

The Al Aqsa Intifada and Israel's Apartheid:

**The U.S. Military and Economic Role in the
Violation of Palestinian Human Rights**



**Report of the National Lawyers Guild Delegation to the
Occupied Palestinian Territories and Israel January 2001**



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The National Lawyers Guild Middle East Delegation wishes to thank the representatives of the organizations who took time out of their busy schedules to meet with us and who were so patient with the difficulties the delegation experienced in staying on schedule. The delegation would especially like to thank the many people who shared their stories and their pain with us. This report is dedicated to you. As they say in Palestine, “Fil Afrah, Inshallah” – May we meet again in good times, God willing.

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Introduction

After the Al-Aqsa Intifada began to rage in late September 2000, several members of the National Lawyers Guild who were attending the International Association of Democratic Lawyers' Congress in Havana, Cuba met to discuss how the Guild should respond. Historically, the Guild has taken strong positions against Israel's violation of Palestinian rights. In 1977, a delegation of its members was sent to the Middle East. In 1978, the report of that delegation, *Treatment of Palestinians in Israeli-Occupied West Bank and Gaza: Report of the National Lawyers Guild 1977 Middle East Delegation*,¹ was issued. The report was the first comprehensive analysis of Israel's practices published by any non-governmental organization (NGO) concerned with human rights. It documented violations by Israel, as a belligerent occupant of the West Bank and Gaza, of the 1949 Geneva Convention.

The Palestinian uprising against the Israeli occupation, known as the "Intifada,"² which began in December 1987, represented increased resistance to the Israeli occupation and led to increased repression of resistance by Israel and further violations of the rights of Palestinians. Israel's repressive practices were, for the most part, the same as those identified in the Guild's 1978 report.

The Guild issued a second monitoring report in 1988 based on material compiled by human rights organizations, the United Nations and the press, and further based on inquiry missions to the occupied Palestinian territories by Guild members between December 1987 and October 1988. That report, titled *International Human Rights Law and Israel's Efforts to Suppress the Palestinian Uprising*, highlighted the substantial violations of rights of the Palestinian people during the 1988 uprising. The report called on the United Nations to

1 (National Lawyers Guild, New York, N.Y.), 1978. The reports cited in this Report, as well as the resolutions passed by the National Lawyers Guild regarding the Middle East, are available on the Guild's website: www.nlg.org.

2 "Intifada" is an Arabic word which means "to shake up" or "to shake off." As used by Palestinians, it refers to the shaking up of the Palestinian community and the shaking off of the Israeli occupation and its control over their lives.

*send an international force into the West Bank and Gaza Strip to protect the local population from vigilante attacks by Israeli settlers, repression by the [Israeli Defense Force], and the threat voiced by leading Israeli politicians to expel the entire Palestinian population of the West Bank and Gaza Strip.*³

As was the case with many activists and organizations working for peace and justice in the occupied Palestinian territories and Israel, the Guild was lulled into a sense of complacency as a result of the Oslo Accords, and our activity around these issues diminished. That complacency ended with the beginning of the Al Aqsa Intifada in late September 2000. In Cuba, Guild lawyers met with Allegra Pacheco, an American and Israeli attorney representing Palestinian citizens and prisoners in the occupied Palestinian territories. Our discussions focused on the reality of the continued oppression of Palestinians: hundreds of Palestinians had been killed and thousands injured by the Israeli Defense Forces during the Al Aqsa Intifada; weapons manufactured in the United States such as the Apache attack helicopter and anti-tank missiles were being used against Palestinian civilians and cities; human rights groups such as Amnesty International and Physicians for Human Rights were issuing reports condemning Israel's excessive use of force as a violation of international law; Israel killed 13 of its own Palestinian citizens during demonstrations in September and October. Clearly, there was a critical need for organizations such as the Guild to act.

There were further discussions and workshops at the National Lawyers Guild's annual convention in Boston in November 2000. A resolution was passed which, in part, called for a delegation to be sent to Israel and Palestine to focus on two areas of concern: first, the use of U.S.-manufactured weapons by the Israelis against the Palestinian uprising in violation of international and U.S. law; and second, discrimination by the Israelis against Palestinian citizens of Israel.⁴ A delegation was selected; it conducted its fact-finding investigation in Israel and the occupied Palestinian territories between January 21 and 28, 2001.

³ *International Human Rights Law and Israel's Efforts to Suppress the Palestinian Uprising*, (National Lawyers Guild, New York, N.Y.), 1989, at 95.

A. Members of the Delegation

Aneelah Afzali, a native of Afghanistan, is a first-year law student at Harvard Law School interested in international human rights, refugee issues, and conflict resolution. She has researched the Palestinian/Israeli conflict at length from a psychological perspective and helped establish the groups *Justice for Palestine* at Harvard Law School and *Common Ground* (bringing together Muslims and Jews to promote dialogue) at the University of Oregon.⁵

Abed Awad, a Palestinian-American, is an attorney in private practice in New Jersey. He attended the Friends Boys School in Ramallah and has extended family in the West Bank.

Kurt Berggren, a long-time Guild member, is an attorney in private practice in Ann Arbor, Michigan, specializing in civil rights and employment law. He has been on three previous human rights-oriented trips to Palestine and Israel in 1990, 1992 and 1994. He has also been the director of three legal services programs, taught in law school, and has been involved for many years in human rights work.

Steven Goldberg is an attorney in private practice in Portland, Oregon. He is chairperson of the National Lawyers Guild's International Committee, and has represented the Guild on trips to South Africa and Cuba. He is an active member of Congregation Havurah Shalom, a Jewish synagogue in Portland.

Zaha Hassan is an attorney in Portland, Oregon, who practices energy and municipal law. She is a founding member of Americans United for Palestinian Human Rights in Portland. Zaha graduated from Friends Girls School in

4 There have been allegations of human rights violations by the Palestinian Authority and individual Palestinians as well. (See U.S. Department of State, *Country Reports on Human Rights Practices - 2000, Occupied Territories*, (February 2001). The Palestine Human Rights Monitoring Group (www.phrmg.org) is a non-governmental organization in East Jerusalem that in part monitors and reports on alleged abuses by the Palestinian Authority. As will be discussed further below, there have also been allegations of Palestinian gunmen firing at Israeli settlements from Palestinian cities and homes. (See e.g., N.Y.TIMES, March 11, 2001, at 1). However, the primary charge of this delegation was to investigate the use of U.S. manufactured weapons. These weapons are not sold to Palestinians or to the Palestinian Authority by the U.S. government or U.S. arms manufacturers.

5 Aneelah Afzali would like to thank Hunt Alternatives (Cambridge, Mass.), the Harvard Law School Islamic Legal Studies Program, the Middle Eastern Law Students Association, and Professor Duncan Kennedy for sponsoring her participation in the delegation.

Ramallah just prior to the start of the first Intifada. Her family currently resides in Al-Bireh, Palestine.

Linda Mansour is an attorney in private practice in Toledo, Ohio, focusing on immigration and international law. She has also practiced with Sidley & Austin in the United Arab Emirates. It is believed that she is the first U.S. licensed Palestinian-American woman lawyer (1979). She has been active in the Palestinian human rights arena for over 27 years. In October 1982, she led a fact-finding delegation in the aftermath of the Sabra/Shatila massacres. She is the founding member of the Committee for Peace in the Middle East. Linda currently has family residing in Lifta (East Jerusalem) and Al-Bireh, Palestine.

Heba Nimr is completing her final year at Stanford Law School and will remain in the San Francisco Bay Area after graduation. Of Palestinian and Egyptian heritage, she has been active in the struggle for Palestinian self-determination since the 1980s. She is particularly interested in linking the movement for justice in Palestine with other international and U.S. domestic justice movements.

Allegra Pacheco is a licensed American and Israeli attorney. She represents Palestinians in the Israeli Supreme Court and military courts on human rights cases such as torture, illegal detentions, house demolitions and land confiscations. In September 1999, together with several colleagues, Pacheco won a seminal petition in the Israeli Supreme Court banning certain torture methods in Israel. In 1998, she was selected by Amnesty International as one of its worldwide human rights defenders. Pacheco is the 2000-2001 Bunting Peace Fellow at the Radcliffe Institute at Harvard University.

Ellen Schachter is a poverty law attorney practicing in the Cambridge office of Greater Boston Legal Services. She specializes in housing, welfare and disability law. She has been a long-time member of the National Lawyers Guild and of the Massachusetts chapter's executive committee. She is a member of Boston-based Women for Justice in Israel/Palestine and the Boston Women in Black.

Carol Smith, a member of the National Lawyers Guild since 1967, is in private practice in Los Angeles, California, specializing in civil rights law. She has been involved in progressive legal issues since she began practicing law

in 1961, working with such groups as the Central Committee for Conscientious Objectors in Philadelphia, Women's Strike for Peace, and the Los Angeles Legal Aid Foundation and Public Defenders Office.

B. Itinerary

The delegation met with a number of individuals and organizations including NGOs and human rights groups. Rather than describe the mission of each of the organizations and groups, we have listed their websites to provide this information. It should be noted that the delegation made repeated efforts to meet with Israeli officials. A request to meet with the Israeli justices appointed to the Commission of Inquiry established to investigate the October killings of Palestinian citizens of Israel was refused, although we were invited to meet with a public relations officer. Our request to meet with representatives of the Israeli Ministry of Defense was also refused.⁶

The delegation stayed at a hotel in East Jerusalem, thus gaining a first-hand understanding of some of the economic conditions facing Palestinians. We were the only tourists staying in the hotel. On several occasions we had no electricity. It was explained to us that although the Palestinian Authority owned the electric company, Israel provided the electricity.

Sunday, January 21, 2001

- Dinner with Mohammed Abu Harthieh, Director of Al-Haq (www.alhaq.org) and Leah Tsemel, an Israeli Jewish attorney who represents Palestinians.

Monday, January 22, 2001

- Tour of Israeli Jewish settlement Gilo.
- Meeting with representatives of BADIL Refugee Rights Resource Center (www.badil.org).
- Tour of buildings damaged by missiles and attack helicopters and examination of weapons debris in the Aida refugee camp, Beit Jala, Beit Sahour and Bethlehem.

6 The letter from the Ministry of Defense is attached as an appendix to this Report.

- Dinner in Gaza with Raji Sourani, director of the Palestinian Centre for Human Rights (www.pchrgaza.org) and Jabr Wishah, a political prisoner for over 14 years, recently released as part of the Oslo Accords.

Tuesday, January 23, 2001

- Meetings with Dr. Abu El Nasser, Chairman of the Palestinian Bar Association in Gaza; General Abdel Razzeq El-Majaida, Public Security Director of the Palestinian National Authority in Gaza and his assistant, General Jamal M. Abou Zayed; and representatives of the International Independent Commission for Citizen's Rights including Dr. Haider Abdel-Shafi, director of the Palestinian Red Crescent Society.
- Meeting in Khan Yunis Refugee Camp with six fathers and three mothers of children, ages 13 to 18, killed during the Al Aqsa Intifada. Tour of the camp viewing property damage and missile debris. While we were inspecting damage near a clash point, several rounds of fire were directed toward our area from the IDF on the perimeter of a nearby Israeli settlement.
- Meeting in Gaza City with representatives of the Ministry of Health and viewing of slides of property damage and injuries to individuals, as well as weapons used by the IDF. The slide show is available on the Ministry's website: www.moh.gov.ps.
- Meeting in Gaza City with Zohair M. Al Sorani, Attorney General of Gaza.

Wednesday, January 24, 2001

- Meeting in East Jerusalem with Ann Kristin Brunborg, researcher at the Palestine Human Rights Monitoring Group (www.phrmg.org).
- Meeting in Al-Bireh with legal advisors to the Palestine Liberation Organization's negotiation team.
- After that meeting, the delegation divided. Four of us drove to Tel Aviv to meet with John Scott, Counselor for Political Affairs at the U.S. Embassy, regarding the Embassy's monitoring and reporting on the Al Aqsa Intifada and use of weapons. The remainder of the delegation went to Nablus for meetings with the Minister of Health in Nablus, a doctor from Rafidya Hospital, and Mahmoud Aloul, the governor of Nablus, and his staff.

Thursday, January 25, 2001

- Tour of Hebron, including Jewish settlements inside the city of Hebron and Palestinian damaged homes with Salem Abu Hawwash, head of BADIL's Board of Directors.
- Meeting with a neurosurgeon at Al Ahli Hospital in Hebron and examination of x-rays of patients injured and killed during the Al Aqsa Intifada.
- Meeting in Jerusalem with Yossi Arnon, chair of the Civil Rights/Human Rights Committee of the Israeli Bar Association and other attorneys from the committee.
- Meeting with Netta Amar, attorney with the Association for Civil Rights in Israel (www.acri.org).
- Meeting with Yael Stein, research director of B'tselem, the Israeli Information Center for Human Rights in the Occupied Territories (www.btselem.org).

Friday, January 26, 2001

- Meetings and tour of Nazareth and Nazareth Ilit with Mohammed Zeidan, Director of the Arab Association for Human Rights (www.arabhra.org).
- Meeting with Hassan Jabareen, Director, and several staff attorneys of Adalah, the Legal Center for Arab Minority Rights in Israel (www.adalah.org).

Saturday, January 27, 2001

- Again, the delegation divided. Several delegates met with representatives of the Palestinian Prisoners' Association. Other delegates were taken on a settlement tour in Jerusalem and the surrounding area by Professor Ibrahim Mattar.

The Israeli Apartheid System in the Occupied Palestinian Territories and in Israel

A. Introduction

Rather than serving as a mechanism to dismantle the Israeli occupation of the West Bank, Gaza, and East Jerusalem, the Oslo “peace process” has been a de facto institutionalization and legalization of that occupation. As Noam Chomsky recently replied when asked about whether the Oslo peace process is dead:

There is no evidence that Oslo isn't working. Oslo is, I think, exactly what Shlomo Ben Ami⁷ described: an effort to create a permanent neocolonialist dependency in the Occupied Territories which will suppress the population.⁸

Those members of the National Lawyers Guild delegation who had lived in or visited the occupied Palestinian territories before the evolution of the Oslo “peace process” were struck by how the face of the Israeli occupation has changed. Although there is no longer an Israeli military presence within the Palestinian urban centers, now under Palestinian Authority control and referred to under Oslo as “Area A,”⁹ Israeli control over Palestinians and the Palestinian territories is, nonetheless, overwhelmingly evident. The delegation members felt the effects of the Israeli military occupation every day we were in the Palestinian territories; the occupation manifests itself everywhere and seeps into all aspects of a Palestinian’s daily life.

Increasingly throughout the world, the conditions within the occupied Palestinian territories have been compared to apartheid-era South Africa. Jeff Halper, Coordinator of the Israeli Committee Against House Demolitions, echoing this concern remarked that “the essential elements of apartheid—

7 Shlomo Ben Ami was Israeli Foreign Minister under Prime Minister Ehud Barak.

8 Noam Chomsky, Address at the Maryse Mikhail Lectureship Series, University of Toledo (March 2, 2000).

9 Under Oslo, the West Bank and Gaza have been divided into three jurisdictions: Areas A, B and C. “Area A” is where the Palestinian Authority exerts both civil and security control. “Area B” is under Israeli security control, but is civilly administered by the Palestinian National Authority. “Area C” is under complete Israeli control.

exclusivity, inequality, separation, control, dependency, violations of human rights and suffering” define the relationship between Israel and the occupied Palestinian territories.¹⁰ The delegation’s observations confirm the oppressive apartheid-like conditions under which Palestinians residing in *both* Israel and the West Bank, Gaza, and East Jerusalem are living.

