

PALESTINE-ISRAEL

INTERNATIONAL HUMAN RIGHTS LAW:

Violations by Israel and the Problem of Enforcement

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with the assistance of
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Introduction

This pamphlet was written in the summer of 2014, after the abduction and murder of three Israeli teenagers and Israel's massive military response on the West Bank, and during Israel's more massive incursion into Gaza.

Controversy abounds over whether Israel is legitimately acting in self-defense or is using disproportionate force. Jen Psaki, spokesperson for the United States Department of State, told a daily press briefing on July 8, 2014: "No country can accept rocket fire aimed at civilians, and we certainly support Israel's right to defend itself against these attacks." On July 25, 2014, Palestinian officials filed a complaint with the International Criminal Court in the Hague, and a spokesman for the Israeli Foreign Ministry responded, "The Israeli military is working 100 percent within the dictates of international humanitarian law." On August 6, 2014, Secretary General Ban Ki Moon told the United Nations General Assembly, "The massive death and destruction in Gaza have shocked and shamed the world." The Secretary General placed particular emphasis on the repeated shelling of U.N. facilities "harbouring civilians who had been explicitly told to seek a safe haven there. These attacks were outrageous, unacceptable and unjustifiable."¹

Historians Against War has circulated a letter to President Obama and members of Congress that begins: "*We deplore the ongoing attacks against civilians in Gaza and in Israel. We also recognize the disproportionate harm that the Israeli military, which the United States has armed and supported for decades, is inflicting on the population of Gaza.*"²

United States law states that no military assistance will be provided to a government that engages in a consistent pattern of gross violations of internationally recognized human rights. Yet the United States gives more military assistance to Israel than to any other country, currently in excess of \$3.1 billion per year.³ The U.S. participates in joint military exercises, military research, and weapons development. According to the Congressional Research Service,

¹ Jen Psaki, Daily Press Briefing, July 28, 2014, <<http://www.state.gov/r/pa/prs/dpb/2014/07/228878.htm#ISRAEL>>; Toby Cadman, "Palestine, Israel and the International Criminal Court," 31 July 2014, <<http://mwcnews.net/focus/analysis/44032-palestine-israel.html>>; and "Recent Israeli, Palestinian Crisis Must Be 'The Last Time', Secretary-General Tells General Assembly," 6 August 2014, Secretary-General SG/SM/16071, <<http://www.un.org/News/Press/docs//2014/sgsm16071.doc.htm>>.

² "Historians' Letter to President Obama and Members of Congress," July 31, 2014, <<http://historiansagainstar.org/gazapetition.html>>.

³ Jeremy M. Sharp, "U.S. Foreign Aid to Israel," Congressional Research Service, Apr. 11, 2014, Summary: "Israel is the largest cumulative recipient of U.S. foreign assistance since World War II. To date, the United States has provided Israel \$121 billion (current, or non-inflation-adjusted, dollars) in bilateral assistance. Almost all U.S. bilateral aid to Israel is in the form of military assistance, although in

U.S. military aid has helped transform Israel's armed forces into one of the most technologically sophisticated militaries in the world. U.S. military aid for Israel has been designed to maintain Israel's "qualitative military edge" (QME) over neighboring militaries. The rationale for QME is that Israel must rely on better equipment and training to compensate for being much smaller geographically and in terms of population than its potential adversaries. U.S. military aid, a portion of which may be spent on procurement from Israeli defense companies, also has helped Israel build a domestic defense industry, which ranks as one of the top 10 suppliers of arms worldwide.⁴

What are "internationally recognized human rights"? What constitutes "torture" or "other cruel, inhuman or degrading treatment"? What is "collective punishment"? What evidence is there that Israel has engaged in a consistent pattern of gross violations of internationally recognized human rights such that the U.S. should not be providing military assistance? What is our responsibility to ensure that universally recognized humanitarian principles are applied?

As historian Robin D. G. Kelley says, "Determining next steps requires that we go back many steps—before the siege, before the election of Hamas, before the withdrawal of Jewish settlements in Gaza, before the Oslo Accords, even before the strip came under Israeli occupation in 1967."⁵ That is what this pamphlet begins to do.

the past Israel also received significant economic assistance. Strong congressional support for Israel has resulted in Israel receiving benefits not available to any other countries" This source details amounts allocated for the period from FY2009 to FY 2018; \$3.1 billion have been appropriated for FY2014 and FY 2015. <<http://fas.org/sgp/crs/mideast/RL33222.pdf>>

The U.S. is also Israel's largest single trading partner. U.S. direct investment in Israel is primarily in the manufacturing sector, as is Israeli investment in the United States. U.S. Department of State, Bureau of Near Eastern Affairs, Fact Sheet, "U.S. Relations With Israel," Mar. 10, 2014, <<http://www.state.gov/r/pa/ei/bgn/3581.htm#>>.

⁴ Congressional Research Service, *ibid.*, pp. 2-3 and sources cited therein.

⁵ Robin D. G. Kelley, "When the smoke clears in Gaza," Aug. 8, 2014, *Black Educator*, <<http://blackeducator.blogspot.com/2014/08/gaza-massacre-continues-us-academia-and.html?m=1>>.

I. International Agreements and U.S. Law

A. International Agreements on Human Rights

Certain rights are absolute. These rights include the right to life, the prohibition against torture and cruel, inhuman or degrading treatment or punishment, and the right to freedom of thought, conscience and religion.⁶

Here is a brief overview of the principal international agreements that we should keep in mind.

The 1907 **Hague Convention IV** and Regulations Respecting the Laws and Customs of War on Land set down what was by then regarded as customary international humanitarian law. Article 42 says that “territory is considered occupied when it is placed under the authority of the hostile army.”⁷ Article 46 says, “Private property cannot be confiscated.” Article 50 says, “No general penalty . . . shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.”

At the end of World War II, the 1945 **Nuremberg Charter** established an International Military Tribunal to convict war criminals. Individuals can be held responsible for “Crimes against peace” (starting or waging a war of aggression or a war in violation of international treaties); “War crimes” (violations of laws or customs of war such as deportation of civilian population, wanton destruction of cities, towns or villages, or devastation not justified by military necessity); and “Crimes against humanity” including murder, deportation and other inhumane acts committed against any civilian population before or during the war, or persecution on political, racial or religious grounds.⁸

In 1948, in response to the Second World War, the United Nations General Assembly adopted the **Universal Declaration of Human Rights**. It declared that all human beings are

⁶ Office of the High Commissioner for Human Rights, “Note to the Chair of the Counter-Terrorism Committee: A Human Rights Perspective On Counter-Terrorist Measures,” [23 Sep. 2002], <http://www.un.org/en/sc/ctc/docs/rights/2002_09_23_ctcchair_note.pdf>.

⁷ Convention (IV) respecting the Laws and Customs of War on Land and its annex: Regulations concerning the Laws and Customs of War on Land. The Hague, 18 October 1907, <<http://www.icrc.org/ihl/INTRO/195>>.

⁸ Charter of the International Military Tribunal, annexed to the Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, 8 August 1945, affirmed by the U.N. General Assembly Resolution 95(1), 11 December 1946, Art. 6, <<http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=AB2411F0665BE7C9C12563CD00519BF5>>.

entitled to freedom from torture and degrading treatment, the right to equality before the law and freedom from arbitrary arrest and exile, and no one shall be arbitrarily deprived of his property.⁹

The **Fourth Geneva Convention**, adopted in 1949, has certain provisions that apply to occupied territories. Article 32 prohibits torture. Article 33 says that individuals should be held responsible for violating the rights of protected persons, and it prohibits collective punishment. Article 49 prohibits forcible transfers or deportations of people from occupied territory to the territory of the Occupying Power or any other country. Article 76 says that persons who are detained or convicted in an occupied territory must serve their sentences within the occupied territory. Article 147 lists as “grave breaches”: wilful killing, torture or inhuman treatment, wilful causing of great suffering or serious injury to body or health, unlawful deportation or transfer of a protected person, wilfully depriving a protected person of a fair trial or unlawful confinement, and extensive destruction or taking of property not justified by military necessity. Articles 1, 146, and 147 require all states to take measures to stop these “absolute” breaches, no matter what the circumstances.¹⁰

Thus, by the end of the 1940s, these human rights had been codified into internationally recognized human rights law.

