

Jerusalem, May 1992

**ACTIVITY OF THE  
UNDERCOVER UNITS  
IN THE  
OCCUPIED TERRITORIES**

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**The Israeli Information Center for Human Rights  
in the Occupied Territories**



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# בִּיִּזְלֵם

**מרכז המידע הישראלי לזכויות האדם בשטחים**

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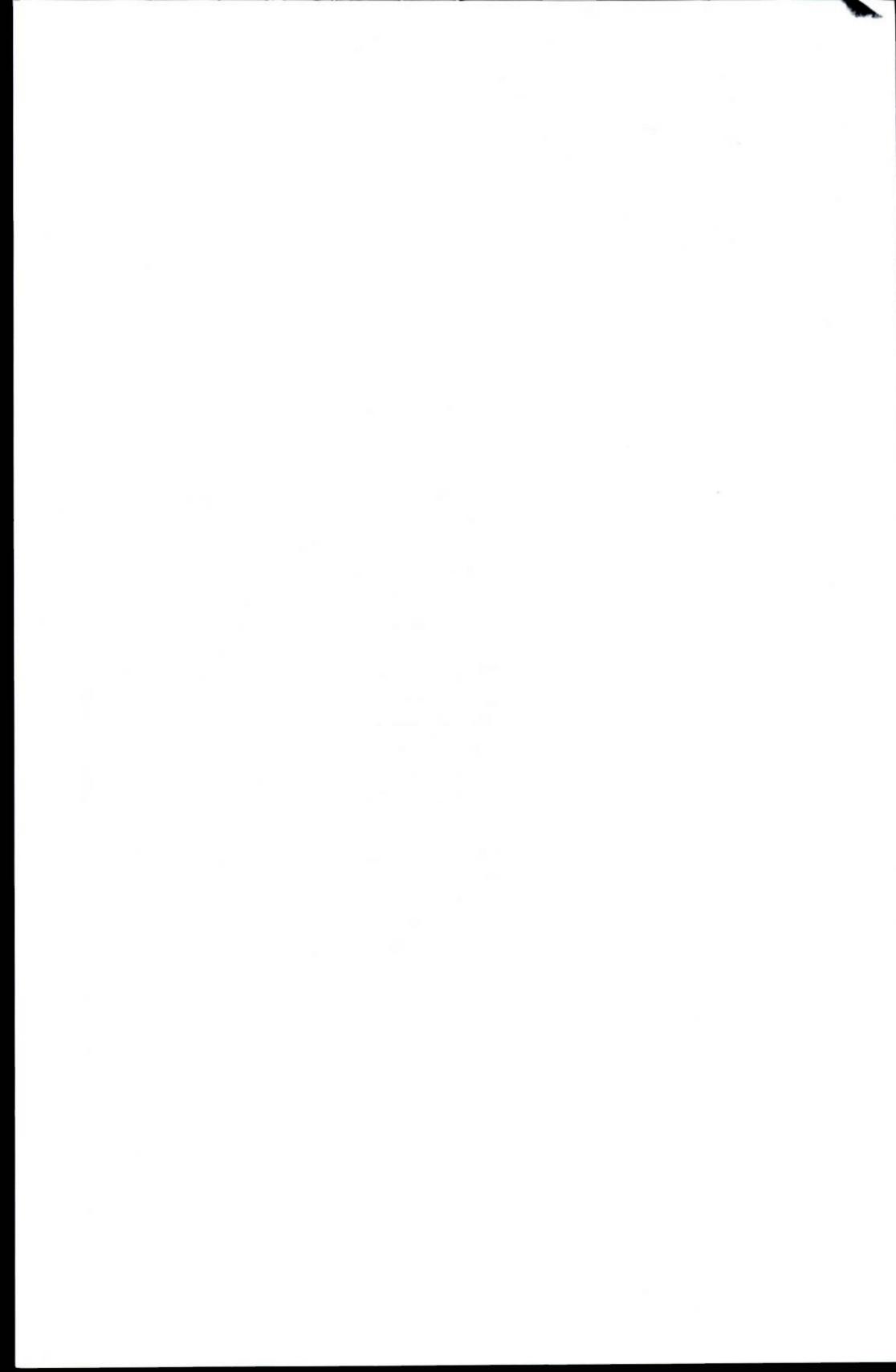
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# CONTENTS

INTRODUCTION	7
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## Part I

A. MODES OF OPERATION	13
B. THE REGULATIONS	15
C. OPENING FIRE BY UNDERCOVER UNITS	18
D. LEGAL ANALYSIS	22
1. Israeli Law	22
a. Self-Defense	23
b. The Defense of Necessity	25
c. Defense of Justification for Those Executing the Law	26
1) Legality of the arrest	27
2) Arrest related to a dangerous felony	28
3) There was no other way to effect the arrest	29
Conclusion	31
2. International Law	32

## Part II

A. SHOOTING	37
1. Tamun - August 1988	37
2. Ramallah - July 1989	41
3. Al-Bureij - October 1989	45
4. Kufr Malek - March 1990	48
5. 'Askar - February 1991	50
6. Shati - August 1991	53
7. 'Askar - March 1992	55
8. Qadum - March 1992	59
9. Tulkarm - March 1992	62
10. Sa'ir - May 1992	67

B. BEATINGS	69
1. Khan Yunis – July 1991	69
2. Idna – July 1991	71
3. Khan Yunis – September 1991	73
SUMMARY AND CONCLUSIONS	75
NOTES	80
APPENDICES	
A. Open Fire Regulations in Situation of Mortal Danger and for Apprehending of Suspects	85
B. Testimonies from the Nazareth District Court Protocol, in Lawsuit for Damages Submitted by the Families of Persons Harmed by Undercover Units	93
C. Fatalities by Undercover Units	98
D. Correspondence between <b>B'Tselem</b> and the IDF	100
E. Response of the IDF Spokesperson	110

# INTRODUCTION

The past two years have witnessed a significant change in the mode of confrontation between the residents of the territories and the Israeli security forces. Whereas at the start of the Intifada the IDF had to cope with a popular uprising which took the form of large-scale demonstrations and stone-throwing, over the past two years there has been an increase in the appearance of groups that employ firearms against Israelis, and against Palestinians in the territories whom they suspect of collaborating with the authorities. Most of the IDF activity against these groups is carried out by the special undercover units known in Hebrew as *Mista'arvim*. There are also undercover units of the Border Police which operate in the territories under the IDF.

The task of the undercover units is primarily to capture *wanted* persons – that is, persons who are considered dangerous terrorists and are suspected of involvement in serious crimes such as the murder of "collaborators," and grave assaults against Israeli civilians and IDF soldiers. These units operate in conjunction with the General Security Service (GSS), utilizing intelligence information.

On October 9, 1988, soldiers disguised as Arabs drove into the village of Yata in the Hebron District and pulled up near a group of young people who were standing in the center of the village. According to testimonies of village residents, when the two leaders of the group, Kamal al-Sariy' and Fadel Najjar, who had been on the security forces' *wanted* list for six months, approached the car, they were met by submachine gun fire. Both were hit. Najjar fell on the spot, and Sariy' ran a few meters before falling to the ground. Both were dragged into the car, which had begun to move. After advancing about 300 meters, the car stopped and the two bodies were discarded. The Association for Civil Rights in Israel (ACRI) lodged a complaint, which led to an investigation by the Military Police/CID.<sup>1</sup>

On October 2, 1991, the Office of the Military Advocate notified Attorney Neta Ziv-Goldman of the Association for Civil Rights in Israel, that according to the Military Advocate's opinion regarding the file, the firing at the two men was legal. Nevertheless, according to the letter, the two soldiers were brought to disciplinary court on charges of illegal use of weapons, having deviated from the military orders for opening fire.<sup>2</sup>

In the aftermath of this event, Reuters reporter Steve Weizman published an article exposing, for the first time, the existence of a unit

for apprehending wanted Palestinians. Weizman claimed that the unit had oral orders permitting its members to "shoot to kill at any wanted Palestinian whose hands were drenched in blood." The IDF Spokesperson and then-Defense Minister Yitzhak Rabin denied the report and stressed that "there is no unit in the IDF that operates contrary to the orders for opening fire which are known and are anchored in the law." Nevertheless, the Chief Military Censor lodged a complaint with the police against Weizman, and against Andrew Whitley of the Financial Times, who had also published a story about the special units. The complaint referred to "publication of a report containing sensitive security information without [first] submitting it for censorship."<sup>3</sup>

Since October 1988, numerous reports have been published about the existence of undercover units that operate in the territories for all intents and purposes as liquidation squads. The reports were repeatedly denied by security sources until the units were exposed in an Israeli television report by Mordechai Kirshenbaum. That report defined the units' mission: "to apprehend *wanted* Palestinians from the hard core of the Intifada, those with blood on their hands."<sup>4</sup>

In recent months, the IDF has been employing a new policy against these *wanted* persons, described by the OC Central Command, Maj.-Gen. Dani Yatom, in media interviews, as an "offensive policy." The practical result of this policy has been, first and foremost, the capture of hundreds of *wanted* Palestinians, and the killing of at least ten, in the first four months of this year, most of them by the undercover units.

According to **B'Tselem's** data, some seventy residents of the territories were killed by the undercover units between the start of the Intifada and the end of April 1992. An analysis of the cases shows that many of those killed were hit by more than one bullet, and usually in the upper part of the body. It is our assessment that in a large percentage of the cases, it was possible to apprehend the suspects without killing them.<sup>5</sup>

Various military sources have denied the existence of a policy of "liquidating *wanted* persons," but the testimonies collected by **B'Tselem** indicate that even if there is no official policy that permits such killing, in practice the phenomenon exists. This report illustrates how the methods of operation employed by the special units, on the one hand, and the message transmitted to the soldiers by the entire military system, on the other, cause so very many deviations from the declared policy.

The first part of the report briefly describes the methods of operation of the special units, and the instructions for opening fire in the IDF in

general and in the undercover units in particular. A comprehensive legal analysis of the subject is also presented.

The second part of the report presents a detailed analysis of ten representative cases in which Palestinian residents of the territories were killed by the special units. These cases were chosen from among the many investigations conducted by **B'Tselem** on this subject, as they characterize different types of problems caused by the activities of the undercover units. In addition, three cases in which Palestinians were beaten by soldiers of the undercover units are described.

The IDF severely limits the availability of information on the activities of the undercover units, and refuses to reveal the open-fire regulations in the territories to the Israeli public.<sup>6</sup> The main sources of information for this report are the large number of investigations and interviews by **B'Tselem** staff of Palestinian eye-witnesses and Israeli reserve soldiers. In addition, we relied on news reports and articles in the Israeli press, and reports from the human rights organizations al-Haq and PHRIC (the latter of which has recently published its own report on the undercover units).<sup>7</sup>



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# **Part I**

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- A. Modes of Operation
- B. The Regulations
- C. Opening Fire by the Undercover Units
- D. Legal Analysis



## A. MODES OF OPERATION

Those conscripted to the special units are soldiers "of high quality, whose draft qualifications would satisfy any elite or special unit in the IDF."<sup>8</sup> The conscripts undergo a long period of training during the course of which they receive special instruction in the use of firearms, anti-guerrilla warfare, as well as physical training, hand-to-hand combat, and elementary studies in Arabic and Palestinian social customs.<sup>9</sup>

According to newspaper reports, soldiers in the special units are armed only with firearms. Usually they use FN pistols, and sometimes Uzi sub-machine guns. They do not carry any less deadly weapons, such as rubber bullets or teargas grenades.

In order to conceal their identity, soldiers in the undercover units use diverse disguises (traditional Arab clothing, "uniforms" of the various masked groups, everyday civilian garb, women's dress, or skull-caps and prayer-shawl fringes of Jewish settlers). For transportation they use cars belonging to residents of the territories, bearing local license plates, which have been confiscated by the army. In the past, the undercover units sometimes disguised themselves as TV crews and reporters, but desisted from this practice after severe criticism by the press and others.<sup>10</sup>

According to the PHRIC report (see p. 9, this report), a settler named Gedaliah Becker accidentally shot two undercover soldiers on August 31, 1988, when he thought that they were about to throw a Molotov cocktail at his car.<sup>11</sup>

In operations aimed at apprehending wanted Palestinians, the undercover units usually initiate the contact. In some cases they sit in ambush, waiting in a local car near where the wanted person is expected to pass. Or, they may "run into him" on the street. More than once, innocent people have been hurt due to mistaken identification. (See below, p. 20).

Another type of activity consists of provocations intended to instantly identify stone-throwers or hurlers of Molotov cocktails. (The bait might be an *Egeded* (civilian) bus, for example.) As soon as stones are thrown at the bait-vehicle, the members of the undercover unit (who sometimes join in the stone-throwing) try to capture anyone designated a "chief inciter."<sup>12</sup>

Many of the undercover units' operations entail conscious entry into life-threatening situations. It is commonplace for a small squad of

soldiers to enter a bustling Palestinian area or make close contact with wanted persons carrying live or non-live weapons. This type of situation sometimes develops into an incident in which the undercover soldiers open fire indiscriminately, feeling that their lives are in danger.

An incident of this sort was seen in a CNN report shown on the "Yoman" news program on May 15, 1992. In the report, an operation by an undercover unit was photographed in the village of Rumana (Jenin District). Soldiers in civilian dress arrive at a place in the village where a funeral is about to take place, shoot into the air, overturn chairs, push the residents aside, and carry out a chase in the alleys of the village. After this broadcast, the Deputy Chief of Staff, General Amnon Shahak, was interviewed. He said that 11 residents of the village were arrested in the operation and pointed out that one man who was armed was wounded by the soldiers but managed to escape.

## B. THE REGULATIONS

IDF soldiers serving in the territories operate according to orders contained in a booklet which every soldier there receives. The booklet is largely devoted to the Rules of Engagement in different situations. The orders define what a soldier may and may not do in terms of opening fire, with reference to the particular circumstances of the event: shooting in a life-threatening situation, shooting to disperse a riot, and the procedure for apprehension of suspects.

In recent years the orders have been slightly modified, apparently with the aim of making them conform to the law and making them clearer. Thus, for example, in the description of the stages for opening fire, clarifications have been added about taking precautions when shooting in the air, and it is stressed that the upper part of a suspect's body is not to be deliberately targeted.

Despite the modifications, the IDF's Rules of Engagement are still not unequivocal and the language of the orders is not clear, as seen by expressions such as "in accordance with the circumstances," "to the degree possible," "as much as possible," and so forth. These phrases leave many "grey areas" and give soldiers much discretion, without providing them with sufficient explanation as to how to exercise that discretion properly. (If we compare the IDF Rules of Engagement with those of the police, for example, it would appear that in the police regulations, an attempt is made to give clearer instructions by giving examples and clarifications regarding a variety of situations.<sup>13</sup>)

The unclarity of the written orders is compounded by oral briefings given to soldiers in the field, and by statements to the media made by senior officers, all of which offer diverse interpretations of the orders and, rather than make them clear, have the effect of making them vaguer.<sup>14</sup>

After Intifada activists began masking their faces to prevent their identification, a new chapter was added to the orders for opening fire: "Procedure for Apprehending Persons in the Gaza Strip or Judea and Samaria Who are in Disguise or Wearing Masks, Under Suspicious Circumstances, Through the Use of Firearms." For a time (a month or two during the fall of 1989), orders for opening fire at masked individuals apparently stated that following the implementation of the "regular" stages, soldiers should "continue shooting until they [the masked individuals] stop." (According to testimony given during the trial of Lt. Col. A., former commander of the "Shimshon" undercover unit,

on October 22, 1991, at the Military Court in the Kiryah [IDF headquarters], Tel-Aviv.) [For more on the trial, see p. 45 of this report.] The original orders were reinstated (according to the same testimony) "apparently after they saw that there were a large number of casualties."<sup>15</sup>

According to press reports, in recent months new modifications in the orders have been introduced at the initiative of Maj.-Gen. Yatom. These changes affect the definition of a "suspect" and of "danger to life."<sup>16</sup> In response to a question posed by Yossi Sarid at a meeting of the Knesset Defense and Foreign Affairs Committee on April 28, 1992, regarding the new open-fire regulations, Chief of Staff Lieut.-Gen. Ehud Barak answered that "there are no new instructions about opening fire, only adjustments, in order to respond appropriately to the reality in the field, and to enable IDF soldiers to capture *wanted* persons, while reducing the danger to their own lives." The Chief of Staff added that all the updates in regulations are submitted to the legal administration for approval before being implemented. "The changes are essential in clarifying what a life-endangering situation is," said the Chief of Staff.<sup>17</sup>

In the new instructions, life-danger is defined as a situation before an attack, such as when a person has drawn a live or non-live weapon, and as a situation after an attack, such as when it appears as if the attacker is about to throw another Molotov cocktail.<sup>18</sup>

The modified orders state that fire is to be opened at armed persons, without warning, even if they can be apprehended by other means. In an interview on Israel TV's "Mabat" newscast on March 16, 1992, the commander of the Nablus sector, Col. A., said: "The message here is clear. Anyone bearing arms is in effect a potential attack[er] and from our standpoint he constitutes a danger. In light of this, as long as he is carrying a weapon, we hit him." Speaking at a press conference on May 6, 1992, Maj.-Gen. Yatom stated that the orders permit opening fire at armed persons without warning.

In the course of preparing this report, we took testimony from a number of IDF reservists who declined to be identified by name in print [soldiers are not authorized to discuss details of their service with civilian bodies]. According to testimony, in the past, if a person threw a Molotov cocktail, fire could be opened only if he was seen holding the firebomb. Today soldiers can shoot **in order to hit** without any warning call, even if the person has already thrown the Molotov cocktail, and even if he is fleeing and it is clear that he is not holding another firebomb.

According to testimony given to **B'Tselem**, the orders regarding armed persons are also applicable in the case of masked individuals "under

suspicious circumstances," – i.e. according to explanations given to the soldiers, if they are holding a stick, a chain, or any other object suspected of being a non-live weapon.

According to soldiers' testimony, they are told in oral briefings that in cases of stone-throwers as well, they should "**fire at the center of the mass,**" without warning calls and without first firing in the air or at the legs, in any incident that endangers life, even after the incident has ended and the danger has passed.

## C. OPENING FIRE BY THE UNDERCOVER UNITS

All official statements insist that the undercover units' orders for opening fire are the same as those for the entire IDF. Thus, the press quoted the Chief of Staff as telling the Knesset's Defense and Foreign Affairs Committee: "The units' activity is legal and the Rules of Engagement are the same as for other IDF units."<sup>19</sup>

In reply to an inquiry by **B'Tselem**, the Office of the Military Advocate General stated:

The Rules of Engagement that are binding on all IDF soldiers operating in Judea-Samaria and in the Gaza District are also binding on the undercover soldiers. The orders given the undercover forces are no different from those of all the soldiers. In view of this, soldiers are obligated to carry out the apprehension of suspects procedure in its three stages, including calling out a warning before using firearms.<sup>20</sup>

Nevertheless, there is plenty of evidence showing that the actual situation is different. Several of the witnesses in the trial of Lt. Col. A., former commander of the "Shimshon" unit, referred to "orders of the IDF as a whole," as distinct from "the unit's orders." In preparing this report, we were told by many witnesses that they had heard from soldiers (currently and in the past) in the undercover units that their open-fire regulations were different.

According to **B'Tselem's** information, for the past few months there has been a new policy regarding Palestinians wanted by the security forces. According to press reports, this is an "offensive policy" **against wanted persons whose hands are drenched in blood** (i.e., alleged to have murdered suspected collaborators or to have attacked Israeli civilians).

In an article which appeared in **Ha'aretz**, Ze'ev Schiff wrote:

In the territories there is a frenzied, ruthless man-hunt after *wanted* persons who have central roles in the Intifada, and many of whose hands are drenched in Jewish and Palestinian blood. By nature, the uprising does not leave the IDF much room for protracted initiated actions. But lately, the offensive against the *wanted* persons has been bearing fruit, militarily speaking. Since a number of the *wanted* persons have been shot and killed, some 30 cases have already been registered in which families of

*wanted* persons have brought their sons to turn themselves in. This was preceded by official information sessions for families, featuring photographs of *wanted* persons who had been killed, where they were told that only by turning themselves in would their sons be spared a similar fate, and perhaps their sentences would be eased.<sup>21</sup>

The information provided by Schiff confirms the impression which emerges from **B'Tselem** investigations that the security forces have launched an offensive against the *wanted* persons (of whom, according to Schiff's article, there are several hundred in the West Bank and Gaza). The offensive is carried out by special units, with assistance from the GSS. During the course of these offensives, even though according to official sources, the instructions are not shoot to kill, *wanted* persons are killed. In the attempt to convince the *wanted* persons to turn themselves in, the security forces use methods of the type Schiff describes as formal information sessions.

There has been a large number of press reports in recent months about the existence of new orders for the undercover units (and apparently for other special units). For example, Alex Fishman of **Hadashot** wrote about the "short procedure" and the "very short procedure" for opening fire by the special units in the territories:

The short procedure includes calling out in Arabic "Halt or I'll shoot," and shooting at the feet. In it, they skip the stage of shooting into the air. The very short procedure is applicable when there is a fear that calling a warning in Arabic will endanger the forces. In such a case, it is permissible to shoot at the legs also without warning.

After January, these procedures received *de facto* approval from the military advocates, appeared in writing, and were used intensively.<sup>22</sup>

Michal Sela, a journalist from the daily **Davar**, quoted a senior commander in Samaria as saying in a press briefing following a series of incidents in which *wanted* persons were killed, that the soldiers open fire after positive identification is made. "To **Davar's** question as to whether this was shooting in a life-threatening situation," Sela wrote, "The officer replied: The soldiers shoot after positively identifying the person." In the case in question, Sela noted, the *wanted* person was carrying a weapon but had not pointed it at the soldiers. In the same article, Sela quoted an exchange between a journalist and another senior officer: "Following several intermediate formulations, a reporter again asked: If I see a *wanted* person, can I shoot? The senior officer replied: Yes!"<sup>23</sup>

On May 4, Reuven Pedhatur wrote in the daily **Ha'aretz**: "The Rules

of Engagement and the methods of operation dictated to the soldiers in the undercover units enable a nearly unlimited use of firearms, and in almost every case, give the person shooting legal cover."<sup>24</sup> An analysis of incidents in which the undercover units were involved also points to operational modes distinctive from those employed in "regular" units.

Killing of *wanted* persons by the undercover units is not a new phenomenon. **B'Tselem** knows of cases in which wanted persons were killed by these units as early as the summer of 1988.<sup>25</sup> However, recent months have seen a considerable increase in the scale of the phenomenon, and it is now clear that these are not isolated incidents, but reflect a policy affecting dozens of Palestinians.

The impression that deliberate killing of *wanted* persons occurs is strengthened by the "wrong address" phenomenon. In a number of instances in which undercover units killed Palestinians, it later emerged that they had targeted the wrong person. In at least one case known to **B'Tselem**, the IDF announced publicly that the wrong man had been killed. On October 7, 1991, 'Imad Nabil 'Atiq, age 22, from the village of Burqin in the Jenin District, was shot. Following the incident, army sources told the press that he had been armed with a pistol and had not heeded the soldiers' calls to halt. The sources added that 'Atiq had long been on the *wanted* list. Palestinian sources, however, claimed that 'Atiq had been neither armed nor wanted. Later, the IDF said there had been a case of mistaken identity. In the second section of this report, we present an analysis of two cases from which one gets the impression that the action targeted certain people, but these were not the ones eventually hit.<sup>26</sup>

It seems that the operational methods of the special units, especially the fact that they work on the basis of intelligence information (that a certain person is expected to be in a certain place at a certain hour, or based on a description of the *wanted* person's outer appearance) leaves the way wide open for mistakes to occur.

Many of the Palestinians killed by the undercover units, in particular in the West Bank, had been wanted by the security forces; some were carrying firearms, others were unarmed.<sup>27</sup> **B'Tselem's** investigations found that in the majority of cases in which the undercover units killed *wanted* Palestinians, they did not first try to capture the *wanted* person without resorting to firearms. In some cases, it is almost certain that the *wanted* person could have been apprehended without being killed.

The undercover units do not always open fire on *wanted* persons. In some cases they apprehend *wanted* Palestinians without opening fire at all. This suggests, again, that in many cases it is not necessary to open fire. Two cases in point follow.

In early March, 1990, Najeh Sabti Khatatbah, who had been wanted by security forces since the start of the Intifada, was arrested in the village of Beit-Furiq (Nablus District). A helicopter circled in from above, and six soldiers arrived at the house and arrested Khatatbah without opening fire. On April 19, 1992, members of the undercover units surrounded a house in the village of Karawat Bani Zeid (Ramallah District) which was used as a hiding place by *wanted* Palestinians. Six *wanted* persons were arrested on the spot and taken for interrogation, without a shot being fired.<sup>28</sup>

It should be stressed that not all the *wanted* persons killed were shot by undercover units, and that not everyone killed by the units was on the *wanted* list. Undercover units also operate against groups of masked individuals and against stone-throwers. In the course of such operations, the units' members open fire in situations that are not life-threatening, at people who are not *wanted*, and in many cases kill them.

On April 20, 1992, two soldiers and an officer from an undercover unit were sent to the village of Dura, in the Hebron District. One of their tasks, among others, was to capture persons writing slogans on walls. In the village they followed the movements of two masked individuals. When they saw them writing slogans they approached them, and at a distance of about two meters carried out, they afterward maintained, **"an abbreviated procedure for apprehending a suspect."** They shouted "halt" in Arabic as two of them fired in the air, and when one of the masked individuals turned toward them, the officer shot him in the legs. (This is the soldiers' version. The masked Palestinians subsequently told **B'Tselem** that there had been no call to halt and no firing in the air before they were shot in the legs.)<sup>29</sup> The soldiers said that one of the masked individuals had been armed with a chain. Other witnesses – an Arab couple living opposite the scene of the incident (Musa and Sahr al-Rajub), and an Israeli couple (David and Aviva Elimelech) who were their guests and were eye-witnesses to the events – testified to **B'Tselem** that the masked individuals had been holding only a can of spray paint. An examining officer found that the soldiers had acted "appropriately and in accordance with orders." It follows, then, that the use of an "abbreviated procedure for apprehending a suspect" was implemented in accordance with orders.

## D. LEGAL ANALYSIS

### 1. Israeli Law

In an affidavit that then-Deputy Chief of Staff Ehud Barak submitted to the Supreme Court in a High Court of Justice case dealing with the legality of the Rules of Engagement,<sup>30</sup> Barak stated that the Rules of Engagement were based on the conception that "opening fire shall be justified according to the general principles of the Penal Law" (Par. 5 of the affidavit). Barak added:

Underlying the orders for opening fire are the guiding principles relating to self-defense according to the defense of "necessity," [and to] the defense of "justification" which can be invoked by any person fulfilling a task under law according to those provisions of law pertaining to the dispersal of rioters.

The foundation of the Rules of Engagement rests on the general principles of the Penal Law, as its provisions are applied in the conditions and circumstances of the IDF's rule in the areas, by virtue of the authority deriving from international law. In this regard, as noted, no change was effected in the orders before the uprising or after it began.