The delegation did not limit its mission to the occupied Palestinian territories. We spent two days in Israel meeting with Jewish and Palestinian citizens. During our meetings with them, we were struck by the similarities between Israel’s policies towards Palestinian citizens of Israel and its policies towards Palestinians in the occupied Palestinian territories. The delegation found that Palestinian citizens in Israel face nearly identical discriminatory land planning and Jewish settlement policies, separate rights and privileges between Jews and Palestinians, and have been subjected to comparable excessive use of force by Israeli security forces. Recognizing the interconnected histories of dispossession experienced by Palestinians, whether they live inside Israel proper, in the occupied Palestinian territories, in refugee camps, or in the Palestinian Diaspora, it became apparent to members of the delegation that we needed to view Israel’s relationship to Palestinians living within Israel through the same lens of apartheid and control as Israel’s relationship to Palestinians in the occupied Palestinian territories.

This section will discuss briefly our findings in the occupied Palestinian territories and in Israel. It will provide the factual basis for our conclusion that the four million Palestinians living under Israeli control – either through military occupation or as citizens – are being subjected to apartheid and institutionalized discrimination by Israel. The fact that the Israeli system is based on ethnicity—Jew and Palestinian—and not on race, does not in any way detract from the illegality and immoral nature of this policy. The delegation believes that a viable peace for both Palestinians and Israeli Jews will be possible only after such inequality and segregation is eliminated.

10 Jeff Halper, *The 94 Percent Solution: A Matrix of Control*, MIDDLE EAST REP. No. 216, Fall 2000, at 15.

B. Nature of Apartheid System: Palestinians Under Israeli Military Occupation

1. ILLEGAL SETTLEMENTS AND BYPASS ROADS

Almost immediately after the 1967 Arab-Israeli war, Israel began building Jewish-only Israeli settlements throughout the West Bank, Gaza, and East Jerusalem, in violation of the Fourth Geneva Convention which explicitly prohibits an occupying power from transferring its own population to the territory it occupies. Expansion of these settlements and new construction on confiscated Palestinian land has continued throughout the “peace process.” The delegation members observed firsthand the ongoing construction of the Har Homa settlement and the expansion of the Pisgat Ze’ev settlement, both located in occupied East Jerusalem.

The Jewish-only settlements are located in strategic areas, often high on hilltops, interrupting the territorial continuity of Palestinian-controlled areas. In addition, the settlements are connected to each other and to Israel through a network of newly constructed highways and bypass roads. Construction of bypass roads continues in the West Bank. The bypass roads literally bridge



Bypass road bridging over dilapidated Palestinian road between Gilo and Beit Jala

over and tunnel through Palestinian villages and towns so that Jewish settlers may travel without having to encounter Palestinians.

Although the roads were ostensibly built for the sake of “protecting” Jewish settlers, they serve, in conjunction with the settlements themselves, as a means of separating and controlling Palestinian areas. Even just a quick glance at a map of the “facts on the ground” illustrates how the exclusively Jewish settlements and bypass roads function to encircle and divide Palestinian areas so that the territory under Palestinian Authority jurisdic-



Tunnel bypass road (on the right) between Gilo and Beit Jala

tion appears more like a series of islands within a sea of Israeli waters than a contiguous, viable, potential state.

The disparity in consumption of a vital natural resource – water – illustrates the consequences of continuing Israeli control over the occupied Palestinian territories. Israeli Jewish settlers on the West Bank are allocated approximately 4.5 times more water, per capita, for agricultural and personal use, than West Bank Palestinians.¹¹ In Gaza, the inequity is even more alarming: Per capita consumption of water by Israeli Jewish settlers in Gaza is as much as 14 times more than Gazan Palestinians.¹²

In addition to facilitating the expropriation of the natural resources of the West Bank and Gaza, geographically separating Palestinians from each other, and preventing any further growth of Palestinian areas, the settlements and bypass roads provide posts from which the IDF observe and attack

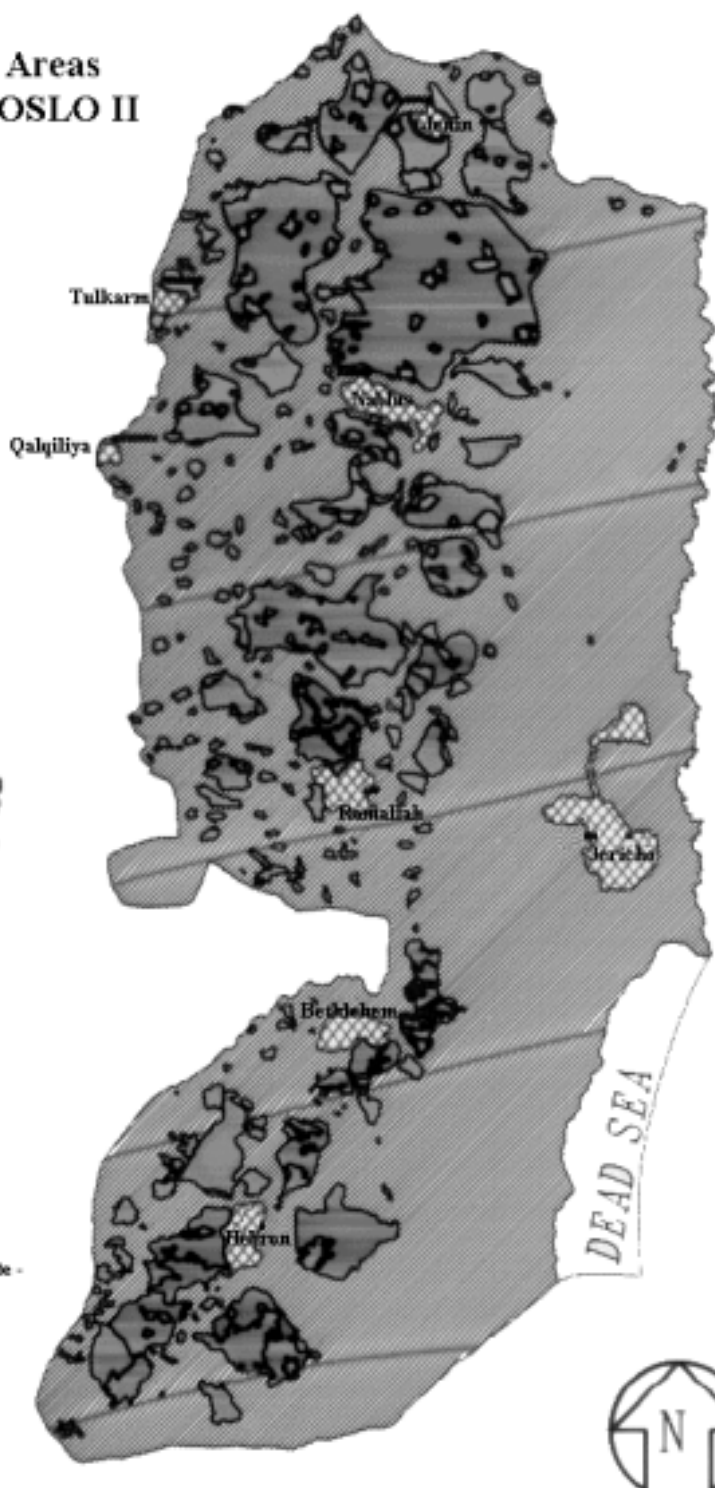
11 Gamal Abouali, *Natural Resources Under Occupation: The Status of Palestinian Water Under International Law*, 10 PACE INT'L. L. REV. 411, 421 (1998).

12 *Id.*

West Bank Areas According to OSLO II

LEGEND

-  AREA A
-  AREA B
-  AREA C



Applied Research Institute -
Jerusalem (ARIJ)



Palestinians. While driving through the Gilo settlement, which overlooks the Palestinian city of Bethlehem and the towns of Beit Sahour and Beit Jala, the delegation observed IDF gunners positioned towards the towns, and several camouflaged military tents spread out along the hillside facing the Palestinian-controlled areas. Not only does the IDF launch attacks from the settlements, but Jewish settlers, themselves, also venture into Palestinian areas to harass, attack, and physically injure Palestinians.¹³

2. RESTRICTED MOVEMENT OF PALESTINIANS

Since March 1993, Israel has imposed a general “closure” on the occupied Palestinian territories. The closure effectively seals the Palestinian territories off from each other, Israel, and other countries. Even under “optimal” circumstances when no active conflict is present, a West Bank Palestinian wanting to travel abroad, to Israel, or even to East Jerusalem or Gaza, must first obtain a travel permit from Israel. The criteria for obtaining permits are not public, and many applications have been denied without explanation. Since October 8, 2000, Israel has imposed a comprehensive closure on the occupied Palestinian territories, refusing to grant any permits to enter Israel (defined by Israel to include illegally annexed East Jerusalem), and revoking permits which allowed passage on the road between the West Bank and Gaza.¹⁴

Closures of individual West Bank and Gaza cities and towns essentially keep Palestinians imprisoned in their own localities, unable to even travel between Palestinian towns theoretically controlled by the Palestinian Authority. The closures are being enforced with both physical blockades and manned checkpoints. As holders of U.S. passports traveling in a vehicle bearing Israeli license plates, the delegation members were generally able to travel throughout the West Bank much more freely than Palestinian residents of the West Bank. Despite having the “right” citizenship and the “right” license

13 See e.g., *Weekly Report on Israeli Human Rights Violations in the Occupied Palestinian Territories*, (Palestinian Centre for Human Rights, Gaza), Jan. 10-17, 2000, available at www.pchrgaza.org/new_reports.htm#Weekly Reports.

14 *Civilians Under Siege: Restrictions on Freedom of Movement as Collective Punishment*, (B’Tselem Report, Jerusalem), Jan. 2001, available at www.btselem.org (“*Civilians Under Siege*”).

plates, delegation members still experienced delays and hassles caused by the closures of Palestinian cities and towns. For example, a trip from Jerusalem to Ramallah covering a distance of approximately ten miles, took more than 45 minutes because of the time required to go through checkpoints, find alternative routes around blockades, and travel dilapidated Palestinian roads which the Israeli government refuses to allow the Palestinian Authority to improve. When a group of us traveled from Ramallah to Nablus in a Palestinian taxi, a trip that would have normally taken approximately half an hour, took nearly an hour and a half as we were turned away at different entrances to Nablus and had to find alternative routes on mountainous back roads. In Gaza, our vehicle bearing Palestinian license plates along with dozens of other Palestinian vehicles were completely stopped for about half an hour at an Israeli checkpoint in order to permit two Jewish settler vehicles, accompanied by IDF jeeps, and a garbage truck carrying settler trash, to pass freely. The stop was imposed by an IDF tank even though the road had already been divided by concrete barriers so that Jewish settlers could travel on one side and Palestinians on the other.

The frustrations of delay the delegation members experienced were minor, however, in comparison with the health threats and economic devastation suffered daily by Palestinians due to the closures of Palestinian cities and towns. At both Rafidya Hospital in Nablus and Al Ahli Hospital in Hebron, physicians recounted several examples of patients with non-fatal injuries who unnecessarily died because delays at checkpoints prolonged the time within which it took them to access medical care. Human Rights Watch¹⁵, and Physicians for Human Rights¹⁶ have both documented repeated incidents of medical personnel not only being blocked from transporting Palestinians in critical need of care, but also being physically attacked while performing their medical duties. Palestinian NGO's such as the Palestinian Centre for Human Rights, LAW: The Palestinian Society for the Protection of Human Rights,

15 *Investigation into Unlawful Use of Force in the West Bank, Gaza Strip, and Northern Israel*, (Human Rights Watch, New York, N.Y.), Oct. 2000, available at <http://www.hrw.org/reports/2000/israel/isrlo00.HTM>.

16 *Evaluation of the Use of Force in Israel, Gaza and the West Bank: A Medical and Forensic Investigation*, (Physicians for Human Rights, Boston, Mass.), Nov. 3, 2000, available at www.phrusa.org.

and the Health, Development, Information and Policy Institute (“HDIP”)¹⁷ have documented and collected statistics regarding the health and collective economic effects of the closures. B’Tselem’s recent report, *Civilians Under Siege*, provides further narratives of specific cases and analysis of the health and economic consequences of the closures on Palestinians, as well as a brief overview of the separation of Palestinian families caused by the closures.

The closures have also had the effect of completely paralyzing the Palestinian judicial system and seriously impairing the development of a viable Palestinian civil society. Abdel Rahman Abu el Nasser, Chairperson of the Palestinian Bar Association, described to members of the delegation how Palestinian lawyers cannot provide adequate legal representation because they are unable to meet with their clients, many of whom require representation in Israeli military court. Palestinian judges are also unable to administer the justice system because they are unable to travel from their homes to their chambers and courtrooms.¹⁸

An additional problem associated with the closures is the lack of clarity regarding which authority, the Palestinian or the Israeli, has jurisdiction over alleged crimes occurring in Area A, Area B, and Area C. Even when the jurisdictional question is clear, Israel has refused to respect the territorial integrity of Palestinian Authority-controlled areas and has entered Palestinian cities to capture or to extra-judicially kill Palestinian suspects.

3. ECONOMIC DEPENDENCE

Though we did not spend a significant amount of time exploring the specific ways in which the Palestinian economy is dependent on Israel, it became clear to us that the economic relationship between Israel, the Palestinian Authority, and Palestinian civilians is a key component of the injustice currently being resisted by Palestinians, and a further indicator of the apartheid-like relationship between Israel and Palestinians.

The peace process has not alleviated the effects of the occupation; rather, it

17 The HDIP’s website is located at www.hdip.org.

18 See also, *Siege, Closure and the Palestinian Judiciary*, (Palestinian Centre for Human Rights, Gaza), Feb. 26, 2001), available at www.pchrgaza.org.

has further exacerbated the structural economic inequalities of occupation.¹⁹ The permit system governing travel, trade and labor, combined with the closures of the West Bank and Gaza keep Palestinian economic “development” at the daily whim of Israeli policy. Chronic Palestinian unemployment has increased during the Oslo era, as has the incidence of Palestinian households living below the poverty line. The trade imbalance between Israel and the Palestinian economy has also increased. The post-Oslo Palestinian economy relies more heavily on goods imported almost entirely from Israel, yet its ability to export to Israel or other countries is severely limited by closure policies and the exclusive Israeli control over trade ports.

The number of Palestinian laborers in Israel has generally decreased during the Oslo era as fewer Israeli work permits are granted to Palestinians and Israel relies more on foreign workers from outside the region. However, “industrial zones” newly developed at the borders of Israeli- and Palestinian-controlled areas in the West Bank and Gaza are promoted as “cooperative” economic ventures that will provide employment opportunities for Palestinians. The Center for Economic and Social Rights (“CESR”), citing the extensive work of Sara Roy on the “de-development” of Palestine, notes that the ultimate goal of the industrial zones, however, is to “keep Palestinian workers in Gaza and the West Bank [and out of Israel], and keep [Palestinian] labor cheap for Israel.”²⁰ Designed to attract foreign investment to these projects that are less regulated and more conducive to “free trade,” these industrial zones are remarkably similar to the *maquilladoras* on the U.S.-Mexican border where Mexican laborers are paid low-wages for the “benefit” of NAFTA-style free trade and the global economy. The unjust economic dependence of the Palestinian economy is perhaps best understood, then, not only in a regional context, but in a global one.