Subsequently, the **International Covenant on Civil and Political Rights** went into effect in 1976. It says that “no one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment,” “no one shall be subjected to arbitrary arrest or detention,” and that “All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.”¹¹

In 1977, protocols to the Geneva Conventions said that the civilian population and individual civilians should be protected against dangers arising from military operations under all circumstances, even in self defense. **Indiscriminate attacks** are prohibited. These include using methods or means of combat that strike military objectives and civilians or civilian property without distinction, and attacks that would be excessive when comparing the harm to civilians compared to the anticipated military advantage. In conducting military operations at sea or in the

⁹ Universal Declaration of Human Rights, Articles 5, 7, 9, and 17, 10 December 1948, <<http://www.un.org/en/documents/udhr/>>.

¹⁰ Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 12 August 1949. The text was drafted by the International Committee of the Red Cross and adopted with only slight changes. <<http://www.icrc.org/ihl/INTRO/380>>.

¹¹ International Covenant on Civil and Political Rights (ICCPR), Articles 7 and 10, adopted 16 Dec. 1966, entered into force 23 Mar. 1976), <<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>>.

air, each party to the conflict is required to take all reasonable precautions to avoid losses of civilian lives and damage to civilian property.¹²

In 1984, the **Convention Against Torture (CAT)** gave us definitions of “torture” and “other cruel, inhuman or degrading treatment.”¹³ Israel ratified the Convention Against Torture in 1991 with some reservations. This Convention specifies that “Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction.”¹⁴ But Israel took no legal steps to implement the Convention Against Torture in its own law. Because “the Convention does not form part of the domestic law of Israel . . . its provisions cannot be invoked in Israeli courts.”¹⁵

For purposes of this pamphlet, The Interim Agreement on the West Bank and the Gaza Strip, otherwise known as **Oslo II**, is important because it designated the areas of land that were to be under Palestinian or Israeli control.¹⁶

In 1998, the **Rome Statute of the International Criminal Court** said that “war crimes” include:

- Extensive destruction and appropriation of property, not justified by military necessity;

¹² For precise provisions and commentary, see “Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977,” <<http://www.icrc.org/applic/ihl/ihl.nsf/1a13044f3bbb5b8ec12563fb0066f226/5e5142b6ba102b45c12563cd00434741>> re self defense; *ibid.* and <<http://www.icrc.org/ihl/WebART/470-750065>> re protection of the civilian population; and <<http://www.icrc.org/applic/ihl/ihl.nsf/9ac284404d38ed2bc1256311002afd89/50fb5579fb098faac12563cd0051dd7c>> re precautions in attack.

¹³ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted 10 Dec. 1984, entered into force 26 June 1987, <<http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>>.

¹⁴ CAT, *ibid.*, Article 2.2.

¹⁵ [U.N.] General Assembly, “Concluding observations of the Committee against Torture: Israel, 12 June 1994, A/49/44, paragraphs 159-171,” ¶¶ 160 and 165, <<http://unispal.un.org/unispal.nsf/181c4bf00c44e5fd85256cef0073c426/c4421732035b02f185256b1e00701601>>.

¹⁶ The Israeli-Palestinian Interim Agreement, 28 Sep. 1995, (hereafter, Oslo II), <<http://www.mfa.gov.il/mfa/foreignpolicy/peace/guide/pages/the%20israeli-palestinian%20interim%20agreement.aspx>>.

- Intentionally launching an attack in the knowledge that such attack will cause incidental loss of life or injury to civilians or damage to civilian property or widespread, long-term and severe damage to the natural environment which would be clearly excessive in relation to the direct overall military advantage anticipated; and
- Attacking or bombarding, by whatever means, towns, villages, dwellings or buildings which are undefended and which are not military objectives. . . .¹⁷

It is the duty of all countries to “do everything in their power to ensure that the humanitarian principles underlying the [human rights] Conventions are applied universally.”¹⁸

B. U.S. Law on Foreign Assistance

United States law prohibits assistance to any country that engages in a consistent pattern of human rights violations. U.S. law also limits the use of U.S. military equipment to defensive purposes or “legitimate self-defense.”¹⁹

“[A] principal goal of the foreign policy of the United States,” according to the Foreign Assistance Act, “shall be to promote the increased observance of internationally recognized human rights by all countries.”²⁰ Furthermore, “no security assistance may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights.”²¹

¹⁷ Rome Statute of the International Criminal Court, Article 8, War crimes, 17 July 1998, <<http://www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=E4C44E2F1347B99D412566900046EACB>>. Not all states have ratified the Rome Statute, but it is an accepted principle of international humanitarian law that the direct targeting of civilians is a breach of customary international law. See Wikipedia, “Distinction (law),” <[http://en.wikipedia.org/wiki/Distinction_\(law\)](http://en.wikipedia.org/wiki/Distinction_(law))>.

¹⁸ Jean S. Pictet, gen. ed., “Commentary, IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War,” International Committee of the Red Cross, Geneva, 1958, <http://www.loc.gov/r/frd/Military_Law/pdf/GC_1949-IV.pdf> at 16.

¹⁹ Congressional Research Service, *op.cit.*, p. 13, and sources cited therein: “The 1952 Mutual Defense Assistance Agreement and subsequent arms agreements between Israel and the United States limit Israel’s use of U.S. military equipment to defensive purposes. The Arms Export Control Act states that the United States may stop aid to countries which use U.S. military assistance for purposes other than ‘legitimate self-defense.’ The Foreign Assistance Act of 1961, as amended, also contains general provisions on the use of U.S.-supplied military equipment.”

²⁰ 22 U.S.C. § 2304(a), Human rights and security assistance, <<http://www.gpo.gov/fdsys/pkg/USCODE-2010-title22/html/USCODE-2010-title22-chap32-subchapII-partI-sec2304.htm>>.

²¹ “Security assistance” includes not only military assistance, but also sales of defense articles or services, credit, loan guarantees, and “any license in effect with respect to the export of defense articles or defense

“[T]he term ‘gross violations of internationally recognized human rights’ includes torture or cruel, inhuman, or degrading treatment or punishment, prolonged detention without charges and trial, causing the disappearance of persons by the abduction and clandestine detention of those persons, and other flagrant denial of the right to life, liberty, or the security of person.”²²

Each year the U.S. Department of State submits Human Rights Reports to Congress on all countries receiving foreign assistance. These are known as Country Reports on Human Rights Practices.²³ The State Department says, “We see it as fundamental to our own interests to support a just peace around the world—one in which individuals, and not just nations, are granted the fundamental rights that they deserve.”²⁴

II. Violations of Internationally Recognized Human Rights

In this part we shall consider policies and practices, found by the United Nations Security Council or other U.N. agencies and the U.S. State Department in annual Country Reports, that show Israel to have demonstrated a consistent pattern of gross violations of internationally recognized human rights. Both international agreements and U.S. law prohibit torture and other cruel, inhuman and degrading treatment, arbitrary arrest and detention, and collective punishment.

services to or for the armed forces, police, intelligence, or other internal security forces of a foreign country under section 38 of the Arms Export Control Act.” 22 U.S.C. § 2304(d)(2), *op.cit.* Thus, the private sector is impacted as well as public funds.

Security assistance may not be provided to such a government “unless the President certifies in writing to the Speaker of the House of Representatives and the chairman of the Committee on Foreign Relations of the Senate that extraordinary circumstances exist warranting provision of such assistance.” 22 U.S.C. § 2304(a)(2).

²² 22 U.S.C. § 2304(d)(1).

²³ “The annual Country Reports on Human Rights Practices—the Human Rights Reports—cover internationally recognized individual, civil, political, and worker rights, as set forth in the Universal Declaration of Human Rights and other international agreements. The U.S. Department of State submits reports on all countries receiving assistance and all United Nations member states to the U.S. Congress in accordance with the Foreign Assistance Act of 1961 and the Trade Act of 1974.” Country Reports from 1999 to date can be accessed on line at <<http://www.state.gov/j/drl/rls/hrrpt/>>; click on year; click on country or Near East; click on Israel and the Occupied Territories; pdf files, paginated, are available for most recent years. The first such report covered the year 1976, issued in 1977, <http://en.wikipedia.org/wiki/United_States%27_Country_Reports_on_Human_Rights_Practices>.

²⁴ May 2010 National Security Strategy, <<http://www.state.gov/j/drl/rls/hrrpt/>>.

A. Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Torture consists of severe physical or mental pain or suffering, intentionally inflicted for purposes such as obtaining information or a confession, punishment, intimidation, coercion, or discrimination, inflicted or instigated by a person acting in an official capacity.²⁵ There are no exceptions.²⁶ An order from a superior officer or public authority does not justify torture.²⁷ The prohibition against torture is absolute, even in the face of threat of terrorist acts, war or threat of war, internal political instability or any other public emergency.²⁸

Other cruel, inhuman and degrading treatment or punishment which does not amount to torture, when committed or instigated or consented to by a person in his official capacity,²⁹ is otherwise known as “ill-treatment”³⁰ or “CIDT.” According to the International Committee of the Red Cross, cruel, inhuman or degrading treatment consists of acts that cause serious mental pain or suffering that any reasonable person would feel to be a serious outrage upon individual

²⁵ According to the Convention Against Torture (CAT), *op.cit.*, Article 1.1, “the term ‘torture’ means any act by 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 has 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.” *See also*, International Committee of the Red Cross (ICRC) policy on torture and cruel, inhuman or degrading treatment inflicted on persons deprived of their liberty, “Policy adopted by the Assembly Council of the ICRC on 9 June 2011,” <<http://www.icrc.org/eng/assets/files/publications/icrc-002-4088.pdf>>, p. 2 n.1.

²⁶ CAT, Article 2.2, “No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”

²⁷ CAT, Article 2.3, “An order from a superior officer or a public authority may not be invoked as a justification of torture.”

²⁸ Committee Against Torture, General Comment No. 2, “Implementation of article 2 by States Parties,” 23 November 2007, ¶ 5, <http://www2.ohchr.org/english/bodies/cat/docs/CAT.C.GC.2.CRP.1.Rev.4_en.pdf>; *see*, CAT, Article 17, providing for the establishment of the Committee Against Torture.

²⁹ CAT, Article 16: “. . . other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.”

³⁰ Committee Against Torture, *op.cit.*, ¶ 3.

dignity. Ill-treatment “has the potential to destroy the social ties that underpin a community or a society,” and is a “flagrant violation” of international human rights law.³¹

In practice, according to the U.N. Committee Against Torture, the difference between ill-treatment and torture is often not clear; “conditions that give rise to ill-treatment frequently facilitate torture and therefore the measures required to prevent torture must be applied to prevent ill-treatment.”³²

The main distinction between torture and CIDT is the intent. It is not the intensity of pain or suffering that distinguishes torture from CIDT, but the purpose of the ill-treatment and the powerlessness of the victim in a situation of detention or similar direct control. In other words, a law enforcement official is entitled to use force that causes light or even severe pain or suffering in order to effect the arrest of a person suspected of having committed a criminal offense. But **when the person has been arrested, handcuffed, detained, or otherwise brought under the direct control of the official, no further use of force or infliction of pain is permitted.** [Emphasis added.] Even non-severe pain or suffering, if inflicted in a humiliating manner, might amount to degrading treatment. If severe pain or suffering is inflicted on a detainee for any of the purposes listed in Article 1 CAT, this not only amounts to cruel and inhuman treatment, but also constitutes torture.³³

Israel uses what it calls a “moderate degree of pressure” when interrogating detainees. Guidelines on interrogation, recommended by the “Landau Commission” and adopted by Israeli authorities in 1987, have been controversial ever since.

- In 1994, the U.N. Committee Against Torture found “moderate physical pressure” completely unacceptable as a method of interrogation because it created conditions leading to the risk of torture.
- In cases considered by the Israeli Supreme Court in 1995 and 1996, it was argued that the interrogation methods being used did not cause severe suffering.
- The U.N. Committee rejected that idea since the government of Israel admitted that its interrogation techniques included hooding (putting a hood over a person’s head), shackling in painful positions, causing sleep deprivation, and shaking, in violation of the Convention Against Torture.

³¹ ICRC Policy, 9 June 2011, *op.cit.*, p.2 n.1. The ICRC regards “cruel” and “inhuman” as meaning the same thing; likewise, “humiliating” and “degrading” mean the same thing.

³² Committee Against Torture, *op.cit.*, ¶ 3.

³³ Manfred Nowak, “What Practices Constitute Torture?: US and UN Standards,” *Human Rights Quarterly* 28 (2006) 809-841, pp. 836-37, available at <<http://faculty.maxwell.syr.edu/hpschmitz/PSC354/PSC354Readings/NowakTorture.pdf>>.

- In 1999, the Supreme Court of Israel held that interrogation methods involving physical force violate Israeli law and the individual's constitutional right to dignity. The Court rejected the following interrogation methods: shaking, forcing detainees to crouch on the tips of their toes, painful handcuffing, seating suspects in the "Shabach" position and playing loud music while in that position, covering a suspect's head with a sack during interrogation, and prolonged sleep deprivation.
- In 2001, the government of Israel took the position that even if its interrogation techniques violated human dignity, they did not constitute either torture or cruel, inhuman, or degrading treatment in violation of the Convention Against Torture.
- In 2002, the U.N. Committee Against Torture, disagreed with the Israeli Supreme Court which held that interrogators who use physical pressure in extreme circumstances, such as "ticking bomb cases," might not be criminally liable.³⁴

In 2004, the United Nations High Commissioner for Human Rights issued the "Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment." It lists many methods of torture, including burns with cigarettes, electric shocks; conditions of detention such as overcrowding or solitary confinement, no access to toilet facilities, exposure to extremes of temperature; restriction of sleep, food, water, toilet facilities, medical care; deprivation of privacy; humiliation; threats to harm the detainee or family; and psychological techniques that break down the individual.³⁵

The U.S. State Department reported in 2013:

Human rights organizations such as the Public Committee Against Torture in Israel reported that "physical interrogation methods" permitted by Israeli law and used by Israeli security personnel could amount to torture; these included beatings, forcing an individual to hold a stress position for long periods, and painful pressure from shackles or restraints applied to the forearms. Israeli officials stated that they did not use techniques that could amount to torture. Israeli and Palestinian NGOs continued to criticize these and other Israeli detention practices they termed abusive, including isolation, sleep deprivation, and psychological abuse, such as threats to interrogate spouses, siblings, or elderly parents or to demolish family homes.

Israeli authorities reportedly used similar tactics on Palestinian minors. Defense for Children International-Palestine (DCI-Palestine), *Breaking the Silence*, and other human rights NGOs claimed that Israeli security services continued to abuse, and in some cases

³⁴ Nowak, *ibid.*, pp. 824-827.

³⁵ Office of the United Nations High Commissioner for Human Rights, "Istanbul Protocol Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," Professional Training Series No. 8/Rev.1, New York and Geneva, 2004, ¶ 145, <www.ohchr.org/Documents/Publications/training8Rev1en.pdf>.

torture, minors who they frequently arrested on suspicion of stone throwing to coerce confessions. Tactics included beatings, long-term handcuffing, threats, intimidation, and solitary confinement. In July the IDF detained a five-year-old child in Hebron suspected of stone throwing, and blindfolded and handcuffed the child's father, although the father was not involved in the alleged stone throwing. Following the incident an IDF commander said the soldiers "erred" in detaining a boy under the age of criminal responsibility and instructed his soldiers to review the protocol for detaining children.³⁶

Furthermore,

The PCATI [Public Committee Against Torture in Israel] reported in July [2013] that, despite more than 776 complaints it filed since 1999, no torture complaint resulted in a criminal investigation, prosecution, or conviction. This remained a pattern during the year. . . .³⁷

Torturers may use forms of torture that produce extreme pain but leave little if any visible evidence. For example, according to the Istanbul Protocol Manual, there are many forms of torture that involve tying or restraining the victim in contorted, hyperextended or other unnatural positions for minutes or hours that cause severe pain and may produce injuries to ligaments, tendons, nerves, and blood vessels. One of those is called "Palestinian" suspension.³⁸ Rather than use the description of positional torture in the Manual, we turn to a vivid description by Lawahez Burgal in her oral history.

I was bound in many positions. . . . First they put a sack on your face which is dirty with shit from the toilet. You can't breathe from that, and you can't see anything. In one of the positions, you sit in a chair with one arm over the back of the chair tied behind your back, the other arm tied under the chair, and your feet tied behind another leg of the chair. Your hands are tied to one leg of the chair and your feet are tied diagonally across to the opposite leg of the chair, so that you are off balance. Hours! That means all your muscles here are affected. You get to the point where you want to die. Try it for ten minutes and imagine it for hours and days, this position.

In another position, there is a pipe on the wall. They will tie your hands to the wall in a way that you are not standing and not sitting, but squatting with your knees bent, your back thrown forward, and your hands high up behind, also for hours or days.

³⁶ United States Department of State, Bureau of Democracy, Human Rights and Labor, Country Reports on Human Rights Practices for 2013, "Israel and The Occupied Territories," (hereafter, "2013 Country Report"), <<http://www.state.gov/documents/organization/220568.pdf>>, p.46.

³⁷ 2013 Country Report, p. 48.

³⁸ Istanbul Protocol Manual, *op.cit.*, ¶¶ 159, 206(d), 207, 210.

