

Al-Haq, Law in the Service of Man
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Joint written statement submitted by Al-Haq, a non-governmental organisation in special consultative status, Badil Resource Center for Palestinian Residency and Refugee Rights, a non-governmental organisation in special consultative status, and the Palestinian Centre for Human Rights, a non-governmental organisation in special consultative status.

Above the law: Israel's impunity for violations of international law in the Occupied Palestinian Territory¹

On 29 September 2006, the Permanent Representative of Israel, Ambassador Levanon, stood before the Human Rights Council and declared that by using resolutions and special sessions to single out Israel while failing to address grave situations in other parts of the world, the Council had cast "a black stain" on the legitimacy of its own good faith and objectivity.

The fact that human rights violations occur elsewhere in the world should in no way be exploited in such a cynical attempt to divert the attention of the international community from the human rights violations which are being persistently perpetrated by Israel in the Occupied Palestinian Territory (OPT). Indeed, the impunity which Israel enjoys for such violations sends a message to human rights violators in other parts of the world that they can act without fear of being held accountable. Similarly, the almost blanket impunity which Israeli military officials enjoy within their domestic legal system perpetuates a *carte blanche* military culture whereby acts committed under the veil of "security," no matter how unlawful and deplorable, are effectively exempt from judicial review.

Domestic Impunity

Israel's legal obligations under Article 146 of the Fourth Geneva Convention require it to investigate, prosecute and provide effective penal sanctions for "grave breaches" of the convention. Israel is also obliged under Article 2(3) of the International Covenant on Civil and Political Rights to ensure that Palestinians who suffer human rights violations shall have access to an effective remedy determined by competent judicial, administrative or legislative authorities.

Responsibility for investigation of the actions of the Israeli military in the OPT lies with the office of the Military Judge Advocate General (JAG). At the beginning of the second *intifada* in September 2000, the JAG's mandate to investigate the deaths of Palestinian civilians was severely narrowed to encompass only the vague notion of "exceptional cases." Thus, only a negligible fraction of killings of Palestinian civilians by Israeli forces have been investigated.

¹ Al-Mezan Center for Human Rights, the Women's Center for Legal Aid and Counselling, Defence for Children International – Palestine Section, the Ramallah Center for Human Rights Studies, Ensan Center for Democracy and Human Rights, Jerusalem Legal Aid and Human Rights Center and Addameer Prisoners' Support and Human Rights Association also share the views expressed in this statement.

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The few military investigations and judicial proceedings that do take place are not pursued in a prompt, effective and impartial manner and are accordingly plagued by severe shortcomings in the execution of justice. The infamous example of 13-year-old Iman al-Hams, wilfully killed when she unwittingly entered an Israeli military zone in Gaza in October 2004, is a case in point. The Israeli soldier concerned was acquitted of all charges against him by a military court, despite clear evidence that he had "confirmed the kill" by firing at the girl from close range.

Over 3,400 Palestinian civilians, including over 850 children, have been killed by the Israeli military since the outbreak of the second *intifada*. Only a handful of Israeli soldiers have been convicted in relation to those killings, generally for relatively minor offences such as unlawful use of a weapon.

In addition to the inadequacy of the legal framework in holding Israeli officers accountable, certain violations of international law have been officially sanctioned by the executive and judicial branches of the State of Israel. In 2001, the Israeli security cabinet authorised the military to carry out targeted assassinations of Palestinian suspects, even when they are not posing any immediate security threat to Israel. A brief suspension in 2005 notwithstanding, this policy has been carried out with great regularity. Over 300 Palestinians, including many civilian bystanders, have been killed as a result of targeted assassinations. In December 2006, the Israeli Supreme Court ignored the Expert Opinion of Professor Antonio Cassese that killing civilians suspected of terrorism, while they are not engaged in military action, involves a "blatant departure" from the fundamental principles of international law. Rather, the court held that targeted assassinations are not *ipso facto* prohibited under international law. With a wide discretion left to the Israeli military to decide under what parameters targeted assassinations may be carried out, due process rights and the non-derogable right to life of Palestinians have and will continue to be violated by Israel and its officers with impunity.