19 *Progress, Stagnation, or Regression? The Palestine Economy Under the Oslo Accords*, (Center for Economic and Social Rights (“CESR”), Brooklyn, N.Y.), Spring 2000 (Draft), available at www.cesr.org/text%20files/economics%20draft.pdf.

20 *Id.* at 39.

C. Nature of Apartheid System: Palestinian Citizens of Israel

The State of Israel will be open to the immigration of Jews from all countries of their dispersion; will promote the development of the country for the benefit of all its inhabitants; will be based on the precepts of liberty, justice and peace taught by the Hebrew Prophets; will uphold the full social and political equality of all its citizens, without distinction of race, creed or sex; will guarantee full freedom of conscience, worship, education and culture; will safeguard the sanctity and inviolability of the shrines and Holy Places of all religions; and will dedicate itself to the principles of the Charter of the United Nations.

—Declaration of the Establishment of the State of Israel,
May 14, 1948

In its 1948 Declaration Establishing the State of Israel, Israel identifies itself as a state for the Jewish people even though today, 20% of its citizens are not Jewish. For the first 18 years of Israel's existence, the government applied two completely different sets of laws to those residing within its borders, depending on their religious/ethnic status. Jewish citizens were governed by a civilian legal system, while military law was applied to non-Jews/Palestinians. During that time, land expropriation laws served to transfer more than 60% of private Palestinian land to "Israel's Lands" to be used for the exclusive benefit of the Jewish population.

In 1966, military rule within Israel was formally eliminated, and one legal system for all citizens of Israel was adopted. Even under the unitary legal system, however, laws and policies discriminating between Jews and non-Jews/Palestinians continue to be enacted and implemented. In addition, under the newly unified legal system, Israeli legislators enacted an emergency rule allowing the state to use administrative detention and other state of emergency provisions within Israel, in the name of national security. The State of Emergency in Israel has been continuously renewed since Israel's inception. It authorizes the government to suspend many due process procedures under the guise of security.

1. ISRAEL'S DISCRIMINATORY LAND POLICIES

Israel's land laws and policies applied in Israel and its occupation policies applied in East Jerusalem, the West Bank and Gaza are, for practical purposes, identical. The common goal is to "Judaize" space and to "implement the Zionist project of controlling the land solely for the benefit of Jewish citizens of the State."²¹ The mechanisms for implementing the Zionist project in both Israel and the occupied Palestinian territories include outright home demolition and land confiscation, "absentee" or "abandoned" property policies to transfer Palestinian-owned land to the State of Israel for Jewish-only uses, and the building and expansion of Jewish settlements while installing bureaucratic controls and physical barriers that limit the expansion of areas where Palestinians reside.

During our visit and tour of Nazareth, in the Galilee, we were struck by the spatial similarities between that area, and the West Bank and Gaza in terms of the demographic distribution of the Jewish and Palestinian populations and these populations' geographic and topographic locations. Specifically, the relationship between Nazareth and Upper Nazareth (Nazareth Ilit), mirrored the relationship between any Palestinian town and a nearby Jewish settlement in the



Jewish Nazareth Ilit overlooking the Arab old city of Nazareth



Arab old city of Nazareth

occupied Palestinian territories. Nazareth is primarily inhabited by indigenous Palestinians and Palestinians “internally displaced” during the establishment of the State of Israel. Upper Nazareth is primarily inhabited by Jews, many of whom are recent immigrants to Israel.

Upper Nazareth is built on land which was formerly Palestinian agricultural lands, confiscated by Israel as “green areas” for “public use.” In fact, confiscated Palestinian agricultural land is used to construct homes for immigrating Jews. The newest part of Upper Nazareth was built as recently as 1992. As indicated by its name, Upper Nazareth is built on higher ground, and overlooks Nazareth. Standing in Upper Nazareth, one can see a large, expansive “bypass road,” constructed identically to its West Bank or Gaza counterpart, which connects Jewish areas while avoiding space inhabited by Palestinians. It is easy to see, from Upper Nazareth, how the road ringing around Nazareth physically prevents the ancient city from expanding any further. Finally, though the roads and building stock of Nazareth are in disrepair, municipal money is not allocated for their maintenance. On the other hand, a new municipal building, a

21 Usama Halabi, *Israeli Law as a Tool of Confiscation, Planning, and Settlement Policy*, 2 ADALAH’S REVIEW 2 (Fall 2000).

major bus station, new schools, and shopping centers have been built in Upper Nazareth. Upper Nazareth is being developed to be a major city, pushing Nazareth and its Palestinian population even further into the margins.

2. DIFFERENTIAL TREATMENT OF JEWS AND PALESTINIAN NON-JEWS.

Palestinian citizens of Israel are systematically discriminated against in various forms: directly, through laws facially discriminating against non-Jews; indirectly, through facially neutral laws and policies that nonetheless have a disparate impact on Palestinians; and, institutionally, through the structural framework that facilitates a pattern of privileges for Jews over non-Jews.²²

Israel's Nationality Law is a primary example of facial discrimination against Palestinians. Under its Law of Return, Israel automatically bestows citizenship to all Jews who immigrate, from anywhere in the world, as well as to their immediate family, including grandchildren. This privilege, however, is for Jews only. Non-Jewish Palestinians, though direct descendants of the land, may not take advantage of Israel's Law of Return.²³

Though military service is technically compulsory for all Israeli citizens, Palestinians have been exempted from that requirement, and the vast majority of Palestinians indeed do not opt to serve in the military apparatus designed to protect the Jewish state and which upholds Israeli occupation of Palestinian and Syrian lands. However, many Israeli government preferences and benefits are conditioned on performing military service, even though the benefit's connection to military service may be tenuous. Until 1997, for example, levels of state child benefits were linked to military service rather than economic need. Though ostensibly a neutral criteria for benefits, the military service requirement has a clear disparate impact on Palestinian citizens. That disparity is aggravated by the fact that another group exempted from military service – Jewish yeshiva students – are nonetheless granted benefits and preferences as though they had served.²⁴

Institutional discrimination against Palestinians is prevalent. For exam-

22 *Discrimination in Israeli Law*, Fact Sheet No. 1, (Arab Association for Human Rights, Nazareth, Israel), available at www.arabhra.org/article26/factsheet1.htm.

23 *Id.*

24 *Id.*



Sign announcing a new housing development in Nazareth written in Hebrew and Russian but not in the native language of the Palestinian citizens of Israel which is Arabic

ple, local government budgets are allocated according to the discretion of state officials, and predominantly Palestinian municipalities receive substantially less funding.²⁵ Public transportation and other services are less accessible to Palestinian localities within Israel.²⁶ Palestinian children do not have access to the same levels of educational programs, funding, and school services that Jewish children do.²⁷ Palestinian residents that live in villages of 400-500 are not provided health care although Jewish settlements of similar size do receive such services.²⁸ While the Israeli government, through its private

25 *Id.*

26 Interview with Mohammed Zeidan, Director of the Arab Association for Human Rights, in Nazareth, Israel, (Jan. 26, 2001).

27 *The Palestinian Arab Minority in Israel: Economic, Social and Cultural Rights*, (Arab Association for Human Rights, Nazareth, Israel) 1998 (report presented to the UN CESCR Committee on Israel's Implementation of the International Covenant on Economic, Social and Cultural Rights); *Arab Children's Rights in Israel*, Fact Sheet No. 6, (Arab Association for Human Rights, Nazareth, Israel), available at www.arabhra.org/article26/factsheet6.htm ("Arab Children's Rights in Israel").

and quasi-public agents, assures the creation of ever more housing stock for Jewish residents, the housing stock for Palestinians is collapsing.²⁹ The 1995 state plan that allocates land for housing, allocated land for 32,259 apartments in Jewish localities, and only 2,377 apartments in Palestinian areas. In 1998, the state housing plan excluded Palestinians altogether; though land for building 23,000 apartments was allocated, none of it was allocated to Palestinian towns or neighborhoods.³⁰

3. ISRAELI POLICING OF PALESTINIAN POLITICAL EXPRESSION

Israel's on-going "state of emergency" legal framework combines with its treatment of Palestinians as implicit enemies of the state to uniquely subject Palestinian citizens of Israel to policing that is, in fact, more like military rule. The brutal police response to the early October Palestinian solidarity demonstrations reflects that military-like approach.

In support of the Al Aqsa Intifada and in solidarity with the Palestinians demonstrating in the West Bank and Gaza, Palestinians living in Israel – citizens of the state of Israel, unlike those Palestinians living within the West Bank, Gaza, and East Jerusalem – held several days of general strikes and political demonstrations, in early October 2000. By October 8, Israeli police had killed 13, injured more than 1000, and arrested approximately 700 Palestinian citizens of Israel. Eighty to ninety percent of the injuries were caused by rubber bullets and live ammunition. Adalah explains that:

The events began with a political protest by Palestinian citizens of Israel over governmental policy on the final status agreement. Quickly, however, a conflict between the state and the Palestinian minority arose over the substantive issue of Israel as a Jewish state.³¹

Adalah reports that though there is no evidence that the demonstrations posed any threat of physical harm, the police responded to Palestinian demonstrators by firing live ammunition, rubber-coated steel bullets, and

28 *Arab Children's Rights in Israel*, *supra* note 27.

29 *Id.*

30 *Legal Violations of Arab Minority Rights in Israel*, (Adalah, Shfaram, Israel), March 1998, at 60.

31 Editors, *Introduction*, 2 ADALAH'S REVIEW 2 (Fall 2000).

tear gas.³² Adalah further remarked that the uniformity of the police response throughout various Palestinian towns and villages suggests a pre-determined plan by the police to respond violently to Palestinian solidarity demonstrations, without any regard to an actual risk of physical harm posed by the demonstrators. The police frequently failed to cooperate with local Palestinian leaders who specifically requested that the police not use such provocative methods; it appears that this failure served to escalate tensions and the risk of physical harm to Palestinians. Adalah has documented several instances where, when there was no police presence, funerals and demonstrations proceeded peacefully.

Police tactics used during the demonstrations appear to us quite similar to IDF methods in the West Bank and Gaza: snipers targeted Palestinians; many of the Palestinians killed or injured were shot in their upper bodies; in some instances, police deliberately prevented ambulances from aiding the injured; and special undercover agents disguised as Arabs were used to apprehend Palestinians. In addition, in various incidents throughout Israel in October 2000, where Jewish citizens attacked Palestinian citizens and their property, the Israeli police not only failed to protect Palestinians from attack, but at least in one incident on the eve of Yom Kippur, the police assisted the attackers, opening fire with live ammunition against the victims of the attack, killing two Palestinians.³³ This failure of the state to protect Palestinians from attacks by Jewish civilians is similar to the apparent deliberate indifference, at the least, of the state towards Jewish settler attacks on Palestinians in the occupied Palestinian territories.

The police brutality of October 2000 is not new.³⁴ In recent years, such police brutality and use of excessive force has increased to control the political expression of the Palestinian citizens of Israel. For example, in September 1998, in response to a Palestinian “tent protest” and demonstrations in Umm el Fahm, over land confiscation, Israeli police “employed harsh and violent

32 Adalah Report submitted to the Official Israeli Commission of Inquiry on January 21, 2001 (summary of the submission is *available at* www.adalah.org/submission.html).

33 Testimony submitted to the Official Israeli Commission of Inquiry by Mohamed Zidan, Chairperson of the High Follow-up Committee for the Arab Citizens in Israel, *available at* www.adalah.org.indictment.html.

34 *See, Editors, Introduction, 2 ADALAH'S REVIEW 2 (Fall 2000).*

measures.”³⁵ In Spring 2000, Israeli police used tear gas and rubber-coated steel bullets to respond to Palestinian Land Day protests; as a result, they injured dozens and killed one elderly woman.³⁶ Our research did not uncover any instances of Israeli police having used live ammunition and sniper fire to control Jewish demonstrations. While such state violence to control expression is deplorable under any circumstances, in this context we see this as yet another example of how Palestinian citizens of Israel are particularly targeted for military-like law enforcement.

35 Samera Esmeir and Rina Rosenberg, *On Resisting Legalization*, 2 ADALAH’S REVIEW 23 (Fall 2000).

36 Orna Kohn and Tawfiq Rangwata, *Palestinian Students, Political Space and Haifa University*, 2 ADALAH’S REVIEW 69, 72 (Fall 2000).

Israeli Indiscriminate and Excessive Force in the Occupied Palestinian Territories During the Al Aqsa Intifada

We met in an office in the Khan Yunis refugee camp in Gaza. Parents of children who had been killed by Israeli soldiers, angry, tearful – talking about their sons' short lives. And then one father approached me. He had grown up in the Israeli town of Yaffa. His grandparents took Jewish refugees from eastern Europe into their home in the 1930s. They helped them give birth to their children, went with them to the movies. And then in 1948, all of that was forgotten as the Palestinians were forced from their villages and homes. How is it that those who were oppressed can so easily shed the lessons of their history and become the oppressor he asked?

—Steven Goldberg, Delegation Member,
January 2001

A. Introduction

Since the beginning of the Al Aqsa Intifada, international organizations that traditionally investigate and report on violations of international human rights and humanitarian laws have visited Israel, the West Bank and Gaza Strip to independently assess the conduct of the parties to this conflict. These organizations include Amnesty International, Human Rights Watch, Physicians for Human Rights/USA, and the United Nations High Commission for Human Rights.³⁷ All of them condemned Israel for its excessive and indiscriminate use of force against Palestinian citizens and civilian areas,³⁸ affirming the conclu-

37 The reports of these organizations are available at: Amnesty International, www.amnesty.org.Israel; Human Rights Watch, www.hrg.org/reports/2000/Israel; Physicians for Human Rights/USA, www.phrusa.org; the United Nations High Commission for Human Rights, www.unhchr.ch, (E/CN.4/2001/114).

38 As reported by UN High Commissioner, Mary Robinson, “a wide range of observers, including United Nations representatives, expressed the strong view that the very high number of casualties, combined with the nature of the injuries being sustained, including by young people, could only be consistent with a military response which was both excessive and inappropriate.” *Report of the High Commissioner on Her Visit to the Occupied Palestinian Territories, Israel, Egypt and Jordan (8-16 November 2000)*, U.N. Commission on Human Rights, 57th Sess., Provisional Agenda Items 4 and 8, at ¶26, U.N. Doc. E/CN.4/2001/114 (2000), available at www.unhchr.ch (“*Report of the High Commissioner*”).

sions made by human rights and humanitarian agencies based in the occupied Palestinian territories and Israel.³⁹ A recent UN Human Rights Inquiry Commission, charged with investigating the conflict, stated in its March 16, 2001 report:

It seems incontestable that the Israeli Security Forces... have used excessive and disproportionate force from the outset of the [Al Aqsa Intifada], whether their conduct is measured by the standards of international humanitarian law applicable to armed conflict, the codes of conduct applicable to policing in situations not amounting to armed conflict or by the open-fire regulations binding upon members of the Israeli Security Forces.⁴⁰

Confirming these reports, our delegation directly observed the effects of Israel's aggression against Palestinians and civilian property. We saw x-rays and photos of victims' injuries indicating excessive force, extensive damage to property specifically in Beit Jala, Nablus, Hebron, and Khan Yunis refugee camp, and a large assortment of weapon fragments revealing the sophisticated weaponry and ammunition, rather than demonstration control devices, used against the Palestinian civilian population.