There is another position that was used on me also. They brought two towels and water. They put you squatting down and with your hands tied to the chair. If you are tired, and you fall to one side, you fall in the water. But your hands stay in the same place; they stretch but you fall. And if you want to lean back, there is a pipe that would strike your back.

You are sitting like that and suddenly a policeman comes and goes [wham] on your head or on your back. . . .

They put me in an isolation cell It was like a grave. It was a small room without windows, without light. . . . And I heard something walking, like mice, inside the cell.

For the first time I felt I knew the meaning of death. I felt that everything was going to stop. I couldn't breathe. I couldn't talk. I couldn't do anything. . . . I was a dead person.³⁹

These forms of torture leave few, if any, external marks but may produce chronic severe disability.⁴⁰

What Lawahez Bursal described is an example of what the Manual says is one of the central aims of torture: “to reduce an individual to a position of extreme helplessness and distress.” The Manual warns us of the consequences not only for the individual but for society.

[T]orture is a means of attacking an individual's fundamental modes of psychological and social functioning. Under such circumstances, the torturer strives not only to incapacitate a victim physically but also to disintegrate the individual's personality. The torturer attempts to destroy a victim's sense of being grounded in a family and society as a human being with dreams, hopes and aspirations for the future. By dehumanizing and breaking the will of their victims, torturers set horrific examples for those who later come in contact with the victim. In this way, torture can break or damage the will and coherence of entire communities. In addition, torture can profoundly damage intimate relationships between spouses, parents, children, other family members and relationships between the victims and their communities.⁴¹

³⁹ Staughton Lynd, Sam Bahour and Alice Lynd, eds., *Homeland: Oral Histories of Palestine and Palestinians* (New York: Olive Branch Press, 1994), pp. 156-57.

⁴⁰ Istanbul Protocol Manual, ¶ 210; *see also*, ¶¶ 207, 211 for details as to injuries.

⁴¹ Istanbul Protocol Manual, ¶ 235; *see also*, Lawahez Bursal in *Homeland, op.cit.*, p. 157, in which she describes the responses of her children when she returned home. “For one week, my son didn't call me ‘Mama.’ I had left him alone and stopped feeding him and I went away. He didn't want to come to me because of that. . . . This hurt me a lot Now, he is very close to me. He doesn't like me to go anywhere without him. He is afraid, maybe, I will go and I will not come back.”

B. Arbitrary Arrest or Detention

The U.S. State Department reported in 2013 that

Human rights problems related to Israeli authorities included reports of excessive use of force against civilians, including killings; abuse of Palestinian detainees, particularly during arrest and interrogation; austere and overcrowded detention facilities; improper use of security detention procedures; demolition and confiscation of Palestinian property; limitations on freedom of expression, assembly, and association; and severe restrictions on Palestinians' internal and external freedom of movement.⁴²

Israeli military law applies to Palestinians in the West Bank, but Israeli civil law applies to settlers in the West Bank. According to the U.S. State Department, Israeli military courts have had a conviction rate of more than 99 percent for Palestinians.⁴³

Israeli law provides safeguards against arbitrary arrest and detention, but key safeguards do not apply to Palestinian security detainees. Palestinian security detainees are subject to the jurisdiction of Israeli military law, which permits eight days' detention before appearing before a military court. There is no requirement that a detainee have access to a lawyer until after interrogation, a process that may last weeks. The maximum period for such a detention order, according to military law, is 90 days; however, detention can be renewed if deemed necessary. Denial of visits by family, outside medical professionals, or others outside the ISA [Israel Security Agency], the IDF [Israel Defense Forces], or the prison service occurred. NGOs [non-governmental organizations] reported persons undergoing interrogations often were held incommunicado for several weeks. In the past the Israeli government refuted such allegations.⁴⁴

In military trials, prosecutors often present secret evidence that is not available to the defendant or counsel. The military courts use Hebrew. Various human rights organizations claimed the availability and quality of Arabic interpretation was insufficient, especially since most interpreters were bilingual Israelis performing mandatory military service.⁴⁵

According to the United Nations Children's Fund, most Palestinian children under the age of eighteen who are arrested in the occupied territories are held in prisons within Israel and

⁴² 2013 Country Report, p. 40.

⁴³ *Ibid.*, p. 53.

⁴⁴ *Ibid.*, pp. 49-50.

⁴⁵ *Ibid.*, p. 57.

are prosecuted under military law.⁴⁶ Signed confessions, often coerced during interrogations and written in Hebrew, were used as evidence against Palestinian minors in Israeli military courts.⁴⁷ Palestinian children sixteen and seventeen years old are detained as long as adults, twice as long as Israeli children living in the West Bank. UNICEF reported that “mistreatment of Palestinian children in the Israeli military detention system appears to be widespread, systematic, and institutionalized.”⁴⁸

These practices are forbidden under internationally recognized human rights law. The Universal Declaration of Human Rights says that everyone is entitled to equal protection of the law, and no one shall be subjected to arbitrary arrest or detention.⁴⁹ The International Covenant on Civil and Political Rights says that anyone who is arrested shall be told at the time of arrest the reasons for the arrest and the charges against him.⁵⁰ The Fourth Geneva Convention says that persons who are detained or convicted in an occupied territory must serve their sentences within the occupied territory.⁵¹ These violations are part of a consistent pattern of human rights violations that has been going on for decades.⁵²

C. Collective Punishment

When a group of people are punished for acts that other people committed, we call that “collective” punishment. A prime example is the sealing or demolition of the homes of individuals who are suspected of having committed terrorist acts. The entire family is punished. Everyone who lived in that house—including children and the elderly—are left homeless even though they are not accused of any crime.

Article 50 of the 1907 Hague Regulations says, “No general penalty . . . shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as . . . responsible.” Article 33 of the Fourth Geneva Convention says, no person may be “punished for an offence he or she has not personally committed.” The International Committee of the Red Cross (ICRC), the agency that drafted the Geneva Conventions, explains, “penalties of any kind

⁴⁶ *Ibid.*, p. 7.

⁴⁷ *Ibid.*, p. 58.

⁴⁸ *Ibid.*, p. 54.

⁴⁹ Universal Declaration of Human Rights, Articles 7, 9.

⁵⁰ ICCPR, Article 9.2.

⁵¹ Fourth Geneva Convention, Article 76.

⁵² *See*, Amnesty International, “Israel and the Occupied Territories: The military justice system in the Occupied Territories,” (AI Index: MDE 15/34/91), London, U.K., July 1991.

inflicted on persons or entire groups of persons, in defiance of the most elementary principles of humanity, for acts that these persons have not committed” are prohibited.⁵³

Israel’s defense regulations permit a military commander to order the demolition of “any house, structure, or land from which he has reason to suspect th[at] any firearm has been illegally discharged, or any bomb, grenade or explosive or incendiary article illegally thrown . . . in any area, town, village, quarter or street” if he is satisfied that “some of the inhabitants . . . have committed, or attempted to commit, . . . violence or intimidation” The military commander may destroy the house or the structure or anything growing on the land without providing compensation.⁵⁴

The U.S. State Department reported that in 2013, entities of the Israeli government “continued to demolish homes, cisterns, and other buildings and property constructed by Palestinians in areas under Israeli civil control on the basis that these buildings lacked Israeli planning licenses.”⁵⁵ Because the Israeli government charged the owners for destruction costs, many owners demolished the structures themselves rather than incur the expense of demolition.⁵⁶

In the 35 unrecognized villages in the Negev claimed by various Bedouin tribes, the government viewed all buildings as illegal and subject to demolition. The Ministry of Interior confirmed that the government carried out 413 demolitions in recognized and unrecognized villages in the Negev in 2012, with an additional 449 Bedouins demolishing their homes themselves to avoid being assessed demolition costs by the government.

There were fifteen separate demolitions of one Bedouin village that was “rebuilt on government land 57 times since 1998 despite . . . a 2007 Supreme Court decision”⁵⁷

⁵³ ICRC, “Treaties and States parties to such Treaties,” <<http://www.icrc.org/applic/ihl/ihl.nsf/1a13044f3bbb5b8ec12563fb066f226/36bd41f14e2b3809c12563cd0042bca9>>, comment on Paragraph 1. Article 33 of the Fourth Geneva Convention also prohibits “pillage,” to spare people from suffering from destruction of their houses, provisions, tools, and other property. Article 53 of the Fourth Geneva Convention prohibits “[a]ny 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 cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.” *Ibid.*

⁵⁴ Defence (Emergency) Regulations, 1945, Article 119, <<http://nolegalfrontiers.org/en/military-orders/mil02>>.

⁵⁵ 2013 Country Report, p. 60.

⁵⁶ *Ibid.*, pp. 11-12.

⁵⁷ *Ibid.*, p. 33.