In the case at hand, then, the question arises with respect to the application of the said principles. We shall argue that they are implemented in the field, as stated, according to the law that applies in Israel and its accepted judicial interpretation in years past and more recently -- all adapted to the requirements of the time and place.

**The guiding principle which forms the basis for the reservations and limitations in the Rules of Engagement is the need to preserve at all times the reasonableness of the means employed, and proportionality between the gravity of the means and the degree of risk. It is subject to and deriving from this principle that the limitations and reservations detailed below were determined. (Emphasis added.)**

The Penal Law, then, is the legal framework within which to examine the Rules of Engagement, their application and usage. The provisions of international law, as noted in the affidavit, do not grant special permission to use live fire in administered areas.

The use of distinctive IDF terminology is likely to give rise to the impression that a new lexicon has replaced the regular Rules of Engagement, giving IDF soldiers special permission to open fire. In fact, however, the quasi-legal terms invented by the IDF to justify the use of live ammunition – "*wanted* persons," "masked individuals," "special units," etc. – have no legal foundation or validity unless they conform with the relevant provisions of the Criminal Law.

In the affidavit quoted above, Chief of Staff Gen. Barak cites the legal justifications for the use of live fire. We shall now consider the terms he uses, elucidate them, compare them with the IDF derivatives of "*wanted* persons" and "masked individuals," and examine the Rules of Engagement -- as far as they are known -- and their application according to the factual evidence in our possession and contained in this report.

### **a. Self-Defense**

Sec. 22 of the Penal Law (Amendment No. 37, 1992) states:

A person shall not bear criminal responsibility for an act or an omission if he acted in the way that he did against an assailant in order to ward off an unlawful assault, which placed his own or another's life, liberty, person or property in danger of harm; however, a person shall not be deemed to be acting in self-defense if he brought about the said assault by his improper behavior, while foreseeing the possible developments.

defense cannot—Sec. 22(b) of the Penal Law states that the right of self be invoked "if in the circumstances of the case the act or omission were not reasonable in order to prevent harm.

The wording of Sec. 22 was recently amended: the legislator differentiated between "self-defense," now addressed in Sec. 22, and the "defense of necessity" currently addressed in Sec. 22(a) of the law.<sup>31</sup> Prior to the amendment, the two defenses were formulated together in Sec. 22. The original provision read as follows:

A person may be exempted from criminal liability for an act or omission if he can show that he acted in the way that he acted in order to prevent consequences that could not otherwise be avoided and that would have inflicted grievous injury or harm to his person, honor or property, or to the person or honor of others (whom he was bound to protect), or to property placed in his charge.

The new version of the defense in the Penal Law, following the amendment, has not yet been considered by the Supreme Court, but it

would appear that this amendment has not altered the basic principles and prerequisites for the application of the defenses of "necessity" and "self-defense," as they were interpreted in the past by the Supreme Court under the previous formulation of the Penal Law.

The accepted opinion in the State Attorney's and the Military Advocate General's Offices is that the new wording of the law assimilated judgements rendered by the Supreme Court under the previous wording of the law, and the amendment does not depart from the Court's precedents.<sup>32</sup> We will therefore discuss these defenses on the basis of the rules determined by the Supreme Court prior to the amendment. These rules emphasized the requirement of proportionality between the act (what was done in self-defense or out of necessity) and the harm sought to be prevented, the requirement that the offender had no other way to prevent the danger, and the requirement that the act was no more than required to prevent the danger.

The factual framework within which an individual may act in self-defense is when he, or another, is **assaulted**, and the action he takes is meant to **ward off** the assault. The action will constitute self-defense only if it was reasonable in order to prevent the harm. Therefore, this section of the law cannot be invoked to apprehend "*wanted persons*," "*masked individuals*" or "*dangerous individuals*," even if they are armed, since a soldier may act in the self-defense only if the harmed person actually assaulted the soldier or another person, and the soldier used firearms to ward off the assailant.

The argument that "*wanted persons*" in themselves constitute a danger, without their having taken offensive action, lacks legal basis. The same holds true concerning masked or armed individuals. A basic principle of self-defense is that an action is not justified to ward off a possible or even very probable future danger, but only when the danger is present in the form of a concrete assault, and the action is required in order to ward off that assault as it is actually occurring.

It is doubtful, therefore, if the basic principles of self-defense, and the social goals that it aims to achieve, are compatible with the methods of operation of the special units. Supreme Court rulings emphasized numerous times that the immediacy of the danger is a condition that must be satisfied before "self-defense" can be invoked. There is no room for the use of force either prematurely, or after the danger has passed.<sup>33</sup>

Explicit statements which give rise to substantial doubt about the application of "self-defense" to the actions of the special units were voiced by Haim Cohen J.:

One must distinguish between self-defense in the spirit of battle

and self-defense for protection: The fighter responds with a counterattack, and the fact that he defends himself against his enemy, is no more than the reason for his war; while the person who protects himself, abhors war and is deterred by it and makes every effort to avoid it, and every act of violence which he commits for his defense he commits reluctantly, and having no other choice. The protection of the law is given to one who defends himself having no other choice, and not to one who fights on the pretext of self-defense.<sup>34</sup>

The type of action of the special units, as described in other sections of this report, involves the infiltration by a small group, armed and well-trained, into the vicinity of a hostile civilian population, in which it is likely to encounter individuals armed with firearms. Such action necessarily entails an especially high risk, which is likely to force the soldiers to use arms, and therefore eliminates, in our opinion, the claim of self-defense, which is reserved for one upon whom danger is thrust and who out of necessity must defend himself or defend others against it.<sup>35</sup>

### ***b. The Defense of Necessity***

The defense of necessity is set forth in Sec. 22(a) of the Penal Law (Amendment No. 37, 1992) which exempts an individual from criminal responsibility for an act or an omission:

...which were immediately necessary in order to prevent the danger of grievous harm to his or another's life, liberty, person or property, stemming from a given situation, provided he had no other way to prevent it and that the harm he caused was not disproportionate to the harm he wished to prevent.

Sec. 22(c) states that the defense of necessity cannot be invoked if **the action resulted in death**.

The defense of necessity is specifically earmarked for cases in which the danger stems not from the person harmed, but from external circumstances. The defense is applicable when the action is a means for preventing danger stemming from a source external to the person harmed. The defense extends only to actions which had to be taken immediately to prevent the danger of grievous harm, and when the harm was inflicted as a last resort. The defense may not be invoked if there is no reasonable proportion between the harm caused and the danger the inflictor sought to prevent. In particular, as mentioned, the defense does not apply if the action taken resulted in death.

The defense of necessity is usually not relevant to the operations of the

special units, with the exception of cases where innocent persons who are in close proximity to the *wanted* person are harmed, where harming bystanders is immediately necessary in order to prevent danger of grievous harm from the *wanted* person, and where there was no alternative course of action. Even in this context, in our opinion, the entry of the special units using shooting as a deterrent, and possessing full knowledge of the risks, into the heart of a civilian population, (as was presented in the television broadcast by the CNN network, see p. 14 of this report), is likely to negate the reliance on the defense of necessity, where the units injured civilians who were in close proximity to the *wanted* person, or who even tried to help him escape. In the cases described in the second part of this report, there is no evidence that shooting at innocent civilians, in order to prevent the escape of a *wanted* person, was necessary in an immediate way to prevent grievous danger. In any event, according to the present wording of the section, the defense of necessity is not available to the special units in the cases of injury that resulted in death.

### ***c. Defense of Justification for Those Executing the Law***

The use of the term "*wanted* persons" and the pattern of behavior of the special units indicate that the military authorities find the legal basis for their actions in the defense of "justification" for a person obeying an order lawfully given.

This defense, set forth in Sec. 24 of the Penal Law, exempts from criminal liability a person who committed an act "in executing the law" or in obeying an order given by a competent authority which he must obey by law "unless the order is manifestly illegal." According to Sec. 78 of the Order Concerning Security Provisions (the central criminal code in the occupied territories), "A soldier may, without an arrest warrant, arrest any person who commits, or is suspected of having committed, an offense under this Order."<sup>36</sup> If so, the special units operate in the territories as units executing arrests, and they demand for their soldiers the defense of "executing the law."

Recently, the applicability of this defense was examined in detail in the case of First Sgt. David Ankonina v. Chief Military Prosecutor.<sup>37</sup> In the wake of the case of Gould v. Attorney General,<sup>38</sup> Supreme Court President Meir Shamgar laid down three prior and necessary conditions for the use of lethal force by the representative of a competent authority in the course of an arrest or in order to prevent escape from detention:

and self-defense for protection: The fighter responds with a counterattack, and the fact that he defends himself against his enemy, is no more than the reason for his war; while the person who protects himself, abhors war and is deterred by it and makes every effort to avoid it, and every act of violence which he commits for his defense he commits reluctantly, and having no other choice. The protection of the law is given to one who defends himself having no other choice, and not to one who fights on the pretext of self-defense.<sup>34</sup>

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- (1) That the arrest was **legal**.
- (2) That it was made in connection with a **dangerous felony**.
- (3) That **there was no other way** to make the arrest. (Emphases in the original.)<sup>39</sup>

### 1) Legality of the arrest

The court ruled that "a reasonable basis for suspicion is required, anchored in facts, in circumstances and in information, and this does not mean mere guesswork."

In the Ankonina case, a crime was committed in sight of the soldier who used live fire, so the question of reasonable suspicion did not arise. In the Gould case, which preceded Ankonina, the facts concerned a person who had been lawfully arrested by a police officer who was in possession of clear evidence about the commission of a crime.

According to our information, soldiers in the special units operate on the basis of lists of *wanted* persons prepared by the GSS, and not according to their own information regarding the suspicions, nor according to a legally issued arrest warrant.

Reliance on lists drawn up by anonymous persons removes the element of personal responsibility, both from the standpoint of the primary moral decision, and from the standpoint of bearing personal responsibility should it turn out that the arrest, or the arrest warrant, were not properly based on concrete suspicions.

On the basis of the provisions of the law and the rulings that have interpreted this defense, we believe that an arrest is legal only if the arresting soldier is in possession of his own information concerning suspicions against the arrestee, or if a legal arrest warrant has been issued by a person of competent authority who has examined the information himself, and from it concluded that there is a basis for the suspicion. In the very least, there must be detailed information in the hands of the soldier executing the arrest, even second-hand, about the nature of the suspicions and the evidence against the "*wanted* person," and it is not enough to be satisfied with general accusations of the sort – "was involved in conducting violent investigations of local residents." (In any case it is clear that the mere fact that a resident of the territories is masked, does not turn him into an object for arrest, nor does it constitute permission for the use of live fire against him if he attempts to evade detention). These conditions are mandatory in order to determine personal responsibility.

## 2) Arrest related to a dangerous felony

As to the classification of the offense which enables the arresting authority to use **live fire**, the legal situation was modified in the above-mentioned Ankonina case. In this case Chief Justice Shamgar determined the limits of the defense of "executing the law," in accordance with the limits of the defense of necessity (as originally defined in the Penal Law, prior to Amendment No. 37). Shamgar C.J. held that one must examine the essence of the felony of which the person to be arrested is suspected. Lethal force can be used if it is necessary in order to prevent results which would be impossible to prevent in another way and which would have caused grievous injury to the assailant (trying to apprehend the suspect) or to others, "and provided that he did no more than was reasonably necessary to obtain that same goal, and that the harm caused is not disproportionate to the offense that was prevented."

Comments made by the Court in the Ankonina case deserve to be quoted and applied:

Public interest in the apprehension and arrest of offenders is formed, *inter alia*, by the desire to defend the members of the public, the offender's potential victims.

The official or the citizen works towards the protection of human life and the physical well-being of the offender's victim or of those liable to become his victims if the offender is not arrested. However, this aspect of the public interest has two facets: just as it serves as a motive for the apprehension of the offender to prevent harm being done to another person, so it provides normative guidance regarding the degree of force to be employed against the offender. In both instances the underlying goal is the desire to avoid as much as possible the taking of life. This goal becomes a limitation on the use of force, so that human life should not be taken nor bodily harm inflicted when this does not stand in reasonable proportion to the degree of danger one wishes to prevent, even when what is involved is the offender's apprehension. In order to realize the said interest, a higher threshold must be set for grounding the justification for the use of lethal force in executing the law, than one which stems exclusively from the formal classification of the offenses according to the maximum punishment accruing to them.

It is therefore proper that we base our tests on a theoretical foundation comparable to the rules of reasonable proportionality which, for example, form the basis for the provisions regarding responsibility for an offense relating to the use of force by a

public official in the course of personal self-defense, as stated in Sec. 22 of the Penal Law, which deals with the defense of "necessity." As is stated there, a reasonable correlation must exist between the degree of the danger and the degree of force employed.

In conclusion, the logical inter-relationship between the means employed and the offense one seeks to prevent, dictates the setting of narrow boundaries for the public official who is required, or who wishes, to exercise his authority in order to arrest an offender or prevent his escape.

This means that soldiers in the special units may not use live fire unless the danger posed by the suspect is proportionate to the drastic character of the measures taken.

The fact that the arrestee is carrying a weapon must of course be taken into account, and this definitely increases the danger that would be posed by that person should he escape arrest, but that may not be the sole reason justifying the use of weapons, in the light of the case law holding that the danger posed and prevented must be imminent and immediate. Therefore, there can be no comparison between a *wanted* and armed person who has escaped in the vicinity of an Israeli population, where there is great danger that he would not hesitate to use his weapon against civilians standing in his way during his escape, and a *wanted* person who escaped in the territories and there is no real fear that he will use the weapon which he holds to harm people during his escape from the security forces.

The fear that if the *wanted* person escapes, he will return and execute serious felonies, such as violent interrogations of collaborators or even murder, does not justify shooting the *wanted* person, because that danger, the seriousness of which no-one would belittle, lacks the imminence and immediacy that justifies the use of live weapons when executing a legal arrest.

### **3) There was no other way to effect the arrest**

As Supreme Court Chief Justice Shamgar stated in the previously - mentioned Ankonina case:

The second condition discussed above dovetails with the third condition, namely, that force should not be used unless it is the last resort in the specific circumstances. In other words, to the condition that requires a reasonable proportion between the offense one is trying to prevent and the means taken toward that end, another condition is added, according to which lethal action

is not to be taken unless it is essential to take it, because more moderate means have proved fruitless and the result could not be prevented in any other way. To the rule of proportionality, which reflects the relationship between the forbidden act and the use of force against it, is thus added the rule of necessity, reflecting the stage at which one may resort to extreme means.

The necessity should be immediate, involving the need to take action on the spot, and the action should be the least drastic possible which still serves the purpose.

The reasonableness of the means is determined according to the factual circumstances of each event, and in this respect, tested methods of operation, utilizing stages, have been developed, primarily in the relevant orders. The methods are, in the first place, a warning given by voice or by a sign; second, expressing the intention to take more decisive action, including a warning given by voice or by a sign; third, expressing the intention to take more decisive action, including the use of firearms, this by means of firing warning shots in the air; and finally – and only finally – aimed fire, but even then in a manner calculated to reduce the degree of bodily harm. Naturally, the order of the actions and other limitations do not apply if a grave immediate danger is posed to the official or to the person he is protecting, which justifies immediately taking every means required for self-defense or for the protection of others.

From this, it is clear that the call to halt and the act of firing in the air may be skipped over, but only in a concrete situation of self-defense which develops in the course of the arrest, under the severe conditions and limitations which apply to such a defense: that is, if the arrestee attacks the arresting official and it is necessary to shoot in order to ward off the attack, in the conditions spelled out above with regard to self-defense. During the arrest a factual situation of self-defense may arise, but in that case the soldier's behavior must pass the tests of self-defense.

A general guideline, if such exists, permitting soldiers in the special units to skip the stages of calling out a warning and firing in the air, even when not dealing with situations of self-defense, is manifestly illegal. Whoever issues such an order or acts according to such an order may find himself accused of the offense of homicide, and in certain cases even of murder.

## **Conclusion**

The appropriate legal framework for the actions of the special units is making arrests. That framework demands the personal responsibility of the soldier who executes the arrest, or of the officer who issues the arrest warrant, and who bears responsibility should it emerge that the arrest was unjustified.

Human life is the basic, essential value that every legal system protects. Every taking of a human life obligates strict and unequivocal rules. Even when the law permits the taking of a human life, it does so in order to protect human life. Any obscuring of the boundaries between self-defense and implementation of arrest, by creating categories of "*wanted* persons" and "masked individuals," as an adjunct of criminal law, is illegal, invites the forbidden taking of human life, and entangles both those who give the orders and those who implement them in the most severe criminal offenses.

The categories of *wanted* and "masked individuals" label those who are included in them as persons who endanger human life, and therefore ostensibly justify the use of lethal fire during arrest, even when the concrete circumstances that give the danger the imminence and the immediacy that justify the shooting do not exist. The very essence of self-defense and the defense of necessity is that they preclude definitions and categories, and demand individual discretion, and treatment of each case on the merits of its unique circumstances. To every general definition, which releases the soldier or the unit from individual discretion, and allows him to respond by firing without making a substantive decision free from preconceived opinion, policy or uniformity, there is a corrupting influence which blurs the moral and legal responsibility for taking human life.

## 2. International Law

In international law, the right to life is perceived as one of the four basic rights. The other three basic rights that are unconditional, even during a state of national emergency, are the right to be free from torture and from cruel, inhuman or degrading treatment, the right to be free of slavery, and the principle that punishment cannot be retroactive. So substantive are these rights that they are considered not only rules of customary international law but also mandatory norms (*ius cogens*).

Among the gravest violations of the right to life are execution without fair legal process and causing death through an inordinate use of force by persons in charge of enforcing the law.<sup>40</sup>

The Hague Regulations (1907), which express the most general and basic customary rules, state, in Article 46, that the "lives of persons" must be respected.

Many articles in the Fourth Geneva Convention (1949) deal with the prohibition on taking human life. Although Israel does not recognize the applicability of the Fourth Geneva Convention in the territories, the government has declared that the Convention's humanitarian provisions will be respected there. A ban on killing is certainly included among those humanitarian provisions. Articles 27 and 32 generally prohibit perpetrating acts of violence against or harming the inhabitants of occupied territory; Article 68 lays down rules for imposing the death penalty, by a court of law. We may infer, then, that a court is the only body authorized to impose the death penalty. Article 71 refers to the right to a fair trial. Article 146 is the commitment of signatory states to bring to justice violators of the Convention. Article 147 states, *inter alia*, that the deliberate killing or deliberate deprivation of the rights of a protected individual to a fair and orderly trial shall be considered a grave violation of the Convention.

The International Convention for Civil and Political Rights (1966), with which Israel affiliated itself in January 1992,<sup>41</sup> states in Article 6 (which, according to Article 4, may not be made conditional, and may not be annulled even in a state of national emergency);

1. Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.
2. In countries which have not abolished the death penalty, sentence of death may be imposed only for the most serious crimes in accordance with the law in force at the time of the commission of the crime and not contrary to the provisions of

the present Covenant and to the Convention on the Prevention and Punishment of the Crime of Genocide. This penalty can only be carried out pursuant to a final judgement rendered by a competent court.

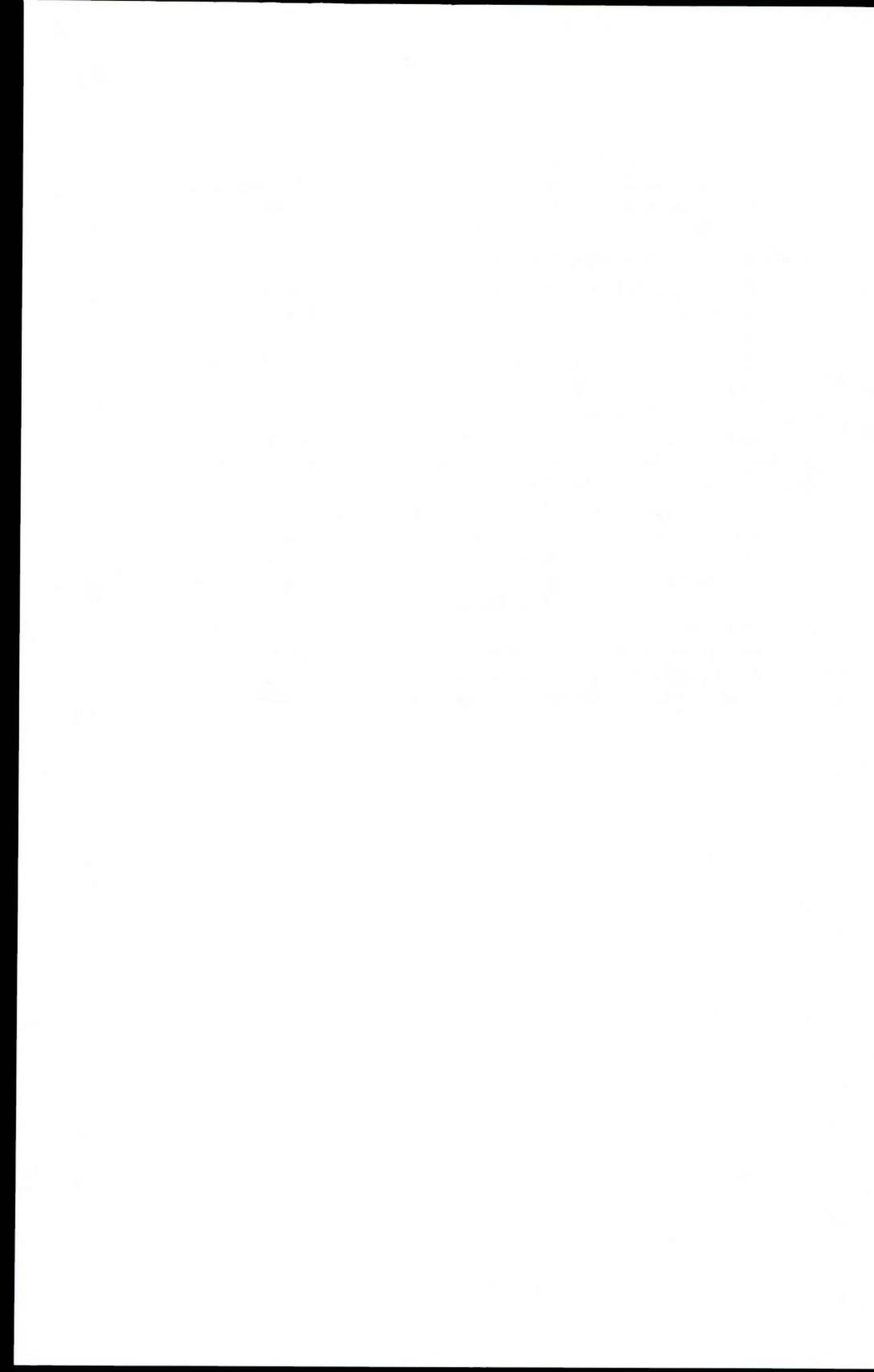
Article 14 of the Covenant states that:

(1) ...everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal, established by law.

(2) Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.

In the collection "Basic Principles on the Use of Force and Firearms by Law Enforcement Officials," ratified by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders,<sup>42</sup> Special Provision 9 of the Basic Principles states:

Law enforcement officials shall not use firearms against persons except in self-defense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may be made **only when strictly unavoidable in order to protect life.** [our emphasis]



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## **Part II**

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A. Shootings

B. Beatings



## A. SHOOTING

### 1. Tamun - August 1988

On August 18, 1988 a white commercial vehicle with local license plates entered the village of Tamun in the Jordan Valley (Jenin District) and stopped in front of a metal shop located near the entrance to the village. The driver and the passenger sitting next to him were wearing civilian clothes. The back windows of the vehicle were covered.

At that time there were six people in the metal shop - four workers (among them Sa'ud Hasan Bani 'Odeh and his relative Jamal Qasem Bani 'Odeh) and two customers, one of whom had his small son with him. The two men dressed in civilian clothes and five soldiers in uniform got out of the car. They approached the metal shop. Two entered the shop through the main entrance and the others surrounded the shop on all sides. They were armed. Those present at the site were frightened and began to run away.

Within less than a minute, the soldiers began shooting at two of the people who were running away. Jamal Qasem Bani 'Odeh, 27, was badly wounded in his knee and was caught. Sa'ud Hasan Bani 'Odeh, 21, was hit by a bullet which entered through his back and came out through his stomach. He lost consciousness. A helicopter was called which took him to Shiba Hospital, where he died from his wounds. The four other people were not hurt. One fled, two were captured and released at the site, and one was taken to Jenin and released after a few days.

Jamal, who was wounded, was taken to the hospital in Afula, and then placed under detention. He was held for six months in the Ramleh prison hospital. After he was released, he underwent a series of operations at Maqassed Hospital in Jerusalem and now suffers from a 65% disability and cannot bend his leg.

Attorneys Riyad Anis and Hussein Abu-Hussein, sued the government for compensation on behalf of the wounded man and the family of the deceased man. The suit has long been pending in the Nazareth District Court, and is reaching the summing up stage.<sup>43</sup>

The soldiers testified in an open court session that they had received orders that day to arrest *wanted* persons in the village of Tamun.<sup>44</sup> Some of the soldiers went to the homes of the *wanted* persons to look

for them and others went to the metal shop. There was disagreement among the soldiers as to whom they were supposed to arrest.

The main goal of the operation, according to the testimonies, was to arrest two people who were candidates for expulsion, Jamal Sa'd Bani 'Odeh and Jamal Khader Bani 'Odeh. To the best of our knowledge, these two men have not been arrested to this day. In addition to these two, there were plans to arrest approximately 12 other members of the group (the killed and wounded man are among these). The State claims that Jamal Qasem Bani 'Odeh (the wounded man) was involved in collecting weapons and throwing Molotov cocktails.

One of the soldiers testified that they had been told to arrest **two wanted** persons and that at least one of them "[had] blood on his hands – in other words, he is dangerous. He murdered or tried to murder." The soldier recalled that there were pictures of two people, but he had seen neither of them, and assumed that the pictures were only shown to the group commander. The instructions that he received, according to his testimony, were: Shoot anyone who tries to flee if he is of the age of the "shabab," if he doesn't stop after a warning. Other witnesses said that the orders for opening fire given to them were as follows: calling out "halt, army"; firing one shot in the air; and if they do not stop, then shooting at the legs. One of the witnesses claimed that after shooting at the legs there was an additional phase – shooting towards the body.

The witnesses all confirmed that their lives were not in danger. They also confirmed that the physical conditions in the area (an open, unpopulated area) would have made it possible for them to continue their chase after the people who were running away. The shooting of the two men took place, according to the witnesses, from a distance of approximately 10-15 meters, and they fell some 20 meters from where the chase began. The witnesses stated that only one half to one minute passed between the time they stopped their vehicle and the time of the shooting, including the carrying out of the procedure for apprehending a suspect. (One witness even said that only 10, or at most, 15 seconds elapsed from the time they got out of their car until the shooting took place.)

The lawyers for the plaintiffs, Attys. Anis and Abu-Hussein, claim that the government gave illegal orders to the soldiers. They charged that if, as the witnesses testified, the whole incident took between one half to one minute, the transition from one stage to the next must have been immediate, without giving the suspects time to stop. In addition, according to the testimony, the military force was equipped only with live ammunition, and had no less deadly weapons, such as rubber bullets.

