear violation of their orders. The soldiers also failed to shout a warning before opening fire and failed to fire warning shots. The wound suffered by Mustafa during the initial barrage of fire indicates that the shots fired were aimed at chest and head level and were shots to kill. In Al-Haq's opinion, the shots fired while the Israeli soldiers chased Mustafa, Iyad, and Thaeer were also fired in contravention of the Israeli military's open fire regulations. Iyad was shot in the back while running away. He and Thaeer posed no threat to the soldiers chasing them, yet from the evidence collected by Al-Haq the shots fired at them also appear to have been aimed to kill.

² B'Tselem, “Provisions of the Open-Fire Regulations”, [www.btselem.org/Open_Fire_Regulations / Regulations_Provisions](http://www.btselem.org/Open_Fire_Regulations/Regulations_Provisions)

*B. Wilfully Causing Great Suffering or Serious
Injury to Body or Health*

The beating of Thae Samoudi was a criminal act and the soldiers responsible can be punished under military law. The beating also fulfills the necessary requirements to qualify as, “willfully causing great suffering or serious injury to body or health”, which is a Grave Breach of the Fourth Geneva Convention and an “inhumane act”.

According to the Official commentaries on the Fourth Geneva Convention the phrase “willfully causing great suffering or serious injury to body or health can be explained as follows,

“Willfully causing great suffering. - This refers to suffering inflicted without the ends in view for which torture is inflicted or biological experiments carried out. It would therefore be inflicted as a punishment, in revenge or for some other motive, perhaps out of pure sadism... Since the conventions do not specify that only physical suffering is meant, it can quite legitimately be held to cover moral suffering also.

***Serious injury to body or health** -This is a concept quite normally encountered in penal codes, which usually use as a criterion of seriousness the length of time the victim is incapacitated for work.”*

In the Celebici Case the International Criminal Tribunal for the Former Yugoslavia found that, “the offence of willfully causing great suffering or serious injury to body or health constitutes an act or omission that is intentional, being an act which, judged objectively, is deliberate and not accidental, which causes serious mental or physical suffering or injury.”³

3 Celebici Trial Judgement, para. 511

The judges also held that the terms “great and “serious » as used in the context of “great suffering or serious injury » can be defined as “much above average in size, amount or intensity » and “not slight or negligible » respectively.⁴

In the Blaskic Trial Judgement the International Criminal Tribunal for the Former Yugoslavia drew upon the case-law of the International Criminal Tribunal in Rwanda, Article 7 of the Statute of the International Criminal Court and the Draft Code of Crimes Against the Peace and Security of mankind to conclude that serious physical and mental injury (i.e. willfully causing great suffering or serious injury to body or health) is an “inhumane act ». This distinction is important as inhuman acts, if carried out in a widespread or systematic context, qualify as crimes against humanity.⁵

International legal standards also limit the amount of force that can be used to detain wanted individuals. These standards require that any use of force against the civilian population for the purposes of carrying out an arrest or to detain a suspect must be limited to that which is necessary and proportionate to the situation. The excessive use of force outside of that which is absolutely necessary to carry out an arrest or detention, except in situations of self-defense, is a criminal act.⁶

In this case the force used against Thae Samoudi was clearly disproportionate to the amount of force necessary to subdue and detain him and was out of proportion to the threat he posed. The beating issued by the soldiers was clearly aimed at causing bodily harm and suffering to Thae and resulted in multiple wounds including the loss of Thae’s eye.

⁴ *Celebici Trial Judgement, para. 510*

⁵ *Blaskic Trial Judgement, para. 239-42*

⁶ *Al-Haq, “A Nation Under Siege”, p. 32*

From Thaer's report and the medical documentation detailing his injuries there can be no doubt that the soldiers who beat Thaer meant him harm. The soldiers' actions were carried out systematically and with intent, and therefore fulfill the necessary requirements to qualify as a grave breach of the Fourth Geneva Convention.