Other forms of collective punishment involve arbitrary arrests, restrictions on movement of people and goods, and denial of access to medical care. Here are some examples from a weekly report by the Palestinian Centre for Human Rights in June 2014, after the abduction of three teenage settlers near Hebron and prior to the intensification of the conflict in the Gaza Strip:

- During the reporting period (June 12-18, 2014), Israeli forces conducted at least 152 military incursions into Palestinian communities in the West Bank. During these incursions, Israeli forces arrested at least 200 Palestinians. The detainees included the Speaker of the Palestinian Legislative Council (PLC) and five other PLC members in addition to two former Ministers.
- Following the disappearance of three Israeli settlers in the Hebron area, Israeli forces carried out a large-scale military campaign against residential communities in the West Bank, turning many houses into military barracks and damaging those houses. Most of the campaign targeted Hebron but it extended to all of the West Bank. On 14 June 2014, Israeli forces closed Hebron's main entrances with cement blocks and barbed wire. Also in Ramallah, Jericho, and Nablus, Israeli forces continued to impose severe restrictions on movement.
- On 14 June 2014, Israeli forces closed all crossing points between the West Bank and Israel, preventing Palestinian civilians from going to work.
- For seven years, since June 2007, Israel has tightened the land and naval closure to isolate the Gaza Strip from the West Bank, Jerusalem, and other countries. Israeli forces impose a total ban on the delivery of raw materials to the Gaza Strip except for very limited items and quantities, not enough to meet the minimal needs of the civilian population. Israeli forces impose an almost total ban on exports from the Gaza Strip, including agricultural and industrial products, except for light-weight products such as flowers, strawberries, and spices.
- Israel continues to reduce the categories and number of Palestinian patients allowed to cross over from the Gaza Strip into Israel, East Jerusalem, or the West Bank for medical treatment.⁵⁸

The U.S. State Department concluded in its 2013 Country Report:

Barriers to movement included checkpoints, a separation barrier that divides the majority of the West Bank from Israel and East Jerusalem, internal road closures, and restrictions on the entry of persons and goods into and out of the West Bank and Gaza Strip. Restrictions on movement affected virtually all aspects of life, including access to places of worship, employment, agricultural lands, schools, and hospitals, as well as the conduct of journalistic, humanitarian, and NGO activities.⁵⁹

⁵⁸ PCHR Weekly Report On Israeli Human Rights Violations in the Occupied Palestinian Territory, June 24, 2014, <<http://www.imemc.org/article/68209>>.

⁵⁹ 2013 Country Report, p. 71.

Israeli restrictions on movement adversely affect access to education. The U.S. State Department noted that in 2013 students in the Gaza Strip did not apply to West Bank universities because they understood that Israel would deny permit requests.⁶⁰

“Essential infrastructure in the Gaza Strip, including water and sanitation services, continued [in 2013] to be in a state of severe disrepair, due in part to an inability to import spare parts and components under Israeli import restrictions.”⁶¹

“The whole of Gaza’s civilian population is being punished for acts for which they bear no responsibility,” the ICRC declared in 2010. “The closure therefore constitutes a collective punishment imposed in clear violation of Israel’s obligations under international humanitarian law.”⁶²

III. Occupation

All of the above violations—torture and other cruel, inhuman and degrading treatment, and collective punishment—are aspects of the occupation of Palestinian territories by Israel. “Occupation is bad,” says Salah Tamari in his oral history, “I don’t care who the occupier is, be it Muslim, be it Christian, or be it Jewish. . . .”

Even if the Jews came to our country as saints—they thought it was empty, they thought it was theirs—then they were confronted with a situation where they found a population. Those saints needed to control the population. After a while, they resorted to the same means that others before them resorted to: divide and rule; the stick and the carrot; collective punishment. Then, after a while, they were no longer saints.⁶³

A. 1948-1967

During the 1948-49 war, the number of Palestinians who became refugees is estimated to be between 600,000 and 780,000, or perhaps five-sixths of the Palestinians living in what is now Israel.⁶⁴

⁶⁰ *Ibid.*, pp. 67-68.

⁶¹ *Ibid.*, p. 77.

⁶² ICRC, “Gaza closure: not another year!”, News Release 10/103, 14 June 2010, <<http://www.icrc.org/eng/resources/documents/update/palestine-update-140610.htm>>.

⁶³ Staughton Lynd, Sam Bahour and Alice Lynd, eds., *Homeland: Oral Histories of Palestine and Palestinians* (New York: Olive Branch Press, 1994), p. 68.

⁶⁴ *Homeland*, p. 7, n.9, citing both Israeli and non-Israeli sources.

“Soon after the establishment of the State of Israel, the Israeli authorities created a military government to rule those areas of Israel most densely populated with Palestinians.” The area under military government was divided into what were called “closed areas.” Palestinians living in one closed area were not permitted to travel to another closed area without a special permit.⁶⁵ Thus, in apparent violation of the Hague Convention and the Universal Declaration of Human Rights,⁶⁶ “Palestinians who lived in one closed area and owned land in another closed area were prohibited from entering the second closed area to cultivate their land. After several years without cultivation, the land was confiscated”⁶⁷

In 1950, the U.N. Security Council passed a resolution calling on governments to take “no further action involving the transfer of persons across international frontiers or armistice lines without prior consultation through the Mixed Armistice Commissions.”⁶⁸ Between 1950 and 1967, the U.N. Security Council called on Israel to allow Arab civilians to be allowed to return, and to stop military strikes on Syria, Jordan, and Egypt, and condemned loss of life and heavy damage to property in the southern Hebron area.⁶⁹

The United Nations Relief and Works Agency (UNRWA) began operations in May 1950 to provide humanitarian relief to more than 700,000 refugees and displaced persons who had been forced to flee their homes in Palestine as a result of the 1948 Arab-Israeli war. Anyone in Palestine who lost both home and means of livelihood as a result of the 1948 Arab-Israeli war qualified as a “Palestine refugee.” UNRWA was expected to be shortlived but still operates

⁶⁵ Al Haq, West Bank Affiliate of the International Commission of Jurists, “Perpetual Emergency: A Legal Analysis of Israel’s use of the British Defence (Emergency) Regulations, 1945, in the Occupied Territories,” Occasional Paper No. 6 (1989), p. 18 and sources cited therein.

⁶⁶ Hague Convention IV, Regulations, Article 46 says, “Private property cannot be confiscated” and Article 50 says, “No general penalty . . . shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible.” The Universal Declaration of Human Rights, Article 17 provides, “No one shall be arbitrarily deprived of his property.”

⁶⁷ Al Haq, “Perpetual Emergency,” *ibid.*, p. 18.

⁶⁸ U.N. Security Council Resolution 89, ¶ 6, 17 November 1950, <[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/89\(1950\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/89(1950))>.

⁶⁹ For a list of Security Council Resolutions critical of Israel for violations of international law, 1948-2009, see “Jeremy R. Hammond, “Rogue State: Israeli Violations of U.N. Security Council Resolutions,” Jan. 27, 2010, <<http://dissentvoice.org/2010/01/rogue-state-israeli-violations-of-u-n-security-council-resolutions/>>.

refugee camps and provides education, health care, social services, shelter, and emergency aid to Palestine refugees in the Gaza Strip, West Bank, Jerusalem, Lebanon, Jordan and Syria.⁷⁰

B. Occupation of the West Bank including East Jerusalem, Gaza, and the Golan Heights since 1967

Since the Six Day War in June 1967, Israel has occupied the West Bank, the Gaza Strip and the Golan Heights. The United Nations Security Council insists that the Fourth Geneva Convention applies to all the Arab territories occupied by Israel in 1967, including East Jerusalem and Gaza. The international community, including the United States, considers Israel's authority in the occupied territories to be subject to the Hague Regulations of 1907 and the 1949 Geneva Convention relating to the Protection of Civilians in Time of War. The Israeli government considers the Hague Regulations applicable but denies the applicability of the Fourth Geneva Convention to the West Bank and Gaza (although stating that it observes many of the Convention's provisions).⁷¹

To show that Israel is a country that engages in a consistent pattern of gross violations of internationally recognized human rights, we have only to look at a vast number of United Nations Security Council Resolutions.

A week after the end of the Six Day War in June 1967, the Security Council called upon the Government of Israel to "facilitate the return" of inhabitants who fled.⁷²

"Emphasizing the inadmissibility of the acquisition of territory by war,"⁷³ in November 1967 the Security Council called for "withdrawal of Israel armed forces from territories occupied in the recent conflict."⁷⁴

⁷⁰ UNRWA was established by United Nations General Assembly resolution 302(IV) of 8 December 1949. Anyone whose normal place of residence was in Mandate Palestine during the period from 1 June 1946 to 15 May 1948 and who lost both home and means of livelihood as a result of the 1948 Arab-Israeli war qualifies as a *Palestine* refugee, as defined by UNRWA. <<http://www.unrwa.org/userfiles/2010011791015.pdf>>. See <<http://www.unrwa.org/>> for current information.