The plaintiffs' attorneys further claim that the wounded man, Jamal Qasem Bani 'Odeh, accused of collecting arms and throwing Molotov cocktails, was held in detention for six months. During this period, and after his release, he was not interrogated by any security personnel. If there were indeed suspicions against him, to an extent that justified opening fire at him, the fact that he was not interrogated until the present time and no charges were pressed against him, is rather surprising.

Atty. Anis presented evidence to the court that the two *wanted* persons, the one who was killed, Sa'ud Bani 'Odeh and the wounded one, Jamal Bani 'Odeh, had not been sought previously, and no one had even checked their houses to see if they were there.

In response to **B'Tselem's** inquiries, the IDF Spokesperson stated on April 13, 1992, that:

The circumstances of the death of Sa'ud Hasan Bani 'Odeh were investigated by the Military Police/CID. The investigation file was sent to a military advocate for his opinion and, after reaching the conclusion that the soldiers acted according to the obligating orders and instructions, he ordered that the case be closed.

The opinion [of the military advocate] indicates that, the soldiers acted in accordance with the procedure for apprehending a suspect, and that they tried to arrest the deceased, who was suspected of perpetrating grave attacks. Since he did not stop at the cry to halt and after the firing of warning shots into the air, the soldiers shot at his legs and wounded him. Shortly afterwards, he died from his wounds.

As far as we know, this is the first case during the Intifada in which a man was killed by soldiers from the special forces. Nonetheless, the incident is characteristic of the operations of these units during the ensuing period.

- Soldiers from this unit, dressed as Arabs, arrived in a local vehicle that had been confiscated (in this case some of the soldiers were still in uniform; in most of the cases described below they all came in disguise).
- Even according to the testimony of the soldiers, the procedure for apprehending a suspect was very quick, and did not leave the *wanted* persons time to stop.
- The soldiers opened fire even though, according to their own testimony, their lives were not in danger and even though, because the area was open, it was possible to continue chasing the *wanted* persons and to try catching them without opening fire.

- The man who was killed was shot at from a distance of 10-15 meters and hit in his stomach, despite the IDF Spokesperson's statement that he was shot in the legs. This is characteristic of many of the cases discussed in this report.
- Despite the IDF Spokesperson's claim that the man who was killed had been *wanted* for being suspected of committing serious attacks, there had been no previous attempt to arrest him. Furthermore, the injured man, who was held in detention for six months by the security forces, was never interrogated.
- If the man who was killed was indeed *wanted*, it is not clear how the soldiers had time to identify him if the incident took place so quickly.

## 2. Ramallah - July 1989

Yasser Abu-Ghosh, age 17, from the town of Bitunia, was known as a central Intifada activist in the Ramallah region, and had been wanted by the security forces since April 1989. He was suspected of attacking "collaborators." The security forces pressured his family to turn him in. According to his brother, Issam, who was in prison in Dhahriyah, a member of the GSS said to him, "Your brother is the head. We will chop off the head."<sup>45</sup>

The Ramallah-based human rights organization "al-Haq," carried out a comprehensive investigation of the death of Abu-Ghosh and the following description is based chiefly on this investigation.

On July 10, 1989, at about 11:30 a.m., Abu-Ghosh and a few friends were walking down a street in the center of Ramallah near the vegetable market, when a commercial vehicle with local license plates stopped and three soldiers wearing civilian clothes got out. A man who is locally known as a collaborator was sitting in a cafe nearby and pointed at Abu-Ghosh.

Abu-Ghosh and his friends began running away with the soldiers, chasing them through the marketplace, with readied pistols, in front of dozens of witnesses. According to the witnesses, none of the pursuers called to Abu-Ghosh to stop. They said that the pursuers shot in the air during the chase through the market. At a certain point, Abu-Ghosh ran down a small alley with the soldiers running after him. One of the soldiers shot at him, and Abu-Ghosh was hit and fell. According to witnesses, the soldier had stopped and aimed his gun before he shot. The distance from which the soldier shot was approximately seven meters. The other men who were fleeing continued to run and were not caught.

Witnesses said that immediately after Abu-Ghosh fell, the soldiers ordered all the people in the area to leave. An Arab physician who asked the soldiers to let him treat the wounded man was also sent away. Abu-Ghosh was put into an army jeep and taken to the military administration building in Ramallah. That night, Abu-Ghosh's sister was informed that her brother had died; two days later, his body was brought to the family.

Attorney Felicia Langer, who represented the Abu-Ghosh family, wrote a letter to the Minister of Defence, demanding that the circumstances of the death be investigated, including why Abu-Ghosh was prevented from receiving medical treatment after he had been wounded.

On May 29, 1990, Mr. Haim Yisraeli, head of the Defence Minister's

Office, sent Attorney Langer a response, describing in detail what had happened according to the investigation of the Military Police/CID.

According to Mr. Yisraeli's letter, a military force was indeed dispatched to arrest Abu-Ghosh who was *wanted*. According to the findings of the Military Police/CID investigation, one of the soldiers called out to the fleeing Abu-Ghosh in Arabic, "Halt, Army," and fired two shots into the air, but Abu-Ghosh continued to run. According to Yisraeli's letter, after Abu-Ghosh turned down the alley and continued to run, one of the soldiers shot at the lower part of his body. One of the bullets hit him in the back, and he fell. During the investigation, the soldier who fired the shot said that he had aimed at the lower part of the body, but that perhaps, since he had been running, the gun was tilted upward and that is how he hit him in the back.

Yisraeli's letter does not address the question of the distance from which Abu-Ghosh was shot. The letter does note that the autopsy report says that the victim (term used in the original) was hit by one bullet which entered his lower right back and emerged through the left side of the chest. Internal bleeding was the cause of death.

Following the investigation, a military advocate decided that the open-fire regulations for apprehending a suspect had not been adhered to. He ordered, therefore, that the soldier who fired be tried in disciplinary court for illegal use of weapons, and the instructions for apprehending a suspect be thoroughly and repeatedly studied by the unit. The military advocate further commented that the [medical] treatment provided was not appropriate to the circumstances, and ordered that the appropriate persons issue instructions about the need to provide medical treatment for all wounded persons and to evacuate them in the appropriate manner.

In July 1990, **B'Tselem** requested the following clarifications from the Minister of Defense:

- A. According to the autopsy report, from what distance and from what angle was the bullet which hit Abu-Ghosh in the back shot?
- B. Why was the soldier who fired not brought to a military court, and what were the considerations involved in the decision to hold only disciplinary proceedings?
- C. Why was it deemed sufficient to try him under the charge of illegal use of weapons, rather than more severe charges such as negligent homicide, or manslaughter?
- D. Before whom was the soldier's disciplinary trial held? Was he indicted? What sentence was given?
- E. Who is responsible for the fact that the medical treatment was not

appropriate to the circumstances, and why were no steps taken against the person responsible?

In October 1991, after sending a follow-up letter, we received the following reply:<sup>46</sup>

The military advocate ordered that the soldier be sent to disciplinary court and not to military court since his deviation from the open-fire regulations was slight and there was no justification for bringing him to trial in a military court.

Due to the circumstances, and since opening fire was justified in the framework of the procedure for apprehending a suspect, and since the only deviation was that the angle of the firing was apparently too high, and this is only a speculation, and since it is not possible to conclude exactly what happened, and since the military advocate reviewed all the evidence and determined that there was no basis for charging the soldier with manslaughter or negligent homicide, he decided that it was sufficient to charge him with illegal use of arms. The soldier was not brought before the disciplinary court since he went abroad before his commander received the order to hold disciplinary proceedings. He is still abroad. When he returns, the necessary steps will be taken.

With regard to the removal of the wounded man – his having been put on a jeep – it was concluded that there was nothing wrong with how he was removed. The military advocate's statement that "the treatment was not appropriate to the circumstances" referred to the question of removing him to a military clinic instead of to a hospital. This was the result of the lack of clear instructions, and no one is responsible for this. Therefore, there was no reason to initiate proceedings – only to issue clear instructions about medical removal. This was done.

This perfunctory response of the authorities is characteristic of the responses to other cases dealt with in this report.

• The findings of the Military Police/CID investigation, according to the letter from Mr. Yisraeli, indicated that the soldier fired towards **the lower part of Abu-Ghosh's body**, whereas the IDF Rules of Engagement, which according to the security authorities, also apply to the special units, explicitly state that one is to fire **only at the legs**. It should be remembered that the Palestinian witnesses stated that the soldier stopped and aimed carefully before he fired. This calls into question the statement that the gun "was raised because of jolts caused by the running." In addition, it should be noted that the soldiers in the special units undergo a long period of thorough training in the use of

arms during chases of the kind described in this case. One would expect, therefore, that they would know how to prevent a situation in which their weapon is positioned towards the body when they are aiming at the legs.

The authorities have stated that no one was responsible for the failure to take Abu-Ghosh to the hospital immediately, which prevented his life from being saved. We consider this statement extremely grave. Even if there were no official regulations about the circumstances under which a wounded person should be taken to the hospital, one would expect that any reasonable person, and especially soldiers who are charged with enforcing the law, would understand that it is necessary to take a person who has been shot and is bleeding to the hospital. The behavior of the soldiers and the response of Mr. Yisraeli reflect a blatant disregard for human life.

### 3. Al-Bureij - October 1989

The following description is based mainly on testimony heard in the trial of Lieut.-Col. A., formerly in charge of the "Shimshon" unit. He stood trial on charge of manslaughter. (According to the charge, he encouraged his soldiers to shoot, contrary to the open-fire regulations, and therefore was responsible for the manslaughter even though he himself did not shoot.) The trial is taking place in the special military court in the "Kiryah" [IDF headquarters] and should be concluding in the next few days.

On October 4, 1989, two groups of the "Shimshon" undercover unit were sent to the al-Bureij refugee camp in the Gaza Strip. The goal of the operation was defined: "to bring down masked men."

The force arrived in the camp in the early morning. At about 2:00 p.m., an additional team that was stationed on lookout saw a group of masked men writing slogans on the wall of a house. The two teams that were to "bring them down" approached the site in two cars with local license plates.

When they reached the site, the commander of one of the groups spotted a man running into the camp. He was masked and wearing a "ninja" suit. He was wearing pink rubber gloves and had a tree branch in his right hand. The man had a slight limp (probably the result of having been grazed by a bullet fired by a soldier from the other team), but he ran very quickly. Another man, wearing a green and white striped shirt, was running alongside him and supporting him.

The team began chasing them in their car and after the first man disappeared in an alley, the soldiers got out of the car and four of them (an officer in charge and three soldiers) ran after the masked man for a distance of about 200 meters. During the chase, the officer in charge (he claims) carried out the "full procedure for apprehending a suspect:" calling out in Arabic, "Halt, army;" shooting into the air; shooting 3 bullets at the legs, pausing for a second or so between shots; and finally, while standing and aiming his rifle straight ahead of him, closing one eye and shooting at the back, in the center of the body. The last bullet was fired from a distance of 60 meters. The bullet went in through the back and emerged near the heart.

Immediately following the last shot, the man fell on his stomach (he was later identified as Maher Muhammad Darwish al-Qadme, age 18). The soldiers approached him and found him unconscious and wheezing. They evacuated him while shooting in the air, in an attempt to extricate themselves from the area, where people had gathered in an uproar at

the sound of the shooting.<sup>47</sup> When they returned to the army base, an army physician examined al-Qadme and pronounced him dead.

According to the testimony of the commander of the team, who shot and killed al-Qadme, he had received orders for opening fire from the officer in charge of the unit, Lieut.-Col. A. in a debriefing session the night before the action (the officer, a Lieutenant, testified as a government witness in return for the annulment of the manslaughter charge against him). The orders included what was described as the "full procedure for apprehension of a suspect" which ends with "shooting at the center of the mass," that is to say, shooting at the upper part of the body, chest and stomach. These instructions, according to him, were valid for approximately one month and were used in the case of masked men. In response to the judge's question as to whether this was tantamount to permission to kill, he said: "Yes, to kill masked men."<sup>48</sup>

Three of the witnesses in the trial (soldiers in the team of the officer who had shot) testified that for a period of one to two months the instructions for opening fire had included a stage in which, after shooting at the legs, if the suspect did not stop, one was to shoot "to stop him." The witnesses understood this to mean the same as "shooting at the center of the mass," which was learned in anti-terrorist training courses in the context of apprehending an armed terrorist.

"The center of the mass is the widest part of the body," said one of the witnesses. "In slang this is shooting to kill. One witness said that he was satisfied with the change in orders: "I would make the instructions more severe than just hitting the center of the mass. Logically, I would shoot him straight in the head."<sup>49</sup> Another soldier in the team testified that the regulations referred only to masked men armed with any kind of weapon, live or non-live.<sup>50</sup>

The commander of another team in the unit contradicted the statements about a fourth stage in the procedure for capturing a suspect and said he had never heard of this procedure.<sup>51</sup> Another witness, the operations officer of the unit, testified that he, too, was present at many briefings of the unit and that "in no case was there talk of shooting at the back where you have to shoot to kill."<sup>52</sup> Contrary to this, the testimony of the commander of the third team (who is abroad), given during the investigation by the Military Police/CID, and presented to the court, confirmed that the commander of the unit gave orders for opening fire which included a fourth stage - shooting to hit.<sup>53</sup>

The accused, the commander of the unit, in his testimony, denied the accusations against him and said that he was not even in the Gaza Strip at the time of the incident, and that on the evening before the action he did not brief the leaders of the team with regard to the open-fire

regulations. He said: "I met with the commanders of the team and spoke only about the operation. It was not my job. The open-fire regulations were known and clear. There were discussions with a military advocate and with high ranking officers, who briefed the soldiers with regard to this issue. Every one of the soldiers knew that the orders forbid shooting a fleeing suspect in order to kill him, when he, the soldier, is not in any danger."<sup>54</sup>

The military court has not reached its verdict yet (at the time of this report). Nonetheless, according to the testimonies, it appears that orders were given to IDF soldiers (not only those in special units) during a certain period to shoot in order to kill masked men, even if their only crime was wearing a mask. In this case, a masked man was writing slogans on the wall. He tried to escape from the site and none of the soldiers claimed that their lives were in danger.

## 4. Kufr Malek - March 1990

Muhammad 'Abd al-Rahman Salameh, age 19, from Kufr Malek (Ramallah District), was shot from close range on March 29, 1990, while writing slogans.

The following description was published by Maya Rosenfeld who obtained testimonies from eyewitnesses in the village.<sup>55</sup>

Around 8:30 p.m. a group of six people arrived at an open space near the village mosque, from the direction of the cemetery. They were wearing civilian clothes in the same style as those worn in the area. Their heads were covered with *kafiyas*. At least some of them were masked. At that time, in the area in front of the mosque, there were young people from the village who were writing slogans on fences and walls. These young men did not recognize the six, and at first thought they were residents of another village. The "strangers" joined those who were writing the slogans, and, according to one of the testimonies, started quarreling with the young men, who were busy writing. Within a very short time (a few minutes) one of the young men realized that they were from the army. Muhammad Salameh, who was among those writing the slogans, began yelling to his friends: "Army, army." Then one of the six "disguised" men pulled a gun and shot Muhammad from a distance of only one and a half meters. Muhammad continued advancing for another 200 meters, losing a lot of blood, and then fell. He was taken by residents to Maqassed Hospital in Jerusalem, but died on the way.

According to Palestinian sources, Salameh had been *wanted* by the security forces for over a year. The IDF Spokesperson reported that Salameh had been with a group of masked men who had tried to incite the residents and that he was shot when he tried to escape and did not heed the call to stop.<sup>56</sup>

The IDF Spokesperson told **B'Tselem** on April 13, 1992 that:

The circumstances of the death of Muhammad 'Abd al-Rahman Salameh were investigated by the Military Police/CID, and during the course of the investigation testimony was taken from the father of the deceased. The investigation file was transferred to a military advocate for his opinion. From this it emerged that during the process of trying to capture a group of masked men, some of whom were writing slogans on the walls, and were armed with knives, sticks and swords, and some of whom who were standing on the roofs to keep a lookout for soldiers, the

IDF force was thrust into a situation which required physical [contact] with the masked men who were writing slogans. In the course of the struggle, the soldiers felt that they were in danger because they were fewer in number than the masked men who were armed with non-live weapons. In the course of things, one of the soldiers called a warning and afterwards shot a single bullet into the air.

At the time of the incident, no wounded were perceived. But afterwards, the body of the deceased, who had apparently been shot by the soldiers, was located. The advocate came to the conclusion that, due to the danger in which the soldiers found themselves, opening fire was justified, and that the deceased was apparently hit by a bullet shot by one of the soldiers who had been on the roof of one of the houses.

From the response of the IDF Spokesperson, the following questions arise:

- The advocate's determination that opening fire had been justified due to the danger in which the soldiers found themselves is not compatible with the next sentence, which states that **apparently** the deceased was killed by a soldier standing on a roof. If the soldiers felt that they were in danger, why did they limit themselves to calling a warning and shooting a single bullet in the air?
- What does it mean that the person killed was "apparently" hit by a bullet shot by a soldier who stood on the roof? Did the soldiers who stood on the roof shoot or not? If they did shoot, then why?
- The description of the incident as it appears in the response of the IDF Spokesperson is not compatible with the Spokesperson's first announcement, which stated that Salameh was shot when trying to escape. If he was trying to escape, why was he hit in the chest and not in the legs?
- The fact that Salameh was *wanted* raises the suspicion that the confrontation between him and the IDF soldiers was not chance but planned.

## 5. 'Askar – February 1991

'Adnan Sa'id Muhammad Jarrad, from the Old 'Askar refugee camp (Nablus District), was wounded on February 10, 1991, and died from his wounds in Shiba Hospital on February 13, 1991. Jarrad, a grocer, age 34, married and father of four children, was never *wanted* and never arrested by the defense forces.

**The testimony of Kamal Abd al-Fattah 'Abd al- Razeq Khatib**  
(Taken in Arabic in 'Askar Camp, by Bassem 'Eid, B'Tselem fieldworker).

On February 10, 1991, about 9:00 a.m., I was sitting with 'Adnan and another neighbor by 'Adnan's grocery in the camp. A double cabin orange Volkswagen passed opposite us on the road inside the camp. The back of the vehicle was open and empty. Inside the vehicle was the driver with one person beside him and three in the back. They were dressed in civilian clothes. (He could not describe the type of clothes.)

When the vehicle passed by us at a distance of about 20 meters, I heard a single shot. The neighbor who was sitting with me and 'Adnan ran away. 'Adnan and I continued sitting, and after a few minutes I heard automatic fire. Apparently all the people in the vehicle were shooting. I was scared and went into the store, and I saw people in the street running away.

When I got inside, I wanted to go up the stairs inside the store to the roof of the house in order to see what was going on in the camp. I left 'Adnan so that he could go into the store and close the shutters from inside.

I went up at least four steps. I heard two shots inside the store and suddenly 'Adnan called, "Kamal, run to me." (When he called me) I turned around in order to go down the steps of the store and I saw a man dressed in civilian clothes, tall, wearing a red hat, a gray shirt and pants of the same color. He stopped by the steps where I wanted to go down, pointed his weapon at me and said: "Stop and don't move." I stopped. He grabbed me by the neck and took me further into the store.

'Adnan was lying on the floor in the narrow hallway between the store and the steps, and when I entered the store I stepped over 'Adnan's body. I did not see blood on the floor, and when I stepped over his body, I saw another man in the store, with a *kafiya* on his head and a jacket. The man who had brought me into the store asked for my identity card. Then he went into the

hall where 'Adnan was lying, picked 'Adnan up, brought him into the store, and took the identity card out of 'Adnan's pocket.

The man with the *kafiya* tied my hands behind me with a plastic strip and stood me up by the gate of the store, on the outside, and he stood inside. He had a walkie-talkie in the sleeve of his jacket, and I heard him say into it: "Bring a doctor, it's urgent," and he described where we were. After more than a quarter of an hour, four soldiers came, one of them a doctor, who was carrying a case on his back.

The doctor undressed 'Adnan and began examining him. More soldiers came and took me away to a distance of about five meters. I waited about an hour and 'Adnan was still in the store. Then the soldiers took me and put me in an army jeep that was standing far from the store. We waited for about an hour and then the jeep went to the military administration building. I was released on February 14, 1991, in the afternoon, four days after the arrest, without being interrogated at all.

'Azzam 'Azmi al-'Ashibi and Khaled Abu al-Yaman were both wounded in the knee during this incident, and both were arrested. After six days of detention, 'Azzam was released on bail pending trial the trial, and Abu al-Yaman is still under arrest in the central prison in Nablus.

The IDF Spokesperson reported to **B'Tselem** on April 13, 1992 that:

The circumstances of the death of 'Adnan Sa'id Jarrad on February 10, were investigated by the Military Police/CID. According to the opinion of the military advocate who reviewed the evidence, it appears that the deceased was shot by the soldiers during a chase, at a time when he made a movement which they suspected to be an attempt to draw a weapon. It later turned out that the deceased had not had a weapon, but relying on the testimony of the soldiers and all the circumstances of the incident, it was found that their claim that their lives were in danger is concrete, sincere and reasonable. Hence no legal steps were taken against the one who fired. It should be emphasized that during the course of this incident, another resident, who possessed a loaded gun, was shot and captured.

The response of the IDF Spokesperson confirms the opinion of **B'Tselem** that 'Adnan Jarrad was shot by mistake. He was killed in his store. He was not armed, and he did not pose a threat to the soldiers.

Perhaps one can learn about the circumstances of the incident from the emphasis at the end of the response. There is no apparent connection between the death of Jarrad and the fact that in the same incident

another resident, who had a loaded gun, was captured. However, assuming that the reference is to Khaled Abu al-Yaman, who was *wanted* by the security forces, it seems correct to presume that the soldiers shot Jarrad - whose physical appearance is similar to al-Yaman's (bearded, green eyes) - thinking, with no clear evidence, that he was the man they had come to arrest, and assuming that he was armed.

This is a clear example of the results of the *modus operandi* of the undercover units. If the soldiers had acted in this case according to the methods for apprehending a suspect within Israel, for example, it can be assumed that large forces would have arrived at the site, blocked the possible escape routes, surrounded the place where, in their estimation, the suspect was located, and called to him to turn himself in, while providing an opportunity for anyone not involved in the matter to leave the area. In such a case, the chances of hitting an innocent person would be extremely low.

An additional conclusion which emerges from the investigation is that the Military Police/CID did not think it necessary to interview Kamal Hatib, a central witness to the incident, whose testimony is presented above, despite that he was under IDF custody and locating him or taking his testimony would have presented no difficulties. The conclusions of the Military Police/CID investigation, and the military advocate's opinion which followed, were apparently based solely on soldiers' testimony.

## 6. Shati - August 1991

On August 5, 1991, in an incident which occurred in the Shati refugee camp in the Gaza Strip, three residents of the camp were killed, and 17 were injured. The following description is based on testimonies taken by Yuval Ginbar of **B'Tselem** from residents of the camp who witnessed the incident.

At approximately 7:45 p.m., during the evening prayer in the mosque, two masked men were engaged in writing slogans on the mosque wall. A Peugeot model 504, with Gaza plates, arrived at the site. A soldier in Arab dress got out of the car. He caught one of the masked men, while from the car, shots were fired at the second. Then, according to one of the testimonies, another soldier in civilian clothes emerged from the car, approached the youth who had been shot, and shot him again with his pistol.

Upon hearing the shots, many people emerged from the mosque and began throwing stones at the soldiers in an attempt to take the wounded man from them. The soldiers responded by firing at the crowd. According to testimony, the soldiers were armed with large pistols and Uzi submachine guns.

Usama Salameh 'Abd al-Rahman al-'Aruqi, age 17 was killed by the shooting, and 17 other Palestinians were injured. Two additional young men, Ya'qub Muhammad Ya'qub Muhammad al-Mushallah, age 17, and Rifat Ibrahim Khalil al-Fasis, age 16, were critically injured, and died later of their wounds.

### *Testimony of Muhammad Mahmud al-Mudawwal*

On August 5, 1991, I was walking with my father and some other people to the mosque to pray. It was approximately 7:45 p.m. There was a masked man by the mosque who was writing slogans, and another man standing next to him. When we were some 10 meters from the mosque, we saw a beige Peugeot 504 stop. A tall man wearing Arab clothes stepped out of the car, pulled out a gun, and shot at one of the masked men, who was running away. **He shot him three times in the back. He didn't call out and didn't fire into the air.**

The masked man fell. After he fell, he [the one who had shot] approached the man and shot him again.

The people began throwing stones, trying to extricate the masked man from the site. The man who had shot ran out of

bullets. I began to get closer to him. Ya'qub [Ya'qub Muhammad Ya'qub Muhammad al-Mushallah, one of the three persons killed], who was next to me, shouted at me to retreat. Another man came and shot at us. Meanwhile, army jeeps and command cars arrived. One soldier near the jeep began shooting automatic fire. There was a lot of shooting. It was impossible to see who exactly hit Ya'qub, but at a certain point he fell. We carried him out of there. I saw the soldiers dragging the masked man by his feet, with his face in the dirt, even though he was injured.

The day following the event, the OC Central Command, Maj. Gen. Matan Vilna'i, and the commander of IDF forces in the Gaza Strip, Brig.-Gen. Shmuel Zucker, conducted an investigation at the site. At the conclusion of the investigation, Brig.-Gen. Zucker said that the soldiers of the force had acted according to the procedures and orders, and that not a single soldier had deviated from the open-fire regulations. According to **Ha'aretz**, August 7, 1991:

The investigation revealed that the IDF force involved in the special operation in the refugee camp identified masked men, and in an attempt to capture them, injured them with gunfire. Immediately after the shooting, the force was surrounded by enraged residents and was barraged by stones from every direction. Brig.-Gen. Zucker said that only the skill and professionalism of the soldiers prevented worse results as far as the residents who attacked the force were concerned.

The Military Police/CID investigation of the circumstances of the incident, in which three persons were killed, is still underway.<sup>57</sup>

The testimony taken by **B'Tselem** paints a different picture. According to the testimony, shots were fired at the masked man even when it endangered other people. Usama al-Aruqi, was on his way to prayers and got caught in the situation by mistake. He was shot, according to testimony given by his cousin who was present, by the same person who fired at the masked man. Rafat al-Fasis was, according to testimony, among those throwing stones at the force, and was injured in the head after one of the undercover soldiers fired at him with a pistol from a distance of approximately 10 meters. Ya'qub al-Mushallah was also, apparently, among the stone-throwers and he, too, was injured in his head.

The testimony also indicates that the shots fired at the masked man were directed at his body, without first completing the three stages stipulated in the procedure for apprehending a suspect: shouting a warning in Arabic, firing a warning shot at a 60 degree upward angle, and shooting to hit the legs only.

## 7. 'Askar - March 1992

On March 15, 1992, three young men were killed in the Old 'Askar Refugee Camp (near Nablus): Na'im 'Abd al-Salam Lahham (age 24), and Hajjaj Ibrahim Hajjaj (age 19) - both 'Askar residents, and 'Imad Mahmud Bisharat, (age 21), a resident of the village of Tamun. The description that follows is based on research by Yuval Ginbar of **B'Tselem** and on testimony he took at the site of the incident.

