

BRIEFING PAPERS

**Wilful Killing:  
The Assassination of Palestinians In the  
Occupied Palestinian Territories by the  
Israeli Security Forces**



**Al-HAQ**  
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## Preface

*As of the 28 February 2001, 364 Palestinians have been killed in the current Al-Aqsa intifada, ten of them in an extra-judicial manner amounting to assassinations. Those individuals who were extra-judicially executed were deemed by the Israeli authorities to have either carried out or planned armed attacks on its soldiers and citizens in the Occupied Territories or against civilian targets within Israel. The decision to assassinate these individuals was made at the highest political levels in Israel.*

*Al-Haq presents this briefing paper on the extra-judicial execution of Palestinian activists and leaders which amount to wilful Killing as prescribed in the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War. This brief is based on field research, analysis of official Israeli policy, and statements made by Israeli politicians and military leaders. The purpose of this brief is to document and expose Israeli practices that flagrantly violate international law in contradiction to Israel's claims to be committed to international human rights and humanitarian principles. By bringing to light this information, Al-Haq hopes to contribute to efforts towards ensuring international protection for the Palestinian people.*

Al - Haq

## Introduction

Since the eruption of the Palestinian uprising on the 29 September 2000, popularly known as the Al-Aqsa intifada, a number of prominent Palestinian activists have been killed by the Israeli security forces in an extra-judicial manner. The individuals in question were deemed to have either carried out, planned or coordinated armed attacks against Israeli security personnel and settlers within the Occupied Palestinian Territories as well as against civilian targets within Israel. Senior Israeli political and military officials have acknowledged the policy of extra-judicial executions publicly. Israeli Deputy Defense Minister, Ephraim Sneh, stated when interviewed on the policy, "I can tell you unequivocally what the policy is. If anyone has committed or is planning to carry out terrorist attacks, he has to be hit...It is effective, precise and just."<sup>1</sup> In an interview on Israel radio on 21 December 2000, an Israeli officer referred to the policy of extra-judicial executions as "pre-emptive operations". The officer stated that the main method used to kill Hamas, Islamic Jihad and Fatah activists deemed to have carried out armed attacks against Israeli security personnel and citizens was by sniper fire, but other means were also used. The officer also stated that the IDF went to great lengths to ensure that there was no harm caused to civilian bystanders.

The Chief of Staff of the Israeli Defence Forces Shaul Mofaz, in reference to a legal opinion on the said policy issued by the Israeli military advocate General Menachem Finkelstein, stated that in exceptional cases it was permitted to kill "Palestinian terrorists." "This is not routine, but an exceptional method whose goal is to save human lives in the absence of an alternative. It is used against people who have definitely been identified as having worked, and are working to commit attacks against Israel."<sup>2</sup>

According to Israeli Prime Minister Ehud Barak, "we are at war, if people attack us and kill us, then our alternative is to attack them. A state facing the threat of terror has to wage a struggle."<sup>3</sup>

As a justifying rationale for their policy, the Israeli authorities have declared the Palestinian uprising an armed conflict. By doing so, they have granted themselves the prerogative to act in a more permissive fashion than would otherwise be the case if the current situation was deemed to be a civilian uprising. In times of war, one can

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<sup>1</sup>Keith B. Richburg, "Israelis confirm wider policy of assassinations", Washington Post 7 January 2001.

<sup>2</sup>Gideon Alon, "Mofaz:IDF jurists approved killings". Ha'aretz, 11 January 2001.

<sup>3</sup>Akiva Eldar, "Liquidation sale for the peace process", Ha'aretz, 4 January 2001.

immobilize the war making capacity of the enemy, which, of course, involves the wholesale taking of human life.

However, the current situation prevailing in the Occupied Palestinian Territories cannot be accurately described as an armed conflict that could conceivably warrant such a militarily permissive response from the State of Israel. The situation in the Occupied Territories is extremely complex. There are indeed instances of armed confrontation between armed Palestinians and Israeli soldiers, but there have also been countless demonstrations by unarmed segments of the population. The majority of the shooting incidents have been sporadic and are carried out by loosely organised armed groups or lone individuals. Officially, the Palestinian Authority has so far refrained from engaging the Israeli security forces. With this being the case, the Israeli authorities are still under an obligation to attempt to arrest and detain suspects deemed to pose a security risk.