⁷¹ U.N. Security Council Resolution 446 (1979); 2001 Country Report, Israel and the Occupied Territories, <<http://www.state.gov/j/drl/rls/hrrpt/2001/nea/8252.htm>>. If you have the number and year of the resolution, U.N. Security Council Resolutions can be found on the internet at <<http://www.un.org/en/sc/documents/resolutions/>>. Therefore, only the number and date of U.N. Security Council Resolutions are annotated herein.

⁷² Resolution 237 (1967). This and other resolutions cited are examples of many more.

⁷³ Resolution 242 (1967); the inadmissibility of the acquisition of territory by war is reaffirmed in Resolutions 252 (1968), 267 (1969), 271 (1969), 298 (1971), 476 (1980), 478 (1980), 497(1981) , 681 (1990). However, in 1976, the U.S. vetoed a resolution that among other things reaffirmed the principle of

In 1969, the Security Council declared that it

- Deplores the failure of Israel to show any regard for the resolutions of the General Assembly and the Security Council;
- Censures in the strongest terms all measures taken to change the status of the City of Jerusalem;
- Confirms that all legislative and administrative measures and actions taken by Israel which purport to alter the status of Jerusalem, including expropriation of land and properties thereon, are invalid and cannot change that status; and,
- Urgently calls upon Israel to rescind all measures that may tend to change the status of the City of Jerusalem.⁷⁵

Numerous resolutions call on Israel “not to transfer parts of its own civilian population into the occupied Arab territories.” For example, as early as 1969, the Security Council determined “that the policy and practices of Israel in establishing settlements in the Palestinian and other Arab territories occupied since 1967 have no legal validity and constitute a serious obstruction to achieving a comprehensive, just and lasting peace in the Middle East.”⁷⁶ And in 1980, the **Security Council called upon “all States not to provide Israel with any assistance to be used specifically in connexion [sic] with settlements in the occupied territories.”** (Emphasis added.)⁷⁷

In 1992, the Security Council strongly condemned the deportation to Lebanon of “hundreds of Palestinian civilians from the territories occupied by Israel since 1967, including Jerusalem,” and demanded that all those deported be safely and immediately returned.⁷⁸ The

the inadmissibility of acquisition of territory by force. Draft resolution S/11940 (26 January 1976), Security Council – Veto List, <http://www.un.org/depts/dhl/resguide/scact_veto_en.shtml>.

⁷⁴ Resolution 242 (1967), repeatedly reaffirmed by number, e.g. Resolution 1322 (2000). For resolutions calling for withdrawal from other Palestinian cities, *see* Resolutions 1402 (2000), 1435 (2002); calling for withdrawal from Lebanon, *see* Resolutions 279 (1970), 316 (1972), 450 (1979), 467 (1980), 517 (1982); and calling for withdrawal from Gaza, *see* Resolution 1860 (2009).

⁷⁵ Resolution 267 (1969). Regarding the invalidity of changes in the status of Jerusalem, *see also* Resolutions 252 (1968), 271 (1969), 298 (1971), 478 (1980), 592 (1986), 605 (1987), 636 (1989).

⁷⁶ Resolution 446 (1979); regarding Israeli settlements in the occupied Palestinian territories, *see also* Resolutions 452 (1979), 465 (1980), 471 (1980).

⁷⁷ Resolutions 465 (1980), 471 (1980).

⁷⁸ Resolution 799 (1992). For other resolutions concerning deportations from the occupied Palestinian territories, *see also* Resolutions 469 (1980), 607 (1988), 608 (1988), 636 (1989), 641 (1989), 694 (1991).

Security Council insists that the Fourth Geneva Convention applies to all the Arab territories occupied by Israel in 1967, and has repeatedly called upon Israel to “abide scrupulously” with the Fourth Geneva Convention.⁷⁹

In 2004, the Security Council reaffirmed ten resolutions between 1967 and 2003, referred again to Israel’s obligations under the Fourth Geneva Convention, condemned the killing of Palestinian civilians in the Rafah area (in southern Gaza), and the demolition of homes in the Rafah refugee camp. It called on Israel to respect its obligations under international humanitarian law and, in particular, not to demolish homes.⁸⁰

Also citing international humanitarian law, including the Fourth Geneva Convention, the Security Council expressed its alarm at severe restrictions on freedom of movement and goods, and demanded complete cessation of all acts of violence and expeditious withdrawal of Israeli occupying forces from Palestinian cities.⁸¹

Time and again, the Security Council has condemned Israel for its disregard for, even defiance of, U.N. General Assembly and Security Council resolutions and flagrant violations of the U.N. Charter.⁸²

C. Oslo II, Areas A, B, and C, the Separation Barrier, and the Gaza Buffer Zone

In 1995, the Government of the State of Israel and the Palestine Liberation Organization (PLO) entered into an Interim Agreement on the West Bank and the Gaza Strip known as Oslo

⁷⁹ Resolution 446 (1979). For other resolutions reaffirming that the Fourth Geneva Convention is “applicable to the Palestinian territories, occupied by Israel since 1967, including Jerusalem, and to other occupied Arab territories” and/or calling for Israel to abide by the Fourth Geneva Convention, *see* Resolutions 452 (1979), 465 (1980), 469 (1980), 471 (1980), 476 (1980), 484 (1980), 497 (1981) (Golan Heights), 592 (1986), 605 (1987), 607 (1988), 608 (1988), 636 (1989), 641 (1989), 694 (1991), 726 (1992), 799 (1992), 1322 (2000), 1544 (2004).

⁸⁰ Resolution 1544 (2004). For other resolutions concerning Palestinian refugees, *see* Resolution 521 (1982) condemning the massacre of Palestinian civilians in the Sabra and Shatila refugee camps (in Lebanon), and Resolution 1405 (2002) concerning reports of an unknown number of deaths and destruction in the Jenin refugee camp (in the West Bank).

⁸¹ Resolution 1435 (2002). *See also* Resolution 1860 (2009) condemning the escalation of violence and hostilities resulting heavy civilian casualties in Gaza, and calling for unimpeded provision and distribution of humanitarian assistance including food, fuel and medical treatment.

⁸² Resolutions 248 (1968), 252 (1968), 256 (1968), 265 (1969), 267 (1969), 271 (1969), 280 (1970), 298 (1971), 316 (1972), 317 (1972), 332 (1973), 337 (1972), 446 (1979), 465 (1980), 467 (1980), 469(1980), 476 (1980), 478 (1980), 520 (1982).

II. The two sides agreed that the West Bank and the Gaza Strip would be one territorial unit until permanent status negotiations were agreed upon.⁸³

(1) *West Bank and East Jerusalem*. The land in the West Bank was divided into three areas, A, B, and C. But each area was made up of unconnected fragments.

- Area A contains 55 percent of the Palestinian population on approximately 18 percent of the land in the West Bank. The Palestinian Authority has formal responsibility for civil and security control. However, since 2002, “Israeli security forces have regularly conducted security operations in Area A cities.”
- Area B contains 41 percent of the population on approximately 21 percent of the territory, mostly small Palestinian villages and farmland. The Palestinian Authority has civil control but Israel is responsible for security.
- Area C “contains Israeli settlements, military installations, and 4 percent of the Palestinian population in small villages, farmland, and open countryside on approximately 61 percent of the land area.” Israel has full civil and security control.⁸⁴

There is a “separation barrier” that divides most of the West Bank from Israel and East Jerusalem.⁸⁵ Israel restricts movement and development in this area by requiring special permits. In 2013, the barrier “affected the commute of children to school in Jerusalem and some farmers’ access to land and water resources. Palestinian farmers continued to report difficulty accessing their lands in Israeli-controlled Area C and in the seam zone, the closed area between the separation barrier and the Green Line.”⁸⁶ Properties within approximately 328 yards from the separation barrier, Israeli military installations, or firing ranges are subject to a heightened threat of demolition or confiscation.⁸⁷

Ten years ago, in 2004, the International Court of Justice issued an advisory opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory. The Court advised the U.N. General Assembly that construction of the wall in the occupied Palestinian territory, including in and around East Jerusalem, is contrary to international law. “All States are under an obligation not to recognize the illegal situation resulting from the

⁸³ Oslo II, *op.cit.*, Article XI.