According to the testimonies, a group of 6-7 young people from Fatah gathered on a roof of one of the outlying houses in the refugee camp. They entered the house for a few minutes, and then returned to the roof. Hajjaj (one of the three killed) came and informed the young people that down below, 'special forces' in women's dress were arriving.

Four of the young people, in an attempt to flee, jumped from the roof into a small back garden. The house was two-storeys high, and the roof they jumped from was approximately five meters higher than the garden. The garden was enclosed by a low fence, beyond which was an open area. One of the four who jumped (Na'im 'Abd al-Salam Lahham) was armed with an old rifle. The other three were unarmed.

A group of soldiers in civilian dress stood by the garden at the time that the four jumped, and shot them, according to testimony, from a range of three meters. None of the witnesses (another young man who had remained on the roof, and a woman, who lived in the house, who saw the shooting through the open bathroom window overlooking the garden) heard a warning call. The witnesses stated that they heard many shots. There are many bullet marks on the wall of the house on the garden side.

Two of the young people who jumped were killed by the shots, one was hit and captured, and the fourth, Hajjaj Ibrahim Hajjaj, was injured and entered the house. According to the witnesses (the women who saw the events and the owner of the house, who was in an inside room), the soldiers continued shooting in the direction of Hajjaj. There are two bullet marks on the wall of the corridor through which Hajjaj entered. Hajjaj entered the house and fell dead.

The three bodies were autopsied at the Abu Kabir Forensic Center. After they were returned, and before the burial, the bodies were photographed. The photographs are in **B'Tselem's** possession. In the photograph of 'Imad Mahmud Bisharat's body, at least four bullet entry holes, and one exit hole, are visible. In the photograph of Hajjaj Ibrahim Hajjaj, five holes are visible, two of which may be exit holes. In the

photograph of Na'im Lahham's body, at least six entry holes, and two exit holes can be seen. According to **B'Tselem's** sources, only the upper body parts were photographed, to preserve the honor of the deceased, and it is likely that additional bullets hit the lower body parts. In addition, the photographs were taken from the front, and it is possible that additional bullets were shot from behind.

The IDF Spokesperson, in the first announcement following the incident, stated that:

The elite unit's force was operating in the Old 'Askar Camp. The force identified a group comprising four armed terrorists. Members of the unit sealed off the area and flanked them... they called out to the armed terrorists to halt but the latter attempted to escape, **and opened fire at the soldiers**. The soldiers returned automatic fire.<sup>58</sup>

The day after the incident, Col. A., the commander of the Nablus region, was interviewed by military correspondent Motti Eden. The interview was aired on Israeli television on the "Mabat" news program. Following is a transcript of the broadcast:

The announcer, Sari.Raz: The Nablus Regional Commander told our correspondent today that: "Anyone bearing a weapon will be killed." (On the screen is a picture of various weapons laid out on a cloth).

Eden: During the clash the terrorists were armed. They had a Kalishnikov, a Samoval Russian submachine gun, and a Carbine rifle. The terrorists did not have time to shoot. They were shot and eliminated immediately.

Col. A: The force identified [a group of] four armed *wanted* persons. They jumped from the roof down to here, carrying their weapons, and when they jumped down, the force surprised them. [When they were] **at a range of one meter**, [the force] shot at them. Three were killed and one was injured [our emphasis].

Eden: More shooting, more killing in order to kill terrorists... How do they respond to that in the field?

Col. A: The message here is very clear. Everyone who carries a weapon is a potential attacker, and in our view, he constitutes a danger. In light of this, every time he has his weapon on him - we hit him.

The following day (April 17, 1992), **Al Hamishmar** published the following article:

Official military sources confirmed yesterday that during the

incident in the 'Askar Refugee Camp on Sunday, in which Palestinians *wanted* by the authorities were killed. there was no exchange of fire between the soldiers and the wanted persons. The official military sources said that this fact became clear during the investigation conducted yesterday among soldiers from the special unit who encountered the three Palestinians. [...]

The military sources said that the soldiers from the IDF force, who were at the site, opened fire at the gang of terrorists, **one of whom was holding a weapon in his hand**, after positively identifying them.

And **Ha'aretz** newspaper reported on April 17, 1992, that according to the investigation conducted by the Central Command, "an IDF outpost sighted four terrorists armed with three rifles, one of them a Kalishnikov." **Ha'aretz** added that the corrected IDF announcement was released only after a journalist, who had heard the details of the incident from the unit commander, approached them, and requested a clarification.

The investigation raises the following questions:

- Were the shots fired at the four young people who jumped unavoidable (considering the fact that the firing occurred after a jump from a great height, and with the soldiers just a few steps away from the target)?
- Why didn't the soldiers call out a warning?
- Why did the soldiers shoot with automatic fire which is, by nature, indiscriminate?
- Did the autopsy confirm the claim that those killed were shot from a range of one to three meters?
- What was the source of the IDF Spokesperson's original, erroneous announcement? Was there an investigation and were lessons learned from the incident?
- According to **B'Tselem's** sources, only two of the four members of the gang – Bisharat and Lahham – were *wanted*. Hajjaj, and the fourth member of the gang, who was wounded and captured, were not *wanted*. Why did the IDF announcement released to the public state that all four were *wanted*?

In our opinion, this is an additional example showing that the open-fire regulations that allow shooting-to-kill at an armed man, are not justified in all situations. One can assume, with a high degree of likeliness, that the youths who were shot were not able to aim their weapons and to shoot immediately after they had jumped from a height of five meters.

Thus, the soldiers were in an advantageous position and they were not in immediate life-danger. According to the first announcement of the IDF Spokesperson (see above) "members of the unit sealed off the area," thus indicating that even if the four had tried to escape it would not have been possible. Accordingly, one must ask why less severe measures were not employed.

The IDF Spokesperson's Office told us that a Military Police/CID investigation of the event was underway.<sup>59</sup>

## 8. Qadum – March 1992

On March 18, 1992, Ra'ed 'Abd al-Rahman Dahmas, age 20, was shot near the Village of Qadum, Qalqiliya District. He was killed on the spot, and his friend, Muntasar Darwish Bakker Barham, was wounded. A third friend who was with them, Muhammad Hasan Khader 'Abbas, was not injured.

The day after the incident, the newspapers reported, based on military sources, that "an IDF force, in an initiated operation, encountered three masked men. One of them brandished a knife and a large stick at the soldiers. The latter shot at him and killed him. His friend was critically injured."<sup>60</sup>

A **B'Tselem** investigation revealed that the three had not been masked, and were not armed with live or non-live weapons. Moreover, the investigation revealed that none of them had brandished any weapon at the soldiers, and that they had not even seen the soldiers. As far as we know, the three had been on their way back to Qadum from a nearby village, where they had taken a cow for mating. On their return, after darkness had fallen, they were surprised by the undercover force, which was waiting in the dry river bed, apparently in an ambush intended for a group of masked men.

Following is the testimony of Muhammad Hasan Khader 'Abbas, age 20, the only one of the three not harmed, regarding the circumstances of the incident (the testimony was taken by Bassem 'Eid, in Arabic).

On March 18, 1991, at 6:00 p.m., I had our cow with me, and I wanted to go to the nearby village of Hajjah (in order to have her mated). I asked my two friends Ra'ed and Munsar to accompany me. They agreed. We walked on foot (the distance between Qadum and Hajjah is 3 km.) We arrived at the village of Hajjah. There we left the cow with Abu Wa'el.

We returned by the same route. I walked with Ra'ed, arm in arm, and Muntasar was in front of us. We were speaking, quietly. At almost half way we arrived at the dry river bed. It was dark. Suddenly, and in unclear Arabic, we heard someone's voice calling to us: "Halt. Soldiers." It was about 7:10 p.m., and they shined three flashlights. The voice and the lights were to our right. When we heard the voice we didn't turn around towards the soldiers, but raised our hands as we were. The distance between us and them was approximately 6 meters.

When we raised our hands, I immediately heard shots fired at us. The soldiers were behind a low stone wall. I heard a lot of

uninterrupted automatic fire. (Afterwards, residents of the village gathered some 108 bullet shells, according to them).

Muntasar, who was in front of us, had fallen to the ground. I was on the right side, in the soldiers' direction. Ra'ed walked around to my other side and stood in my place, and immediately fell to the ground. When Ra'ed fell, I threw myself on the ground, and when I fell, the shooting immediately ceased and a flare was shot.

Afterwards, three people in civilian dress arrived from the direction that the shots were fired from. One of them was wearing jeans and a black t shirt, the second was wearing torn pants and a jeans jacket. He came up to me and put his gun to my head (I think it was an M-16) and the third was wearing black pants, a black t-shirt and a black hat. I heard the man who put his gun to my head speaking Hebrew, but I didn't understand what he was saying. He ripped my t-shirt. Maybe he thought I was wounded.

When the flare was shot, almost 20 uniformed soldiers approached us. The same man took a walkie-talkie out of his pocket, spoke into it - I heard the word "yes." A man wearing jeans and a white shirt and carrying a white suitcase arrived. Apparently the man was a doctor who was at the site. The doctor removed Ra'ed's clothes and gave him an infusion, but immediately saw that Ra'ed was dead. The doctor began cursing, "damn you," and spat on him. Afterwards, he turned Ra'ed over on his back and began slapping him on the face (when the doctor began treating Ra'ed, he had been lying on his face and stomach).

After the doctor confirmed that Ra'ed was dead, he approached Muntasar and began treating him. Then a helicopter arrived. The helicopter landed, they put Muntasar on a stretcher, and the helicopter took off. Afterwards, a jeep arrived, more soldiers came out of it, and they put Ra'ed onto the jeep. They handcuffed me behind my back and tied my legs, blindfolded me and put me onto the jeep.

While the jeep was still standing, someone asked me my name. I answered. Afterwards, he asked me, 'who is this?' (meaning Ra'ed). I told him what his name was. The man who asked me was talking incessantly into the walkie-talkie. I heard the word "bingo," and I understood that Ra'ed had been *wanted*.<sup>61</sup>

The jeep took off, and at the junction of the village of Immatein, where there was an army roadblock, it stopped. Afterwards, he

blindfolded me again and transferred me to another jeep. The jeep set off. When I got to the place, it turned out that it was the Tulkarm detention facility.

I stayed in Tulkarm for eight days. I was interrogated once by a police officer with three stars on his shoulder who asked me to tell him what happened on March 18. After eight days of imprisonment I was released.<sup>62</sup>

From the investigation the following points emerged:

- According to testimony, the soldiers shot at the three after the latter had raised their hands.
- The shooting, from a close range (6 meters) was automatic fire, and aimed at the body, and not at the legs.
- The fact that one of the three was arrested and released after a short period, after an extremely short interrogation and without any suspicions being raised against him, confirms our claim that the only crime of the three was that they were at the wrong place at the wrong time. This is also confirmed by the fact that his friend, who had been wounded, was not interrogated at all or arrested.
- It is likely that the soldiers had been waiting in ambush for a group of masked men, and when the three friends arrived at the dry river bed, the soldiers erred in the darkness, and thought that the group was the target of the ambush. They opened fire without checking the identities of the Palestinians approaching them.
- As with previous cases described here, the IDF Spokesperson's Office provided a description far from the reality, fully backing up the soldiers whose haste to pull the trigger led to the death of an innocent man.

## 9. Tulkarm - March 1992

On March 22, 1992, Jamal Rashid Ghanem (age 23), wanted by the security forces, was shot and killed while playing soccer at the Tulkarm stadium, unarmed. The description that follows is based on testimonies taken by Yuval Ginbar of **B'Tselem** at the site of the incident.

According to the testimonies, on the day of the incident in the afternoon (shortly after 4:00 p.m.), there was a soccer game between the team of the Shweike Sport Club and the Tulkarm Trade Union Team. The game was held in a stadium encircled by a concrete wall, on top of which there is a fence (approximately 4 meters high). The field is enclosed by an additional fence 2 meters high, topped with 3 barbed wires. There is a 5-meter space between the fence and the wall. There is one entrance to the stadium, approximately 2 meters wide, from the east side. Across from this entrance is the entrance to the field itself. An additional entrance, to the field only, is located on the west side, on the south side of the fence. In addition to the players, there was a crowd of some 70-80 people present at the stadium. (See diagram.)

Jamal Rashid Ghanem, who was killed, played on the Shweike team. During the second half of the game, when the Shweike team had a corner kick, and Jamal was exactly opposite the goalie, at a distance of approximately 3 meters (on the north side of the field), four persons in civilian dress entered the field. Immediately upon entering the field they drew large pistols and ran towards Ghanem.

Ghanem tried to hide behind the referee, but the latter ran away and the four shot at Ghanem, according to the witnesses, without calling a warning and/or shooting at the legs. According to witnesses, Ghanem was shot when he was no less than 50 meters from the nearest exit from the field. The fans, who tried to leave the site, discovered that the entrance to the stadium was being blocked by soldiers.

### ***Testimony of Jamal Ayyub***

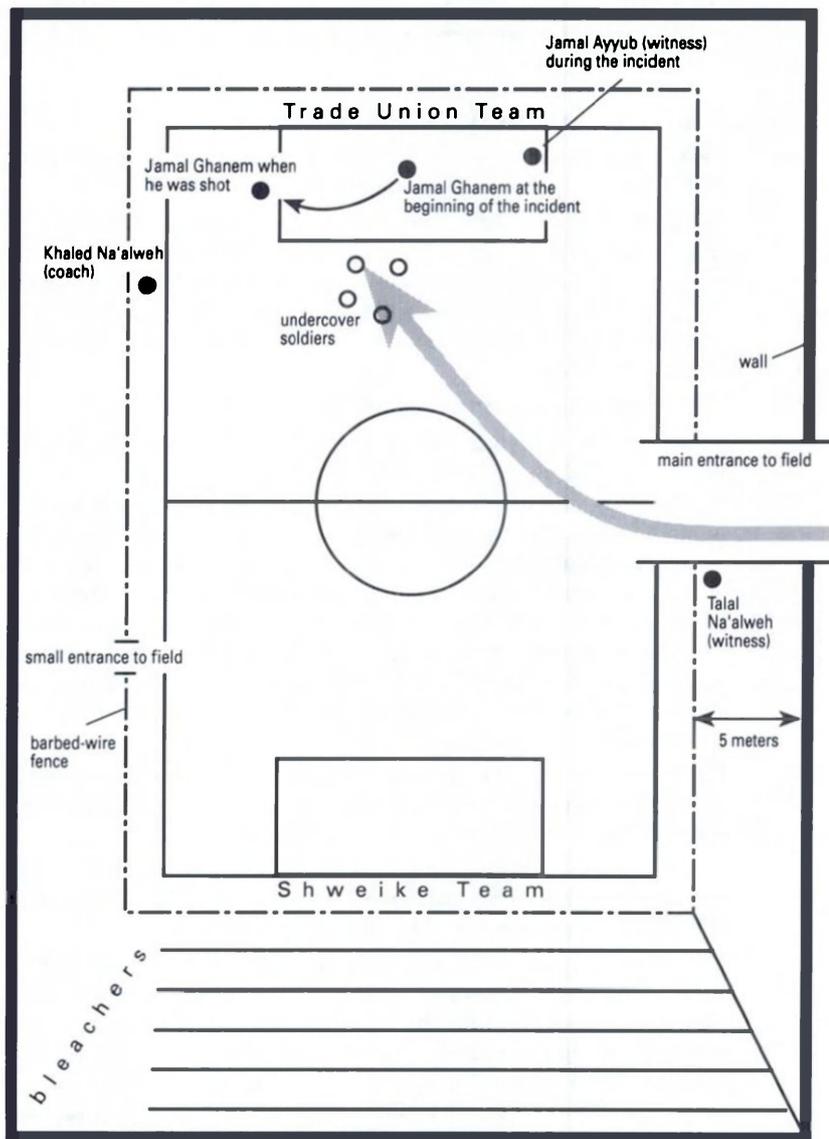
I play defense for the Shweike team. On Sunday we played against the trade union team. We played 4-4-2, with Jamal on offense.

At the beginning of the first half, we got a free corner kick. I went up, I was in the penalty area, to the left of the goal. Jamal was to my right, about 20 meters from me.

Suddenly, I saw four people on the field with guns. They came from the direction of the gate, from behind me. I figured that they wanted Jamal.



# Tulkarm Stadium



Jamal grabbed the referee and said to him: protect me. The referee didn't want to, and left him, and then he was all alone, not knowing whether to go right or left, and then they shot him. They shot him without any warning, and without any attempt to catch him alive. A soldier came and put his foot on his [Jamal's] chest. They began shooting in our direction. I left the field.

### ***Testimony of Khaled Yusef Na'alweh***

I am the coach of the soccer team of the Shweike Sport Club (*Nadi Shweike al-Riadi*), for which Jamal played.

On Sunday, March 22, 1992, there was a game between us and the Tulkarm Trade Union Team (*Niqabat 'Ummal Tulkarm*), as part of the Ramadan games. The game was supposed to begin at 4:00 p.m., but it began a bit late - our team was a bit late, and also it had been raining. We agreed that each half would be 30 minutes long.

The crowd was very small - perhaps 70-80 people.

I was on the sidelines, where the other administration people were, shouting instructions to the team.

At the beginning of the second half, my team was aiming for the goal on the north side, and had a corner kick. Jamal was not far from the goal (he was not the one executing the kick). I saw four people in civilian dress (regular - without *kafiyas* or anything) enter the field, from the direction of the main gate. As soon as they entered the field, they drew large pistols. They were running towards Jamal. Jamal took note of them, grabbed the referee, and sort of hid behind him. He asked the referee to protect him.

I did not hear if the soldiers shouted anything. They began shooting when they were at a distance of 10 - 15 meters from Jamal. I didn't noticed where they aimed.

The referee was afraid, and pushed Jamal away from him. All four immediately shot at Jamal, and he fell. The firing was automatic. I estimate that they shot dozens of bullets.

I don't remember if he was with his back to them, or facing them. Everything happened very quickly, and Jamal barely had time to move at all. After he fell they approached him, and one stepped on his shoulder. He was already not moving. The soldiers began shooting into the air, and people started running away, but the field was surrounded by special forces and regular

army. They kept us against the wall for maybe a half hour to an hour.

They took Jamal's body away in a military ambulance, approximately one half hour after shooting him. Before that, an ambulance came from Tulkarm, but they didn't let it in.

### ***Testimony of Talal 'Abdallah Na'alweh***

On Sunday I was watching the game. I was near the goal. Shweike had a corner kick. Jamal was exactly opposite the goalie, about three meters from it, with his face towards the goal.

I saw four people come in through the gate, and immediately enter the field, towards Jamal. After they came 5 meters closer, I saw that they had Uzis. I shouted to Jamal (I knew that he was *wanted*). He didn't pay attention – he probably thought I was cheering, like the fans always do.

They drew their guns on the field. When they were about ten meters from him, Jamal saw them, grabbed the referee, and said to him: protect me.

The soldiers began shooting. The referee turned around and ran, and Jamal remained alone. The four were shooting at him. Straight at him, not into the air. He fell backwards.

One of them came and put his leg on Jamal's shoulder. The others began shooting into the air, to scare people.

I left the field, but was immediately approached by a man in civilian clothes, who aimed his gun at me and said: go back or I'll shoot. I went back.

Afterwards, three border police jeeps arrived, and later the regular army came along with an ambulance. That was within a few minutes. But they only removed him after about a half hour.

Following the incident, the IDF Spokesperson said that the soldiers, who were conducting an initiated operation, had instructed Ghanem to halt, and when he did not respond and began to escape, they shot and killed him. Later on, we were told by the IDF Spokesperson's office that Ghanem had been wanted for conducting violent interrogations of local residents, and for attempts to carry out attacks on IDF forces.<sup>63</sup> In this conversation, we were told that the force involved in the event was not an IDF force, but belonged to the Border Police. The Border Police Spokesperson confirmed this and said the case was under police

investigation.<sup>64</sup> It is not clear to us whether any of the many Palestinian witnesses to the incident (spectators, players, or team personnel), were interviewed as part of the investigation.

In an interview on the "Yoman" news program on Friday night, May 1, The OC Central Command, Maj.-Gen. Dani Yatom, stated that the soldiers involved in the incident had shot at Jamal Ghanem's legs, but he had slipped, and therefore was hit in the body and died. Yatom also claimed that Ghanem was moving towards a hole in the fence and would have escaped had he not been shot.

According to testimony, as stated earlier, the undercover soldiers did not aim their weapons at Jamal's legs, but at his body. The parents of the deceased said that there were two holes in their son's back, and three in his chest (it is possible that some were exit holes). According to them, there were no wounds on his legs.

The claim of Maj.-Gen. Yatom that the man was killed because he slipped – that is to say, the deceased, and not the soldier who shot him, is to blame for the fact that he was killed – is unacceptable. Moreover, in four out of the ten incidents presented in this report, it is claimed that the soldiers aimed their weapons towards the legs of the suspect but hit them in the body (in one case, in the head). This indicates that this is not an isolated exception, but a recurring pattern. Jamal Ghanem was not armed and did not endanger the lives of the soldiers; nevertheless, he was hit by at least three bullets, all of them in the upper part of his body.

## 10. Sa'ir - May 1992

The event described below is based on testimonies gathered by Bassem Eid of **B'Tselem** from Palestinian eye-witnesses. On May 7, 1992, Israeli Independence Day, a yellow volkswagen van with Israeli plates and bearing an Israeli flag, entered the village of Sa'ir (Hebron District). Four men dressed in civilian clothes sat in the car, some of them with beards and wearing yarmulkes.

Some young Arab men who were playing soccer at the entrance of the village sighted the car, and threw stones at it. The passengers shot at them from inside the car, and wounded Amin Muhammad Jaradat, age 16, in his right thigh. Mahmud 'Issa Shalaldah, one of the other young people, stopped an Arab car that was passing by, and together with another young person, Nidal Jaradat, lifted the wounded person into the car, and ordered the driver to travel quickly and to evacuate the wounded person. The driver travelled towards the nearby village of Shuyukh, with the yellow volkswagen pursuing close behind, its passengers shooting into the air.

After approximately one and a half kilometers, at the entrance to Shuyukh, the fleeing car came upon a barrier made of stones, and stopped. Mahmud Shalaldah immediately got out of the car, and began to run away. Three of the passengers in the volkswagen got out of the car, carrying firearms, apparently Uzi's, and chased after him, all the while shooting automatic fire.

After a few minutes (according to testimony, 3 - 4 minutes) the three returned, and witnesses at the site heard one of them say to his friend who remained near the vehicle: "Finished."

Residents of the village found Mahmud Shalaldah, seriously wounded in the head. They took him to the hospital in Ramallah, where he died the next morning.

Following the event, the IDF Spokesperson released this announcement:

During an operation initiated by the IDF this afternoon around 5:30 p.m. against rioters and disturbers of the peace, in the area of the village of Sa'ir in the Hebron District, soldiers of the force identified two young Arab men throwing stones at a car which was passing by. The soldiers from the force shot at them, and as a result both were wounded, one moderately and the other critically, and they were taken to the hospital for medical treatment.

The following day, an additional announcement was published, stating

that Mahmud Shalaldah, who had been wounded by shots from IDF soldiers while throwing stones, died from his wounds in the hospital in Ramallah.

The IDF Spokesperson's announcements did not in any way address the fact that Mahmud Shalaldah was shot over one kilometer from the place where the stones were thrown, and not at the time when the stone-throwing was taking place, but when he was running away and was not endangering anyone.

Ariella Ringel Hoffman, a reporter for **Yediot Ahronot** who had sent an inquiry to the IDF Spokesperson regarding this matter, was told that after Shalaldah had begun to flee, the soldiers carried out the procedure for apprehending a suspect, and the youth fell and was hit in the head.<sup>65</sup>

The investigation raises the following points:

- The undercover forces, in this instance disguised as settlers, entered the village to provoke people to throw stones. This was similar to an action in the village of 'Asirah al-Qibliyah, on March 9, 1992, in which an *Eged* bus entered the village, and soldiers in civilian dress got out and shot at stone-throwers. 'Abdallah Suleiman Muhammad al-Shami was killed from the shooting.
- Mahmud Shalaldeh was shot fatally in his head at a time when he was fleeing from soldiers and not endangering anyone. The claim that he "fell and was hit in the head" during the procedure for apprehending a suspect is a claim which appeared in various versions of other cases presented in this report, and sounds unreasonable.
- In this event as well, the IDF Spokesperson published a misleading announcement that did not address the fact that the "Israeli vehicle" at which the stones were thrown was the same car transporting the soldiers. The announcement also omitted the fact that Shalaldah was shot very far from the place in which the stone-throwing incident took place, and well after the incident had ended.

## **B. BEATINGS**

Although this report focuses on unjustified shooting, it is impossible to ignore another aspect of special unit operations. Many testimonies of Palestinians relate to the brutal behavior of soldiers during searches conducted in homes or on the street. It appears that the norms of conduct for shooting are extended into other realms not necessarily connected to security operations.

In January 1988, soldiers from the "Duvduvan" unit, the undercover unit in the West Bank, arrested residents from Kufr al-Dik (Nablus District) on the basis of a list of names compiled by the GSS, and beat them with iron bars. This incident came to light in the course of the trial of Col. Yehuda Meir, who was brought to trial for a similar incident that took place in the village of Hawara. In light of this revelation a Military Police/CID investigation was opened. The investigation has been concluded, but **B'Tselem** does not know if a decision has been made to bring charges against the officers and soldiers who took part in this operation.

Following, three cases are described in which Palestinian residents were beaten for no reason whatsoever. This is an additional expression of the destructive atmosphere that reigns in the undercover units.

### **1. Khan Yunis - July 1991**

On July 21, 1991, Atty. Maher Khamis Fares was arrested by soldiers from the "Shimshon" undercover unit. He was beaten and humiliated, and finally released when it emerged that there were no grounds for his arrest. The following description is based on a complaint submitted on his behalf by Atty. Raji Sourani, Director of the Gaza Center for Law and Justice:

On the day of the incident, at around 3:00 p.m., Atty. Fares left his brother's house, which is near the beach in Khan Yunis. A man in civilian dress and carrying a crate approached him. When the man drew closer to Atty. Fares, he threw the crate aside and, together with another man who appeared on the scene, body-searched Fares. The two emptied his pockets and dragged him over to a nearby wall.

Atty. Fares thought that they were Arabs who wanted to hurt him, and

he said to them: "You are making a mistake. What do you want from me?" The two then drew their pistols, and said, "Army." Atty. Fares immediately ceased to resist, and told them that he was a lawyer.

At that point uniformed soldiers arrived at the site, and bound his hands with plastic handcuffs. They put him in a nearby office. They lay him down with his face to the floor, and ordered him to be silent. While he was lying, they began beating him on the head with a heavy object. Atty. Fares thought that it was a pistol. The beating continued even after he began bleeding heavily from the head.

After some time, he was instructed to stand. A soldier brought a bottle of water, cleansed Atty. Fares' head with water, and afterwards bandaged his head. Atty. Fares was taken with other prisoners to a jeep, where they covered his eyes and seated him with his head down and his hands tied behind his back. He was brought to the infirmary where he was treated for the wound on his head. Afterwards, they again handcuffed him. When he complained that the handcuffs were too tight, a soldier came and tightened them even more.