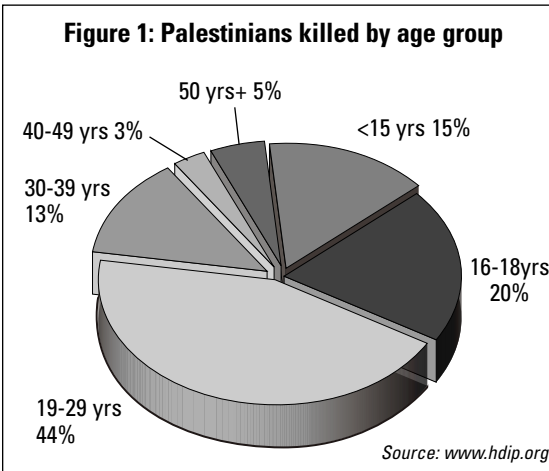
39 Numerous Palestinian-based organizations, such as the Palestinian Human Rights Monitoring Group, www.phrmg.org, and the Israeli-based organization, B'Tselem, www.btselem.org, have condemned Israel's indiscriminate and excessive use of force during the Al Aqsa Intifada. The following international resolutions and reports have additionally condemned Israel's aggression and failure to follow international law: U.N. SCOR, 420, 5th mtg. at 2, U.N. Doc. S/RES/1322 (2000), available at <http://www.un.org/Docs/scres/2000/res1322e.pdf>; *Grave and massive violations of the human rights of the Palestinian people by Israel*, U.N. Commission on Human Rights, Resolution S-5/1, 5th Special Sess., Agenda Item 3, at 1, 2, 4, and 5, U.N. Doc. E/CN.4/RES/S-5/1 (2000), available at www.unhchr.ch; *Question of the Violation of Human Rights in the Occupied Arab Territories, including Palestine: Report of the Human Rights Inquiry Commission Established Pursuant to Commission Resolution S-5/1 of 19 October 2000*, U.N. Commission on Human Rights, 57th Sess., Provisional Agenda Item 8, at 31, U.N. Doc. E/CN.4/2001/121 (2001), available at www.unhchr.ch ("*Report of the Human Rights Inquiry Commission*"); *Report of the Committee on the Exercise of the Inalienable Rights of the Palestinian People*, U.N. GAOR, 55th Sess., Supp. No. 35, at 18, U.N. Doc. A/55/35 (2000), available at <http://www.un.org/documents/ga/docs/55/a5535.pdf>; and *Mission Report on Israel's Violations of Human Rights in the Palestinian Territories Occupied Since 1967*, submitted by Mr. Giorgio Giacomelli, Special Rapporteur, U.N. Commission on Human Rights, 5th Special Sess., Agenda Item 3, U.N. Doc. E/CN.4/S-5/3 (2000), available at www.unhchr.ch.

40 *Report of the Human Rights Inquiry Commission*, *supra* note 39, at 31. The Human Rights Inquiry Commission was established on January 2, 2001 with the following members: Dr. Kamal Hossain, former Prime Minister of Bangladesh, Professor Richard Falk, professor of international law at Princeton University; and Professor John Dugard of South Africa, lecturer at Leiden University in the Netherlands.

B. Indiscriminate and Excessive Use of Lethal Force Against Palestinians

1. INTERNATIONAL AND NATIONAL REPORTS

Since September 29, 2000, when demonstrations against the Israeli occupation of the West Bank and Gaza broke out, the number of Palestinians killed and wounded by the Israeli security forces keeps escalating. Four months after the start of the Al Aqsa Intifada, Israeli security forces had wounded more than 10,000 Palestinians, and killed 357 in the West Bank and Gaza Strip.⁴¹



(As of April 2, 2001, 11,142 Palestinians have been injured and 426 killed). Eighty-nine percent of those killed were civilians, and about one-third were children 18 years of age or younger.⁴² See Figure 1.⁴³ Of those injured, 36.3% in the West Bank and 63.6% in the Gaza Strip were less than 20 years old.⁴⁴

Moreover, the overwhelming majority of injuries sustained by Palestinians have been to the upper parts of their body (75.6% in the West Bank and 60.3% in Gaza).⁴⁵ See Figure 2.⁴⁶ According to a report by HDIP, 146 Palestinians (43.8%) died from head and neck injuries, 109 (32.7%) suffered chest injuries, 30 (9%) were shot in the abdomen, 42 (13%) suffered injuries to multiple parts of their body, and four (1%) died from lower limb injuries. IDF Open Fire

41 *Health Care Under Siege II: The Health Situation of Palestinians During the First Four Months of the Intifada*, (HDIP, Ramallah), Feb. 2001, at 4, 6, available at http://www.hdip.org/reports/Currentintifada_contents.htm (“*Health Care Under Siege II*”).

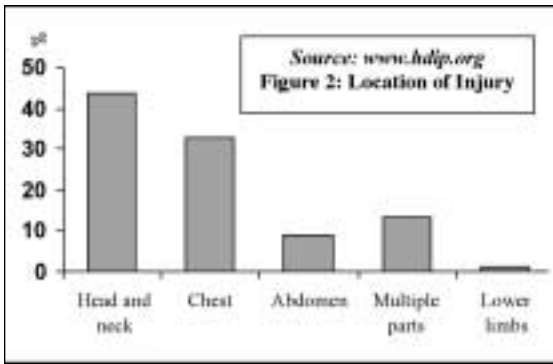
42 *Id.* at 4.

43 *Id.* at 4 (graph reflects statistics for the first four months of the Al Aqsa Intifada).

44 *Id.* at 6.

45 *Id.* at 6; see also *Report of the High Commissioner*, *supra* note 38, at 7, ¶29.

46 *Health Care Under Siege II*, *supra* note 41, at 5 (chart reflects statistics for the first four months of the Al Aqsa Intifada).



Regulations specify that rubber bullets are to be used only when there is a clear threat to life, at distances of no less than 40 meters, *aimed only at the lower body, and never used against children.*⁴⁷ Human Rights Watch, corroborating

the findings of Israeli and Palestinian human rights organizations, concluded that “rubber bullets, as well as plastic-coated metal bullets and live ammunition, have been used routinely in an illegal and indiscriminate manner.”⁴⁸

There is a pattern of excessive Israeli force against Palestinian demonstrators who are unarmed and pose no threat of death or serious injury to Israeli soldiers or settlers.⁴⁹ The overwhelming majority of demonstrations against the Israeli occupation were by unarmed civilians, with stones or bottles of petrol, at most. According to Amnesty International, “the Israeli security services were almost invariably well-defended, located at a distance from demonstrators in good cover, in blockhouses, behind wire or well-protected by riot shields... Certainly, stones – or even petrol bombs – cannot be said to have endangered the lives of Israeli security services.”⁵⁰ However, the IDF employed military weapons, such as live ammunition, plastic coated metal bullets, and snipers to inflict massive trauma against civilian demonstrators. Evidence at hospitals showed that of the fatal gun shot wounds in Gaza, 50% were to the head. “This high proportion of fatal head wounds suggests that given broad rules of engagements, soldiers are specifically aiming at peoples’ heads.”⁵¹

47 See *Illusions of Restraint: Human rights violations during the events in the Occupied Territories, 29 September – 2 December 2000*, (B’Tselem Information Sheet, Jerusalem), Dec. 2000, at 11, available at www.btselem.org (“*Illusions of Restraint*”).

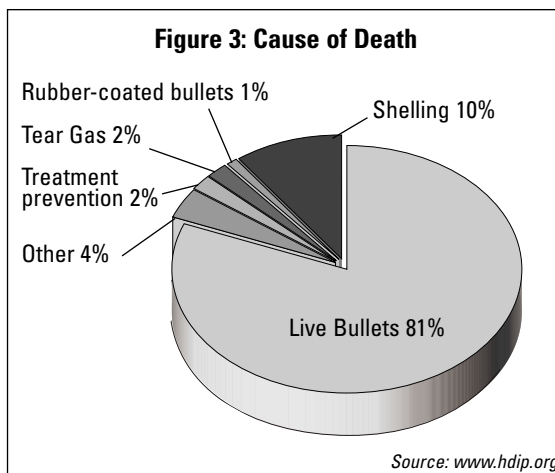
48 *Israel, the Occupied West Bank and Gaza Strip, and the Palestinian Authority Territories: Investigation into unlawful use of force in the West Bank, Gaza Strip, and Northern Israel*, (Human Rights Watch, New York, N.Y.), October 2000, available at <http://www.hrw.org/reports/2000/israel/>.

49 *Id.*

50 *Israel and the Occupied Territories: Excessive Use of Lethal Force*, (Amnesty International, New York, N.Y.), Oct. 19, 2000, at 6, available at www.amnesty.org.

51 *Evaluation of the Use of Force in Israel, Gaza and the West Bank, a Medical and Forensic Investigation*, (Physicians for Human Rights Report, Boston, Mass.), Nov. 3, 2000, at 2.

In a few instances, there was sporadic gunfire from within the demonstration. However, the IDF's use of lethal force was disproportionate, indiscriminate, and not directed at the source of the threat. This violates international law standards as well as Israel's Open Fire Regulations. Live and expended ammunition at the



scene of the demonstrations and in surrounding buildings and residences showed widespread use of lethal force by the IDF.⁵² 40-mm machine guns firing high explosive grenades have been used by the IDF against civilian demonstrators. Such heavy armaments designed to kill enemy soldiers over large areas constitute weapons of warfare rather than crowd dispersal or demonstration control devices.⁵³ Whereas the Israelis used primarily rubber bullets and tear gas in the first intifada (1987-1993), live ammunition is now in constant use against civilian demonstrators, and has been the most common cause of death during the Al Aqsa Intifada. *See Figure 3.*⁵⁴ Often, the IDF selected ammunition not for its accuracy, but for its penetrative power in causing serious damage to body tissue and its ability to kill rather than control demonstrators.

Israeli security forces have the capacity to control violent demonstrations without the use of firearms. Amnesty International reports that “violent demonstrations by Ultra-Orthodox Jews in Jerusalem... were policed without resort to firearms” and “no demonstration organized by a Jewish group has ever been fired on, even by rubber bullets.”⁵⁵

52 The UN High Commissioner for Human Rights, Mary Robinson, reports that while she was conducting her fact-finding mission, the heavy weaponry used by the IDF caused death and injury among non-combatants. The heavy weaponry referred to by Mary Robinson includes rockets fired by the infantry and by Apache helicopters, armored vehicles, and heavy machine guns. *Report of the High Commissioner, supra* note 38, ¶28 *supra* at fn. 2.

53 *See infra* Weaponry and the Role of the United States.

54 *Health Care Under Siege II, supra* note 41, at 4 (reflects statistics for the first four months of the Al Aqsa Intifada).

55 *Israel and the Occupied Territories: Excessive Use of Lethal Force, supra* note 50, at 9.

2. OBSERVATIONS OF OUR DELEGATION

Our delegation visited the Al Ahli hospital in Hebron, which handles head, chest, and back injuries, and the Rafidya hospital in Nablus. At both hospitals, we saw x-rays of dead and seriously injured Palestinian youth. The Al Aqsa Intifada differs dramatically from the first one in the high number of injuries, type of injuries, and the type of bullets used by the IDF. Additionally, one of the biggest problems is the closure, roadblocks, and intentional delay of ambulances by the IDF.

Since the beginning of the Al Aqsa Intifada, Al Ahli hospital has had over 450 cases of serious and moderate injuries, and at least 14 cases of cold blooded killing. About 35% of the patients were under age 16. Almost all the injuries have resulted from rubber-coated steel bullets, metal bullets, and live ammunition. The effects of what is believed to be the high velocity bullet fired at close range resemble those of the internationally-banned “dum dum” bullets: multiple fragmentation and internal tissue damage.

A representative sample of x-rays we viewed included the following:

- Yusif Abuwad, 24-years-old, who was shot from only a meter with a high velocity bullet on November 16th. He was ordered to leave the main road, and when he refused, the soldier shot him in cold blood;
- Jaduwa Abu Habash, 16-years-old, who was hit in the heart on November 15th with a high velocity bullet resulting in multiple fragmentation. Israeli soldiers deliberately blocked the checkpoint and would not allow the ambulance carrying him to go through for 1 1/2 hours;
- Ahmed Kuosney, 14-years-old, who was shot when he was in his house from a Palestinian-controlled area of divided Hebron on December 8th. While the type of bullet used was not clear, he died after suffering severe head injury and serious hemorrhaging;
- Muwwad Abu Hidwan, who was hit by shelling in his house and died the same night after severe hemorrhaging. All the structures of his brain were injured, and the fragments can be seen in the x-ray;
- Hamid Hawatmoh, 19-years-old, who died because roadblocks prevented him from getting medical assistance for 3 1/2 hours; and
- Ghazal Jalizat, 14-years-old, who was shot with rubber bullets as she was leaving clashes near her school on November 4th. There were



X-ray depicting the fragmenting M-16 bullet

traces of the bullet in her skull, although the IDF tried to claim that she was injured in a car accident. Fortunately, she survived after the surgeons removed a large bone in her skull for 40 days and then replaced it.

The Rafidya Hospital received 646 Al Aqsa Intifada patients, with over 50% (319 patients) hit by live ammunition, 51 arriving nearly dead, and five cases of point-blank shooting. X-rays shown to us included:

- Saad al-Harouf who was shot with a live bullet and died from massive bleeding because it took seven hours to get to the hospital;
- Mohammed Jamal shot with a live bullet in his lower leg;
- Mohammed Abu Rub shot point blank with a live bullet resulting in fragmentation;
- Rafat Judeh whose shoulder, arms, and hand were shot off after he was fired at with a high velocity bullet or tank fire;
- Maamoun Jamal Qutmuss shot by settlers in the spine with 50 fragments appearing in the x-ray;
- Abdel Mouin shot several times in the chest, abdomen, elbow and head. Because of the Israeli enforced closure of his town, Mouin was forced to wait nine hours before he could get to the hospital and he died;

- Raed Ahmed Abu Dhaber shot in the face and survived after treatment;
- Ibrahim Beni Odeh whose head was blown off by an explosion in a car;
- Wisam Abdel Fatough Dahoud shot by a live bullet causing fractures in his femur; and
- Nasser Abdel Halih shot with two bullets in his pelvis.

In addition to x-rays, other specific instances of excessive force against persons were described to us. For instance, we visited the location in Beit Sahour where Hussein Abayat, a leader of the military wing in the area of Bethlehem, was assassinated. An eyewitness to the assassination, Aiman Abu Eita from the General Ministry in Beit Sahour, described the lethal and excessive attack against Hussein. Three Apache helicopters fired Hellfire missiles directly at him when he was in his car. The car was in flames and when Aiman and others tried to pull Hussein out of the car, Israeli soldiers fired bullets at them to prevent the rescue. When Hussein was pulled out of the car, his brain, protruding from the left side of his head, came out into Aiman's hands. Two women waiting nearby were also killed, and a couple was seriously injured.

At the Khan Yunis refugee camp, the grieving parents of some children who had been killed shared with us the stories of their martyred sons. Even though none of the children posed a security threat to Israeli soldiers or settlers, the IDF still shot and killed 12-year-old Jihad in the eye while he was demonstrating, 15-year-old Ibrahim Fawad al-Kassas while he was demonstrating, 14-year-old Ibrahim Ad Umr with sniper-fire that shattered his head, 18-year-old Mohammad Tawfiq al-Tawid in the chest while he was helping a wounded friend, 18-year-old Deissir al-Hraj while he was working at his father's store, and 13-year-old Mohammad Abu El with a high velocity bullet while he was visiting a site of destruction.