During the second *intifada*, the Israeli military has repeatedly expanded the open fire regulations applicable to its forces in the OPT in disregard of basic international legal norms. The expanded regulations apparently permit soldiers to use lethal force against Palestinians even in situations where they are not under threat. Also, numerous officers have testified to having received orders to "shoot to kill" in circumstances where such force was patently excessive. Thus, not only are Israeli soldiers committing illegal acts without fear of punishment but they are being expressly ordered to act in contravention of international human rights and humanitarian law.

Israel's impunity for its actions in the OPT is buttressed by the discharge in its legal system of state liability for damages to Palestinians in the context of "combat operations." Finally, the *de facto* immunity which Israeli settlers in the OPT enjoy for persistent violence against Palestinians is further evidence of the attitude taken by Israel regarding violations of Palestinians' human rights.

International Impunity

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That Israel considers itself above international law has been manifest throughout its almost 40-year occupation of the OPT. Since the adoption of Resolution 242 in 1967, a total of 47 Security Council resolutions have been passed specifically relating to violations of international law by the Occupying Power in the OPT. Israel has refused to abide by these binding resolutions, and has done so without reprisal from the UN or the international community. In direct contravention of binding international law as interpreted by the International Court of Justice (ICJ), Israel also continues to construct a Wall in the occupied West Bank, thereby intensifying the widespread violations of the rights of Palestinians, with complete impunity.

Regarding large-scale violations of international law perpetrated by its armed forces, Israel's failure to adequately investigate such actions is compounded by its refusal to co-operate with international missions authorised to do so. Twice in the last year alone, Israel has refused to permit UN fact-finding missions to enter the OPT: one under Special Rapporteur John Dugard to examine the situation in Gaza following the commencement of Israel's "Operation Summer Rains" offensive, a second under Archbishop Emeritus Desmond Tutu concerning the Israeli artillery attack on a residential area of Beit Hanoun, Gaza, in November 2006. Such rebuttals of independent, external investigations, in addition to Israel's refusal to sign the Statute of the International Criminal Court, further illuminate the atmosphere of impunity and lack of transparency in which the Israeli military operates in the OPT

Request to the Council

After almost 40 years of continuous and systematic breaches of the basic rights of the occupied Palestinian population with no censure of those responsible, the effectiveness of merely issuing resolution after resolution must be questioned. Kofi Annan addressed this issue in his final statement to the Security Council, wondering whether the repeated condemnation of Israel has had any effect on its policies. Questions prevail, therefore, as to how Israel's policies and the impunity with which it pursues them can be meaningfully tackled, and as to the role of the Human Rights Council in this regard.

As Special Rapporteur John Dugard notes in his recent report, "[t]he international community has identified three regimes as inimical to human rights – colonialism, apartheid and foreign occupation." With elements of all three prevalent in the OPT, the international community faces a real challenge to the authenticity of its commitment to human rights, and must acknowledge the futility of attempting to rely on words alone when it comes to exerting pressure on Israel to respect the rights of Palestinians. Since the inception of the UN, no other state has been permitted to so openly and incessantly defy international law and Security Council resolutions without sanction as Israel has. Cognisant that it is a new institution capable of exploring new avenues to ease the unremitting hardship of the Palestinian people, the undersigned organisations call on the Human Rights Council to:

- Urgently commission a report on potential new legal mechanisms for individuals to redress violations of human rights including the possibility of the creation of an international human rights court;
- Call upon the Israeli government to immediately facilitate all pending requests by Special Rapporteurs for country visits;

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- Request that the Special Rapporteur on the promotion and protection of human rights while countering terrorism include in his report to the Council following his impending visit to Israel and the OPT information related to the consistency with international norms of (i) Israel's laws and procedures for investigation of allegations of criminal misconduct on the part of the Israeli military, (ii) Israel's amended *Civil Wrongs (Liability of the State) Law*, and (iii) the recent Israeli Supreme Court ruling on targeted assassinations.
- Recommend that, bearing in mind the failure of the Security Council to adopt adequate measures against Israel despite the exacerbating threat to global peace and security stemming from its continuing occupation of the OPT and human rights violations therein, the General Assembly, in accordance with GA Resolution 377, consider the matter immediately with a view to making appropriate recommendations to member states for collective measures against Israel.