One of the soldiers took Atty. Fares to a separate room, where he met a tall, thin man with a dark complexion, who introduced himself as Abu al-Amin, and said that he was a GSS member. The man showed him a phone book. Atty. Fares confirmed that the phone book was his. The GSS man claimed that the book included phone numbers of Intifada activists. Atty. Fares denied this and stated that the numbers were of his clients and friends. The interrogator asked him to indicate which phone numbers were from abroad. Atty. Fares pointed to the phone number of his brother, 'Adnan, in Riad, Saudi Arabia. Afterwards, the first interrogator exited the room, and another man entered, and asked him a few more questions, and finally apologized and released him.

After the Gaza Center for Law and Justice submitted a complaint to the IDF authorities, the Military Police/CID opened an investigation, which resulted in the pressing of charges against a soldier from the "Shimshon" unit, who had beaten Atty. Fares and caused the cuts in his head.<sup>66</sup> The soldier was charged with ill-treating Atty. Fares, and on April 6, 1992, a trial was opened in the military court of the Southern Command. The OC of the Southern Command, Matan Vilna'i, issued a special order instructing the president of the court to conduct the entire trial behind closed doors. The order did not leave any opportunity for the court president to exercise his judgement on the matter.

## 2. Idna - July 1991

During the night between July 29 and 30, 1991, several masked men knocked on the door of Ibrahim Tmeizi, one of the six mukhtars of Idna village in the Hebron District. One of them told the household members: "My name is Muhammad, I am fleeing from the soldiers. Let me enter.

The Tmeizi family, who saw that the masked men had weapons, were afraid to let them in. They said that Ibrahim Tmeizi was not suspected of collaborating, but in the past, young people had tried to attack him because of his business and friendship ties with Israeli antique collectors. While Tmeizi was arguing with the men, two of his sons went up to the roof and began throwing stones at the masked men. The masked men began shooting in the air. Chaos ensued, the masked men set off a flare, and within a few minutes, military vehicles, soldiers, and a military ambulance arrived at the site. At that point, the Tmeizi family and their neighbors understood that the masked men were undercover soldiers.

Meanwhile, the soldiers broke into the house, and began searching for Ibrahim Tmeizi, all the while conducting themselves violently and damaging property in the house.

When Ibrahim emerged from his hiding place, the soldiers beat him, kicked him, and blindfolded him, and one of the soldiers said in Arabic, "Shoot him."

Afterwards, the soldiers inspected the identity cards of the household members. They conferred among themselves, and finally asked Ibrahim Tmeizi if there was another mukhtar from the Tmeizi family in the village besides himself. Ibrahim said there was. The soldiers asked him to show them the house of the second mukhtar, and he did so. On the same night, the second mukhtar was arrested by the IDF, and was released the next day, without, according to his claims, having been interrogated at all.

Military administration officers apologized to Ibrahim Tmeizi for the incident, explaining that there had been a mistake, and offered to compensate him for the damages. Tmeizi declined the offer.<sup>67</sup>

In response to an inquiry by **B'Tselem**, the IDF Spokesperson, stated on April 13, 1992, that:

The incident was investigated by the Military Police/CID, which took testimonies from both the mukhtar and his family. The military advocate who reviewed the material from the investigation, ordered that disciplinary hearings be held before a senior officer for a number of IDF soldiers and the officer involved in the incident.

In an inquiry conducted by **B'Tselem** it emerged that the officer and three soldiers were brought to a disciplinary hearing before the division commander (details of the specific charges are unknown to us) and were acquitted.

### 3. Khan Yunis - September 1991

On a September day in 1991, two residents of Khan Yunis, Yusuf Jahuh, age 66, and Mahmud Ibrahim 'Ali 'Alawan, age 58, were walking along the roadside, with a wagon filled with heating wood. Suddenly, a civilian car pulled up beside them, and four soldiers in civilian dress got out. One of the soldiers approached Jahuh, and began punching him and beating him with the butt of his rifle. He continued beating him, even after Jahuh fell on the road, bleeding profusely. A second soldier hit 'Alawan on the face.

Jahuh sustained bodily injuries and his face was bleeding, both at the ear and mouth. He required stitches and was hospitalized for one week. 'Alawan was hit in the face, and required first aid, after which he was released and sent home.

The entire incident occurred within approximately five minutes, after which the soldiers immediately left the site, and other soldiers, who had arrived, took Jahuh and 'Alawan to the police station in Khan Yunis, where they sat and waited for over a half hour until an ambulance arrived and brought them to a place where they could receive medical attention.

In November 1991, charges were pressed against two soldiers in the "Shimshon" undercover unit, Corporal 'A. and Sergeant A. The two were accused of assault and inappropriate behavior.

Initially, the two denied that they had been present at the site of the incident. Later, they confessed to having been there, but claimed that they had not attacked the complainants. Finally, they confessed that they had attacked them, and claimed that the reason for this was a "conflict between drivers." They said that one of the logs on Jahuh and 'Alawan's cart had hit their car, so they got out of their car "to teach them a lesson."

On April 22, 1992, the two soldiers were convicted in a plea bargain, after the charges had been changed to deviation from authority, damaging the army's image, and shameful behavior. One of the soldiers was sentenced to a four-month suspended sentence, and the second was fined NIS 300.<sup>68</sup>

In summing up the case, the defense lawyer for the two accused soldiers, Atty. Eliyahu Shiloh, stated that:

The education system has not succeeded in providing a good educational basis for young people. And these young people enter the military, and arrive at a unit which operates not in the usual army framework, but deals in operations which in other

countries are in the realm of the secret service apparatus only.

When an 18-year-old conscript soldier gets to the point of killing people, something in our ethical system has gone wrong. This unit has also killed erroneously when it was supposed to have captured a *wanted* person, and I do not think that this is the job of a conscript soldier. When an 18-year-old boy is forced to take someone's life, his ethical system is harmed.

## SUMMARY AND CONCLUSIONS

In recent months, the activity of undercover units in the territories has been intensified, in the framework of what has been defined an "offensive policy" against Palestinians wanted by the security forces. During this period, the number of persons killed by the undercover units has increased substantially. Military sources have denied the charges that there is a policy to "eliminate" *wanted* persons.

The report presents an analysis of ten cases in which Palestinians were killed by undercover units. These cases were chosen as representative, from among dozens of investigations conducted by **B'Tselem**; all characterize various problems which arise from the activity of the special units. The analysis illustrates that the activity of the special units on one hand, and the message given to soldiers by the entire military establishment on the other hand, lead to many deviations from the stated policy.

The following conclusions emerge from the report:

- The soldiers in the special units are equipped with live ammunition only. In many cases, no serious attempt is made to stop the persons killed, or to employ less severe measures (plastic and rubber bullets, tear gas, etc.) before the shooting which causes their death.
- Many of those killed were shot from close range, and hit in their upper body. In many of the cases, the person killed was hit by a large number of bullets.
- In four of the ten cases presented in the report, it was claimed that the soldiers aimed their weapons at the feet of the suspect, but hit him in the body (Tamun - August 1988, Ramallah - July 1989, Tulkarm - March 1992, and Sa'ir - May 1992). (In one of the cases, Sa'ir, the suspect was shot in the head).
- **B'Tselem** knows of 5 cases of persons killed apparently by mistake.
- The percentage of persons killed who were armed when they clashed with the undercover units has risen in recent months, and from January to April 1992, reached 50%. Still, fifty-percent of those killed are unarmed.

The legal section of the report reviews the relevant court decisions, and elucidates the restrictions stipulated by the Supreme Court regarding use of the "self-defense" claim, and the criteria for apprehending a suspect and shooting during the procedure for apprehending a suspect.

In addition, the section reviews the prohibitions in international law against killing without a trial, and against the inordinate use of force by those vested with enforcing the law.

"Self-defense" applies only in a situation in which a person is defending himself from attack, and on condition that the action was intended to ward off an attack, and was reasonable in order to prevent harm. "Self-defense" does not justify an action directed at a future danger, but rather, only an action necessary to ward off an attack actually occurring. Force may not be used prior to attack, or after the danger has passed.

The criteria for apprehending suspects require that the soldier executing the arrest act according to a legal arrest warrant, or that he personally have information concerning suspicions against the *wanted* person, or at least that he have detailed information - possibly from a secondary source - regarding the nature of the suspicions and evidence against the *wanted* person. Reliance on lists of *wanted* persons drawn up by anonymous authors, and on general accusations such as "was involved in violent interrogations of local residents," eliminates personal responsibility, both from a legal and ethical standpoint.

Use of fatal force during an arrest is justified only when there is no other way to prevent the danger posed by the *wanted* person, and on condition that the severity of the measure employed is not disproportionate to the harm which the user of the force seeks to prevent.

There is no question that IDF soldiers must defend themselves when attacked in a life-threatening situation. It appears, however, that in many cases, soldiers fatally shoot and kill in circumstances which do not justify "self-defense." The report discusses several reasons for this phenomenon:

## 1. "À la guerre comme à la guerre"

A number of the heads of the military establishment have lately justified the methods of operation employed by the undercover units, claiming that there is a war in the territories, and therefore the IDF functions as on the battlefield. This claim is groundless. In an affidavit submitted to the High Court of Justice, quoted in the report, Chief of Staff Ehud Barak stated that the legal basis of the IDF open-fire regulations in the territories is the Israeli Penal Law.<sup>69</sup> The basis for comparison used for the activities of the special units in the territories cannot be the glorious operations by IDF units over enemy lines, but police activity within the State of Israel.

The Israel National Police also deals frequently with armed criminals, who have taken refuge in the heart of a civilian population which often attempts to assist criminals and is hostile to the police. Despite this, no one claims that the police must operate according to the rules of the battlefield when it sets out to arrest armed criminals. Moreover, no one would even consider the police breaking into a place where such a criminal (or group of criminals) was hiding in an operation which would endanger the policemen's lives, and obligate them to use live fire and kill in self-defense.

The accepted methods of police operation for the apprehension of suspects are surrounding the area with a large police force, blocking the possible escape routes, and trapping the *wanted* person in a manner which does not endanger the police. Such an action is more expensive and requires much manpower. In addition, it is not glorious like the undercover unit operations, but places the value of human life as the first consideration, and recognizes that capturing *wanted* persons is not an end which justifies all means.

The methods of operation of the undercover units create a high likelihood that persons of the territories will lose their lives. The more an action endangers the life of IDF soldiers, the more likely that live fire will be used, and that *wanted* persons or others in the area will be harmed.

There is an element of uncertainty in these methods of operation, both because there is a danger that a given operation will develop in a dangerous and unanticipated direction which requires a harsh response, and in terms of identifying the *wanted* persons. The speed with which the action occurs, the element of surprise, and the fatal fire not preceded by milder methods, in many cases prevents positive identification, and leaves the way wide open for error, and for inflicting harm on innocent persons, as it appears from some of the cases described in the report.

## **2. Open-fire regulations**

A change in the open-fire regulations this year greatly expanded the definition of "life-endangering situation," enabling soldiers to use the "self-defense" claim to justify any instance of opening fire.

The regulations do not convey to the soldiers the gravity of unjustified shooting, and are worded in unclear language which leaves many "grey areas" and much room for the soldiers' discretion, without explaining to them, with examples and clarifications, how they are to exercise that discretion.

The oral briefings given by the commanders in the field are unclear and obfuscate the instructions, instead of elucidating them. These briefings, as well as comments by senior officers in the media, create an impression among soldiers that the killing of a *wanted* person is considered a success, while an escape is considered a failure. This message reinforces the phenomenon of the soldiers being "trigger happy."

## **3. The chain of cover-up and back-up**

The entire military establishment takes part in justifying the phenomenon of killing *wanted* persons. The chain begins with comments in the media by senior officers, and from initiatives in the field, which support giving soldiers freedom to shoot even in cases where shooting can be prevented. These initiatives are processed by legal experts and receive legal legitimacy in the form of "adjusting the regulations to the new situation."

The IDF Spokesperson's Office plays an important role in this chain. The announcements given to the media after every event in which Palestinians are killed by IDF soldiers, and especially in the case of undercover units, are often inaccurate. A comparison of investigations by **B'Tselem** with announcements from the IDF Spokesperson creates the impression that the IDF Spokesperson gives the media misleading information, based on distorted reports from forces in the field (in some cases, the IDF Spokesperson issues corrections to preliminary announcements which were found to be incorrect), or, even worse, announcements intended to knowingly cover-up illegal activity.

Thus, the public is told about "danger posed to the soldiers," while a **B'Tselem** investigation refutes the claim; the IDF Spokesperson reports on "*wanted* persons who were shot when they did not respond to the cry to halt," while a **B'Tselem** investigation shows that there was no call to halt; where persons were hit in the body or head, even though the soldiers "shot at the legs;" and "armed masked persons" turn out to have not been in any way involved in terrorist activity.

Frequently, announcements from the IDF Spokesperson, and comments by senior officers, contain information regarding crimes attributed to *wanted* persons. These comments give the public the impression that the latter's acts justify killing them.

An additional link in the chain is the Military Police/CID. As evidenced in the report, in most cases, Military Police/CID investigations are conducted in a negligent manner, and rather than attempt to arrive at the truth, confirm that the soldiers "acted in accordance with the procedure." The investigations create the impression that no real effort is made to question Palestinian witnesses. In at least two of the cases described in the report (Tamun - August 1988, and 'Askar - February 1991), eyewitnesses to the event were in IDF custody, and despite this, the Military Police/CID did not deem it necessary to take testimony from them.

Finally, the Office of the Military Advocate General: in only one case from among the ten which appear in the report, were charges pressed against an officer (al-Bureij, October 1989). In three additional cases, including two cases in which the Military Police/CID did not bother to question the witnesses, the file was closed after it was determined that the soldiers had acted appropriately. In the fifth case (Ramallah - July 1989) an order was given to begin disciplinary proceedings against a soldier, but execution of the order was postponed until the soldier returns to Israel from abroad. In the five remaining cases, the investigation has not been completed.

Even if there is no policy of "eliminating" *wanted* persons, the report indicates an atmosphere which justifies fatal shooting by undercover units in general, and shooting at *wanted* persons in particular, including circumstances which do not justify "self-defense," as defined in the ruling. In the zeal to capture *wanted* persons, deviations from the official orders are understood as an unavoidable necessity.

The message passed on to soldiers in the "oral tradition" which has grown up around the written orders, is that even if the killing of *wanted* persons is not a goal in and of itself, it is not viewed as wrong.

This message is as immoral as it is illegal. In the State of Israel, as in all properly functioning countries, only a court is authorized to impose a death sentence on a person, after he has been lawfully tried and convicted. The charges against *wanted* persons, no matter how grave, do not justify aberrations from this principle. The legal and defense establishments bear the responsibility of elucidating this to those who operate in the territories on their behalf, and of preventing all unjustified killing.

## NOTES

1. See, for example, Yizhar Be'er, **Kol Ha'ir**, October 21, 1988.
2. Letter of Capt. Shabi David, Assistant to the Chief Military Prosecutor, T.A. 102 (18) 2724, October 2, 1991.
3. See, for example, Tali Zelinger, **Davar**, October 25, 1988.
4. "Yoman," (a weekly news broadcast on Israeli television), June 21, 1991.
5. According to data provided by the Chief of Staff, 130 *wanted* persons suspected of grave security offenses such as murder, and possession of weapons, were captured during the first four months of 1992. (The Chief of Staff did not specify what percentage of those captured turned themselves in, and what percentage was captured during operations of IDF units.) These data were reported by the Chief of Staff during a television interview on the "Mabat" news program on Saturday night May 9, 1992.

According to Maj.-Gen. Dani Yatom, 1,400 *wanted* persons and others wanted for questioning were detained in the West Bank during the first four months of this year, (Maj.-Gen. Yatom did not specify how many were captured during military action), 13 were killed, and 13 were injured. These data were reported by Maj.-Gen. Yatom at a press conference on May 3, 1992.

**B'Tselem** knows of only 11 *wanted* persons who were killed. See Appendix C.

6. See correspondence, Appendix D.
7. PHRIC, "Targeting to Kill: Israel's Undercover Units." Jerusalem, May, 1992.
8. Emanuel Rozen, "Security," **Ma'ariv**, May 20, 1992.
9. Sima Kadmon, "Voices of the Duvduvan [Cherry]" **Mar'ariv**, weekend supplement, July 5, 1991.
10. On July 5, 1988, ABC television reported that on June 16, 1988, Israeli security men drove into the village of Salfit in a car marked with ABC tags. They had cameras and identified themselves as newsmen who had come to interview a young Palestinian at the remnants of his house, which had been destroyed because someone had thrown a Molotov cocktail. But immediately after the "interview," he was arrested.

In an article which appeared in **Davar** on June 28, 1991, Michal

Sela reported about two people dressed as journalists who were present at the funeral of Rashad a-Shawa, former mayor of Gaza, which had taken place some years previously. Sela reported that she approached them to get acquainted, but they avoided her. She said that their thin shirts "did not conceal the guns tucked in the pockets of their trousers".

11. PHRIC report, (see note 7, above), p.45, note 13.
12. An operation of this type was carried out, for example, in 'Asira al-Qibliya on March 9, 1992, where stones were thrown at a bus and soldiers in civilian clothing emerging from it shot and killed Abdallah Suleiman Muhammad al-Shami. In the May 15, 1992 edition of "Yoman," a video movie filmed by Palestinian residents was shown, in which an army jeep was seen driving slowly. Alongside the jeep was a commercial vehicle with local license plates. Right after stones were thrown at the jeep, soldiers dressed in civilian clothes were seen getting out of the commercial vehicle, and chasing those who had thrown the stones.
13. See, B'Tselem, **The Use of Firearms by the Security Forces in the Occupied Territories**, Jerusalem, July 1990, pp.37-38, 71-74.
14. Ibid., p. 29-36.
15. **B'Tselem** data confirm this conjecture. Nineteen of those killed during October and November 1989 (out of a total of 43 killed by the security forces in that period) were masked individuals or were in the company of masked individuals. See B'Tselem, **The Use of Firearms by the Security Forces in the Occupied Territories**. July 1990, pp. 23-24.
16. According to the **Jerusalem Post**, February 4, 1992, the new instructions went into effect on February 2, 1992.
17. See **Ha'aretz** and **Hadashot**, April 29, 1992.
18. See Alex Fishman, "Safety-Catch Open, Finger on the Trigger," **Hadashot**, May 1, 1992.
19. **Davar**, June 26, 1991.
20. Assistant Chief Military Prosecutor, T.A. 227 2714, September 27, 1991.
21. Ze'ev Schiff, "The Other Operational Aspect," **Ha'aretz**, May 1, 1992.
22. See Alex Fishman, "Safety-Catch Open, Finger on the Trigger," **Hadashot**, May 1, 1992.
23. Michal Sela, "Yes and No," **Davar**, March 25, 1992.

24. Reuven Pedhatur, "Black Flag at Dura," **Ha'aretz**, May 4, 1992.
25. According to the PHRIC report, the first deaths caused by the undercover units occurred in April 1988.
27. See Appendix C.
28. Capt. Avital Margalit of the IDF Spokesperson's Unit confirmed this in a telephone conversation on April 27, 1992.
29. See Reuven Pedhatur, "Black Flag at Dura," **Ha'aretz**, May 4, 1992.
30. HCJ 378/89. The petition was rejected on grounds of lack of justiciability, the court's reasons not being made public to this day.
31. Amendment No. 37 to the Penal Law was ratified by the Knesset on March 16, 1992.
32. This opinion was presented by the Military Advocate General during a meeting with **B'Tselem** representatives on March 16, 1992.

Also, in the official explanations to the proposed amendment to the law (H.H. 2057, May 21, 1991), it was stated explicitly that "it is suggested in the spirit of the sentence that a broad test of reasonableness be laid down, rather than the narrow tests that are included today in Sec. 22. These tests constitute part of the explicit reasonableness test and there is no need to recall them in detail.

The main change that was implemented by the amendment to the Penal Law is to be found in Sec. 22(c), which permits the court to impose a lighter punishment than that stipulated by law if the accused proves that he acted within the framework of self-defense, but exceeded what was reasonable in the circumstances for the prevention of harm, or proves that he acted within the framework of the defense of necessity, but the harm that he caused was disproportionate to the harm that he sought to prevent or he exceeded what was reasonable in the circumstances for the prevention of harm. The problem with the amendment is that the legislator did not set a minimum threshold for punishment in these circumstances, so that a person who kills another in circumstances that up until this amendment would have imposed a severe mandatory penalty, is likely to be subject to an extremely lenient sentence.

33. Crim App 190/54 *The State Attorney v. Kaminsky* P.D. 15 (1) 54, p. 56. Crim App 50/64 *al-Navadi v. The State Attorney* P.D. 18 (4) 37. Crim App 229/62 *Gratchinsky v. The State Attorney* P.D. 17 (2) 1075.

34. Crim App 319/71 Ahmed v. The State of Israel P.D. 26 (1) 309, p. 316.
35. Before the Penal Law was amended, the Supreme Court ruled that self-defense is not available to a person who knowingly put himself in a situation in which he was likely to be assaulted. (Crim App 410/71 Horowitz v. State of Israel, P.D. 20 (1) 624. That case was adopted by the court in Crim App 88/83 Shukrun v. State of Israel P.D. 38 (2) 617).

It should be noted that from these judgements it is not entirely clear if it is enough that a person "**knowingly** put himself into a situation wherein he was forced to defend his life" in order to deprive him of self-defense (Shukrun case, p. 620), or whether what is necessary is that "he **knowingly and illegally** put himself into a situation which caused the assault against him" (Horowitz case, p. 145). The amendment to the law eliminates the claim of self-defense for the person who caused the assault against which he is defending himself "by his unacceptable behavior and by the fact that he foresees the possible developments in advance."

36. The Security Provisions Order does not include a provision similar to that in Sec.19 of the Criminal Procedure Ordinance (Arrest and Search), which states: "Anyone authorized to arrest a person who is subject to arrest may use any reasonable means required to execute the arrest, if the person resists or tries to prevent the arrest."
37. C.A. 486/88 P.D. 44 (2)353.
38. C.A. 57/53 P.D. 7 1126.
39. Ibid., pp. 368-369.
40. See Jaime Orra, **Human Rights in States of Emergency in International Law**. Oxford, 1992, p.96.
41. Israel signed the Convention on December 19, 1966, and ratified it on August 18, 1991. Its provisions became effective for Israel as a signatory state on January 3, 1992.
42. Havana, August-September 1990.
43. T.A. 334/89, 273/89.
44. See Appendix B.
45. Atty. Felicia Langer, who heard this from the family, conveyed the information to **B'Tselem**.
46. H. Yisraeli, Defense Minister's Office, Q/16235, October 23, 1991.
47. At this stage, apparently, another person, Mahmud Ibrahim

- Abu-Shamleh, age 22, was killed.
48. The testimony was heard on October 27, 1991.
  49. The testimonies were heard on October 22, 1991.
  50. This testimony was heard November 3, 1991.
  51. This testimony was heard on February 16, 1992.
  52. This testimony was heard on January 7, 1992.
  53. This testimony was presented at the session which took place on November 19, 1991.
  54. The testimony was heard on November 19, 1991.
  55. "Killed According to Procedures," Jerusalem 1990.
  56. See, for example, **Ha'aretz**, April 1, 1990.
  57. Letter from Capt. Avital Margalit of the IDF Spokesperson's Office to **B'Tselem**, April 13, 1992.
  58. See, for example, **Ha'aretz**, March 16, 1992.
  59. Telephone conversation, Capt. Avital Margalit, April 29, 1992.
  60. See, for example, **Ha'aretz**, March 19, 1992.
  61. According to inquiries undertaken by **B'Tselem**, Ra'ed Dahmas had been involved in a stone-throwing incident in January 1989, in Qalqiliya. In the aftermath of this incident, he left his family's home and went to live in the house of his uncle in Qadum. According to the testimonies in our possession, he was not involved in subsequent incidents or attacks.
  62. On April 7, 1992, Bassem 'Eid of **B'Tselem** interviewed Muntasar Darwish Baker Barham, who was injured in the incident, in the Maqassed Hospital. He gave a similar testimony.
  63. Telephone conversation, April 29, 1992.
  64. Telephone conversation, May 3, 1992.
  65. **Yediot Ahronot**, May 13, 1992.
  66. Following this incident, the soldier was discharged from the unit. See: **Yediot Ahronot**, April 12, 1992.
  67. For more information on this incident see: Dani Rubinstien, "The Military Administration Asked Forgiveness." **Ha'aretz**, September 1, 1991.
  68. For a critique of this sentence, see B. Michael, "Samson's Haircut." **Ha'aretz**, April 26, 1992.
  69. See p. 22.

## **RULES OF ENGAGEMENT FOR IDF SOLDIERS**

### **Opening fire in situation of mortal danger**

#### ***1. Attack on our forces by gunfire or explosives***

In a situation where our forces or civilians are attacked (bygunfire or explosives including petrol bombs) fire aimed to hit is to be returned in the direction of the attackers only. Firing must cease immediately when no longer required (e.g. when the attacker has been hit or when he raises his hands in surrender).

#### ***2. Opening fire in situations of mortal danger during riots***

Warning: this rule applies only when our forces or civilians are in mortal danger. In riots where no danger exists to life, the regulations of Part B "Firing in the Air to Disperse Rioters" applies.

##### **A. The Situation**

When our forces or civilians are bodily attacked or when stones are being thrown at them or other non-firearms are being used, the use of firearms is allowed only when there exists a real and immediate danger to their lives.

**Emphasis:** The question whether the use of non-firearms constitutes a real and immediate danger to life shall be examined according to the circumstances of each incident, including: the numerical ratio between the attackers and our forces, the terrain and the age of the attackers.

##### **B. Opening Fire Procedure**

1. Opening of fire will be carried out as much as possible in the stage outlined below. Movement from stage to stage shall be carried out only if the earlier stage did not bring about the removal of the danger and if there still exist circumstances permitting the opening of fire.

2. These are the stages:

**Stage A** – Before the weapon is fired and, in as much as circumstances allow, warnings should be called out in Arabic: "Wakef wala batukhak" (Halt or I'll shoot).

**Stage B** – Warning shots should be fired upwards in single-fire mode (semi-automatic), after ensuring that there is no danger of the shot hitting people or property.

**Stage C** – Shoot to hit the legs only.

Under all circumstances use of the weapon will be made only in single-fire mode (semi-automatic), with the utmost caution, and only towards the legs of the attacker.

3. Fire should not be directed at the upper body of the suspect.

4. Only a specific attacker who has been identified as a danger to human life can be shot at. It is vital to safeguard against hitting others.

5. Opening of fire will be done, as far as circumstances allow, only by the commander.

6. As far as possible, avoid shooting at women and children.

7. Once the danger has elapsed (for example: when the cause of the danger has fled) do not continue fire, except as laid down in the procedure for apprehending a suspect.

## **Opening Fire as Part of the Procedure for Apprehension of Suspects**

### ***General***

1. These rules serve to define the opening of fire as part of the procedure for apprehension of suspects, as carried out by IDF soldiers as part of their duty to maintain the security of the area.