The mothers of the martyrs asked us to explain to the American public that they are suffering tremendously with the loss of their children. They added that they were deeply hurt by the accusations made in the Israeli and U.S. press that Palestinian mothers are pushing their children to the front lines of demonstrations. One mother stated that these accusations caused her almost as much pain as she experienced from losing her child. The fathers



Palestinian children from Khan Yunis refugee camp in Gaza

emphasized to us that they perceive the United States as being responsible for the continued occupation of their country. They expressed their frustration with the United States' veto power which they feel has prevented Palestinians from obtaining international relief and protection. The words of these fathers proved true in late March 2001 when the United States used its veto power to block an international presence requested by the Palestinians and recommended by Mary Robinson, the U.N. High Commissioner for Human Rights, after her visit to the occupied Palestinian territories.⁵⁶

C. Indiscriminate and Excessive Use of Force Against Palestinian Property

1. INTERNATIONAL AND NATIONAL REPORTS

Israeli forces have indiscriminately and excessively shelled residential areas throughout the West Bank and Gaza Strip, affecting over a million

56 Chris Hawley, *U.S. Vetoes U.N. Force Resolution*, (AP, U.N.), March 27, 2001.

Palestinians.⁵⁷ Through December 2000, Israeli bombardment had wounded 729 Palestinian civilians in their own homes, killed 25 civilians, damaged more than 3,000 Palestinian civilian homes, and rendered over 4,100 Palestinians homeless.⁵⁸ In describing the use of excessive force against Palestinians in their homes and cities, the Palestinian Human Rights Monitoring Group (“PHRMG”) concludes that

*the Israeli army intentionally attacked densely populated residential areas in order to inflict collective punishment on civilians. The shelling of residential areas occurred without warning, and excessive and indiscriminate military power was used against a defenseless and unarmed population.*⁵⁹

The PHRMG found that IDF attacks against Palestinian homes and civilian areas have in numerous cases been totally indiscriminate and that

*Israeli shelling of civilian areas has continued for long periods after any threat of Palestinian gunmen has been removed. Further, using extremely inaccurate grenade machine guns covering wide areas of civilian areas, as a response, constitutes a serious violation of international humanitarian law.*⁶⁰

During the first four months of the Al Aqsa Intifada, indiscriminate weaponry which cause large paths of destruction and are not aimed at a specific target have been deployed repeatedly against the residents of Rafah, Beit Jala, Ramallah, Nablus, Hebron, and Gaza. “Israel’s most sophisticated weaponry (helicopter-launched missiles, long range-sniper rifles and hidden bombs)”⁶¹ are used to shell Palestinian homes and infrastructures in densely populated civilian areas. Shrapnel from air burst grenades have killed and wounded youth and women in these areas. Precision guided missiles as well as high-velocity ammunition have been used to penetrate and destroy homes.

57 *Overkill: Israeli Bombardment and Destruction of Palestinian Civilian Homes and Infrastructure During the Al-Aqsa Intifada*, (PHRMG, East Jerusalem), Jan. 29, 2001, Table 1, available at www.phrmg.org (“Overkill”).

58 *Id.*

59 *Id.* at 25. PHRMG’s consultant for this report was David Holley, a British military consultant. PHRMG had had its own field investigators on the ground in Israel, the West Bank and Gaza.

60 *Id.* at 16.

61 *Id.* at 5.

Grenade launchers underneath the M-16 are used against residential housing.

Shelling often takes place at night and people are afraid to sleep in their homes. In Jericho, the residents never knew which part of the camp would be attacked since Israeli fire has been directed at all sides. Mary Robinson, the U.N. High Commissioner for Human Rights, visited Rafah refugee camp in Gaza and observed a number of homes and apartments that had been heavily damaged by nightly gunfire and/or rocket attacks. Shelling has also damaged public buildings. For example, in the center of Hebron, three schools, a mosque, a library, 31 stores, offices of private associations, a pharmacy, a hospital where a patient was hit and the electrical supply was cut off, two medical labs, 29 cars, offices, and banks, have been damaged. To the investigators, these facts are part of the evidentiary basis revealing the widespread practice of indiscriminate IDF fire.

2. OBSERVATIONS OF OUR DELEGATION.

Beit Jala has been the target of much indiscriminate Israeli aggression during the Al Aqsa Intifada because of its location across from the Gilo settlement. Gilo, built on land confiscated from Beit Jala residents, is strategically located overlooking Beit Jala. It is protected from possible Palestinian gunfire by large concrete barriers. In stark contrast, Beit Jala is vulnerable to attacks from the surrounding Israeli military posts and individual settlers. PHRMG described to the delegation that individual non-local Palestinians (usually from Bethlehem) fire with rifles towards Gilo, rarely reaching the settlement. Nonetheless, Israel retaliates with 12.7 mm concrete busting bullets and then, helicopters and tanks shell Beit Jala indiscriminately for several hours *after* the Palestinian gunmen have left the area by car.

Evidence of the resulting destruction exists throughout the village. According to PHRMG, 438 private homes in Beit Jala were hit by Israeli shelling through December 31, 2000, affecting 12,325 civilians with estimated cost of damage at 1,835,728 NIS.⁶² All the Palestinians we spoke to recounted the same story: massive indiscriminate shelling and missile attacks

62 *Overkill, supra* note 57, Table 1. PHRMG reports that shelling in Beit Jala killed 3 civilians, wounded 300, and caused 1,799 residents to become homeless. The figures for other Palestinian villages are also included.



Palestinian homes in Beit Jala damaged repeatedly by Israeli bombardment



by tanks and helicopters against their homes and villages with no provocation on their part. The destroyed buildings and the weapon fragments we saw substantiated this story.

We visited a destroyed house in Beit Jala that had been bombed by helicopters and tank rounds from Gilo. There was no provocation and no apparent reason for the IDF to target this house, except for its location. Forty people (five families) lived in the house and were inside the house when the bombardment began. A school behind this house was also damaged.

Down the street, another home was also destroyed. We spoke with the sister of the homeowner, Terez Abu Zeghrba, who told us that since the Al Aqsa Intifada began, the house was hit 40 times without provocation. Anytime clashes occurred on the road below, the IDF opened fire in the direction of this house. Her brother had recently spent \$1 million to renovate the house.

In the Aida refugee camp, the IDF hit almost every house in the camp with bullets and attacked 42 homes with missiles during November and December alone. One resident of Aida, Omar Abdelaziz Da'jna, told us that the shelling had been occurring twice a week. He showed us his house and emphasized that there was no provocation from in or on his house since he did not want to risk hurting the 21 children that live there.

On two occasions (November 27 and December 2), the IDF launched missiles at his house after midnight following an almost two-hour shelling



Top: U.S.-made laser guided missile
Left: Damaged Home of Omar Abdelaziz Da'jna

raid. We examined the computer-guided missile casings, noting the English inscriptions on the canisters.

Besides the missiles, other holes in the walls of his house resulted from bullets of various size and caliber, including the common U.S.-made M-16 bullets.

In Hebron, a few local Palestinians sometimes shoot towards Israeli army positions and Jewish settlements located in the middle of Hebron. The disproportionate retaliation by the IDF, though, extensively damages the villages and severely affects Palestinians who were not at all engaged in the provocation. Furthermore, the IDF has the ability to shoot the individual (usually there are between one and three) gunmen, but they are usually allowed to escape and then the IDF inflicts collective punishment on the entire village. According to PHRMG, 778 private homes in Hebron were hit, and over 119,200 civilians affected through December 31, 2000. In late November, Israel bombed and devastated the Fatah headquarters with three guided missiles from Apache helicopters. While the building itself was empty, it was in the middle of a civilian neighborhood – residential buildings within ten feet on each side of the office – and



shrapnel ricocheted and caused damage to adjacent homes. The collected weapon fragments contained inscriptions in English.

While in Hebron and Beit Jala there may have been some Palestinian provocation, this is not the case in Gaza, where there is usually no provocation. In the Khan Yunis refugee camp, shelling occurs every night to prevent Palestinians from living there since Khan Yunis overlooks a settlement (it is very rare for Palestinian villages to be higher than the settlements). About 500 people are “homeless” in the sense that they do not sleep in their house at night

because of the shelling and bombardment. While we were in the area, the Israeli soldiers shot blank rounds to scare us and urge us to leave. The buildings in the camp have been hit by all kinds of weapons, with the holes on the buildings reflecting machine gun fire, 12.7 mm “concrete busters,” 30 mm bullets from helicopters, 105 mm and 120 mm bullets from tanks, and grenades, with estimated damages at NIS 2,732,035, according to the PHRMG.⁶³



Fatah Headquarters in Hebron



Apartment buildings in Khan Yunis refugee camp which have been repeatedly bombarded by the IDF

D. Delay and Prevention of Medical Treatment.

Under international law, Israel must ensure the provision of medical care to the Palestinians as an occupied population and must enforce the special protections accorded to persons treating and evacuating the wounded.⁶⁴ During the first two months of the Al Aqsa Intifada, the IDF attacked 82 ambulances using live ammunition and rubber coated steel bullets, wounding 56 medical staff and killing at least one person.⁶⁵ HDIP reports that through April 2, 2001, Israeli attacks on medical personnel and services have injured 103 medical staff and killed at least two medical personnel, in 126 separate attacks.⁶⁶

The same restrictions on movement forced on the Palestinian population are also imposed on ambulances carrying the sick and wounded. Evidence also shows that when ambulances try to cross checkpoints to evacuate the wounded, they are prevented from doing so by Israeli soldiers. The wounded are then manually carried across, resulting in life threatening delays. The staff at Al Ahli and Rafidya hospitals reported to our delegation that the unnecessary delays led to the deaths of many injured civilians treated at their facilities. The United Nations High Commissioner for Human Rights, Mary Robinson, personally confirmed that during her delegation's trip to Gaza, there was gunfire at a checkpoint and that the IDF prevented two ambulances from attending to the Palestinian casualties.⁶⁷

63 *Overkill, supra* note 57, Table 1. Ninety-two private homes have been hit in Khan Yunis, 88,820 civilians have been affected, 100 civilians have been wounded by the shelling, and 490 are homeless.

64 Articles 20, 21, and 55 of the Fourth Geneva Convention, and Articles 12,15,and 21 of the First Additional Protocol to the Geneva Convention of 1977.

65 *Illusions of Restraint, supra* note 47, at 24-25.

66 *Palestinian Intifada Fact Sheet*, (HDIP, Ramallah), available at <http://www.hdip.org/reports/PalestinianIntifadaFactSheet.htm>.

67 *Report of the High Commissioner, supra* note 38, at 9.

Weaponry and the Role of the United States

When demonstrations against Israel's occupation of the West Bank and Gaza erupted again on September 29, 2000, few believed that the Israeli army would deploy attack helicopters, navy ships, heavy tank fire, mortar fire, anti-tank rockets, and even high explosive grenades targeting wide areas against densely populated civilian residential areas.

—Ann K. Brunborg,
Palestinian Human Rights Monitoring Group⁶⁸

The delegation's primary focus was to examine the role the United States has played in Israel's low intensity warfare waged against the largely unarmed civilian population in the occupied Palestinian territories. Virtually all Israel's weapons are provided or financed by the United States. Perhaps Mahmoud Aloul, the governor of Nablus, expressed the Palestinian perception best when he told us:

Israel does not produce tanks⁶⁹ or planes and all of them are U.S. manufactured. You've never heard of Israel using Russian weapons, have you? It is a clear and evident case that the United States is not denying, nor is Israel denying, that all of the weapons essentially come from the United States.⁷⁰

The delegation spent a good deal of time interviewing the Palestinian victims of Israeli military assaults, inspecting damaged property that had been hit with bombs, missiles and bullets, and looking at the residue of Israeli attacks. We spent considerable time in Beit Jala, Hebron, Nablus and Gaza looking at shell debris and weaponry fragments that were found primarily in destroyed and damaged buildings. Although some of the shells contained Hebrew writing, which indicated Israeli manufactured weapons, the overwhelming majority of the fragments, when there was writing on them, had English descriptions at the least, and many of them identified the places of

68 *Overkill*, *supra* note 57, at 2.

69 Although the Merkava tanks that have been used by Israel against the Palestinians during the Al Aqsa Intifada are made in Israel, the development of the tank was financed through the U.S. Department of Defense. *See infra*, note 98.

70 Interview with Mahmoud Aloul, Governor of Nablus, in Nablus, West Bank (January 24, 2001).

manufacture as being within the United States.

What we thought might be a difficult chore in identifying the arms supplier turned out to be an elementary one. During the delegation's trip to the occupied Palestinian territories and Israel, PHRMG was preparing a comprehensive report on the weapons Israel is using against the Palestinians. That organization identified the following array of weapons used by the IDF in the occupied Palestinian territories:

- Apache helicopters firing 30 mm chain guns (675 rounds per minute) and Hell-Fire Air to Ground missiles;
- Huey Cobra helicopters firing 20mm chain guns;
- Naval ship artillery: Reshef patrol boats firing 76mm high explosive rounds against Gaza City on September 20, 2000;
- Main armament of tanks: firing 105mm and 120mm Tungsten carbide DFDS sabo rounds or high explosive rounds;
- M203 Grenade Launcher firing 40mm M406 HE grenades;
- MK19 Automatic Grenade Launcher firing 40 mm M383 grenades fed with a grenade belt carrying 48 grenades with a shooting range of 2200 meters;
- Light Anti-tank Weapons (LAW): shoulder-fired, anti-armor weapons with 84mm or 90mm rockets;
- 5.56 mm bullets fired from M-16 machine guns;
- 7.62 mm high velocity bullets fired from general purpose machine guns and Galil Sniper rifles;
- 12.7 mm bullets fired from Browning machine guns and Barret sniper rifles;
- M114 TOW rockets;
- 40-90 mm mortar fire;
- Air Burst grenades;
- Rapid Detonating Explosives;
- Rubber and plastic coated metal bullets;
- Blank rounds to scare;
- Debris from heavy field artillery found in nine Palestinian cities; and



- Armored pile drivers and Caterpillar bulldozers used to destroy Palestinian agricultural land and homes;

Also identified as American-made are the armored personnel carriers. MK19 grenade launchers, mortar fire, field artillery, air burst grenades and all ship artillery are indirect weapon systems and are not meant to fire at specific targets.

The vast majority of those weapons identified come directly from the United States. Ann K. Brunborg of PHRMG identified as U.S.-made all the helicopters, rockets, grenade launchers, Caterpillar bulldozers, airburst shells, M-40 ground launchers, and all of the ammunition for these weapons, including airborne cannons, Hellfire air to ground missiles and the various high velocity shells. The shrapnel and weaponry debris with identifying writing that the delegation viewed in numerous sites was almost totally U.S.- made. The United States, while providing all these weapons, does not appear to have made any effort presently to either control or monitor how these weapons are used.

The U.S.-made assault helicopters are the most deadly and fear-inspiring weapons used. They are used extensively to attack civilian neighborhoods and to implement assassinations. They are generally used in tandem or in groups to overwhelm the pinpointed target with massive firepower. In Beit Jala, the Israelis turn off all electricity and then fly the Apaches without lights so as to be invisible, thereby further inducing fear and terror in the targeted neighbor-



hoods. The huge number and extensive use of Apache attack helicopters is, at a minimum, a symbol of U.S. foreign policy creating a warlike atmosphere.