In virtually all the cases of individuals killed under the policy in question, they did not pose an immediate threat to the lives of Israeli soldiers. The individuals in question were not participating in any hostile activity at the time they were killed. Moreover, the Israeli authorities have failed to make public the evidence against those individuals who were killed within the ambit of the policy. There was no judicial scrutiny of those sentenced to die and certainly no avenue was availed for those sentenced to appeal. The decision to kill is seemingly taken by a cabal of intelligence officials and senior military and political figures who effectively act as judge, jury and executioner, which is completely at odds with due process procedures.<sup>4</sup>

Under the provisions of international humanitarian law pertinent to belligerent occupation, Israel is under an obligation to attempt to arrest and detain those who it deems are hostile to the security of its forces. It is under the standards of

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<sup>4</sup>Due process rights under international humanitarian law includes: To be told early on and in a language he understands what he is accused of;  
to be presumed innocent until proven guilty;  
to be tried without undue delay;  
to be heard before an impartial decision maker;  
to be tried in a regular constituted court;  
to prepare and present a defence;  
to present witness;  
not to be required to testify against himself or to confess guilt;  
to be tried in his presence;  
to be convicted only of a crime that he himself committed;  
not to be punished more than once for the same crime;  
to be convicted only for what was a crime when the act was committed;

international humanitarian law that Israel's actions should be judged. In this brief, Al-Haq argues that the policy of extra-judicial execution amounts to wilful killing, which is a grave breach of the Fourth Geneva Convention. Grave breaches of the Geneva Conventions are akin to war crimes and are subject to international criminal prosecution.

### **An Overview of Extra-Judicial Executions in the Occupied Territories**

During the first intifada between 1987 and 1993, an assassination policy was also pursued by the Israeli authorities as a means of dealing with wanted Palestinian activists. Many of the Palestinian activists shot dead were wanted for a broad range of activities, including non-violent protest, such as writing graffiti or handing out political leaflets. At the time that they were fatally wounded, many of those who were extra-judicially executed, were not engaged in life threatening activity, and in many cases, no genuine attempt was made by the Israeli security forces to apprehend the individuals concerned.

The following are examples of individuals who were killed as a result of that policy:

On November 30 1990, Najib Mustapha Hwail (20) was ambushed and shot by an Israeli undercover unit. He died in hospital on March 1 1991. Hwail was wanted on suspicion of being a member of the Black Panthers and of killing collaborators. In October 1990 Shin Bet agents had raided Hwail's home, but he was not present at the time. A note was left by the agents urging Hwail to turn himself in or face the consequences. A photograph of Hwail in the house was defaced with an X and the word "martyr" written over it. On November 30 1990, in the early afternoon, Hwail was sitting with friends in front of a house when a car pulled up and four men got out. Hwail began to run and was shot three times.<sup>5</sup>

Hassan Mohammad Hassan Kamil (20), Ahmad Khaled Sadeq Kamil (21), and Saber Mohammed Ahmad Abu Farha (24) were killed on 25 September 1991 when Israeli undercover soldiers opened fire on a van in which they were traveling from Faqou'a to Jenin. Hasan and Ahmad, the apparent targets of the attack, were wanted

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to have a sentence no more severe than the law allowed at the time of the act;

to be told of his rights of appeal and what time limits there are;

to appeal and ask for a pardon or reprieve;

to have any death sentence stayed until six months after notification of the protecting power.

<sup>5</sup>Case taken from "Targeting to Kill: Israel's Undercover Units", Palestine Human Rights Information Center, May 1992 p33.

for suspected involvement in the Black Panthers organization. Saber was the driver of the van and an "unfortunate casualty".<sup>6</sup>

On the 12 March 1992, Khalil Mohammed Shaker Fahmawi, a 19-year-old wanted Palestinian, was chased out of his bed by Border guards and captured outside his brother-in-law's house in the Al-Damaj neighbourhood of Jenin refugee camp. Upon capture, Fahmawi was beaten and was pushed into a military jeep and taken to an unknown destination. Twenty-four-hours later, Fahmawi's body was returned to his family with a bullet wound on the left side of his chest.<sup>7</sup>

Jamal Rashid Abdul Rahim Ghanim was 23-years-old and wanted by the Israeli authorities when he was shot dead on the 22 March 1992. Four armed men shot Ghanim while he was playing soccer at the Tulkarem Municipal soccer field. After Ghanim was shot, he was left lying on the soccer field for half an hour. Uniformed soldiers who arrived at the scene in the immediate aftermath of the shooting turned away an ambulance. A military vehicle eventually took Ghanim away. When his body was returned it had five bullet wounds. Three in the back, one in the back of the head and one in the chest.<sup>8</sup>