2. It is forbidden to open fire in order to arrest a suspect except in accordance with these regulations.

3. These rules do not apply when our forces are attacked by fire or explosives.

## **Definitions**

4. "**Suspect**" – Anyone against whom there exists a reasonable suspicion that he has committed, or abetted in the commission of, or attempted to commit a terrorist activity or any other serious felony.

Note! The suspicion must be based on facts, information or reliable data, taking into account the place and the time. **A mere suspicion, a feeling, or a hunch are insufficient.**

5. "**Serious Felony**" – A felony in which there is real danger to life or limb, such as: murder, illegal possession of a weapon, membership and activity in a hostile organization which is likely to endanger life or cause bodily injury, stone-throwing at persons or vehicles where there exists a **real danger and the arrest takes place immediately after the event**, security-related and willful damage to property in a manner which is likely to endanger life or cause bodily injury.

## **Stone-throwing – Note!**

a. It is forbidden to open fire on stone-throwers, except as part of the procedure for apprehension of suspects and only when the stone-throwing constitutes a real and immediate danger.

b. A real danger is deemed to exist when stones are thrown at a **moving vehicle** with the intention of hitting it or, in the case of stone-throwing in other circumstances, **endangering lives** – taking into consideration the conditions of the terrain, the size of the stones, numerical ratio between the attacking force and our forces, and the like.

c. It is forbidden to open fire unless the arrest procedure is carried out immediately after the stone-throwing. If the suspect is not arrested immediately after the incident, no further use of weapons will be made for the arresting procedure.

## **Emphases**

6. Fire is not to be opened against a suspect for a "normal" crime, e.g. refusal to identify self, theft, smuggling, and the like. **Under no circumstances shoot at a person who does not obey a command to stop and flees**, unless he is a "suspect" according to the definition in article 4 above.

7. Fire will be used only as a **last** resort for apprehending a suspect and once all the other means have proven ineffective.

8. Opening fire on a suspect is to be avoided in circumstances in which there exists a danger that other people are liable to be hit.

9. Opening fire on **children** under 14 years of age and on **women** is to be avoided.
10. As far as possible, firing will be carried out only by the **officer in command**.
11. Even in circumstances where there is no other way to apprehend the suspect, the commander will still consider whether it is necessary to open fire under the circumstances of the event.
12. In all cases in which a person has been hit as a result of fire, medical treatment must be provided.

### ***Procedure for the Use of Firearms***

13. At first, try to apprehend the suspect without the use of force. If the suspect resists arrest, it is permissible to use reasonable force to overcome such resistance. "Reasonable force" is defined as the force a reasonable man would use in the circumstances in order to carry out the arrest in view of the suspect's resistance or attempts to escape.
14. If the suspect was not apprehended or if he escapes after being arrested, it is permitted to use gunfire according to the following stages. Movement from stage to stage will be carried out only if the previous stage has not resulted in the arrest of the suspect.
15. The stages for opening fire are those set out in Part A (Opening Fire in Situation of Mortal Danger During a Riot, Part B, p.15).

# **Procedure for Arresting Persons in the Gaza Strip or Judea and Samaria Who are in Disguise or Wearing Masks, Under Suspicious Circumstances, Through the Use of Firearms**

## ***Background:***

1. In Judea and Samaria and the Gaza Strip, there is much grave activity of local residents who operate in special disguises or masks (which are not routinely used by the local residents), whether in attacking collaborators, imposing a reign of terror on the local population, or acting as chief instigators in demonstrations and violent riots. This activity, which occurs day and night, constitutes a grave crime, and justifies immediate arrest, including the use of shooting in the procedure for apprehending a suspect.

## ***Goal:***

2. This order will specify the procedure for capturing and arresting disguised or masked persons, whether or not they are armed, day or night. It should be emphasized that regarding disguised or masked persons who are taking part in demonstrations and riots, only the operational orders for using weapons and plastic bullets during a demonstration will apply

## ***The Method:***

3. As a rule, a condition of shooting to stop a masked suspect is that circumstances exist which raise a suspicion that a dangerous crime is being committed, or that a suspect is on his way to commit a dangerous crime. In order that shooting to stop a masked suspect be allowed, the commander of the force must have reasonable suspicion that the suspect committed, is committing, or is about to commit a dangerous crime, (such as a violent attack on soldiers or local inhabitants, attacks on property in a manner likely to endanger human life, bearing an axe, knife or other weapon or the like), or there must be a suspicion that the masked person is on his way to commit a dangerous crime as described above.

It is therefore possible to shoot to apprehend a masked suspect when there are **additional suspicious circumstances** aside from the fact

that the person is masked, such as: being with a group bearing weapons (club, knife, axe) or other dangerous activity, such as: writing slogans where the writer is guarded at night by a group bearing the aforementioned weapons; having a recent background of violent and dangerous activity in the neighborhood/village preceding the identification of the masked person; or intelligence information regarding intentions to carry out violent activity in the near future - leading to a reasonable suspicion that the masked persons participated in an activity which has already occurred, or are about to participate in a dangerous criminal activity of which there is advance notice.

Such circumstances - each one alone, or a combination of them to the extent that in the commander's view they constitute suspicious circumstances, enable opening fire to apprehend a masked suspect. This is subject to all the limitations of the procedure for apprehending suspects in disguise.

4. First, as much as possible, an attempt should be made to capture the suspect, avoiding the use of force. If he resists arrest, one may use reasonable force in order to overcome the resistance to arrest.

5. If the suspect is not captured, or if the suspect escapes following arrest, one may open fire according to the procedure for apprehending a suspect, in order of the following stages:

**Stage A** - Calling out a warning in Arabic: "Wakef wala batukhak" (Halt or I'll shoot).

**Stage B** - Shooting warning shots upwards in single fire mode (semi-automatic) after ensuring that there is no danger of the shots hitting people or property.

**Stage C** - Shooting to hit the legs only. Under all circumstances use of the weapon will be made only in semi-automatic (single-fire) mode, with the utmost caution, and only towards the legs of the attacker.

6. In every case, the commander will carefully consider if fire should be opened, taking into consideration all the information in his possession, and the circumstances of the incident.

7. Opening fire towards a suspect when there is a danger that innocent people are liable to be hit is to be avoided.

8. Opening fire on women and children is to be avoided.

9. In every case in which a person is hit by fire, medical treatment must be provided.

10. A criminal investigation must be opened for a suspect arrested according to this procedure.

**11. Persons who are in disguise or masked who are participating in demonstrations and riots.** One must not open fire as part of the procedure for apprehending a suspect, at persons who are in disguise or masked, or who are participating in demonstrations or riots, whether as instigators or throwers of stones and other objects.

In these cases, the rules and restrictions outlined in the Rules of Engagement of the Operations Branch, apply, including the order regarding the use of plastic bullets. (Operation order, No. 1.38 in "Kaham," Operations Branch.)

**Note: Before carrying out the procedure, check whether it is still valid.**

### ***Emphases:***

Following a Supreme Court ruling, and in coordination with the State Attorney's Office, the following items must be emphasized when instructing the forces regarding firing to apprehend masked suspects.

**Essence of the emphasis:** In order to shoot to stop masked suspects, there must be circumstances that raise suspicion that a dangerous crime is being committed, or that the suspect is on his way to commit a dangerous crime.

Following are a number of examples which can be given during briefings, which clarify the content of the said emphasis:

- a. Opening fire to apprehend a masked suspect who is walking alone, in the daylight, in a quiet, residential area, and does not appear to be bearing any weapon (axe, knife, club, and the like), and is not perpetrating any act (except for wearing the mask), is to be avoided.
- b. Opening fire to apprehend a masked suspect when there is a danger that children, women or innocent people may be hurt, is to be avoided.
- c. Opening fire to apprehend a masked person who is writing slogans on a wall, is to be avoided.

In order that it be possible to shoot to apprehend a masked suspect, there must exist, in the estimation of the commander of the force, a reasonable suspicion that the suspect has perpetrated, is perpetrating, or is about to perpetrate a dangerous crime (such as violent attacks on soldiers or local inhabitants, harming property in a manner likely to endanger human life, carrying an axe, knife, or other weapon, and the like), or a suspicion that the masked person is on his way to perpetrate a dangerous crime as described above.

One may therefore shoot to apprehend a masked suspect when there are **additional suspicious circumstances** aside from his wearing a

mask, such as: circulating in a group while bearing weapons (club, knife, axe), or other dangerous activity, such as: writing slogans, where the writer is guarded at night by a group bearing the aforementioned weapons; having a recent background of violent and dangerous activity in the neighborhood/village preceding the identification of the masked person; or intelligence information regarding intentions to carry out violent activity in the near future - leading to a reasonable suspicion that the masked persons participated in an activity which already occurred, or are about to participate in a dangerous criminal activity which there is advance notice.

Such circumstances - each one alone, or a combination of them to the extent that in the opinion of the commander they constitute suspicious circumstances, allow the opening of fire to apprehend a masked suspect, and this is subordinate to all the limitations of the procedure for apprehending persons in disguise.

Appendix B

## EXCERPT FROM A NAZARETH DISTRICT COURT PROTOCOL

Testimonies of soldiers involved in the incident in the village of Tamun, on August 18, 1988, during which Sa'ud Hasan Bani 'Odeh was killed, and Jamal Qasem Bani 'Odeh was critically wounded.

### State of Israel - Courts

CC 273/89, 33489

January 5, 1992 n.m.

Witness number 1 for the defense was sworn in and testified in answer to questions posed by Atty. Ronen:

My name: Uzi. In August 1988, I was on conscript duty in the IDF. On August 18, 1988, I was at the incident in Tamun. I gave testimony relating to this testimony to the Military Police/CID. I identify my signature on that same testimony from March 23, 1989. What is written in my statement is correct.

Accepted into evidence as exhibit N/1.

The witness continued:

We arrived at the metal shop in question in a van. It may have been red. Its license plate was from the territories - not military. I sat on the driver's side at the front of the vehicle. Other people sat in the belly of the vehicle. The driver and I wore civilian clothes, and the rest of the soldiers were wearing IDF clothes.

At the stage when we arrived at the metal shop, the weapons we had with us were concealed. The intent was that no one's weapon would be seen.

The witness continued to respond to the questions posed in the cross-examination by Atty. Riyad:

I do not remember if the back windows of the vehicle were covered with cardboard. We arrived at the village of Tamun with a force that split into two parts. It is correct that the entire force entered Tamun together. Later it split up. There was a separation point when we went in the direction

of the metal shop, and I do not recall what the other force did. The point at which the force split up was 300 m. from the metal shop.

It is correct that when I got out of the van, I took out my weapon.

Those who sat in the back of the vehicle had the job of getting out first. I got out immediately after them. From the moment we got out of the van we were no longer concealing our weapons. I was among those who did not enter through the main door of the metal shop.

I estimate that approximately 10, at the most 15 seconds elapsed from the time we emerged from the vehicle until shots were heard. I did not shoot. If you ask me what instructions we received before executing the operation, I say: I was told that our job was to apprehend two wanted persons. It seems to me we were told regarding them that they were dangerous, and we were also told that if they were to run away, we were to carry out the full procedure for apprehending a suspect. We knew the names of the wanted persons. Today I do not remember the names of the wanted persons. It is true that they told us to carry out the procedure for apprehending a suspect regarding anyone of the age of the "shabab." It is true that regarding any one of the age of the "shabab" who would flee from the building, our instruction was to carry out the procedure for apprehending a suspect. I recall that we also received pictures. If you ask me why I didn't remember the issue of pictures of the wanted persons in the Military Police/CID investigation, I say: apparently they didn't ask me. If you ask me what I was asked, I say: I remember there were cries of "Wakef," [halt - in Arabic]. I do not remember how many cries. If you were to ask me how many shots, I also couldn't tell you. It seems that I heard A.'s voice shouting "halt." If you were to ask me what the distance was between A. and the two guys who were shot, I would say:

I only saw one who ran and fell, and the distance between him and A. was approximately 30-35 m. It is true that the direction in which the one who fell was fleeing was the direction of the open field. If you were to ask me if it was possible to continue running after him until we caught up with him, I would reply: it is difficult for me to answer that. It was not me who carried it out. It is also hard to take risks. Maybe the man is carrying something on

him. The one who fell was injured in the knee. The one who fled did not turn around to [face] the soldiers - he ran away. When I got around the corner, I saw him falling. It is correct that after I got out of the seat near the driver, and until I got around the corner, I saw the fleeing man fall. As far as I recall, pictures had been given to the commander of the force, and not to all the participants. I did not have pictures. I did not try to compare the pictures we received to the wanted person who fell.

The commander of the force, E., told us in the briefing that at least one of them had blood on his hands, and that is to the best of my memory. In other words, the man was dangerous, had murdered or had tried to murder. I of course do not remember the name.

If you were to ask me what for me is the procedure for apprehending a suspect, I would say: when a man is suspicious in our opinion, begins running away, one must call after him in Hebrew and Arabic, shoot in the air, and afterwards, to shoot at the legs. From my point of view, everyone who was in the metal shop during the event was considered a suspect.

The witness continued in a second round of questioning from Atty. Ronen:

If they hadn't run away, there would not have been shooting. We would have stopped them, asked for their identity cards, and taken whomever we had to take.

Ronen: I call on witness number 2 for the defense.

The witness was sworn in and testified to the questions posed in the direct examination by Atty. Ronen:

My name: Nir.

In February '90 I was released from my IDF conscript duty. In August '88, I was in a unit which was involved in the incident in Tamun. I gave testimony to the Military Police/CID on August 25, 1988. Its content is true.

Accepted into evidence as exhibit N/2.

I was in the unit with A. It is true that A. shot in the direction of the one who was injured in his leg. If you were to ask me why we didn't physically capture the one who was shot, I would say: He got far away from us and we were unable to catch up with him.

After shots had already been heard in village, local residents gathered, and a shower of stones and cinderblocks were thrown at us, and we took shelter inside the metal shop and waited for a force to extricate us. The extricating force comprised about 30 vehicles and a helicopter, under the supervision of the regional commander. It took them a long time to reach us, because the village was blocked by stones and tires.

Uzi the medic treated the person wounded in the leg, and Oren the medic treated the second wounded person. I told the brigade commander that the one wounded in the stomach had to be evacuated by helicopter. And then we landed the helicopter at the site. The driver and the person next to him were wearing civilian clothes, and the rest of the team in the back of the van were in uniform.

If you were to ask me if I heard of Sh., I would say: I did. It was from him that I received the information before we executed the event. He was not present when the event was taking place. He was not present during the shooting.

The witness continued to respond to the questions posed in the cross-examination by Atty. Rivad:

We received information on a number of suspects with pictures. There were a number of briefings in a number of different places. I had pictures of the candidates for arrest. I don't remember how many pictures I received. It could be that we were supposed to arrest only two people. It is true that the force split into two. The one in which I served was in the direction of the metal shop and the other part of the force went to look for the wanted persons in the houses in the village. Sh. was not with me. I saw him later in the field.

The commander of the other part of the force who went to look in the houses - U. I received information regarding the suspicions against wanted persons from Sh. We were told that the wanted persons were suspected of throwing Molotov cocktails, incitement. That is what I remember. A person wanted for hostile terrorist activity, if such a wanted person flees, the procedure for apprehending a suspect is to be carried out for him. It is true that we were supposed to carry out the procedure for apprehending a suspect only for wanted persons, and not for people running away from the metal shop. It is true that before the procedure for

apprehending a suspect was carried out, I was supposed to try to match the picture of the wanted person that I had with the fleeing person. I do not know to whom I returned the picture after the event. In the Military Police CID investigation, they asked about pictures - I do not know if they took notes on them.

When we arrived at the metal shop, we all got out together. I came around from the west side of the metal shop. A. was with me. I estimate that about one minute elapsed from the time that the vehicle stopped to the time that I heard the shots. I didn't stand there counting the seconds. It is difficult for me to estimate the time. The vehicle did not unload exactly near the entrance of the structure, and Uzi had to go a greater distance. I did not shoot. If you were to ask me if I compared the pictures with the people arrested at the site, I compared identity cards and personal details.

I saw only one person flee in front of us. He did not turn his face to us. We saw him taking a short cut out of the metal shop. We saw him running away. He got about 20 m. away from us and fell. I called out to halt. I also said this in the Military Police/CID investigation N/2. I called out "Wakef, jeish." [Halt, army.] That is what I said. I did not call out, "Wakef wala batukhak," [halt or I'll shoot] and I did not see that the one who ran from us had a weapon in his hand. There was no apparent danger from him.

The witness continued in the second round of questioning by Atty. Ronen:

If a wanted person flees, and the size of the force allows it, you can continue to pursue him. In the present case we were supposed to carry out a combing operation within the area of the metal shop. We did not know if there were weapons or more people inside the metal shop. It was physically impossible to capture the person. We were carrying equipment, and we were slower than the fugitive.

To me, "a person wanted for hostile terrorist activity" is a person against whom there is a reasonable suspicion that he committed a terrorist attack directed at people.

Appendix C

## FATALITIES BY THE UNDERCOVER UNITS

(to May 8, 1992)

### 1. Fatalities: By Year and Quarterly

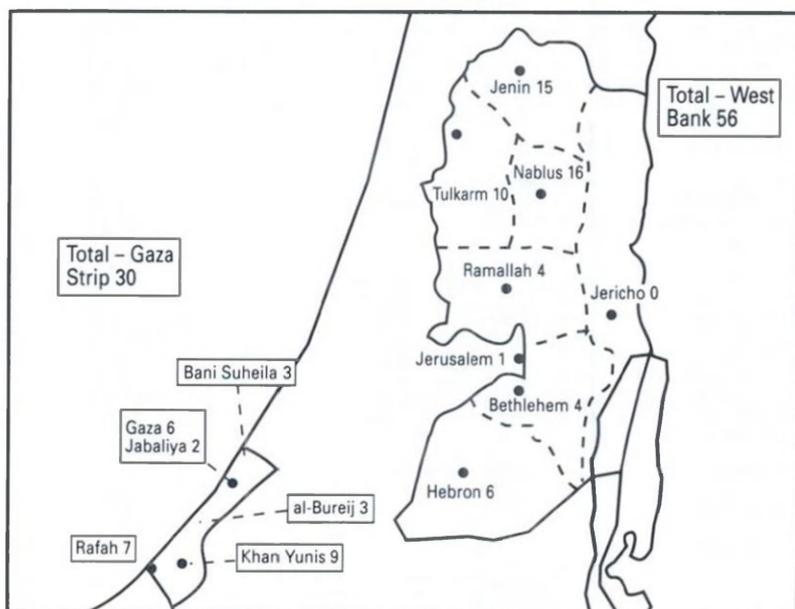
Year	Quarter	West Bank		Gaza Strip	
		Total	Wanted	Total	Wanted
1988	I	-	-	-	-
	II	-	-	-	-
	III	1	1	1	-
	IV	3	-	-	-
1989	I	2	-	-	-
	II	1	-	2	-
	III	7	1	2	-
	IV	7	4	5	-
1990	I	4	3	-	-
	II	1	1	1	-
	III	-	-	1	-
	IV	2	2	4	-
1991	I	2	2	5	-
	II	2	-	1	-
	III	3	2	3	-
	IV	7	3	-	-
1992	I	9	5	4	2
	II	5	2	1	-
<b>Total</b>		<b>56</b>	<b>26</b>	<b>30</b>	<b>2</b>

## 2. According to the Circumstances of the Shooting

(Based mainly on announcements of the IDF Spokesperson's Office. Some of the categories overlap, such as masked persons who attempted to escape).

Year	West Bank				Gaza Strip			
	Total	Masked, not wanted	Armed	Attempted Escape	Total	Masked, not wanted	Armed	Attempted Escape
1988	4	-	-	-	1	-	-	-
1989	17	5	6	3	9	6	1	1
1990	7	1	-	4	6	6	1	5
1991	14	3	5	3	9	5	4	2
1992	14	2	7	3	5	1	3	-

## 3. By Area



Appendix D

## CORRESPONDENCE BETWEEN B'TSELEM AND THE IDF

בְּיָדֶיךָ

מרכז המידע הישראלי לזכויות האדם בשטחים  
ב'תשל"ם' מרכז המידע האשראלי לחقوق האנושן פי הארצות המוחלטה  
B'TSELEM - The Israeli Information Center for Human Rights in the Occupied Territories

Brig.-Gen. Ilan Shiff  
Military Advocate General  
Office of the Military Advocate General  
6 David Elazar St.  
Hakiryah, Tel-Aviv

February 2, 1992  
ref. 1894

URGENT

re: Rules of Engagement  
For IDF Forces in the Territories

Dear Sir,

There have recently been many items in the media regarding the expansion of the Rules of Engagement. The items have not explained the essence of the "expansion." We have asked the IDF Spokesperson for an explanation, but have not yet received a reply.

It appears, from an inquiry we conducted with various persons, that the meaning of the new orders is that now, certain units in the IDF, which deal with capturing "wanted" persons, will be able to shoot at a person identified as "wanted," (one of the phrasings we heard was "someone with blood on his hands"), and also without the three known stages of the open fire regulations (calling out to halt, shooting in the air, shooting at the legs).

We are very concerned about the likely implications of such a relaxing of the rules - if indeed this is the nature of the new regulations. You are certainly aware, as we are, of the "trigger happy" phenomenon which exists to this day.

Therefore, I am asking you urgently to allow two lawyers (Atty. Avigdor Feldman and Atty. Gil'ad Sher) to review the wording of the new regulations on our behalf, under obligation of confidentiality (I might state that when Atty. Feldman submitted his petition to the matter of the Rules of Engagement to the High Court of Justice, the State agreed to allow him to see the regulations). In addition, I ask you to receive us as soon as possible, for a discussion on this matter (participants in the discussion: Atty. Feldman, Atty. Sher, Sharon Roubach, Na'ama Yashuvi).

I would be most grateful for a prompt response.

Sincerely,

Na'ama Yashuvi

רחוב קרן היסוד 18, ירושלים 92148, טלפון 617274, 02-617271, פקס 02-617946  
شارع كيرن همسود 18، القدس 92149، تليفون - 617274 - 02، فاكس 617946  
\*B Karen Hayesod St., Jerusalem 92149. Tel. 02-617271, 617274, Fax. 02-617946

Israel Defense Forces  
Headquarters of the Military  
Advocate General  
Commander's Office  
tel. 55692911  
HQ : 20(38)T 0/93  
February 18, 1992

Ms. Na'ama Yashuvi  
B'Tselem  
Keren HaYesod St. 18  
Jerusalem 92149

re: Rules of Engagement for IDF Forces  
In the Territories  
Your letter: ref. 1894, February 10, 1992

Dear Ms. Yashuvi,

1. The open-fire regulations sent to the IDF stand up to the test of legality, and have even won our approval, as well as that of the State Attorney's Office and the Attorney General.
2. As for your request to study the regulations, in light of the fact that the instructions are classified, I have referred your request to the authorized persons, and I will respond to it upon receiving their stand on the matter.
3. Regarding a meeting with you, I am certainly prepared to sit with you, and I suggest that you schedule a meeting with the head of my office.

Ilan Shiff, Brig.-Gen.  
Military Advocate General

# ביזלם

מרכז המידע הישראלי לזכויות האדם בשטחים  
מאגזין מרכז: המומות האסראילי לחقوق האנסן מן האראסי הא-חנאה  
B'TSELEM - The Israeli Information Center for Human Rights in the Occupied Territories

## FAX COVER PAGE

To: Captain Shabi David, Assistant to Chief  
Military Prosecutor  
Office of the Military Advocate General  
Fax No: 03-5696564  
From: Na'ama Yashuvi ; B'Tselem  
Date: April 2, 1992 Ref: 2080  
No. of pages, including this page: \_\_\_\_\_  
Our fax No. is 972-2-617946  
Confirmation No. 972-2-617271/4

## Message:

re: Investigation Files for Incidents  
Involving the Undercover Units

Dear Sir,

As we agreed, I am sending you a list of cases, which to the best of my knowledge involved the undercover units.

I would be grateful if you would answer each of the following questions, for each of the cases:

1. Was an investigation opened? Has the investigation been concluded?
2. How many Palestinian witnesses, and how many IDF witnesses, were interviewed during the investigation?
3. Does the file contain medical documents?
4. In cases of death - was an autopsy performed?
5. According to the testimony, had the person killed been masked?
6. According to the testimony, had the killed person been armed? If so, with what weapon?
7. Was the action documented on video? If so, did the investigators view the film?
8. Has the investigation been concluded?
9. What was the attorney's stated opinion?
10. Were disciplinary or military legal proceedings initiated against anyone, and what were the results of the trial?

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#### Cases of Death

1. Sa'ud Hasan Bani 'Odeh, killed on August 18, 1988, in the village of Tamun, Jenin District.
2. (1) Hani Muhammad Sa'id Tayyim, (2) 'Imad Nasser, (3) 'Omar 'Arafat, (4) Mas'ud Lubdah Battiri. All were killed on December 1, 1989 in the Nablus qasbah. [\*Note: We know that this case was documented on video, part of which was screened on Moti Kirschenbaum's television report in June 1991].
3. Muhammad 'Abd al-Rahman Salameh, killed on March 29, 1990, in Kufr Malek, Ramallah District.
4. Jamal Jamil al-'Aqliq, killed on June 11, 1990, in the Nablus qasbah.
5. 'Adnan Sa'id Jarrad, injured on February 10, 1991 (and died of his wounds on February 13, 1991) in the Old 'Askar refugee camp, Nablus District.
6. (1) Usama Salameh 'Abd al-Rahman al-'Aruqi, (2) Ya'qub Muhammad Ya'qub Muhammad Mushallah, (3) Rafat Ibrahim Khalil al-Fasis. All were killed on August 5, 1991, in the Shati refugee camp, Gaza District. [\*Enclosed is testimony on the case taken by B'Tselem.]

#### Cases of Attack

7. Atty. Maher Khamis Muhammad Fares, from Khan Yunis, Gaza Strip, was attacked on July 21, 1991. On July 29, 1991, Atty. Raji Surani submitted a complaint on the matter to the Office of the Gaza Legal Advisor.
8. Ibrahim Tmeizi, one of the mukhtars of Idna village, Hebron District, was attacked on the night of July 29, 1991.

In addition to the above cases, I am sending you (via post) testimony taken by B'Tselem regarding five additional cases, which occurred in recent months.

I am requesting that you put the testimony with the investigation file and update me regarding the state of the investigation in each of these files:

1. The death of 'Iz Jodeh 'Abd al-Majjid Rishwan from Khan Yunis, on February 12, 1992.
2. The deaths of (1) Muhammad Hajjaj and (2) Musallam Mustafa al-Khuli, in Rafah, on February 29, 1992.
3. The death of 'Abdallah Suleiman Muhammad al-Shami from 'Asirah al-Qibliya, Nablus District, on March 9, 1992.
4. The deaths of (1) Na'im 'Abd al-Salam Lahham, (2) Hajjaj Ibrahim Hajjaj, and (3) 'Imad Mahmud Bisharat, in the Old 'Askar refugee camp, Nablus District, on March 15, 1992.
5. The death of Jamal Rashid Ghanem in Shweike, Tulkarm District, on March 22, 1992.

I am aware that this is a large amount of cases. Nevertheless, I would be grateful if you could send your reply at your earliest possible convenience.