⁸⁴ 2013 Country Report, p. 50.

⁸⁵ *Ibid.*, p. 71.

⁸⁶ *Ibid.*, p. 72. *See also*, p. 55: “Throughout the year there were reports Israeli security forces in Jerusalem and in the West Bank arbitrarily arrested and detained numerous Palestinian protesters and activists, particularly those participating in demonstrations against the separation barrier. . . .”

⁸⁷ *Ibid.*, p. 60.

construction of the wall and **not to render aid or assistance** in maintaining the situation created by such construction.” (Emphasis added.) The U.N. General Assembly put the Court’s findings into a resolution that recalled and reaffirmed many guiding principles of international law.⁸⁸

Land owned or populated by Palestinians and Israeli Arabs was generally zoned for low residential growth. In 2013, approximately 13 percent of all land in East Jerusalem was available for construction, but none of it was available for Arab construction. Homes built by Arab residents without legal permits were subject to demolition. “In both the West Bank and Jerusalem, Israeli authorities placed often insurmountable obstacles in the way of Palestinian applicants for construction permits, including the requirement that they document land ownership . . . , high application fees, and requirements that new housing be connected to often unavailable municipal works.”⁸⁹ Israel demolished approximately 660 Palestinian-owned structures in Area C and East Jerusalem in 2013, displacing nearly 1,100 persons, compared with 604 structures and 886 persons in 2012.⁹⁰

Israel controls 90 percent of the water from the Mountain Aquifer that lies under the West Bank and Israel. Palestinians on average receive less water than the World Health Organization says is the minimum amount required to maintain basic hygiene standards and food security. In 2013, the Israeli military “continued to destroy water cisterns” and “also destroyed unlicensed Palestinian agricultural wells, particularly in the Jordan Valley area of the West Bank, claiming they depleted aquifer resources.”⁹¹

(2) *Gaza Strip*. Israel retains effective control over the Gaza Strip and restricts the movement of people and goods. According to the International Committee of the Red Cross (ICRC) in 2011,

Almost no one can leave the Gaza Strip, not even to go to the West Bank, where many Gazans have family or previously had work. Health-care facilities are suffering from the restrictions imposed by Israel on the transfer of medical equipment, building materials and many basic items needed for maintenance. Water and sanitation facilities have been under strain for many decades. . . . Security incidents in the area between Gaza and Israel frequently result in loss of life or in destruction of property or livelihoods. . . . The strict limits on imports and the almost absolute ban on exports imposed by Israel make economic recovery impossible. The unemployment rate currently stands at nearly 40

⁸⁸ Resolution adopted by the General Assembly, A/RES/ES-10/15, 2 August 2004, <<http://unispal.un.org/UNISPAL.NSF/0/F3B95E613518A0AC85256EEB00683444>>.

⁸⁹ 2013 Country Report, pp. 88-89.

⁹⁰ *Ibid.*, p. 61.

⁹¹ *Ibid.*, p. 89.

percent. It will remain ruinously high as long as the economy fails to recover. . . [T]he actual level of exports from the Gaza Strip remains close to zero. . . .⁹²

In the previous year, 2010, the ICRC declared, “The closure imposed on the Gaza Strip is about to enter its fourth year, choking off any real possibility of economic development. Gazans continue to suffer from unemployment, poverty and warfare, while the quality of Gaza’s health care system has reached an all-time low.” On average, the power supply was interrupted for seven hours a day. Hospitals relied on generators, but fuel reserves for hospital generators kept drying up, and laundry services were repeatedly shut down. “Only about 60% of the territory’s 1.4 million inhabitants are connected to a sewage collection system. . . . Because the aquifer is over-exploited, drinking water in most of Gaza . . . is unfit for consumption, and the risk of contracting an infectious disease is high. . . . The closure must be lifted so that the 4.5 billion US dollars pledged by donor countries over a year ago can be put to use.”⁹³

The “buffer zone” between Israel and the Gaza Strip is approximately 24 square miles, seventeen percent of Gaza. Nearly 35 percent of Gaza’s cultivable land is within the buffer zone.⁹⁴ In 2013, the State Department reports, “Israel warns Palestinians they are at risk of being shot if they come within 328 yards (300 meters) of the ‘buffer zone’ separating Gaza from Israeli territory,” and that Israel regularly enforces the buffer zone by firing toward Palestinians approaching from further away.⁹⁵ In July 2014, the U.N. Office for the Coordination of Humanitarian Affairs (OCHA) said that the “no-go” zone along the border encompassed 44 percent of Gaza’s territory.⁹⁶

Israel strictly enforces fishing limits off the coast of Gaza. They fire warning shots at Palestinian fishermen entering restricted areas, confiscate fishing boats in those areas and detain

⁹² ICRC, “Gaza: no end in sight to hardship and despair,” interview with Mathilde De Riedmatten, deputy head of the ICRC’s sub-delegation in Gaza, 20 May 2011, <<http://www.icrc.org/eng/resources/documents/interview/2011/palestine-israel-interview-2011-05-19.htm>>.

⁹³ *Ibid.* See also, U.N. Office for the Coordination of Humanitarian Affairs (OCHA), “The Humanitarian Impact of Gaza’s Electricity and Fuel Crisis,” March 2014, <http://www.ochaopt.org/documents/ocha_opt_electricity_factSheet_march_2014_english.pdf>.

⁹⁴ 2013 Country Report, p. 72, citing the U.N. Office for the Coordination of Humanitarian Affairs.

⁹⁵ *Ibid.*, p. 43.

⁹⁶ U.N. Office for the Coordination of Humanitarian Affairs (OCHA), “Occupied Palestinian Territory: Gaza Emergency Situation Report (as of 23 July 2014, 1500 hours),” <http://www.ochaopt.org/documents/ocha_opt_sitrep_24_07_2014.pdf>. **For weekly reports, archives 2003-2013, maps, and fact sheets, see** <<http://www.ochaopt.org/index.aspx>>.

fishermen, but the fishermen report confusion over the exact limits of the restricted areas.⁹⁷ In 2010, the ICRC reported that “nearly 90% of Gaza’s 4000 fishermen are now considered either poor (with a monthly income of between 100 and 190 US dollars) or very poor (earning less than 100 dollars a month). . . . In their struggle to survive, the fishermen have little choice but to sail into no-go zones, at the risk of being shot by the Israeli navy.”⁹⁸

At the beginning of 2013, there were 741,410 registered Palestinian refugees in the West Bank and more than 1.2 million in the Gaza Strip, many living in 27 UNRWA-affiliated refugee camps. These refugees included Palestinians who were displaced from Israel in 1948 and their descendants. UNRWA estimated that more than 70 percent of the population of the Gaza Strip depended on services provided by UNRWA.⁹⁹

This was the picture before the summer of 2014. Operation “Protective Edge” began in early July. On August 12, 2014, the United Nations Office for the Coordination of Humanitarian Affairs reported:

- 1,962 Palestinians had been killed, including at least 1,417 civilians, of whom 459 were children and 238 were women. The child fatalities exceeded the combined number of children killed in the conflicts in 2008-2009 and 2012.
- 67 Israelis had been killed, including 64 soldiers and three civilians including one foreign national.
- 335,000 people were hosted at UNRWA, government shelters and with host families.
- 16,700 homes in Gaza had been destroyed or severely damaged.¹⁰⁰

⁹⁷ 2013 Country Report, p. 73.

⁹⁸ ICRC, “Gaza closure: not another year!” *op.cit.*

⁹⁹ 2013 Country Report, p. 76.

¹⁰⁰ OCHA, Highlights, 12 Aug. 2014, <http://www.ochaopt.org/documents/ocha_opt_sitrept_11_08_2014.pdf>. During the Israeli incursion into Gaza in December 2008-January 2009, the Israeli government reported that 1,166 Palestinian deaths resulted from Israeli military operations, including 295 noncombatant deaths; four Israeli civilians and ten soldiers were killed in combat or as a result of rocket and mortar fire. “Israeli human rights organizations reported a lack of protection for civilians during the Israeli incursion into Gaza. Among 1,385 estimated casualties, . . . B’Tselem reported that civilians accounted for 773, or more than half, of those killed. 2009 Country Report, Israel and the Occupied Territories, March 11, 2010, <<http://www.state.gov/j/drl/rls/hrrpt/2009/nea/136070.htm>>.

IV. The Dahiya Doctrine and the Problem of Enforcement

A. Proportionality and the Dahiya Doctrine

During the summer of 2014, the images shown to the world on television displayed an overwhelming disproportion between the deaths and suffering of Gazans and Israelis. There is no way to explain these numbers other than to recognize that Israel has targeted civilian institutions such as apartment buildings, medical facilities, and United Nations schools to which Gaza residents had fled for protection.