In November 2000, about six weeks after the beginning of the Al Aqsa Intifada, the United States gave Israel additional Apache helicopters. The U.S. Embassy spokesperson interviewed by members of the delegation indicated that the supplying of the Apache helicopters was a long process that had begun in the summer of 1999, but did concede, however, that the decision-makers could have intervened at any time to either accelerate or decelerate the process. The U.S. Embassy spokesperson pointed out that the United States could monitor weapon sales, could impose conditions on weapon sales, and could delay or cancel the sale of weapons such as the Apache helicopters. None of these actions are being taken. In fact, as this report is being prepared, word has been received that the U.S. Department of Defense has given Israel permission to purchase another nine Apache helicopters from Boeing to add to its existing arsenal of 42 Apache helicopters.⁷¹ It should be noted that, since the start of the Al Aqsa Intifada, both France and Germany have refused to allow the export of military equipment to Israel.⁷²

Misuse of U.S.-manufactured and financed weapons is also evident in Israel's state assassinations of Palestinians. Since the violence broke out at the end of September 2000, IDF units are responsible for the deaths of more than 20 Palestinian activists accused of being behind shooting and bombing attacks in the West Bank, Gaza Strip and Israel. Amnesty International USA has urged the U.S. government to thoroughly review all arms transfers to Israel in light of reports that U.S. weapons are being used to commit state

71 *Israel to Buy 9 Boeing Helicopters in 500 Million Deal*, REUTERS (New York), Feb. 19, 2001.

72 Nicole Krau, *France and Germany Stop Arms Sales to Israel*, HA'ARETZ ON-LINE, www3.haaretz.co.il/eng/htmls/1_1.htm, Dec. 17, 2000.

assassinations. As Curt Goering, Deputy Executive Director of Amnesty International USA, stated:

There is clear cause for concern that U.S.-made weapons are being used in attacks on Palestinians, since the U.S. is the major supplier of arms to Israel...[Amnesty International USA] call[s] on the U.S. government to provide guarantees that their arms transfers are not being used to violate human rights.⁷³

Palestinians view the United States' permissive arms policy toward Israel as a clear sign of U.S. lack of impartiality and support for the belligerent Israeli occupation. A father of a martyred child from the Khan Yunis refugee camp articulated this view most succinctly: "One word from the U.S. government would stop all this."

73 *Amnesty International Condemns State Assassinations, Requests U.S. Government to Review All Arms Transfers to Israel*, Amnesty International Press Release, (Amnesty International, Washington, D.C.), Feb. 20, 2001, available at www.amnesty-usa.org/news/2001/israel02202001.html.

International Law Governing the Use of Weapons by Israel

The legal context for evaluating the use of weapons by Israel is framed by both international and U.S. law. An examination of these laws provides some objective standard for evaluating Israel's actions; it also provides ideas and possible methods for challenging any legal violations.

A. An Overview of International Law

Israel has occupied the West Bank, Gaza Strip and East Jerusalem since the 1967 Arab-Israeli War. That occupation is subject to the **United Nations Charter**, the fundamental international treaty to which Israel is signatory. In Articles 2.3 and 2.4, Israel agreed not to use force or threat of force in the settlement of disputes, and to settle all disputes by peaceful means.

There is a specific body of international humanitarian law aimed at protecting civilians under military occupation. The law is codified in the **Hague Regulations of 1907**⁷⁴ and the **Fourth Geneva Convention of 1949**⁷⁵. The international community, including the United States,⁷⁶ considers Israel's authority in the occupied Palestinian territories to be subject to these Conventions as a matter of customary international law. Customary law provides that even if a country is not a party to a particular treaty, it may still be bound by the terms of the treaty if it is intended for adherence by states generally and is in fact widely accepted in the international community.⁷⁷

Despite this international consensus regarding the applicability of these Conventions to Israel's occupation, and despite the explicit statement in Article 2 of the Geneva Convention that it applies "to all cases of partial or total occu-

74 Fourth Hague Convention Respecting the Laws and Customs of War on Land and the Annexed Regulations (1907), text *available at* www.tufts.edu/departments/fletcher/multi/texts/BH036.txt.

75 Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, August 12, 1949, 75 U.N.T.S 287, text *available at* www.tufts.edu/departments/fletcher/multi/texts/BH241.txt.

76 U.S. Department of State, *Country Reports on Human Rights Practices – 2000, Occupied Territories*, (February 2001), *available at* www.state.gov/g/drl/rls/hrrpt/2000.

77 RESTATEMENT (THIRD) OF THE FOREIGN RELATIONS LAW OF THE UNITED STATES § 102(2) (1987).

pation,” Israel disputes the application of the Fourth Geneva Convention. It has generally conceded the application of the Hague Convention to its occupation of the West Bank and Gaza.⁷⁸ However, as a result of the Al Aqsa Intifada, Israel now asserts that the Hague convention does not apply because the situation is no longer a “belligerent occupation” but rather “a situation of hostility.”⁷⁹ Under the Hague Convention, Israel is responsible for compensating Palestinians for any damage caused by its actions undertaken for military purposes, such as the seizure of property belonging to a Palestinian in the occupied Palestinian territories. By now contending that the Convention does not apply, Israel is arguing that it no longer is required to compensate Palestinians whose property Israel has taken.

The Hague and Geneva Conventions prescribe the conduct of the belligerent occupier during what is assumed will only be a temporary period of occupation. These treaties specifically counter the idea that territory can legitimately be acquired by war and conquest. “However instituted, belligerent occupation connotes only a temporary, provisional circumstance and an implicit duty to withdraw once hostilities have been brought to an end.”⁸⁰ Thus, the Fourth Geneva Convention proscribes the military occupier from taking any action that turns its temporary presence into entrenched sovereign permanence. Policies by the occupier such as mass confiscations of civilian property or settlement of the occupier’s own civilians in the territories are therefore absolutely prohibited. Likewise any “peace” agreement that purports to transfer or legitimize sovereign claims by the occupier or restricts or cancels the rights of the occupied population to its territory, is absolutely prohibited.⁸¹

Despite the fact that a belligerent occupation is by definition military in character, the protection and humane treatment of the inhabitants of a militarily occupied territory remain fundamental to the international law of belligerent occupation. The Hague and Geneva Conventions, as well as the First

78 HA’ARETZ, January 7, 2001.

79 *Id.*

80 Falk and Weston, *Israeli Occupation Under International Law*, 32 HARV. INT’L L.J. 129, 142 (1991) (“Falk and Weston”).

81 Allegra Pacheco, *A Few Lessons From the Oslo Agreements: A Legal Perspective*, in THE NEW INTIFADA: RESISTING ISRAEL’S APARTHEID, (Roane Carey ed. forthcoming from Verso September 2001).

Protocol to the Geneva Convention⁸² carefully spell out a long list of the rights guaranteed such inhabitants.⁸³ Those rights include prohibiting human rights violations such as torture, illegal detentions, house demolitions, deportations, and humiliation and degradation of the civilian population.

B. Israel's Violation of International Law During the Al Aqsa Intifada

1. EXCESSIVE FORCE AGAINST PERSONS AND PROPERTY: "COLLECTIVE PUNISHMENT"

One of the findings of this report, and the other reports cited, is that Israelis often use weapons for collective punishment. For example, the IDF responds to Palestinian gunmen shooting Kalashnikov rifles at Israeli military posts and settlements by indiscriminately targeting houses not involved in the gunfire, killing and injuring civilians and causing tremendous property damage. Even when the gunfire does come from specific houses, the Israeli retaliation continues at times hours after the gunfire has stopped.⁸⁴ Further, many of the weapons used – MK 19 grenade launchers, mortar fire, field artillery, air burst grenades, artillery from naval vessels off the coast of Gaza – are indirect weapons systems, not meant to fire at specific targets. Other weapons used by the Israelis – 12.7 mm armor piercing bullets referred to as "concrete busters," 30 mm bullets from attack helicopters, 105 mm and 120 mm bullets from tanks – are a response disproportionate to the rifles used against them. The use of these weapons results in indiscriminate retaliation as opposed to retaliation focused on the specific threat by gunmen to Israeli security.

Article 50 of the Hague Regulations prohibits collective punishment: "No general penalty, pecuniary or otherwise, shall be inflicted upon the population on account of the acts of individuals for which they cannot be regarded as jointly and severally responsible." The Fourth Geneva Convention is equally clear on this issue:

82 First Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (1977), 1125 U.N.T.S 3, available at www.tufts.edu/departments/fletcher/multi/texts/BH707.txt.

83 Falk and Weston, *supra* note 80, at 145.

84 *Overkill*, *supra* note 57, at 14, 20.

Article 33. No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited...Reprisals against protected persons and their property are prohibited.

Article 53. Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

Protocol I to the Geneva Conventions even more explicitly prohibits such collective punishment. Article 51 codified the established rule that civilians must not form the object of attack.⁸⁵ Furthermore, acts which are intended to spread terror among the civilian population, and indiscriminate attacks (“those which are not directed at a specific military objective”) are prohibited.

What we are left with, then, are international laws which limit – at least in principle — the right of belligerents in significant ways: First, parties to a conflict must not choose weapons which have the effect of causing unnecessary suffering. Secondly, they must not use other permissible weapons in a manner which causes such suffering, or employ tactics or practices which have such effect. Further, the use of weapons is always subject to the humanitarian laws of war, most recently defined and applied by the International Court of Justice.⁸⁶ These rules specifically forbid the use of any weapons that cannot distinguish between civilians and military personnel and targets, that kill people in neutral territory, and that violate rules of necessity or proportionality or cause permanent damage to the environment.⁸⁷

Finally, if the IDF are not certain that they are being fired upon from a particular location, international law demands that they err on the side of caution. As noted in the First Protocol to the Geneva Convention, Article 52, paragraph 3:

85 See also I. Detter, *The Law of War* 288 (Cambridge U. Press, 2nd ed. 2000).

86 *Legality of the Threat or Use of Nuclear Weapons*, I.C.J. ¶78, 1996.

87 See *Overkill*, *supra* note 57, at 4-8; Detter, *supra* note 85, at 166.

In case of doubt whether an object which is normally dedicated to civilian purposes, such as a place of worship, a house or other dwelling or a school, is being used to make an effective contribution to military action, it shall be presumed not to be so used.

2. EXCESSIVE LETHAL FORCE AGAINST PERSONS: DEMONSTRATIONS

In this report, and in the other reports cited, there are repeated examples of rubber-coated steel, metal, and high velocity bullets used by the IDF to respond to demonstrations where rocks and stones, and in some situations Molotov cocktails, were thrown. Soldiers were rarely in danger during these demonstrations in that they were generally a safe distance away and well protected.⁸⁸ In some of the demonstrations, there was gunfire from the Palestinian side. However, as noted in B'Tselem's report:

...the Palestinians who fired were located a distance away from the stone-throwers and were hidden inside buildings in the area. This separation was intentional, and B'Tselem saw Palestinian Authority personnel moving among the stone-throwers and moving away people with firearms and people in uniform. In all the cases, Palestinian gunfire began after the demonstration had lasted at least an hour and after the soldiers had already fired "rubber" bullets and live ammunition. In fact, after Palestinians fired, the soldiers stopped firing and did not respond, except in one instance, on 27 October, when soldiers shot at Palestinians who opened fire. In the other cases, Israeli security forces did not respond to Palestinian gunfire, which lasted no more than five minutes.⁸⁹

If the IDF purpose was to disperse the crowds, other, less lethal methods should have been available and are used by other countries' police forces throughout the world.⁹⁰

Article 23 of the Hague Convention prohibits the employment of "arms, projectiles, or material calculated to cause unnecessary suffering..." In 1979, the U.N General Assembly adopted the Code of Conduct for Law Enforcement Officials.⁹¹ These rules apply to the police and to security forces involved in

88 See *Illusions of Restraint*, *supra* note 47, at 6.

89 *Id.* at 6-7.

90 *Id.* at 5, 12-14.

91 Code of Conduct for Law Enforcement Officials, G.A. Res. 34/169, U.N.GAOR, 106th mtg. at 185, U.N. Doc. A/Res/34/169 (Dec. 17, 1979), available at www.un.org/documents/ga/res/34/ares34.htm; see *Illusions of Restraint*, *supra* note 47, at 6.

policing, and should be applicable to demonstrations. Article 3 of the Code provides that law enforcement officials may use force only when strictly necessary, and to the extent required for the performance of their duty. The commentary on this article emphasizes that the use of force is allowed only in life-threatening situations and then only to the extent required under the circumstances and where less forceful means did not succeed in removing the danger.⁹² The Israelis seemed to consistently ignore the requirement of gradualism, and moved directly to the use of lethal weapons, often against children.

3. DAMAGE TO PUBLIC BUILDINGS

PHRMG reports that between September 29 and December 31, 2000, 93 public buildings and institutions had been shelled by the Israelis.⁹³ Such destruction of public buildings is prohibited by Article 53 of the Fourth Geneva Convention.

4. DELAY AND PREVENTION OF MEDICAL TREATMENT

This report, and other reports which we have cited, refer to numerous incidents of Palestinian ambulances and medical staff being attacked. Ambulances are often delayed from getting to the wounded, or from transporting the wounded to hospitals, as a result of having to go through Israeli military checkpoints. Articles 20, 21 and 55 of the Fourth Geneva convention specifically prohibit such actions. For example, Article 20 states:

Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transporting of and caring for wounded and sick civilians, the infirm and maternity cases shall be respected and protected.⁹⁴

92 *Illusions of Restraint*, *supra* note 47, at 6.

93 *Overkill*, *supra* note 57, at 23.

94 *See also* Articles 12, 15 and 21 of the First Additional Protocol to the Geneva Convention.

Federal Laws Governing the Export of Arms to Israel

Much of the weaponry in Israel's arsenal is American manufactured, jointly developed by Israel and the United States through U.S. Department of Defense programs, or purchased in Israel with U.S. foreign assistance. The provision of this foreign assistance to Israel must comply with two federal legal regimes, the **Arms Export Control Act** and the **Foreign Assistance Act**. Subsection A presents an overview of U.S. foreign aid to Israel. Subsection B examines the Arms Export Control Act which governs the export of U.S. weapons to foreign governments. Israel's historical compliance with the Act as well as its current compliance is also reviewed under Subsection B. Subsection C examines the Foreign Assistance Act which prohibits the sale of arms to countries which have a consistent pattern of violating internationally recognized human rights and analyzes whether Israel's actions during the Al Aqsa Intifada require the United States to suspend military assistance to Israel.

A. An Overview of U.S. Foreign Assistance to Israel

Since 1976, Israel has been the leading recipient of foreign assistance⁹⁵ from the United States.⁹⁶ From 1949 through fiscal year 2000, the United States has given Israel over 81 billion dollars in foreign aid, making Israel the largest cumulative recipient of U.S. foreign assistance since World War II.⁹⁷

It is important to note, however, that \$81 billion is a conservative number for U.S. foreign assistance to Israel. The figure, \$81 billion, does not include Department of Defense allocations for joint defense projects such as, for example, the \$200 million allocated in past years for Israel's development of

95 "Foreign assistance" refers to both economic/development assistance and military assistance.

96 Clyde R. Mark, *Israel: U.S. Foreign Assistance*, CONGRESSIONAL RESEARCH SERVICE ("CRS"), I.B. 85066, at 1 (updated Jan. 5, 2001).