Sincerely,

Na'ama Yashuvi

Army Spokesperson's Unit  
Information Branch  
HY-2 (45/4) 3547  
April 13, 1992

"B'Tselem" - Na'ama Yashuvi

re: Investigations Files

Dear Ms. Yashuvi,

Our response to your letter of April 2 is as follows:

1. General:

- a. As we have told you in the past, every case of unnatural death in Judea and Samaria and the Gaza District, is investigated by the Military Police/CID.
- b. During the investigations, a true attempt is made (often through human rights organizations) to take testimony from Palestinian Arabs as well. Unfortunately, in most of the cases they did not want to testify out of fear that they would be considered collaborators.
- c. All the relevant documents are attached to the investigations file, including the medical documents. The documents from the autopsy are also attached to the file (if they were not "lifted" by the family prior to the performance of the autopsy.)

2. Cases of Death:

- a. The circumstances of the death of Sa'ud Hasan Bani 'Odeh were investigated by the Military Police/CID. The investigation file was sent to a military advocate for his opinion, and, after reaching the conclusion that the soldiers acted according to the obligating orders and procedures, he ordered that the case be closed.

The opinion indicates that the soldiers acted in accordance with the procedure for apprehending a suspect, and that they tried to arrest the deceased, who was suspected of perpetrating grave attacks. Since he did not stop at the cry to halt and after the firing of the warning shots into the air, the soldiers shot at his legs and wounded him. Shortly afterwards, he died of his wounds.

2. We have not yet located the cases of death in Nablus. This is still under examination.

3. The circumstances of the death of Muhammad 'Abd al-Rahman Salameh were investigated by the Military Police/CID, and during the course of the investigation testimony was taken from the father of the

deceased. The file of the investigation was transferred to a military advocate for his opinion. From this it emerged that during the process of trying to capture a group of masked men, some of whom were writing slogans on the walls, and were armed with knives, sticks and swords, and some of whom were standing on roofs to keep on the lookout for soldiers, the IDF force was thrust into a situation which required physical [contact] with the masked men who were writing slogans.

In the course of the struggle, the soldiers felt that they were in danger because they were fewer in number than the masked men who were armed with non-live weapons. In the course of things, one of the soldiers called a warning and afterwards shot a single bullet into the air.

At the time of the incident, no wounded were perceived. But afterwards, the body of the deceased, who had apparently been shot by the soldiers, was located. The advocate came to the conclusion that, due to the danger in which the soldiers found themselves, opening fire was justified, and that the deceased was apparently hit by a bullet shot by one of the soldiers who had been on the roof of one of the houses.

d. The circumstances of the death of Jamal al-'Aqliq were investigated by the Military Police/CID. The investigation file was recently transferred for the opinion of a military advocate. His opinion has not yet been given.

e. The circumstances of the death of 'Adnan Sa'id Jarrad on February 10, were investigated by the Military Police/CID. According to the opinion of the military advocate who reviewed the evidence, it appears that the deceased was shot by the soldiers during a chase, at a time when he made a movement which they suspected to be an attempt to draw a weapon. It later turned out that the deceased had not had a weapon, but relying on the testimony of the soldiers and all the circumstances of the incident, it was found that their claim that their lives were in danger is concrete, sincere and reasonable. Hence no legal steps were taken against the one who fired. It should be emphasized that during the course of this incident, another resident, who possessed a loaded gun, was shot and captured.

f. The circumstances of death of three residents of the Shati refugee camp on August 5, 1991, are still being investigated by the Military Police/CID.

### 3. Cases of Attack

a. The attack on Atty. Maher Fares from Khan Yunis - the case was investigated by the Military Police/CID. Following the findings, the attorney ordered that an IDF soldier be brought to trial in military court on charges of assault causing real injuries. His case is currently being heard in court.

b. The attack of Ibrahim Tmeizi from the village of Idna - The incident was investigated by the Military Police/CID, which took testimonies from both the mukhtar and his family. The military advocate who reviewed the material from the investigation, ordered that disciplinary hearings be held before a senior officer for a number of IDF soldiers and the officer involved in the incident.

4. We confirm the receipt of the affidavits - we have sent them to the relevant IDF officials.

Have a good holiday.

Sincerely,

Avital Margalit, Captain  
Department Head, Information

# ביטסלם

מרכז המידע הישראלי לזכויות האדם בשטחים

بيتسيلم مركز المعلومات الاسرائيلي لحقوق الانسان في الأراضي المحتلة

B'TSELEM - The Israeli Information Center for Human Rights in the Occupied Territories

Chief of Staff  
Lieut.-Gen. Ehud Barak  
Office of the Chief of Staff  
Hakiryah, Tel-Aviv

May 12, 1992  
ref. 2145

re: Shooting Incident in the Villages  
of Shuyukh and Sa'ir on May 7, 1992

During an initiated operation by an IDF force in the villages of Sa'ir and Shuyukh in the Hebron District, on May 7, 1992, one person was killed, and another was gravely injured.

From testimony taken by B'Tselem, enclosed in this letter, it appears that the members of the force arrived at the village of Sa'ir in a vehicle with Israeli plates, and two Israeli flags. The soldiers, who, according to the testimony, were wearing civilian clothes and yarmulkes, shot at a group of young people playing soccer, after some of them had thrown stones at them. Amin Jaradat, age 16, a resident of Sa'ir, was injured from the shooting. The members of the force, all the while firing into the air, charged after the car, which was taking the wounded person away. The chase continued until the Shuyukh junction, where the car they had been chasing stopped, and a young man ran out of it. The soldiers chased the fugitive, Mahmud Shalaldeh, and shot and killed him.

We view the circumstances of the incident, as they appear from the testimony, to be very grave, especially the fact that the soldiers acted provocatively when entering the village disguised as settlers, leading to the stone-throwing against them, and the shooting in the head (according to the testimony) of a fleeing person, who did not pose a danger to anyone.

We ask you to take all the necessary steps to clarify the circumstances of the incident, to bring the persons responsible to trial, and to see to it that incidents of this type be prevented from occurring in the future.

In light of the many recent cases in which there has been a suspicion of unjustified fatal firing by IDF soldiers, and especially by soldiers

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18 Kerem Hayesod St. Jerusalem 92149. Tel 02-617271, 617274 Fax 02-617946

of special units, I am requesting that you allow us to receive the wording of the updated Rules of Engagement. A prior request by Na'ama Yashuvi from B'Tselem to the Military Advocate General on this matter was denied.

Sincerely,

Yizhar Be'er  
Executive Director, B'Tselem

cc: Maj. General Dani Yatom  
Central Command  
Metzudat Kfir  
Jerusalem

Israel Defense Forces  
Secretariat of the High Command  
tel. 03-6961822  
MB-5- 2973  
May 17, 1992

Mr. Yizhar Be'er  
Executive Director, B'Tselem  
Keren HaYesod St. 18  
Jerusalem 92149

re: Your letter regarding shooting in Shuvukh and Sa'ir

Dear Sir:

I received your letter of May 12, 1992 on the matter at hand.

The testimony was sent to the Office of the Military Advocate General to be joined with the investigations material regarding the circumstances of the death of Mr. Shalaldeh (if, indeed, it was an activity by IDF forces).

As for the matter of receiving the wording of the Rules of Engagement - our position is that the rules are classified, and it is not appropriate that they be at the disposal of the public. The Military Advocate General's response is therefore still valid.

Sincerely,  
Yuval Horn, Captain  
Secretariat of the High Command

YH-ND  
19646

## Appendix E

# RESPONSE OF THE IDF SPOKESPERSON

### IDF Activities Against Armed Terrorists in Judea, Samaria and the Gaza District

---

The latest Betzelem Organization Report (hereafter: the Report) addresses the activities of the (IDF's) special units. Although the Report is voluminous, a large portion of the incidents cited are attributed to vague, anonymous sources – often rumors or stories gleaned from the press.

The Report ignores the prevailing situation in the area, in which armed, hard-core terrorists, who do not adhere to any code of law, have engaged in terror attacks which are characterized by acts of individual violence. They have been attacking Israeli civilians, IDF troops and the local Arab population. This situation places IDF soldiers daily in life-threatening situations, which require them to make split-second decisions.

The guiding principle behind the IDF's activities against these hostile elements is to deal with them on an individual basis by apprehending them, and to refrain from harming the public at large.

The IDF, as stated in the Report, increased its operations against these hostile elements. Such operations resulted in the apprehension of over 750 wanted terrorists, whom it was known with certainty were involved in violent attacks against Jews and Arabs alike. During the course of these arrests 18 local Arabs were killed.

Although the final version of the Report modified its initial direct accusations of "intentional killing" or "a policy of eliminating fugitives", it nevertheless continues to claim that an atmosphere prevails which justifies the special units' "shooting-to-kill" in general and the killing of fugitives in particular. The facts, however, do not bear out these allegations.

The IDF categorically rejects such accusations, which present a one-sided, distorted picture that differs completely from reality. There has never been, nor will there ever be an IDF policy of intentional killing of wanted fugitives.

Orders governing fire allow soldiers to open fire in two specific situations:

A. When a soldier finds himself in a life-threatening situation, in which case he shoots to hit, in order to remove the threat.

B. While carrying out the procedure for apprehending a suspect, in which case the fire is intended to stop the suspect, not to kill him.

No IDF personnel, of any rank, are authorized to deviate from these instructions or lead soldiers and commanders in the field to understand them differently. In cases where it is determined that enlisted personnel or officers have deviated from these orders, legal proceedings are taken against them, despite the fact that they are operating in difficult and dangerous situations against armed Palestinians who have murdered Jewish and Arab victims.

The IDF's credibility should be judged by the instructions given to soldiers, the way in which they are carried out, its supervisory mechanisms and the methods used to deal with irregularities.

The sanctity of life is a basic IDF value – there has been no change in this principle nor will any compromise in this matter ever be tolerated.

## THE SITUATION IN THE FIELD -THE FACTS

### ▼ The Background for IDF Activities Against Wanted Suspects

The nature of the *intifada* has evolved in the course of time. The first stages of the *intifada* were characterized by large-scale public disturbances in the streets. Today, however, following various developments within the Palestinian society, *intifada* activity has become institutionalized within the framework of terrorist organizations. These organizations, such as the PLO, the PFLP and the Hamas, strive to keep up the momentum of the uprising by increasing terrorist activity and encouraging the use of firearms.

As a result of this change there is an ever-growing desire on the part of the general population to return to normal, day-to-day life. *Intifada* activists, who can no longer count on the readiness of the local population to participate in large-scale riots, feel compelled to impose their will on the residents by force. As this trend continues, these activists resort to increasingly violent measures against the residents in order to coerce them into continuing the uprising.

The organizations leading the uprising have founded special underground cells, whose purpose is to stir the passive population into taking part in the violent opposition and to impose the "leadership's" orders.

These cells are commonly known as the "*Popular Committees*", and they deal mainly with the distribution of leaflets, writing slogans, imposing strikes and causing disturbances at one level or another, including throwing firebombs at IDF forces.

Alongside these cells, other mechanisms, called "*Shock Forces*" or "*Shock Committees*", were formed. Their activities are aimed at forcefully imposing the will of the various organizations on the population. The ideology behind this activity is that in order for the uprising to succeed, all Palestinians must first stand united against the Israeli authorities. To this end committee members act against individuals who refuse to cooperate and abide by the rules of the "National Leadership". For example, merchants who opened their stores during a strike or sold Israeli merchandise have been badly beaten and their property has been burned. Workers who sought work in Israel in order to earn a living received "night visits" by masked "*Shock Forces*" members, who threatened them, confiscated Israeli entry permits and beat them.

Members of the previously mentioned organizations were instructed by their leaders to undermine the Israel Civil Administration and its Arab employees: local policemen and Civil Administration workers were forced to resign from their jobs. Those who refused to comply were abducted from their homes, tortured, interrogated about their "collaboration" with Israeli authorities and, more than once, murdered after being cruelly tortured. At the same time, in an attempt to "replace" the Civil Administration and to gain the approval of the population, the "*Shock Committees*" began to act against those whom they considered drug dealers or people guilty of immoral behavior.

Those suspected of dealing with drugs or hard liquor were forcefully abducted from their homes and subjected to "interrogation". They were forced to "plead" guilty to the charges against them and were then brutally murdered. Many others died during the course of these "interrogations".

The phenomenon of internal murders has reached such proportions that its restraint was demanded by all political factions of the Palestinian society, in posters and hard-hitting articles published in the press. The situation has escalated to such an extent that on May 15, 1992 a conference attended by over 150 *intifada* activists from the Fatah/Arafat, Democratic Front for the Liberation of Palestine and the Hamas organizations was held in Gaza (where such killings have been particularly prevalent). The Fatah/Arafat representatives called upon the other organizations to reduce the extent of the killings and also their hard-line attitude towards the population. They suggested that only the leading "collaborators" (whose "guilt" is beyond doubt) be eliminated.

The security forces, which are responsible for maintaining law and order, see the phenomenon of armed terrorists as a vexing problem which must be dealt with. Through careful and tedious intelligence work and ongoing security operations, many terrorist cells - composed of murderers and other dangerous criminals - were uncovered and brought to justice.

As of the second half of 1991 (the eve of the peace talks) there has been a wave of terror and attacks involving the use of firearms against military and civilian targets. Most activities of this type are carried out by gangs of wanted fugitives and others whose identities are known to the security forces.

The *intifada* has changed its face. In the words of the Palestinians themselves it has become the "Red Intifada". Criminals and murderers who fled from their homes are today organized in small gangs armed with firearms and other weapons. Their main activity is to attack Israeli civilians and IDF soldiers within Judea, Samaria and the Gaza District. At the same time, they are terrorizing the local population in an effort to maintain the *intifada's* momentum and attempt to prevent any return to normal daily life.

While in the past the *intifada* had been characterized by a general restraint in the use of firearms, it has now become common practice to attack civilians and soldiers with live ammunition. Fugitives spend much of their time gathering arms and weapons.

During the period between October 1991 and April 30, 1992, 1,031 terrorist attacks involving firearms took place in Judea, Samaria and the Gaza District. Seven Israeli civilians and three soldiers were killed and 121 Palestinians were murdered by other Palestinians. Within the "Green Line" five security personnel and six Israeli citizens were murdered by Palestinians in the period between October 1991 and May 27, 1992.

Wanted fugitives are designated as such only after a lengthy process. They must first be identified by the General Security Services (GSS), on the basis of concrete intelligence, as having committed dangerous crimes. They must then have been summoned to an investigation and failed to appear, their homes must be searched without their having been found and their families asked to bring them to an investigation, to which they do

not arrive.

As fugitives have used firearms against civilians and soldiers, they are considered highly dangerous and it is assumed that they would not hesitate to open fire if engaged.

*The following are examples of the dangers encountered when engaging wanted fugitives:*

4.1.92 - An armed terrorist and senior activist wanted since April 1991 was killed in the village of Um A-Tut. The man, Muhamed Ali Madras, a member of the Black Panther organization, had been imprisoned three times in the past and had participated in the murders of suspected collaborators.

In an operation initiated by the special units the suspect was identified. He was called upon to halt, but started to run away. During the ensuing chase he drew a weapon and fired at the soldiers. Two soldiers were wounded, one moderately. The soldiers returned fire, killing Madras.

The objective of the operation was to apprehend the terrorist alive, but when the soldiers found themselves in a real life-threatening situation, they were forced to open fire at the terrorist.

12.2.92 - Mahmud Ahmed Hanani, a PFLP activist and terrorist-squad member, was apprehended. His squad was involved in the "interrogation" of Palestinians suspected of collaborating with the Israeli authorities. He is suspected of having personally taken part in the "interrogation" and murder of two Palestinians suspected of collaboration. When apprehended, he was armed with a knife.

5.3.92 - An IDF force arrived at the home of a suspect in the village of Bani Souhila. A terrorist armed with a Kalashnikov rifle opened fire at the force from the courtyard, killing Cpl. Baruch Ben-Shimon.

The soldiers returned fire, killing the terrorist who had fired at them, wounding another and apprehending seven. The terrorists were found to be in possession of an Uzi sub-machine gun, a Kalashnikov rifle, four pistols, knives and axes.

The terrorist cell had operated for a long period in the rural areas around Khan Yunis. The wanted men had been involved in many murders of local residents.

31.3.92 - Salah Awad Bazur of Jenin, who was armed with a pistol, was apprehended. He is suspected of having taken part in the murders of a suspected collaborator and his wife, another so-called collaborator from the village of Rabbah, two other suspected collaborators from Kabatiya and a policeman from the village of Sneer. He had also been involved in the "interrogations" of other suspected collaborators, and had provided weapons to wanted terrorists.

24.5.92 - One Border Police soldier was killed and another sustained moderate injuries during a clash between a combined IDF and Border Police force and an armed terrorist squad in the Sabra neighborhood in Gaza.

The combined force, which was on an early morning operation designed to apprehend suspects in Gaza City, was attacked by a terrorist squad hiding in one of the houses.

The terrorists threw a hand grenade and fired a pistol at the soldiers. One Border Policeman died after sustaining gunshot wounds, and another was injured. The force returned fire, killing three terrorists. A pistol, axes, a commando knife and other equipment were found in their possession.

The terrorists killed were wanted for questioning since the beginning of the year following the uncovering of a large Hamas network in Gaza. The organization included a para-military branch designed to carry out terrorist attacks, as well as other branches.

*Az a-Din Alkasam* terrorist squads are suspected of having murdered Mr. Doron Shorshan in January 1992, and placing numerous explosives in the vicinity of the main Gaza District refugee camps. They have also claimed responsibility for the murder of Mr. David Cohen on May 17, and for having fired at the car of the Gaza District Police Commander approximately one month ago. They are further suspected of having carried out a series of murders of local Arab residents.

One of the terrorists was identified as Marouan Zay'a, who took part in the murder of three Israelis at a factory in Jaffa in December 1990.

#### Betzelem's Reliance on Media Reports

On May 12, 1992 a combined IDF-Border Police force operating in the village of Rumana in the Jenin district, identified members of the "Black Panther" terror group. Eleven suspects were apprehended.

Betzelem's reference to the CNN news item covering this incident illustrates that organization's tendency to base itself on foreign television items, which do not reveal the entire picture.

From the CNN report it would appear that the IDF broke up a peaceful ceremony. The following supplementary facts, however, serve to indicate the contrary:

1. The incident took place during a ceremony in the village marking 40 days to the death of a Palestinian who was murdered as a result of a feud between local Arab families. The IDF was in no way linked to his death.
2. Armed terrorists were present at the ceremony.
3. Stone barricades were placed at the entrance to the village in order to prevent the entry of anyone regarded by the villagers as "undesireable".
4. Three of the terrorists who participated in the ceremony and who succeeded in fleeing from the scene were apprehended at 02:30 hours the following day (13.5.92). This occurred following a clash with IDF troops near the village of Arka in the Jenin district. During the course of the confrontation, the Israeli forces held their fire because they had not positively determined that the suspects were armed and therefore did not feel threatened. The terrorists shot at the soldiers, and in the ensuing exchange of fire one terrorist was seriously wounded. He was later evacuated by an Israeli Air Force helicopter, for medical treatment. Another terrorist was captured and the third escaped.

A Browning rifle, an Uzi sub-machine gun and a pistol were found at the scene in Arka.

5. The terrorists had been sought by the security forces for a long period.

The report shown by the television network, therefore, did not reflect the reality of events which took place in the village.

### ▼ IDF Preparedness

The activities of armed terrorist squads must be seen as the backdrop to the security forces' policy of maintaining security in Judea, Samaria and the Gaza District.

Because it involves warfare against dangerous terrorists armed with firearms and other weapons, this situation demands suitable preparation.

Faced with this new threat to the security of the State of Israel and to Judea, Samaria and the Gaza District, the IDF expanded and re-enforced the existing special units, which operate very successfully in the territories.

The aim of security forces' policy and the actions of the special units is to capture the hard core – armed terrorists. It should be remembered that these terrorists often enjoy the cooperation of the local population, which provides them with food and shelter. The local population also protects the terrorists by warning them in the event of approaching IDF forces, and ensures their escape routes. At times, such cooperation is obtained by coercion.

Thus these terrorists can be caught only through extensive efforts to gather field intelligence and initiating special operations.

At the same time, the IDF distinguishes between hard-core terrorists and the majority of the population. This can be seen in the decrease of mass disturbances, in the exclusion of schools from the cycle of violence, etc.

### ▼ Activities of the Special Units

Part of the IDF's actions against terrorists in Judea, Samaria and the Gaza District are carried out by special units. The primary role of these units is to locate and apprehend wanted suspects.

The principle characteristic of these units' activities, which is in essence their unique quality, is their conflict with the hard core of the *intifada*. These units make efforts not to come in contact or into conflict with the general population.

The special units operate in accordance with a high level of moral standards. They are high-quality units, in which the IDF invests much training and instruction. It is

obvious that these forces, which operate under special conditions that may also pose serious risks, must be comprised of first-class manpower and command.

It should be stressed that the IDF does not have, nor will it have a policy or a practice of killing wanted fugitives. IDF soldiers do not strike fugitives except in situations where they pose a threat to our forces, or during the procedure for apprehension of suspects – in which case the intention is to capture the suspect and not kill him.

### ▼ Success of the Operations

During the more than four years of the *intifada*, coordination between the IDF, the Civil Administration and the Israel Police has improved. This coordination has allowed for an efficient use of intelligence information, which in turn allowed for precision operations and sophisticated special units operations.

Additional factors have led to this success. More and more, IDF forces in Judea, Samaria and the Gaza District are comprised of regular personnel and rely less on reserves, who have a high turnover rate. This has led to an improvement of both the IDF's operations and its deterrence, as well as its knowledge of the theater of operations.

The operations of the various commands have improved, and greater emphasis has been placed on the quality of command.

A further expression of the IDF's power of deterrence and success is the phenomenon of suspects turning themselves in to the Authorities. Since the beginning of the year dozens of suspects have turned themselves in to the IDF and the Civil Administration, and their interrogations have led to the capture of other terrorists.

Moreover, as a result of IDF deterrence, which includes the activity of the special units, the desire of Palestinian Arabs in the areas to join the circle of *intifada* activists has been decreasing. Likewise, the gap between the violent armed cells and the Palestinian population has widened. This is expressed by articles published in the Arab media, which condemn the negative phenomena brought about by the *intifada*, as well as the great damage done to Palestinian society by the violent activities of the uprising.

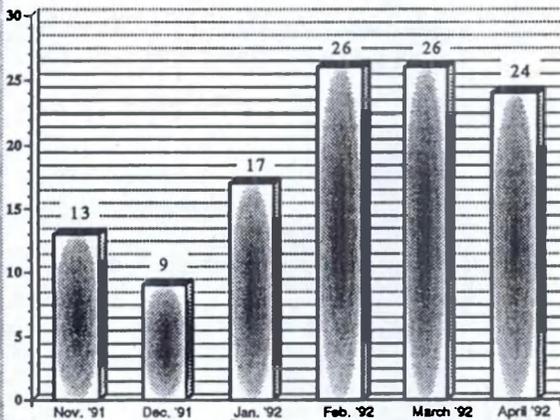
## Soldiers and Civilians Killed Since the Beginning of the *Intifada* in Judea, Samaria and the Gaza District

	1988	1989	1990	1991	1992*	Total
<b>Soldiers</b>	4	4	2	1	3	14
<b>Civilians</b>	7	3	1	6	6	23
<b>Total</b>	11	7	3	7	9	37

\* Correct to May 1992

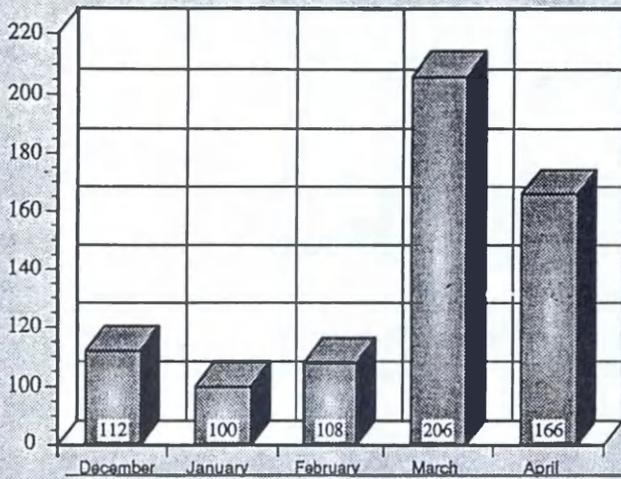
IDF Spokesman's Unit - Information Branch

### Local Arabs Killed by Local Arabs November 1991 - April 1992



IDF Spokesman's Unit - Information Branch

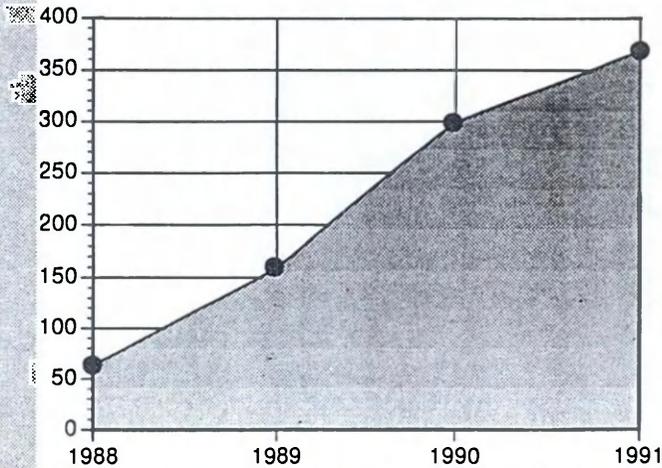
**Use of Firearms by Arabs In Judea, Samaria and the Gaza District: December 1991 - April 1992**



\* Firearms: shootings, arson, incendiary and explosive devices and grenades.

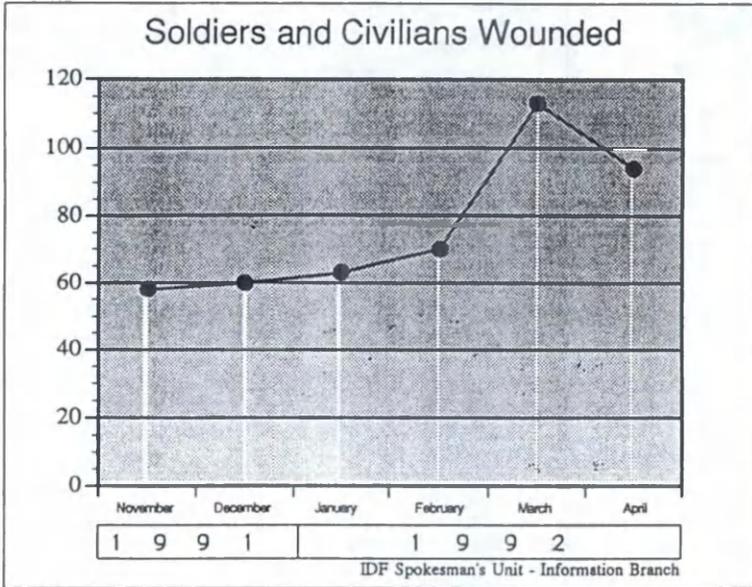
IDF Spokesman's Unit - Information Branch

**Use of Firearms and Grenades by Arabs During the Intifada**

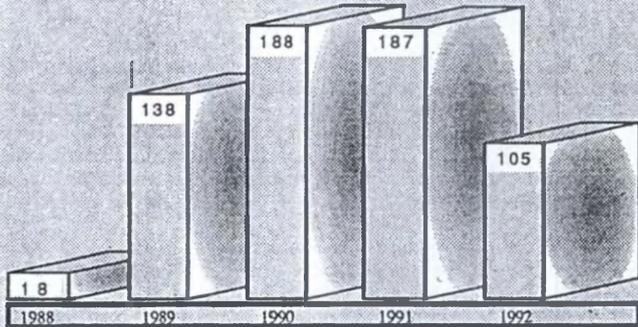


IDF Spokesman's Unit - Information Branch

### Soldiers and Civilians Wounded



### Local Residents Killed by Other Local Residents In Judea, Samaria and the Gaza District During the Intifada



- The 1992 figure is incomplete, as it only includes data through May 14.
- The number of murders carried out during the first five months of 1992 is higher than in previous years.