These practices by the Israel Defense Forces (IDF) violate three interrelated principles of the Fourth Geneva Convention. These have been characterized as the principal of **distinction**, the principle of **military necessity**, and the principle of **proportionality**. First, military forces must **distinguish** between combatants and civilians, and are prohibited from killing or injuring civilians. Second, military forces can only **attack military targets**. Third, and encompassing the first and second principles as well, combatants may not **attack indiscriminately**, may not cause harm to civilians that exceeds the military benefit of the attack, must take precautions before an attack to minimize civilian casualties, and in short, must not **use violence when its objective is disproportionate to the destruction it can be expected to cause**.¹⁰¹

Israel's disproportionate actions appear to be pursuant to a strategy, known as the "Dahiya doctrine." Dahiya was a section of Beirut from which rockets were fired at Israeli cities during a 34-day war in 2006. Israel responded by air raids that flattened Dahiya. In 2008, the commander of the IDF northern front was reported by Reuters to have said:

What happened in the Dahiya quarter of Beirut in 2006 will happen in every village from which Israel is fired on We will apply disproportionate force on it (village) and cause great damage and destruction. From our perspective, these are not

¹⁰¹ Brian Fitzsimmons, "The Israel-Hamas War: Are war crimes being committed?" Foundation for Middle East Peace, July 22, 2014, <<http://www.fmep.org/analysis/the-israel-hamas-war-are-war-crimes-being-committed>>. *See also*, Wikipedia, "Distinction (law)," quoting Luis Moreno-Ocampo, Chief Prosecutor at the International Criminal Court who investigated allegations of war crimes during the 2003 invasion of Iraq, explaining the concept of "distinction" under international humanitarian law and the Rome Statute: one must assess (a) the anticipated civilian damage or injury; (b) the anticipated military advantage; and (c) whether (a) was "clearly excessive" in relation to (b). <[http://en.wikipedia.org/wiki/Distinction_\(law\)](http://en.wikipedia.org/wiki/Distinction_(law))>.

civilian villages, they are military bases. . . . This is not a recommendation. This is a plan. And it has been approved.¹⁰²

If this is the plan and practice of the Israel Defense Forces—to apply disproportionate force with intent to cause great damage and destruction—we may expect Israel to continue to engage in a consistent pattern of gross violations of internationally recognized human rights.

B. The Problem of Enforcement

There is no doubt that gross violations of human rights are occurring. No matter who is committing them, we have a duty to do everything in our power to see that humanitarian principals are universally applied. But we are faced with the problem of enforcement.

As we have seen, neither the United Nations nor the United States government can be relied on for enforcement. The United States has frequently vetoed Security Council resolutions calling for Israel to withdraw from the occupied territories.¹⁰³ There are questions as to whether or not the International Criminal Court would have jurisdiction, or the ability to enforce a remedy. The United States Congress is not likely to cut military assistance to Israel unless and until there is a groundswell of popular opinion calling for it to do so. So, what can we do?

The Congressional Research Service has observed, “Some U.S. citizens and interest groups periodically call upon Congress to ensure that U.S. military assistance to Israel is conditioned on the Israeli government’s ‘compliance with applicable U.S. laws and policies.’” The footnote to that statement says, “One example from October 2012 featured representatives of Baptist, Lutheran, Catholic, Presbyterian, Methodist, Orthodox, Quaker and other Christian groups.”¹⁰⁴

¹⁰² Reuters, “Israel warns Hizbullah war would invite destruction,” Maj.-Gen. Eisenkot tells *Yedioth Ahronoth*, 3 Oct. 2008, <<http://www.ynetnews.com/Ext/Comp/ArticleLayout/CdaArticlePrintPreview/1,2506,L-3604893,00.html>>.

¹⁰³ See Security Council – Veto List, (USA vetoed more than forty resolutions on the Middle East situation between 1972 and 2011), <http://www.un.org/depts/dhl/resguide/scact_veto_en.shtml>; for the first and last USA veto on the list, see U.N. Security Council draft resolution S/11940, 24 July 1973, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/10974> and S/2011/24, 18 Feb. 2011, <http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2011/24>.

¹⁰⁴ Congressional Research Service, *op.cit.*, p. 13 and 13n.44. See also, Israel/Palestine Mission Network of the Presbyterian Church (U.S.A.), “Zionism Unsettled: A Congregational Study Guide,” Jan. 2014, <http://www.israelpalestinemissionnetwork.org/main/index.php?option=com_content&view=article&id=256>.

During the summer of 2014, more than two dozen religious groups (including American Muslims for Palestine, Jews for Justice in Palestine, and numerous Protestant Christian groups) issued a call for an arms embargo on Israel.¹⁰⁵

In 2005, more than 170 Palestinian organizations called for a broad “boycott, divestment and sanctions” campaign against Israel similar to that applied to South Africa in the apartheid era.

These non-violent punitive measures should be maintained until Israel meets its obligation to recognize the Palestinian people’s inalienable right to self-determination and fully complies with the precepts of international law by:

1. Ending its occupation and colonization of all Arab lands and dismantling the Wall;
2. Recognizing the fundamental rights of the Arab-Palestinian citizens of Israel to full equality; and
3. Respecting, protecting and promoting the rights of Palestinian refugees to return to their homes and properties as stipulated in UN resolution 194.¹⁰⁶

The Boycott, Divestment and Sanctions campaign has as its logo the image of Handala, a cartoon character created by Naji al-Ali. On a visit to Youngstown, Ohio before his assassination, Mr. Ali said that Handala was himself, a child in a Palestinian refugee camp in Lebanon who had never been able to grow up because of the terrifying things that he had watched. In the BDS logo, Handala is holding the scales of justice behind his back.



¹⁰⁵ Religion Press Release Services, “Faith Groups Join Call for an Arms Embargo on Israel,” July 30, 2014, <<http://pressreleases.religionnews.com/2014/07/30/faith-groups-join-call-arms-embargo-israel/>>.

¹⁰⁶ “Palestinian BDS National Committee,” July 2005, <<http://www.bdsmovement.net/bnc>>; “Palestinian Civil Society Call,” 9 July 2005, <<http://www.bdsmovement.net/call>>.

Further Reading Suggestions

Al Haq Defending Human Rights in Palestine Since 1979, advocacy, monitoring and documentation, publications, library, interactive maps, reports from the field, weekly focus, <<http://www.alhaq.org/>>.

Amnesty International, “Israel and Occupied Palestinian Territories,” news and publications, annual reports, <<http://www.amnesty.org/en/region/israel-occupied-palestinian-territories>>.

B’Tselem - The Israeli Information Center for Human Rights in the Occupied Territories, publications, interactive maps, newsletter, human rights links, <<http://www.btselem.org/>>.

Defence for Children International Palestine (DCI-Palestine), publications, case studies, international and domestic law, settler and soldier violence, statistics, videos, news, <<http://www.dci-palestine.org/>>.

HaMoked Center for the Defence of the Individual, provides texts of Israeli laws and regulations, petitions to the Israeli High Court of Justice, decisions by Israeli and other courts, other official documents and reports, timelines, updates, <<http://www.hamoked.org/home.aspx>>.

Human Rights Watch, Reports on “Israel/Palestine,” <<http://www.hrw.org/world-report/2014/country-chapters/israel-and-palestine>>.

International Committee of the Red Cross (ICRC), “Israel and the Occupied Territories,” treaties, law, publications, maps, archives, <<http://www.icrc.org/eng/resources/icrc-archives/index.jsp>>.

Israel/Palestine Mission Network of the Presbyterian Church (U.S.A.), publications, fact sheets, maps, trips, boycott, proactive investment, <<http://www.theipmn.org/>>.

Palestinian Centre for Human Rights (PCHR), fact sheets, position papers, weekly and annual reports, <<http://www.pchrgaza.org/portal/en/>>.

Public Committee Against Torture in Israel (PCATI), Israeli law in Occupied Palestinian Territories including military orders, reports on torture in Israel since 1990, forensic documentation, women in detention, <<http://www.stoptorture.org.il/en/skira1999-present>>.

U.N. Office for the Coordination of Humanitarian Affairs (OCHA), “Occupied Palestinian Territory,” reports, fact sheets, maps, videos, weekly and monthly reports, archives, <<http://www.ochaopt.org/>>.

United Nations Relief and Works Agency for Palestine Refugees (UNRWA), reports, news, <<http://www.unrwa.org/newsroom>>.

United Nations Security Council, Resolutions (see note 71), Veto List (see note 73).

U.S. Department of State, Country Reports on Human Rights Practices (see note 23).

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