97 Shirl McArthur, *A Conservative Total for U.S. Aid to Israel: \$91 Billion—and Counting*, WASH. REP. ON MIDDLE EAST AFFAIRS, at 15, (Jan/Feb 2001); Mark, CRS, I.B. 85066, *supra* note 96 at 6.

the Merkava tank.⁹⁸ Moreover, the figure does not reflect imputed interest Israel receives from early disbursement of U.S. foreign assistance.⁹⁹

U.S. foreign assistance to Israel is unique because repayment on loans to Israel is waived and the United States has pledged in the Cranston Amendment to provide Israel with economic assistance not less than the amount Israel owes the United States for previous loans.¹⁰⁰ A more accurate total of cumulative U.S. foreign assistance to Israel may be closer to \$91 billion.¹⁰¹

In fiscal year 2000 alone, the United States allocated over four billion dollars to Israel in foreign assistance.¹⁰² This amount included the average yearly allocation to Israel of approximately three billion dollars plus 1.2 billion dollars allocated pursuant to the Wye River Peace Accord.¹⁰³ Foreign assistance earmarked for Israel in fiscal year 2001 is 2.8 billion dollars.¹⁰⁴

1. U.S. MILITARY ASSISTANCE TO ISRAEL

U.S. military assistance to Israel began as a way to contain Soviet expansion into the Middle East.¹⁰⁵ Despite the fall of the Soviet regime, Israel received over 1.98 billion dollars in military assistance from the United States for fiscal year 2000.¹⁰⁶ The Israeli government has been able to “maintain [its] status as strategic ally by creating an Islamic adversary to replace the Soviet nemesis of the past.”¹⁰⁷ Israeli sources, both official and unofficial, reportedly “offer warnings and advice [to U.S. government officials] about confronting the threat of Islamic fundamentalism, always picturing Islam as the enemy of the West and the United States.”¹⁰⁸

98 McArthur, *supra* note 97, at 15.

99 *Id.*

100 Mark, CRS, I.B. 85066, *supra* note 96, at 6.

101 McArthur, *supra* note 97, at 15.

102 Larry Nowels, CRS, *Appropriations for FY 2001: Foreign Operations, Export Financing and Related Programs*, R.L. 30511, at Table 7 (updated Nov. 28, 2000).

103 *Id.*

104 *Id.*

105 Clyde R. Mark, *Israel: Israeli-United States Relations*, CRS, I.B. 82008, at 2 (updated Jan. 12, 2001).

106 Kenneth Martin, Defense Institute of Security Assistance Management, U.S. Department of Defense, *Fiscal Year 2000 Security Assistance Funding Allocations*, DISAM JOURNAL, (Spring 2000) 22:3 at 20, Table 2, available at <http://disam.osd.mil/>.

107 Mark, CRS, I.B. 82008, *supra* note 105, at 9.

Given these present-day “threats,” Department officials provide that U.S. military assistance to Israel reflects the United States’ “steadfast commitment to Israel’s security, to the maintenance of its qualitative military edge, and to strengthening Israel’s ability to deter and defend itself.”¹⁰⁹ Military assistance allocated to Israel for the fiscal year 2001 will

enable the Israeli government to meet cash flow requirements associated with the procurement of U.S. origin systems such as F-16 and F-15I fighter aircraft, Apache Longbow upgrades, field vehicles, and advanced armaments. Israel’s annual [foreign military financing] level is expected to increase incrementally (by \$60 million each year) to a level of \$2.4 billion in FY 2008, as [economic assistance] is phased out. Israel also will be eligible in FY 2001 to receive Excess Defense Articles under section 516 of the Foreign Assistance Act for defense maintenance, spare parts, support equipment and other needs.¹¹⁰

Unlike other foreign countries receiving U.S. military aid, the United States permits Israel to use up to 25 percent of the aid to purchase weapons manufactured in Israel.¹¹¹

2. U.S. ECONOMIC ASSISTANCE TO ISRAEL

The economic aid Israel receives from the United States is arguably difficult to separate from the U.S. military aid because the economic aid is given to Israel as a direct, lump sum cash transfer and is, therefore, fungible. Israel is not economically self-sufficient and relies upon U.S. economic assistance and borrowing to maintain its economy.¹¹² The U.S. State Department justifies economic aid to Israel as designed to support Israel’s economic and political stability and to “help relieve the impact of economic burdens Israel has incurred due to its isolation in the region and the unstable situation in the Middle East.”¹¹³

108 *Id.*

109 U.S. State Dept., Office of the Sec’y of State, *Congressional Budget Justification for Foreign Operations, FY 2001*, written statement by Asst. Sec’y of State Edward S. Walker Jr. (March 15, 2000), available at http://www.state.gov/www/budget/fy2001/fn150/forops_full/ (“*Congressional Budget Justification for Foreign Operations*”).

110 *Id.*

111 McArthur, *supra* note 97, at 16.

112 Mark, CRS, I.B. 85066, *supra* note 96, at 1.

113 *Congressional Budget Justification for Foreign Operations, supra* note 109.

There are virtually no conditions on Israel's use of U.S. economic aid. Unlike most countries that receive such aid, the U.S. Agency for International Development does not oversee the use of U.S. economic aid in Israel but merely "encourages Israeli reforms to reduce government spending and deficits, increase privatization, reform labor markets and continue to liberalize its trade resources."¹¹⁴

U.S. economic aid to Israel is supposed to be phased out by the year 2008.¹¹⁵ However, half of the assistance will be recovered in military assistance which will amount to 2.4 billion dollars in 2008.¹¹⁶

B. The Arms Export Control Act

1. PURPOSES FOR WHICH SECURITY ASSISTANCE MAY BE PROVIDED UNDER AECA

The Arms Export Control Act of 1976 ("AECA"), 22 U.S.C. 2751 et seq., establishes the conditions under which the United States may legally sell or lease "defense articles and services" to foreign governments. The term "defense article" is defined under the AECA as including any weapon or material used for the purpose of furnishing military assistance.¹¹⁷ "Defense service" includes, among other things, technical assistance or defense information.¹¹⁸

The AECA provides that U.S. military assistance to a foreign country must "strengthen the security of the United States and promote world peace."¹¹⁹ It must further

the security objectives of the United States and ... the purposes and principles of the United Nations Charter[,] and must be "...consistent with...the purposes of the foreign assistance program of the United States as embodied in the Foreign Assistance Act of 1961, as amended..."¹²⁰

114 USAID Briefing Book on Assistance to Israel, available at www.usaid.gov/regions/ane/news-pages/one_pagers/isr.isr.htm; see generally, Mark, CRS, I.B. 85066, *supra* note 96.

115 *U.S. Aid to Israel to be Phased Out*, WashingtonPost.com, www.washingtonpost.com, (Jan. 19, 2001); *Congressional Budget Justification for Foreign Operations, FY 2001*, *supra* note 109.

116 *Id.*

117 22 U.S.C. §2794(3).

118 22 U.S.C. §2794(4).

119 22 U.S.C. §2753(a)(1).

The Foreign Assistance Act, discussed *infra*, prohibits assistance to the government of any country “...which engages in a consistent pattern of gross violations of internationally recognized human rights...”¹²¹

In furtherance of these purposes and principles, the AECA permits the United States to sell or lease defense articles and defense services to a foreign country *solely* for four primary purposes:

- (1) for internal security,
- (2) for legitimate self-defense,
- (3) to permit the participation in regional or collective arrangements consistent with the United Nations Charter or when requested by the United Nations for international peacekeeping, and
- (4) to enable foreign military forces in less developed friendly countries to construct public works and to engage in other activities helpful to economic and social development.¹²²

The terms “internal security” and “legitimate self-defense” are not defined under the AECA and are left to either presidential or congressional interpretation.

To be eligible to receive U.S. military assistance, a foreign country must have agreed not to use the military assistance for purposes other than those provided for under the AECA unless the consent of the President has been first obtained.¹²³ Any country using U.S. military assistance for a purpose not provided for under the AECA or under a more limited agreement signed pursuant to the AECA will be found “in substantial violation” of the AECA and military assistance must be terminated to that country.¹²⁴

2. RESPONSIBILITY FOR COMPLIANCE UNDER AECA

Most of the initiative and much of the discretion on conventional arms transfer decisions under the AECA is left to the President, subject to some

120 22 U.S.C. §2751.

121 22 U.S.C. §§2151n(a) and 2304.

122 22 U.S.C. §2754.

123 22 U.S.C. §2753(a)(2).

124 22 U.S.C. §2753(c).

Congressional oversight.¹²⁵ The President is required to “report to Congress promptly upon the receipt of information” that a substantial violation of the AECA “may have occurred.”¹²⁶ A country will be ineligible to receive U.S. military assistance when either the President determines and reports in writing to Congress that a foreign country is in substantial violation under the AECA or Congress passes a joint resolution finding the same.¹²⁷

Despite a Presidential finding that a country is in substantial violation of the AECA, the President may continue cash sales and deliveries to that country if he certifies in writing to the Congress that a termination of the sales would have “significant adverse impact on the U.S. security.”¹²⁸ However, the Presidential certification is ineffective if Congress adopts a joint resolution finding the country in substantial violation.¹²⁹ The country will remain ineligible until the President determines that the violation has ceased and the country concerned has given the President “satisfactory” assurances that the violation will not recur.¹³⁰

The Secretary of State also has authority to suspend military assistance to a foreign country. The Secretary of State, under the direction of the President, is “responsible for the continuous supervision and general direction of sales, leases, financing, cooperative projects, and exports, under [the AECA].”¹³¹ The Secretary’s authority includes determining whether there will be a:

- (1) sale or financing for a country and the amount thereof;
- (2) lease to a country;
- (3) cooperative project and the scope thereof; and
- (4) delivery or other performance “to the end that the foreign policy of the United States would be best served thereby.”¹³²

125 Note: *Executive-Legislative Relations and the U.S. Arms Export Control Regime in the Post-Cold War Era*, 33 COLUM. J. TRANSNAT’L L., 179, 182 (1995).

126 22 U.S.C. §2753(c)(2).

127 22 U.S.C. §2753(c)(3)(A).

128 22 U.S.C. §2753(c)(3)(B).

129 *Id.*

130 22 U.S.C. §2753(c)(4).

131 22 U.S.C. §2752(b).

132 22 U.S.C. §2752(b).

All contracts between the United States and a foreign country for the sale of defense articles entered into pursuant to the above referenced sections of the AECA “may be canceled in whole or in part, or [their] execution suspended, by the United States at any time under unusual or compelling circumstances if the national interest so requires.”¹³³

3. ISRAEL’S OBLIGATION UNDER THE 1952 MUTUAL DEFENSE AGREEMENT

Under the terms of a 1952 agreement between the United States and Israel, Israel has agreed to use U.S. military assistance

solely to maintain its internal security, its legitimate self-defense, or to permit it to participate in the defense of the area of which it is a part, or in United Nations collective security arrangements and measures, and that it will not undertake any act of aggression against any other state.¹³⁴

The terms “internal security” and “legitimate self-defense” are not defined under the agreement.

4. ISRAEL’S HISTORICAL COMPLIANCE WITH THE AECA

On at least four occasions, the United States raised questions regarding Israel’s misuse of U.S. military assistance. In 1978 and 1982, the Secretary of State informed Congress that Israel may have violated the AECA when Israel invaded Lebanon.¹³⁵ Israel’s attack on an Iraqi nuclear reactor in 1981, resulted in the Secretary of State reporting to Congress that Israel may have violated the 1952 mutual defense agreement. In that case, the President suspended the shipment of four F-16 planes scheduled to be delivered to Israel.¹³⁶ Delivery of another ten F-16’s and two F-15 aircraft was later suspended.¹³⁷ The President eventually lifted the suspension, however, and all the planes

133 22 U.S.C. §2791(e)(1).

134 Mutual Defense Assistance Agreement, signed July 23, 1952 (TIAS 2675), (as quoted in a report by Richard F. Grimmett, CRS, *Defense Articles and Services Supplied to Foreign Recipients: Legislative Restrictions on Their Use*, Rep. No. 86-18F (updated Feb. 6, 1986)).

135 Mark, CRS, I.B. 82008, *supra* note 105, at 12.

136 Richard F. Grimmett, CRS, *Defense Articles and Services Supplied to Foreign Recipients: Legislative Restrictions on Their Use*, Rep. No. 86-18F at 4 (updated Feb. 6, 1986).

137 *Id.* at 5.

were transferred.¹³⁸ Israeli operations in Lebanon also raised concern in 1979 when the President informed Congress of Israel's possible illegal use of U.S. military equipment there.¹³⁹ Although there have been other situations in which a U.S. president expressed concern over Israel's misuse of U.S. weapons, the president did not send Congress a written statement regarding the possible violations in those cases.¹⁴⁰

5. ISRAEL'S COMPLIANCE WITH THE AECA DURING THE AL AQSA INTIFADA

Israel's current use of U.S. security assistance in the Palestinian territories is not related to any U.N. peacekeeping effort nor does it involve the construction of public works. To comply with the AECA then, Israel must be using the security assistance for internal security or for legitimate self-defense.

Although left undefined under the AECA and the 1952 U.S.-Israel agreement, under no reasonable interpretation of the terms "internal security" and "legitimate self-defense" can Israel's use of excessive and indiscriminate lethal force against a civilian population be justified. International legal standards arguably should be consulted in interpreting the terms "internal security" and "legitimate self-defense" because the AECA provides that security assistance must further the purposes and principles of the United Nations Charter. As is apparent from the findings of international human rights groups, the United Nations, and the State Department, Israel is not using U.S. military assistance for either its internal security or its legitimate self-defense; rather, it is collectively punishing Palestinians in violation of international human rights and humanitarian law.¹⁴¹ After the delegation's meetings with Palestinians living in the occupied Palestinian territories, touring the property damage in Beit Jala, Beit Sahour, Khan Yunis refugee camp and in Hebron, and examining x-rays of the killed and wounded, it was also clear to every member of the delegation

138 *Id.*

139 *Id.*

140 *Id.* at 6.

141 *See supra* INTERNATIONAL LAW GOVERNING THE USE OF WEAPONS BY ISRAEL, part B.2.

that Israel's military response to the Al Aqsa Intifada cannot be characterized as actions of "legitimate self-defense" or "internal security."

There is little doubt that the purposes and foreign policy objectives stated in the AECA are not furthered by the continued, unconditional provision of U.S. military assistance to Israel. Military assistance to Israel neither strengthens the security of the United States nor promotes world peace. Supplying military assistance to Israel while Israel flagrantly violates international law and while other countries, such as France and Germany, suspend arms sales to Israel¹⁴² has fueled anti-American sentiment around the world, especially in the Middle East, and jeopardizes the security of the United States as well as its reputation in the world community

C. Foreign Assistance Act

1. PURPOSES AND POLICY OF THE FAA

Congress enacted section 2304 of the Foreign Assistance Act of 1961 ("FAA"), 22 U.S.C. § 2304 et seq. as a way to influence the foreign policy decisions of the executive branch.¹⁴³ The FAA provides that "a principal goal of the foreign policy of the United States shall be to promote the increased observance of internationally recognized human rights by all countries."¹⁴⁴ In light of this foreign policy goal, except under certain specified circumstances, "no security assistance[,]” including military education and training, "may be provided to any country the government of which engages in a consistent pattern of gross violations of internationally recognized human rights."¹⁴⁵ A parallel section of the FAA, section 2151n, prohibits the provision of development assistance to countries that have a consistent pattern of gross violations of internationally recognized human rights.¹⁴⁶

To facilitate the application of section 2304 of the FAA, the President is "directed" to

142 See *supra* note 72.

143 Stephen B. Cohen, *Conditioning U.S. Security Assistance on Human Rights Practices*, 76 AM. J. INT'L L. 246, 248 (1982).