Ra'ed Abdul-Rahman Dihmes, a 20-year-old wanted Palestinian, was shot and killed by an Israeli undercover unit on 18 March 1992 as he was walking to the village of Kafr Qadum accompanied by two friends. The Israeli authorities had been looking for Dihmes since the beginning of the intifada. At the time of his death, Dihmes was neither armed nor masked, nor were his friends.<sup>9</sup>

### **The Assassination of Palestinian Activists Committed by the Israeli Security Forces during the "Al-Aqsa" Intifada**

According to Al-Haq's documentation, the Israeli security forces in the Occupied Territories have carried out ten assassinations during the current Al-Aqsa intifada. The ten cases listed below give a general background into the circumstances in

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<sup>6</sup>Ibid pp 29-33

<sup>7</sup>Case taken from Human Rights Focus, "Killing by undercover and uniformed security forces increase; "wanted" Palestinians placed in immediate danger", AL-HAQ, 12 May 1992.

<sup>8</sup>ibid

<sup>9</sup>ibid. Please note that during the summer of 1989 the Israeli authorities changed the criteria for suspects that could be apprehended through the use of lethal force to include individuals wearing masks who attempted to escape capture. The Israeli authorities had accused masked individuals of enforcing strikes and in spear heading the campaign against collaborators.

which the individuals in question were killed. In a number of cases, bystanders were also killed due to Israel's use of disproportionate force when carrying out the operations.

### **Hussein Mohammad Salem I'bayat (34)**

On November 9 2000, the Israeli security forces killed Hussein Mohammad Salem I'bayat in Beit Sahour in the Bethlehem district. An Israeli helicopter gunship shelled the car in which I'bayat was riding causing his immediate death as well as the deaths of two bystanders, Rahmeh Rashid Shahin and Aziza Mohammad Dannoun. Other bystanders were injured in the attack.

According to eyewitness testimonies collected by Al-Haq, shortly after I'bayyat entered his car accompanied by Khaled Saleh Salahat, a helicopter flying over the town fired two missiles towards his car. The car was completely destroyed and I'bayyat was killed. Another two missiles were fired from the helicopter hitting another car in which Ibrahim Musa I'bayyat and Nasser I'bayyat were riding. One of the missiles exploded killing Dannoun and Shahin who were near the two cars. In addition, other bystanders were injured, Jamal Ibrahim Al-Wahadneh and Yousef Mohammad Allan seriously, and Salah Iddin Awad Sh'eibat and his wife Jamileh moderately.

### **Testimony to Al-Haq by Ibrahim I'bayat:**

*On Thursday 9 November 2000, at about 11 in the morning, I went with Hussein I'bayat and two others to inspect an area opposite the Oush-Ghrab camp near Beit Sahour. The Israelis had attacked the area during the night. We wanted to see the people in the area and ascertain the extent of the damage. While we were visiting the area we noticed a number of helicopters flying over the town. We thought nothing of it. As we were driving away two missiles hit Hussein's car, one in the front and the second penetrated the interior of the car and killed Hussein. Two other missiles were fired and I think they were aimed at my car. One of the missiles fell about one meter from the front of my car and exploded killing Rahmeh and Azziza. The second missile struck the front of the car, but did not explode.*

The Israeli authorities openly admitted responsibility for the killing of I'bayat and claimed that he had been responsible for organizing attacks on the Israeli settlement of Gilo. According to the Head of Israel's Central Command, Major General Yitzhak Eitan, "The State of Israel cannot for long stay indifferent to the repeated

attacks on its soldiers and civilians. Any other country would long ago have responded with great force. We will continue to hurt anyone trying to hurt us. This is not our first or our last move." <sup>10</sup> Despite the fact that a number of bystanders had been killed and seriously injured, Israeli military sources claimed that the attack was carried out in a highly professional manner and that there was no way of preventing civilian casualties. <sup>11</sup>

### Jamal Abdul Razeq (33)

On November 22 2000, Israeli security forces in Rafah in the Gaza Strip, killed Jamal Abdul Razeq. Awni Idheir, Na'el Liddawi and Sami Abu Laban were also killed in the same incident. According to information available to Al-Haq, Razeq and his passenger Awni Idheir, were on their way from Rafah to Khan Yunis. The moment their car stopped at a military check post located on the road leading to the Morag settlement, a plain-clothes member of the Israeli security forces fired a barrage of bullets from his machine gun at the car. A military vehicle parked at the check post also opened fire. Shooting continued unabated for about one minute. The individuals in question were killed. A taxi behind Razeq's car was hit in the barrage of fire and Sami Abu Laban and Na'el Liddawi were also killed. Nahed Fojo was injured and then arrested by the Israeli security forces following the incident. <sup>12</sup>