IDF Spokesman's Unit - Information Branch

## OPEN-FIRE INSTRUCTIONS

### ▼ The Legal Basis

The legal premises on which the opening of fire instructions are based have not changed following the outbreak of the *intifada*. The legal principles which constitute the basis of the open fire instructions are the same ones which guided the IDF before the *intifada*.

*IDF soldiers in Judea, Samaria and the Gaza District are permitted to use live fire in two situations only:*

- A. When a soldier finds himself in a life-threatening situation, in which case he shoots to hit, to remove the threat.
- B. While carrying out the procedure for apprehending a suspect in situations described by IDF standing orders. This procedure includes a number of preconditions which must be met before live fire is used – and the fire is intended to stop the suspect, not to kill him.

No IDF personnel, of any rank, are authorized to deviate from these instructions or lead soldiers and commanders in the field to understand them differently. In each case involving the IDF-caused death of a resident of Judea, Samaria or the Gaza District a Military Police investigation is conducted. In cases where it is determined that enlisted personnel or officers have deviated from these orders, legal proceedings are taken against them, despite the fact that they are operating in difficult and dangerous situations against armed Palestinians who have murdered Jewish and Arab victims.

The principles governing use of fire have not changed. However, the new and complex situations with which the soldiers are forced to cope on a daily basis, coupled with the fact that the *intifada* is changing its character and forcing soldiers to face new dangers, demand a clarification of opening fire regulations.

The open fire regulations have always detailed situations which a soldier on duty is liable to encounter. Regulations for the use of live fire in such situations were defined.

The changing face of the *intifada* demanded that the regulations define the *new* situations with which soldiers are forced to deal. Thus, for example, the increase in the number of cases in which IDF soldiers and civilians are stabbed by sharp instruments such as knives and axes, necessitated clarifying the matter of when one could fire.

The new reality, in which IDF soldiers face armed terrorists who do not hesitate to open fire, in a hostile area, necessitated a clarification of those situations which qualify as "life-threatening" to soldiers or civilians facing armed terrorists.

Today, as in the past, the underlying principle is that in order to arrest a dangerous criminal, it is permissible to open fire only when no other means of capturing him exist. This is only used as a last resort. There has been no change regarding this principle. The purpose of clarifying these orders was to ensure the safety of soldiers engaged in apprehending terrorists.

Betzelem's claim, that in the framework of the changes in the opening of fire instructions it has been permitted to fire at armed men without warning, even when they could otherwise have been apprehended without threatening soldiers' lives, is baseless.

The open fire regulations are in accordance with the Law and Supreme Court rulings, and they have been approved by both the Military Advocate General and the State Attorney.

The legal section in the Betzelem Report analyzes the summary of the legal basis on which the open fire instructions are constructed. It should be stressed that no contradiction exists between the IDF's open fire instructions and the legal sources and decisions mentioned in the Report.

Other assertions which appear in the same section of the Betzelem Report are no doubt derived from a faulty knowledge of the open fire instructions. Therefore, some of the legal conclusions featured in the Report are baseless, as they are based on erroneous assumptions regarding the content of the open fire instructions.

For obvious reasons, the exact wording of the IDF's open fire regulations may not be divulged, but we have no doubt that if these instructions could be published, many of the claims brought in the Report would be most effectively neutralized.

Only in clearly defined and limited cases do the regulations permit use of firing while apprehending suspects. Suspicion in such cases must be based on facts, data or reliable information. It is unequivocally stressed that a general suspicion, a gut feeling or a guess are not grounds enough for such action.

### ▼ Deviations From Standing Orders

The IDF considers the preservation of the high moral values of its soldiers in their operations in Judea, Samaria and the Gaza District a central precept, despite the fact that they have to deal with severe cases of violence. Proof of this strictness is reflected in the vigorous manner in which the IDF deals with those who have deviated from regulations.

To date, during the *intifada* some 154 charges have been filed against 223 IDF personnel for committing crimes during their service in the Territories. Forty-four of these indictments involved the illegal use of firearms. Forty-seven of those involved were officers, 173 were enlisted men and three were civilian IDF employees. To date, 171 have been convicted, 19 acquitted, 30 are about to be court-martialed and two court-martials, in which three soldiers were involved, have been cancelled.

These cases involved full court-martial procedures. In addition, disciplinary actions were taken at the field level, whenever it was deemed necessary.

## ▼ International Law

The authors of the Report detailed several general principles of International Law with reference to the "Right to Life" and the imposition of the death penalty.

It should be emphasized that there is no contradiction between the Open Fire Regulations given to IDF soldiers in Judea, Samaria and the Gaza District and regulations laid down by International Law in general, and those mentioned in the Betzelem Report in particular.

Some of the specific regulations mentioned in the Report are extremely general and have no direct bearing on the question of the open fire regulations. With reference to the other norms mentioned in the Report, we submit that IDF soldiers operating in Judea, Samaria and the Gaza District in no way deviate from these norms, since they are totally in accordance with the IDF's own Open Fire Regulations.

Moreover, in reference to the Conventions dealing with the subject and the way in which nations of the world utilize these regulations in practice, it is clear that the regulations followed by IDF soldiers are very strict. In fact, they do not allow IDF soldiers to use their weapons even in situations which International Law recognizes as warranting such use.

This restraint is noteworthy, especially when it is taken into account that Israel is operating in the territories in accordance with laws of belligerent occupation, which, under international law, grant broad power to the administrative authority.

## ▼ The Claims Regarding Lack of Clarity

The Open Fire Regulations are clear, and are designed to give soldiers and their commanders the tools with which to face most of the situations they are likely to encounter during their operational duty. However, it is not possible for the instructions to define in advance all the situations in which a soldier will be required to use his weapon. Consequently, some of the regulations are formulated as clear guidelines which necessarily allow the soldier the use of a certain degree of judgement. The soldier, in turn, is required to act in a responsible and reasonable manner.

The high degree of detail in the regulations is designed to reduce as much as possible situations in which a given soldier might err and use his weapon in an illegal manner.

**IDF soldiers and their commanders face armed terrorists who do not hesitate to shoot and are not responsible to any code of law. Under these conditions the soldiers are forced to remain calm and exhibit self-control when making split-second decisions – which can result in a wounded terrorist or a dead soldier.**

In addition to the written instructions given to all soldiers, there are daily briefings on the Open Fire Regulations. Before each operation, specific instructions are given in accordance with the special nature of the operation. These instructions

further limit the chance of misunderstanding among soldiers participating in the operation.

Moreover, the actions of IDF soldiers are subject to the scrutiny of the IDF Advocate General's Office – an investigation is carried out in the wake of every complaint regarding deviations from the Open Fire Regulations. The actions of IDF soldiers are also scutinized in the investigation, which as a matter of policy is carried out in the event of any fatality caused by IDF soldiers in Judea, Samaria or the Gaza District.

When it is found that IDF soldiers have ostensibly deviated from the Open Fire Regulations and other instructions, legal measures are taken against the offenders.

### ▼ Briefing IDF Reserve Soldiers

Betzelem claimed that they heard evidence from IDF reservists regarding changes in the regulations governing the opening of fire at rock and firebomb throwers, as well as masked activists.

If indeed Betzelem has received submissions of this nature, it is requested to pass the evidence on to the appropriate IDF authorities so that an enquiry can be opened into the matter. Today, as in the past, it is permissible to shoot to hit only in cases when the soldier's life is in danger. Once the danger has passed, this is no longer allowed.

### ▼ Apprehending Fugitives

Even though Betzelem did not explicitly claim that the IDF conducted a shoot-to-kill policy, we wish to reiterate that there is not, and never has been such a policy. Moreover, whenever a suspect is killed during the apprehension procedure, the matter is considered an operational setback. The aim is to apprehend suspects and bring them to trial.

In fact, the Military Police Criminal Investigations Department investigates every case in which death occurs and the findings are passed on to the Advocate General's Office. If there were indeed a shoot-to-kill policy, there would be no need for an inquiry following such an incident.

Betzelem's assessment that it will always be possible to apprehend fugitives without any use of weapons is not based on the full facts. At best, this view is based on partial evidence and misguided thinking.

Betzelem's assumption that it is always possible to apprehend wanted fugitives without use of firearms is not founded on reality. Moreover, such a supposition completely ignores the danger threatening soldiers in clashes with suspects. The fact is that on numerous occasions, soldiers have been hurt during such clashes.

Betzelem ignores the fact that the soldiers operate in densely populated areas which are often very hostile, and in narrow streets and alleys where the subject can lose himself in the crowd and easily disappear.

As a rule, shots are fired at fugitives when there is no other way of apprehending him, and the use of firearms is but a last resort.

Contrary to reports made in media publications, only a small percentage of the fugitives who were apprehended were either killed or wounded while being apprehended. During the past six months, when more emphasis was placed on the activities of special units in Judea, Samaria and the Gaza District, over 750 fugitives were captured. All were definitely known to have participated in terrorist activity against Jews and Arabs. Some were apprehended while in possession of weapons. Some even opened fire on IDF soldiers. Eighteen were killed. The terrorists captured were found to be in possession of dozens of weapons and firearms. These included a machine gun, guns, pistols, firebombs, explosive devices and various types of ammunition.

### ▼ Deliberate Construction of Life-Threatening Situations

Betzelem claims that IDF soldiers deliberately create situations in which their lives are placed in danger. The Report condemns such a phenomenon. The Report further states that in such situations the soldiers fire indiscriminately.

This claim is incorrect. Insuring their soldiers' security and welfare is a primary duty of every IDF commander. It is therefore obvious that the IDF will invest every effort in order to avoid placing soldiers in undue danger.

Furthermore, IDF soldiers, whose duty it is to carry out their missions, prevent violence and murder against Israeli citizens and local Arab residents alike and restore the general peace, are forced to operate in complex situations and at personal risk.

It is the duty of IDF soldiers to reach places where uncontrolled masses are rioting or where, according to their information, armed terrorists are hiding. It is their duty to carry out their job and not to retreat when facing danger. Obviously, the claim regarding "willingly endangering their lives", which refers to soldiers carrying out their duties, is out of place and even ridiculous.

The other claim, which states that in life-threatening situations soldiers fire indiscriminantly, is also baseless. In a life-threatening situation fire is directed only at the source of the threat.

## DETAILED RESPONSE TO INCIDENTS

The Betzelem Report mentions ten cases which claim to involve the illegal use of firearms by soldiers of the special units during operations. Three additional cases are claimed to have involved the use of unreasonable force. Four of the ten shooting cases mentioned in the Report are under investigation by the Military Police, so we are unable to discuss them (cases 6, 7, 9 and 10). As stated, every case which involves the death of a resident of Judea, Samaria or the Gaza District is investigated in this manner. On completion of the investigation, the findings are passed on to the Advocate General's Office, which renders its legal opinion on the matter.

It should be noted that, as with any complaint filed with the IDF, the Betzelem Report, including its testimonies, was passed on to the Military Police so that it could be used as grounds for investigations.

The case listed as case number 8, which describes a shooting accident which caused the death of Jamal Ghanem of Shuaikha, is not being investigated by the Military Police, but by the Israel Police, as Border Police personnel were involved in that case, and not IDF soldiers. Thus, the gunfire which wounded Nabil Atik was carried by the Border Police and not IDF soldiers.

Betzelem's claim that of the ten cases noted in the Report, only in two were legal proceedings instituted, is both wrong and misleading. The Report ignores the fact that four of these cases are still under Military Police investigation and therefore have not been reviewed by the Advocate General. An additional case is being investigated by the Israeli Police and has therefore not reached the legal review stage. Thus of the five remaining cases in which the investigations have been completed and reviewed by the Advocate General, legal proceedings have been instituted in two.

The following are our comments regarding the rest of the cases mentioned in the Report:

### 1. Tamun, August 1988

We are not able to address the claims raised in the description of the events as presented by the Betzelem Report since the entire issue is currently being investigated in court in the framework of a civil suit for compensation filed by the family. Any attempt to one-sidedly base factual decisions on evidence brought forth by only one of the sides, as the Report did, reflects interference in a matter under court investigation, which is a violation of the law.

We would like to point to the legal opinion of the Advocate General on the matter of the responsibility in general of soldiers in the event of a death. He states that guilt must be proven beyond all reasonable doubt. However, in a civil court proceeding, it is enough for the prosecutor to prove that *in all probability* the defendant was negligent.

As mentioned, this matter has yet to be resolved in court, and it would be unsuitable to take a stand on the issue until after such time.

## 2. Ramallah, July 1989

Special units do indeed undergo special, long-term and thorough weapons training in order to ensure the accuracy of their marksmanship, paying special attention to aiming at the legs.

The goal of the training is to reduce to a minimum the chances of stray bullets causing undue injury.

In the case of the incident mentioned by the Report, the soldier fired at the suspect after shouting an initial warning and after an exhausting chase. When he stopped and aimed his weapon, the suspect continued to flee. The soldier was subsequently forced to fire at the legs of a fast moving target. Under these circumstances, in which the soldier was found to have acted in accordance with orders, legal responsibility cannot be attributed to him. It was determined that there was insufficient evidence to justify court-martialing the soldier for manslaughter.

Regarding medical attention - despite his decision, that the medical attention given was not suitable to the circumstances of this injury, the Advocate General determined that legal measures would not be taken against the soldiers who made the decision to transport the wounded suspect by jeep to the nearest military clinic. This is because their actions did not originate from a disrespect for human life, but from a lack of knowledge regarding the possibilities for treatment and evacuation that were available to them. Suitable conclusions were drawn regarding the matter from this incident, which took place approximately three years ago.

It should be noted that this same suspect, Yassir Abu Katish was suspected by the security forces of being the leader of a terror squad belonging to George Habash's PFLP and of taking part in a firebomb attack on the house of a suspected collaborator. According to information provided by the GSS, he was a major activist, since the beginning of the *intifada*, and instigated riots and attacked security forces in the Ramallah region. His name was mentioned during interrogations of many of his partners. It should be pointed out that since being incriminated by his friends he escaped from his home, has continued hostile activities, and, though he was summoned for questioning on numerous occasions, has not appeared.

## 3. El Bureij - October 1989

As mentioned in the Report, the military court has not yet ruled on the case. Drawing factual conclusions prior to the court ruling may influence the trial and its outcome. We are therefore unable to discuss this case at present.

We would like to address ourselves to the disbelief expressed in the Report regarding the so-called shoot to kill policy, the opening fire instructions given to special units and the opening fire instructions in general. This disbelief is inconsistent with the facts. A senior officer with the rank of lieutenant colonel has had criminal charges brought against him for ostensibly issuing open fire instructions which were not in accordance with IDF standing orders.

#### 4. Kafr Malek - March 1990

The Military Advocate's opinion on the matter indicates that the operational activity mentioned was not carried out with the intention of capturing Mahmud Salameh, but was rather designed to apprehend a group of masked "shock force" members who were armed with knives and similar weapons. Mahmud Salameh was injured during the course of the ensuing violent clash between the terrorists and the IDF soldiers. One of the soldiers was forced to use his weapon when the soldiers found themselves in a life-threatening situation. Any insinuations that Mahmud Salameh was purposely singled out are baseless, because the soldiers had no knowledge as to the identity of the masked gang members.

#### 5. Askar - February 1991

From the Report's comments regarding the findings of the investigation, it is clear that Betzelem members were not provided with all of the relevant facts as they were presented in the investigation. Once again, the Betzelem organization version is one-sided.

Adnan Sa'id Jerad was shot by soldiers during an operation designed to apprehend four armed individuals suspected of murdering local residents and of imposing terror throughout the Nablus area.

During the course of the operation one of the suspects was identified sitting with others near the entrance of a store. The soldiers approached the group and called out a warning to the suspect. Some of the others sitting with him began to flee, and the soldiers assumed that they too belonged to the dangerous group, based on both intelligence information they had received and the fact that they were running away. The soldiers began to pursue the suspects, at the same time calling for them to stop and firing warning shots into the air. The soldiers who chased Adnan Jerad saw him run into a store, push aside the people inside, and run into an adjacent room. He suddenly made a suspicious motion. The soldiers, believing that this was an attempt to draw a weapon, and fearing that their lives were in danger, shot him.

It was later established that the deceased was not in possession of a weapon, but based on the soldiers' testimonies and on the circumstances of the incident, their claim that the situation was a life-threatening one was found to be sincere and reasonable, and therefore no legal measures were taken against the soldier who fired at Adnan Jerad.

Forged identification documents belonging to the resident accused of murder were found on Adnan Jerad's body, a fact which strongly indicates that he was more than an innocent passerby.

Moreover, during the course of the operation Haled Abu Yamen and another resident were apprehended. This second resident had been seen fleeing the scene, just like Jerad. He was suspected of belonging to the same gang of dangerous criminals, and when apprehended was found to be in possession of a loaded gun.

Haled Abu Yamen was brought to trial, where he was accused of taking part in activities against the IDF, the brutal beating murder of a Kfar Salem resident, which was carried out with clubs and axes, and the possession of firearms.

#### 6. Idna, July 1991

The incident took place while an IDF force was trying to apprehend a group of armed terrorists, which, according to IDF information, was hiding in one of the houses in the village of Idna. The soldiers mistakenly reached the home of Ibrahim Tamieza, and tried to enter, but were violently attacked by family members who thought that a group of local residents was trying to do them harm. The family members hurled various heavy objects such as rocks and metal rods at the soldiers from the roof of the house. In face of the opposition, the soldiers thought that the terrorist squad was hiding in the house and that the family members were protecting it and trying to prevent its capture.

The soldiers rushed into the house and began searching for the terrorists, whom they believed were hiding within. During the search, Ibrahim Tamieza was found hiding in one of the rooms. Once their mistake was made clear, the commander of the force offered his apologies.

The incident was followed by a military police investigation which found that an officer and several soldiers were apparently negligent in performing their duties and acted in an illegal manner. These soldiers were consequently brought to disciplinary trial before a senior officer.

The IDF expressed its apologies to Mr. Tamieza for the regrettable incident.

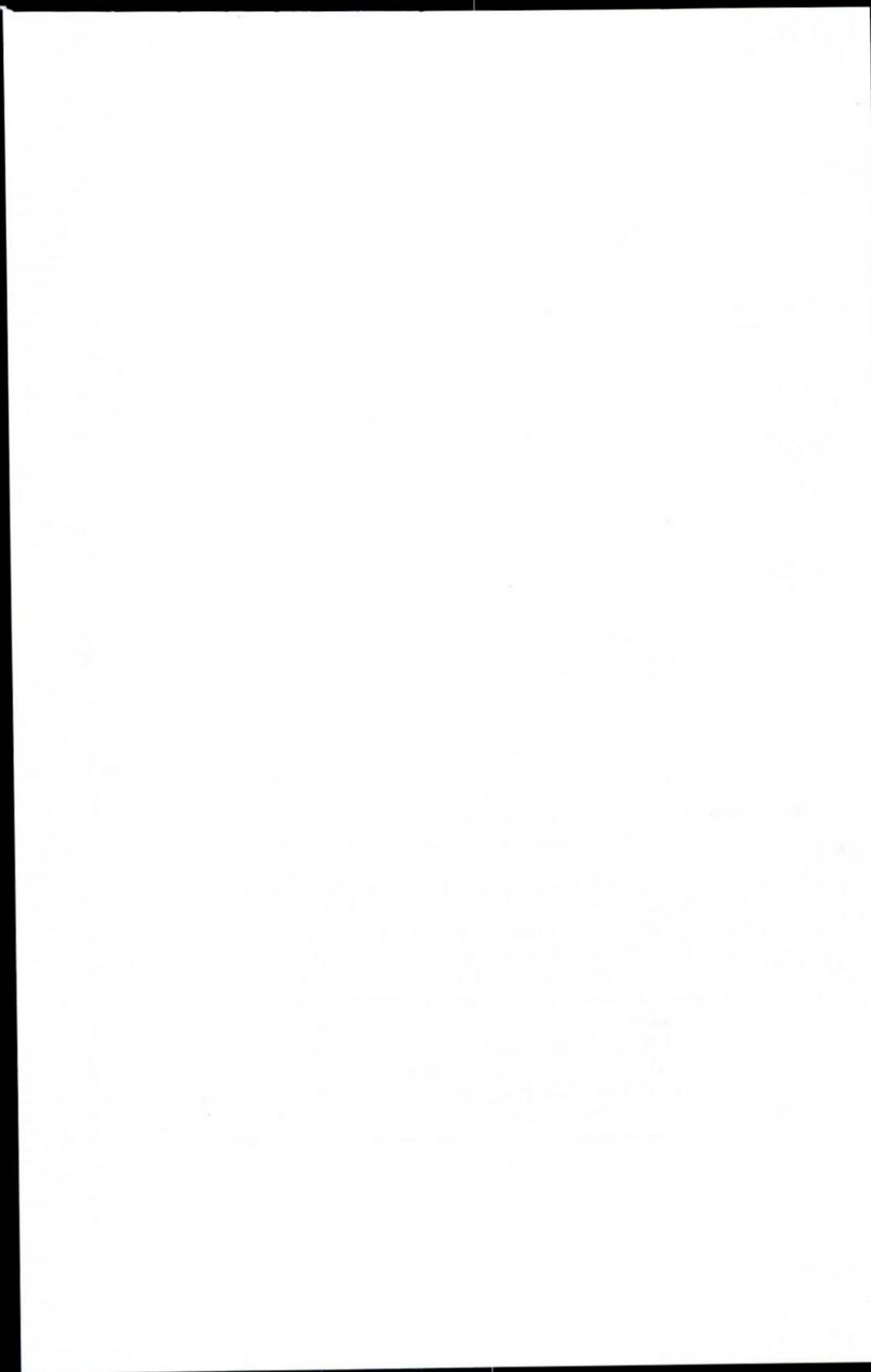
#### 7. Khan-Yunis, September 1991

As seen, in all the cases mentioned in the Betzelem Report in which it was found that soldiers had violated the law, those responsible were brought to trial. This applies to this case as well.

It should be added to the data presented by Betzelem that the Military Prosecution appealed to the Military Court of Appeals concerning the lenient punishment meted out to the soldier who had beaten local residents. A final verdict has not yet been reached. It should be noted in passing that the entire incident developed out of a "drivers' conflict" resulting from an accident in which the soldiers' vehicle was damaged. It has nothing whatsoever to do with the operational activity of soldiers in special units.

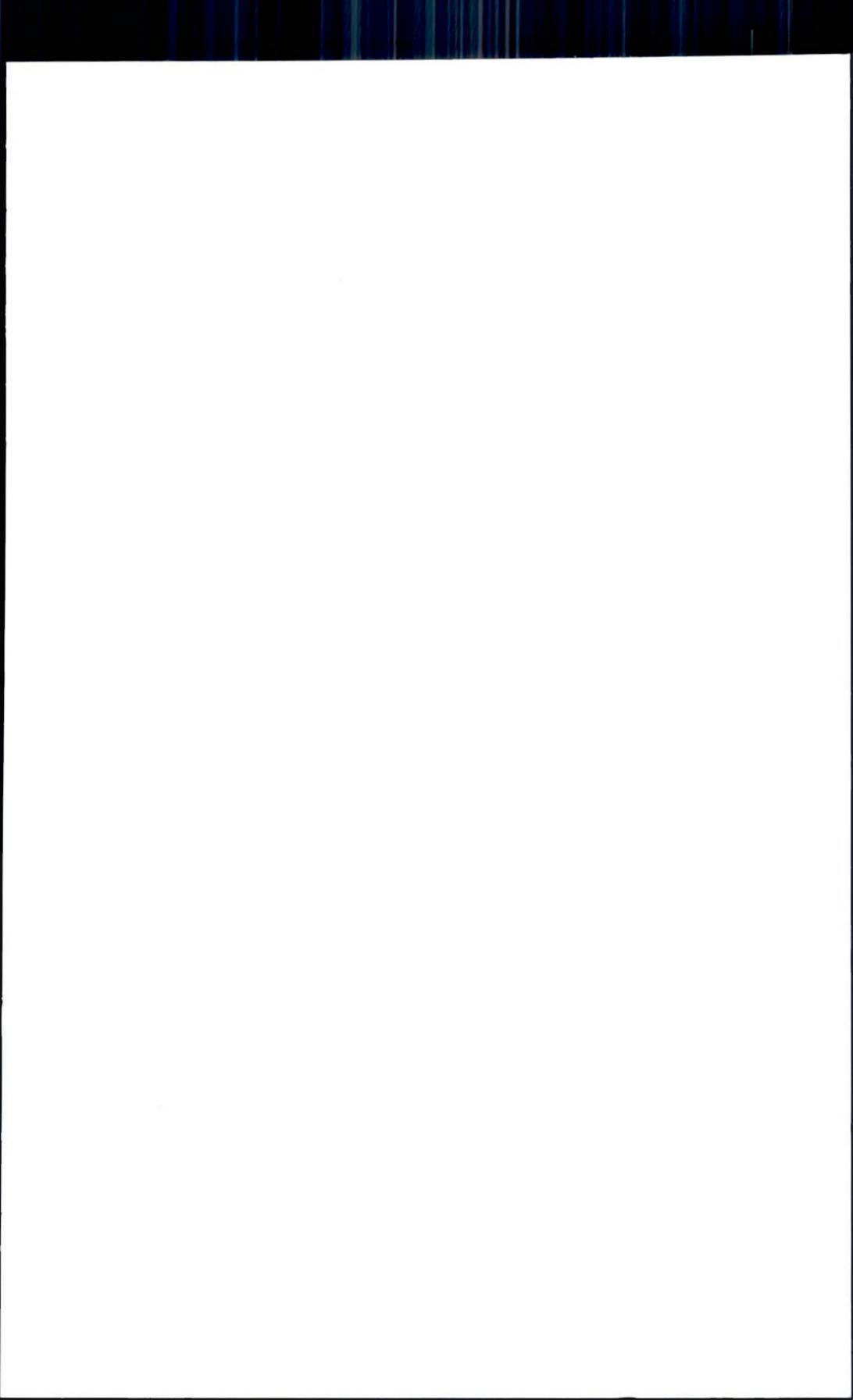
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