144 22 U.S.C. §2304(a).

145 22 U.S.C. §2304(a)(2).

146 22 U.S.C. §2151n(a).

formulate and conduct international security assistance programs of the United States in a manner which will promote and advance human rights and avoid identification of the United States...with governments which deny to their people internationally recognized human rights and fundamental freedoms, in violation of international law or in contravention of the policy of the United States as expressed in this section or otherwise.¹⁴⁷

2. REPORTING REQUIREMENTS UNDER THE FAA

The Secretary of State, the Assistant Secretary of State for Democracy, Human Rights, and Labor and the Ambassador at Large for International Religious Freedom are required to prepare a “full and complete” report every fiscal year regarding the observance of and respect for internationally recognized human rights in each country proposed as a recipient of security assistance.¹⁴⁸ The Secretary’s report must include, among other things, information regarding commission of war crimes and crimes against humanity.¹⁴⁹

In the Secretary’s preparation of the report and in determining whether a government has engaged in a gross and consistent pattern of violating human rights, the findings of “appropriate international organizations, including non-governmental organizations such as the International Committee of the Red Cross” must be considered.¹⁵⁰ The report must also provide information regarding the extent of the cooperation of the government in question in permitting an unimpeded investigation by international and nongovernmental organizations of alleged violations of internationally recognized human rights.¹⁵¹

3. SPECIFIC CONGRESSIONAL REQUESTS FOR INFORMATION ON FAA COMPLIANCE

If Congress makes a request for specific information regarding a particular country under section 2304 of the FAA, the Secretary of State must within thirty days provide Congress with all available information about observance of and respect for human rights and a detailed description of practices

147 22 U.S.C. §2304(a)(3).

148 22 U.S.C. §2304(b).

149 22 U.S.C. §2304(b).

150 *Id.*

151 *Id.*

by the recipient government.¹⁵² The Secretary of State must also provide information regarding the steps that the United States has taken to promote respect for and observance of human rights in that country and how the United States has sought to discourage human rights abuses.¹⁵³ In addition, the Secretary of State must inform Congress regarding the steps the United States has taken to “publicly and privately call attention to and disassociate[] any security assistance provided for such country from[] such practices.”¹⁵⁴

The Secretary of State is required to provide his opinion regarding whether any extraordinary circumstances exist necessitating continuation of security assistance and whether it is in the national interest to provide such assistance to a country despite the fact that the country is in violation of section 2304.¹⁵⁵ If there are extraordinary circumstances, the Secretary must provide a description of the circumstances and the extent to which assistance should be continued.¹⁵⁶ The Secretary must also state why, on all the facts, it is in the national interest of the United States to provide continued security assistance.¹⁵⁷

4. TERMINATION OF SECURITY ASSISTANCE UNDER THE FAA

a. Joint Resolution of Congress

Congress may any time after the Secretary of State transmits his statement regarding a country’s human rights violations, adopt a joint resolution “terminating, restoring or continuing” security assistance to a country.¹⁵⁸ If 30 days have passed from the date Congress made its request for information and the Secretary of State fails to transmit his statement, no security assistance may be delivered to the country unless and until the statement is transmitted.¹⁵⁹ A country found to be engaging in a consistent pattern of gross human rights violations may still receive security assistance if the President certifies

152 22 U.S.C. §2304(c)(1)(A).

153 22 U.S.C. §2304(c)(1)(B).

154 *Id.*

155 22 U.S.C. §2304(c)(1)(C).

156 22 U.S.C. §2304(c)(1)(C)(i).

157 22 U.S.C. §2304(c)(1)(C)(ii).

158 22 U.S.C. §2304(c)(4)(A).

159 22 U.S.C. §2304(c)(3).

in writing to specific congressional committees that extraordinary circumstances exist warranting provision of such assistance.¹⁶⁰

b. Federal Suit to Terminate Security Assistance

It may be possible to bring suit in federal court to enforce the provisions of the FAA. In *Crockett v. Reagan*,¹⁶¹ 29 members of Congress brought suit against the President and the Secretaries of Defense and State under the War Powers Act and the FAA. The Plaintiffs alleged that the defendants' supply of military equipment and aid to the government of El Salvador while it was engaged in a civil war in which the Salvadoran government consistently committed gross human rights abuses violated the FAA. The court dismissed the Congresspersons FAA claim under the court's equitable jurisdiction because the court found that the proper place for the 29 members of Congress to debate the propriety of providing military assistance to El Salvador was on the floor of the House or Senate.¹⁶²

Despite its holding, the court did not rule out the possibility of an action being brought under the FAA given the proper circumstances. Notable was the court's statement that

a court upon scrutiny of detailed discovery might not agree with the President's assessment of the human rights situation in El Salvador, and could possibly conclude that the provision of security assistance under these circumstances violates section [2304 of the FAA]...¹⁶³

It is not entirely clear who has standing to bring suit under the FAA. At least one federal district court has found insufficient a taxpayer suit.¹⁶⁴ In addition, the court found that to grant a private party standing to sue for enforcement of the FAA would violate Article III of the Constitution.¹⁶⁵ The court reasoned that section 2304

160 22 U.S.C. §2304(a)(2).

161 558 F. Supp. 893 (D.C. 1982), *affirmed*, 720 F.2d 1355, *cert. denied*, 467 U.S. 1251, 104 S.Ct. 3533, 82 L.Ed. 2d 839.

162 *Crockett v. Reagan*, 558 F.SUPP. at 903.

163 *Id.*

164 *Clark v. United States*, 609 F.SUPP. 1249, 1251 (D.C. Md. 1985).

165 *Id.*

is a section clearly enacted to affect the relationship between the Congress and the President over disbursing foreign aid funds in light of an official policy of concern for human rights. The only parties with standing to seek adjudication under section 2304 are the executive and legislative branches.¹⁶⁶

There is a possibility that a victim of human rights abuse may bring suit for damages under the FAA against the U.S. government for the government's failure to suspend military aid to a country in violation of section 2304 of the FAA. Such a plaintiff may argue that the FAA creates a duty in the United States to suspend the sale or lease of U.S. weapons when the U.S. government has information that a country has been engaged in a consistent pattern of violating human rights. The United States' failure to suspend military aid as required under the FAA, the argument would go, directly resulted in specific injury to the plaintiff. Assuming a court would find standing in such a case, other legal pitfalls such as the doctrine of political question may result in the dismissal of the action.¹⁶⁷

5. ISRAEL'S COMPLIANCE WITH THE FAA

It should be noted that it has been very difficult to document Israel's human rights abuses because of Israel's refusal to cooperate with international commissions assigned to investigate the human rights situation in the occupied Palestinian territories.¹⁶⁸ Despite these difficulties, the U.N. Security Council, the U.N. High Commissioner for Human Rights, and every non-governmental human rights group that has investigated the matter has concluded that Israel is in violation of internationally recognized human rights standards in its military response to the Al Aqsa Intifada.

The International Committee of the Red Cross ("ICRC"), the findings of which are referred to as relevant under the FAA, has raised concern about

¹⁶⁶ *Id.*

¹⁶⁷ See generally, Elizabeth F. Schwartz, *Getting Away With Murder: Social Cleansing in Columbia and the Role of the United States*, 27 U. MIAMI INTER-AM. L. REV. 381 (1995-96).

¹⁶⁸ See *U.N. Probes Israeli Abuse Allegations*, CNN/World Website, www.cnn.com/WORLD (posted Feb. 19, 2001).

Israel's violation of human rights and humanitarian law.¹⁶⁹ Most recently, the ICRC has expressed concern over Israel's closures of Palestinian cities in violation of international humanitarian law.¹⁷⁰

Extremely troubling is PHRMG's report which states that one of Israel's aims in the Al Aqsa Intifada seems to be the testing of weapons and weapons systems out on the Palestinian civilian population.¹⁷¹ Claudia Cordone of the International Secretariat of Amnesty International stated during a press briefing regarding Israel's response to the Al Aqsa Intifada that "[t]here is a pattern of gross human rights violations that may amount to war crimes."¹⁷²

The State Department's Human Rights Country Report for Israel and the occupied Palestinian territories was also damning stating that

Israel's overall human rights record for the occupied territories was poor...Israeli security forces committed numerous human rights violations throughout the year [and] often used excessive force against Palestinian demonstrators...There were numerous credible allegations that police beat persons in detention. Three Palestinian prisoners died in Israeli custody under ambiguous circumstances during the year. Prison conditions are poor. Prolonged detention, limits on due process, and infringements on privacy rights remained problems. Israeli security forces sometimes impeded the provision of medical assistance to Palestinian civilians. Israeli security forces destroyed Palestinian-owned agricultural land. Israeli authorities censored Palestinian publications, placed limits on freedom of assembly, and restricted freedom of movement for Palestinians.¹⁷³

Thus far, Congress has not, pursuant to the FAA, specifically requested the Secretary of State to transmit a statement to it describing Israel's violations of

169 See *Annual Report 1999: Israel, the Occupied Territories and the Autonomous Territories*, (ICRC, Geneva, Switzerland), August 2000, available at www.icrc.org.

170 *Israel and the Occupied Territories: The ICRC Starts its "Closure Relief Programme,"* ICRC Press Release, Feb. 26, 2001, available at www.icrc.org.

171 *Overkill*, *supra* note 57, at 38.

172 Amnesty International Press Briefing, Washington, D.C. (Nov. 2, 2000). For an overview of Israel's human rights abuses in the occupied Palestinian territories and in Israel, see *Concluding Observations of the Human Rights Committee: Israel*, U.N. Human Rights Committee, 63rd Sess., U.N. Doc. CCPR/C/79/Add.93 (1998).

173 *Country Report on Human Rights Practices—Occupied Territories*, U.S. Department of State, *supra* note 76.

human rights and outlining what steps the United States is taking to promote observance of human rights standards and to discourage further violations.

Given the unanimity in the findings of the international nongovernmental organizations investigating Israel's human rights abuses and the State Department's human rights country report on the occupied Palestinian territories, it seems clear that U.S. foreign assistance does not promote and has not been promoting Israel's increased observance of internationally recognized human rights. The effects of Israel's indiscriminate use of lethal force witnessed by the delegation leaves little room for doubt that Israel is engaging in gross human rights abuses. Continued foreign assistance arguably has made Israel more brazen in its brutal treatment of the Palestinian civilian population. In addition, it creates the impression that the U.S. sanctions and approves of Israel's misuse of U.S. manufactured and financed weapons. Palestinians repeatedly expressed to the delegation that they felt that both the United States and Israel were engaged in a one-sided war against them. The appearance of U.S. complicity in Israel's human rights abuses violates the explicit purpose and policy of the FAA and militates immediate U.S. government action to suspend foreign assistance to Israel.

Conclusions and Recommendations

A. Conclusions

In light of the overwhelming evidence of Israel's use of U.S. foreign assistance to violate human rights, the delegation concludes as follows:

- (1) The Israeli military and police have **consistently used excessive force against the Palestinian population** leading to a large number of Palestinian casualties and permanent injuries as well as extensive and unnecessary property damage. Such excessive military actions violate international law including, but not limited to, Articles 2.3 and 2.4 of the United Nations Charter, the United Nations Code of Conduct for Law Enforcement Officials, the Fourth Geneva Convention and Article 9 of the Law Enforcement Principles. In addition, many of these actions violate Israel's internal Open Fire Regulations.
- (2) The Israeli military and police have inflicted **indiscriminate attacks on the Palestinian civilian population as a form of collective punishment** in violation of Article 50 of the Hague Regulations and Articles 33 and 53 of the Fourth Geneva Convention.
- (3) The Israeli government has used **closure, isolation of communities, demolition of homes, and destruction of agricultural property as a form of collective punishment** in violation of Article 50 of the Hague Regulations and Articles 33 and 53 of the Fourth Geneva Convention.
- (4) **Most of the weapons Israel has used and is using in these acts of aggression were manufactured in the United States, jointly developed by Israel and the United States, or financed by the United States.**
- (5) The use of **United States military assistance in Israel** and the occupied Palestinian territories against the Palestinian civilian population **has not promoted the purposes and policies of the Arms Export Control Act of 1976 ("AECA").**

- (6) **The excessive and indiscriminate force of the IDF and the Israeli police is not necessary to Israel’s “legitimate self-defense” or “internal security”** and thus violates Israel’s 1952 mutual defense agreement with the United States and the AECA.
- (7) Israel has demonstrated a **“consistent pattern of gross violations of internationally recognized human rights”** which has been well documented by numerous non-governmental organizations. Under these circumstances continued United States funding of military arms and training to Israel is **unlawful under the Foreign Assistance Act of 1961 (“FAA”)**.
- (8) **Palestinian citizens of Israel face systemic discrimination** with respect to economic, social and cultural rights including, but not limited to, the right to housing, unrestricted movement, equal employment, quality public education, proportional access to government resources, and property rights.

B. Recommendations

To avoid the United States’ complicity in Israel’s gross violations of internationally recognized human rights, encourage Israel’s compliance with international law and federal statute, and ensure a just peace in the area, the delegation recommends the following:

- (1) The NLG calls upon the **President of the United States to immediately report to Congress** that he has received information that **a substantial violation of the AECA has occurred**.
- (2) The NLG calls upon the joint session of **Congress to issue a report** and determination that **Israel has acted in substantial violation of the AECA and the FAA**.
- (3) The NLG calls upon the joint session of **Congress to pass legislation suspending all current foreign assistance to Israel** until Congress, in concert with the Executive Branch, has determined that Israel is no longer acting in violation of the AECA and the FAA.

- (4) The NLG calls upon the joint session of **Congress to pass legislation conditioning any future foreign military assistance on Israel's compliance with the AECA, the FAA and international law.**
- (5) The NLG calls upon the President of the United States to work with the U.N. Security Council in implementing the recommendations of the U.N. High Commissioner for Human Rights contained in her report on the Al Aqsa Intifada. Specifically, the NLG calls upon the **President to support the deployment of U.N. peacekeeping forces in the occupied Palestinian territories.**
- (6) The NLG calls upon the joint session of **Congress to establish an independent commission to monitor Israel's compliance with the AECA and FAA.**
- (7) The NLG calls upon the joint session of **Congress to pass legislation conditioning any future foreign economic aid to Israel on the passage of laws designed to better protect the civil rights of Palestinian and other non-Jewish citizens of Israel** and to equalize (proportionally) the provision of government resources provided to Jewish populations with non-Jewish minority populations in Israel.
- (8) The NLG calls upon the joint session of **Congress to pass legislation establishing a U.S. Agency for International Development** in Israel to monitor the current and future use of United States economic aid to Israel.

Appendix



STATE OF ISRAEL
MINISTRY OF DEFENSE

DEPUTY DIRECTOR GENERAL-SPECIAL ASSIGNMENTS

21 January 2001

Dear Ms. Boling,

Thank you for your letter dated 17 January 2001 to Mr. A. Yaron which was forwarded to me.

Unfortunately, it will not be possible for meetings to be arranged for this delegation with representatives of the Ministry of Defense. From an examination of the relevant decision taken by the National Lawyers Guild, it was not a balanced resolution and it would not be of help in achieving the goals of Israel, the cessation of violence and the resumption of talks between the sides.

Sincerely yours,

Moshe Kochanovsky



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c.c A. Yaron - Director General - M.O.D