Fojo gave the following testimony to Amnesty International:

*"I got up early in the morning and made various runs, taking children to school. I worked till 9.45 am and found two young men; I later knew they were Sami Abu Laban and Na'el Liddawi. They asked me to take them quickly to buy some fuel for the bakery where they worked. I went towards Khan Yunis, past the Palestinian check point, I was going at 60 km an hour, when near the junction to the Morag settlement a lorry pulled out in front and I had to jam on the brakes. Suddenly there*

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<sup>10</sup> Amira Hass, "Dispute over death of Hamas bomber", Ha'aretz, 24 November 2000.

<sup>11</sup> ibid

<sup>12</sup> Jamal Abdul Razeq was the specific target of this attack. Palestinian collaborator Majdi Mohammad Makkawi confirmed that Razeq had been specifically targeted by the Israeli Authorities in his broadcast confession on the evening of January 3, 2001 following his arrest by Palestinian intelligence. Makkawi stated that his role in the assassination was to inform the Israeli security forces of the time at which Jamal Abdul Razeq left his house in Rafah and of the model of the car he was driving. Majid Makkawi was executed in Gaza after the Palestinian State Security court sentenced him to death. The sentence was issued on January 11, 2001 and was approved by the President of the Palestinian National Authority on January 12, 2001.



*was intensive shooting-I could not see from where and against whom as I flung myself down as low as possible and lay as though unconscious. After some time an Israeli soldier carrying a body bag opened the door. He thought I was dead-it was though he was about to put me in a body bag. Then "he shouted one is still alive!" He laid me down, handcuffed and with a blindfold and took me to Gush Katif. I did not know if the other passengers were dead or alive. I heard soldiers, I was blindfolded, I felt bad, I tried to vomit. After three hours I was taken, still handcuffed and with my legs tied to Ashkelon prison. They took of my clothes and doctors examined me; I had a high temperature. They gave me prison clothes and I was interrogated by four intelligence officers. I told them the exact same story, they asked me some questions about six times: "Was there a Kalashnikov in the car? " I said, "no, the people only had empty kerosene cans and their clothes were covered in flour". They said they would release me if I said there were weapons in the car but I insisted there weren't. They spat in my face, insulted and humiliated me, trying to get me to change my story."<sup>13</sup>*

### **Ibrahim Bani Audi (33)**

Ibrahim Bani Audi, an activist in the Hamas organization was killed on the 23 November 2000 by a bomb planted in his car. Bani Audi had been held in prison by the Palestinian Authority without regard to proper due process procedures. He was killed while on furlough from Jnied prison near Nablus where he had been held since August 1998. Bani Audi was killed by the Israeli security services with the aid of one his cousins, Alan Bani Audi. Alan Bani Audi apparently gave a car to Israeli operatives who planted a bomb in the car's headrest and was told to give the car to Ibrahim. The bomb exploded while Ibrahim was driving the car in the center of Nablus. The Israeli authorities charged that Ibrahim was killed while preparing a bomb.<sup>14</sup>

### **Anwar Mahmoud Ahmad Humrain (28)**

On December 11 2000, the Israeli security forces assassinated Anwar Mahmoud Ahmad Humrain, an Islamic Jihad activist. He was killed about 20 meters away

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<sup>13</sup>"State Assassinations and Other Unlawful Killings," Amnesty International, 21 February 2001, p 8.

<sup>14</sup>Alan Bani Audi was arrested by the Palestinian Authority for his part in the killing of Ibrahim. In a trial before the Palestinian State Security Court that fell way below internationally accepted standards for a fair trial, Bani Audi was found guilty of treason, espionage and being an accomplice in the killing of Ibrahim Bani Audi. Alan Bani Audi was executed on 13 January 2001 by firing squad.

from the main building of the Al-Quds Open University in the Dahyeh Neighborhood of Nablus. Members of the Israeli security forces fired from the Jarzim Mountain opposite the University. Hamrain was struck by two bullets in the head and by several bullets in other parts of his body. According to the Israeli army, Humrain was killed in an exchange of fire.<sup>15</sup> However, according to eyewitness accounts, there was no shooting in the area and Humrain had been apparently looking for a taxi when he was gunned down. Humrain was married with children and was a former detainee of the Palestinian Authority. He had been held in detention since October 1998 and was released six weeks before he was killed.