C. Willful Killing

The killing of Iyad qualifies as willful killing, which is equivalent to murder, and those responsible for his death are therefore prosecutable both under local law and for committing a Grave Breach of the Fourth Geneva Convention. Civilian deaths incidental to a justifiable military action are not illegal under international law assuming the military action is carried out subject to the principle of proportionality. However, any killing of a civilian that is intentional or is not justified by military necessity qualifies both as a grave breach of the Fourth Geneva Convention under Article 147 and as a war crime.

The International Criminal Tribunal for the Former Yugoslavia examined the issue of willful killing in depth in the Celebici Case.⁷ The court held that willful killing is equivalent to murder, noting that although semantic differences exist between the two terms, accepted meanings of the terms, the context in which they are used, and the facts necessary to prove either "murder" or "willful killing" are similar as such that "there can be no line drawn between 'willful killing' and 'murder' which affects their content."⁸

⁷ *Prosecutor V. Delalic, herein referred to as the Celebici Case*

⁸ *Celebici Trial Judgement, para. 421-2*

The distinction between a “willful killing” and any other killing rests in intent or *mens rea*.⁹ The judges in the Celebici case defined necessary intent by saying that, “necessary intent, meaning mens rea, required to establish the crimes of willful killing and murder, as recognized in the Geneva Conventions, is present where there is demonstrated an intention on the part of the accused to kill, or inflict serious injury in reckless disregard of human life.”¹⁰ A death that can be deemed the accidental consequence of another action cannot be deemed “willful”. The definition of the term “willful”¹¹ accepted in the Celebici Case is the definition found in the official Commentary to article 85 of Additional Protocol I to the Geneva Conventions, which states that, “the accused must have acted consciously and with intent, i.e., with his mind on the act and its consequences and willing them...”

According to the information gathered by Al-Haq regarding the death of Iyad Samoudi, he was killed while lying wounded on the ground by being shot in the back of the head from close range. At the time he was killed Iyad was surrounded by approximately six soldiers and posed no discernable danger to their safety. Iyad could easily have been detained and arrested and there can be no justification for killing him. The soldier who shot Iyad in the head must have known what the results of his actions would be and should therefore be held accountable for his actions.

Additionally, in accordance with the notion of “superior responsibility » the officer whom Thaer Samoudi reported seeing following his beating and the killing of Iyad Samoudi can be held accountable for the actions of the soldiers under him if he has taken no action to investigate and punish those responsible for the actions recounted above. In the Kordic and Cerkez Trial Judgement the International Criminal Tribunal for the Former Yugoslavia ruled that if a commanding officer is in possession of information which enables them to conclude that a crime is going to be or has been committed and they

⁹ The “mental element”

¹⁰ Celebici Trial Judgement, para. 439

¹¹ Gutman, Roy and David Rieff, “Crimes of War: What the Public Should Know” pp. 381-3 WW Norton and Co., New York, c. 1999.

either do not act to halt the crime or do not punish those found responsible for committing a crime, they themselves can be held accountable.¹² If, as in this case, a crime has already been committed, “persons who assume command after the commission are under the same duty to punish. This duty includes at least an obligation to investigate the crimes to establish the facts and to report them to the competent authorities, if the superior does not have the power to sanction himself.”¹³

12 Kordic and Cerkez Trial Judgement, para. 368 - 446

13 Kordic and Cerkez Trial Judgement, para. 446

Conclusion

In light of these findings Al-Haq calls upon the Israeli Authorities to carry out an investigation into this case and to hold accountable those found responsible for killing Iyad Samoudi, for shooting Mustafa Samoudi and for beating Thaer Samoudi. Al-Haq also calls upon the International Community to demand that Israel take action in this case, and failing that, to itself take action to hold the Israeli soldiers and officials responsible for the above named Grave Breaches of the Fourth Geneva Convention accountable for their actions. As Grave Breaches, the International community is both morally and legally responsible for investigating these acts and for ensuring that those who are found culpable for them are tried before a court of law.

Al-Haq continues to request that the International community demand that Israel end its occupation of the Palestinian Territories. The violations outlined above are not isolated incidents or products of the current Intifada. They are products of the continued illegal occupation of the Palestinian Territories by Israel. Israel must end its illegal occupation and begin to respect international law if the continued human rights violations in the Occupied Territories are to be brought to an end.