**Yusef Ahmad Mahmoud Abu Sway (28)**

On December 12 2000, the Israeli security forces assassinated Yusef Ahmad Mahmoud Abu Sway in Irtas village. He was an activist in the first Intifada (1987-1993) as well as a member of Fatah and was wanted by the Israeli authorities.

**Abbas Othman Amhad Al-I'wewi (27)**

On December 13 2000, the Israeli security forces assassinated Abbas Othman Amhad Al-I'wewi, an activist in Hamas, in the center of Hebron. I'wewi was shot while waiting for a taxi. According to the medical reports, I'wewi was hit by three bullets, two in the abdomen and one to the chest. Iwewi had been held in detention without trial on a number of occasions since 1997 by the Palestinian Authority and had been released some five weeks before he was killed.

**Hani Hussein Hasan Bakri (31)**

On December 14 2000, members of the Israeli security forces in the south of the Gaza Strip assassinated Hani Hussein Hasan Bakri. Bakri was a Hamas activist and was killed near the Gush Katif junction. Several individuals who were riding in Bakri's taxi when he was killed testified to the events they witnessed. They stated that an Israeli soldier ordered Bakri to stop his taxi at the side of the road after he had passed through an Israeli checkpoint. Five soldiers approached the taxi and one of them asked Bakri to get out of his taxi. Shortly after Bakri opened the door to get out of his car the five soldiers opened fire, hitting Bakri in the head and chest. He was

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<sup>15</sup>Amos Harel, "Man Killed as shooting erupts in the West Bank and Gaza." Ha'aretz 11 December 2000.

killed instantly. There was no evidence to suggest that Bakri was armed. Nonetheless, in a statement on the killing, the Israeli security services described Bakri's death as a result of a clash with the IDF. The IDF statement contradicts eyewitness accounts, which indicate that there was no exchange of fire and that Bakri was unarmed. During the assassination of Bakri, 40-year-old Abdallah Isa Abdallah Kanan was critically wounded. Kanan was pronounced dead on 23 December 2000.

#### **Sa'id Taha Saleh Al Kharouf (32)**

On December 15 2000, the Israeli security forces assassinated Sa'id Taha Saleh Al-Kharouf an activist in the Islamic Jihad Movement near the village of Huwara in the Nablus District. According to a statement given by his family, Sa'id received a phone call at about 11:00 pm on December 14 from a Palestinian from Jerusalem who he worked with. This individual told Sa'id that he was having car trouble and that he needed help. When Sa'id reached the location with a friend, Dr. Abdallah Al-Ardha, at about 1:00 a.m., a group of Israeli soldiers opened fire on them killing Al Kharouf. He was struck by five bullets, while Dr. Al-Ardha sustained serious injuries and was arrested and then transferred to a hospital inside Israel.

#### **Dr. Thabet Ahmad Thabet (48)**

On December 31 2000, Members of the Israeli security forces in Tulkarem assassinated Dr. Thabet Ahmad Thabet a member of the Fatah Higher Committee and General Director of the Palestinian Ministry of Health's Tulkarem offices. According to information available to Al-Haq, Israeli soldiers stationed at a checkpoint about 300 meters away from Thabet's house opened fire upon him as he was reversing his car from his home. Thabet was hit by four bullets, which entered his back, chest and abdomen. He died moments after reaching the Tulkarem hospital. According to an Israeli army spokesman in reference to the killing, the soldiers were responding to shooting in the area and that Dr. Thabet was an unfortunate casualty of these clashes. However, according to people present in the vicinity at the time of the incident in question, there were no armed clashes in the area. The Israeli authorities had also claimed that Thabet had been responsible for coordinating a number of shooting incidents in the Tulkarem area against Israeli targets. In the wake of the Thabet killing, in a meeting of the Knesset Foreign Affairs and Defence Committee, an Israeli security official claimed that:

*We attack terrorists who set out to shoot at civilians; we identify the heads of*

*squads and district commanders, and attack them. This activity frightens and quiets a village; and as a result, there are regions in which operatives are afraid of undertaking activities.*"<sup>16</sup>

The Israeli authorities have yet to present evidence linking Thabet to any armed activity in the Tulkarem area.

Moreover, as in many of the cases illustrated above, the Israeli authorities could conceivably have arrested Thabet if they were suspicious of his activities. In a detailed testimony given to LAW, The Palestinian Society for the Protection of Human Rights and the Environment, Thabet's widow stated that her husband used to go every Friday to pray at a mosque located in the vicinity of Faroun village, which is located in Area C, an area under full Israeli security control.

Dr. Thabet was a respected man in the Tulkarem district and had been an outspoken activist against the Israeli occupation. He also had substantive contacts with the Israeli peace movement and had been involved in a number of activities concerned with Palestinian-Israeli reconciliation.

### **Masoud Hussein A'yyad (50)**

On February 13 2001, the Israeli security forces assassinated Masoud Hussein A'yyad, an active member of Fatah and an officer in the Palestinian security services. Israeli Assault helicopters launched a number of missiles at his car, which was traveling near the Jabalya Refugee Camp in the Gaza Strip. Five bystanders were also injured in the attack.<sup>17</sup> According to Israeli sources, A'yyad was a leader of a Hizbollah cell in the Occupied Territories responsible for attacks on Israeli interests. However, to date, no proof has been furnished by the Israeli authorities to substantiate such a claim.

### **The Israeli Rationale for the Assassinations**

Israel has adopted a policy that allows for the extra-judicial execution of Palestinians in the Occupied Territories. This policy is clearly laid out in statements

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<sup>16</sup>Amira Hass, "Top Fatah official gunned down. IDF neither admits nor denied he was targeted; Palestinians vow revenge," Ha'aretz, 1 January 2001.

<sup>17</sup>Members of the Palestinian security services, on account of their civil policing functions are also protected persons in line with the Fourth Geneva Convention.

made by Israeli politicians and military commanders.

In a meeting held by Israel's Deputy Chief of Staff Moshe Ya'alon with the heads of the Yesha Councils in the West Bank and Gaza Strip to discuss the situation in the Occupied Territories he stated, "It is the right of the Israeli Prime Minister to give the green light to the Israeli army to assassinate the leaders of Fatah. This will force the Palestinians to stop the confrontations after they realize the high price they pay."<sup>18</sup> Moreover, the Israeli Deputy Minister of Defense said in a statement to Israeli army radio, "We will hit all persons involved in terrorist actions and attacks, or who prepared for attacks. A position in the Palestinian Authority does not give immunity to any person. Thus, the assassination of the officials responsible for attacks or who incite attacks is the best, most effective, accurate and appropriate means."<sup>19</sup> In an answer to questions about the policy of assassination directed towards the Israeli Prime Minister in the Knesset, Ehud Barak justified such operations saying, "Israel faces a state of war and there are no other means to fight terrorism."<sup>20</sup>

The assassination policy seems to have been pursued as a form of punishment for a person accused by the Israeli authorities of carrying out operations that are perceived to be detrimental to the security of Israel's armed forces stationed in the Occupied Territories as well as to the safety of the settlers residing in the said territories and Israeli citizens within Israel's sovereign borders. The policy has also been pursued as a preemptive measure against individuals who are suspected of planning to carry out such operations or who ordered others to carry them out. The policy was also seemingly conceived as a way of "taking care of" individuals wanted by Israel.<sup>21</sup> The fact that a number of individuals who were wanted by Israel and who were held by the Palestinian Authority and subsequently released after the start of the intifada and who were eventually killed, seems to indicate that there is a high probability that this rationale played a part in the minds of those who planned the policy. The Israeli security forces have also seemingly used the assassination of leading Palestinian activists as a deterrent and as a way to demoralize the local population. The assassination of leading Palestinian activists has also been used as a means of retaliation. For example, the decision to kill I'bayat was seemingly influenced by his alleged involvement in the shooting incidents on Gilo.

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<sup>18</sup>AlAyyam Newspaper, December 7, 2000, issue number 1786, p. 1.

<sup>19</sup>Al-Quds Newspaper, January 4, 2001, issue number 11268, p. 6.

<sup>20</sup>Al-Ayyam Newspaper, January 3, 2001, issue number 1811, p. 1.

<sup>21</sup>See Al-Quds Newspaper, January 11, 2001, issue number 11275, p.9.

## The Legality of Israel's Practice

*"The laws of combat, which are part of international law, permit injuring, during a period of warlike operations, someone who has been positively identified as a person who is working to carry out fatal terror attacks against Israeli targets. These people are enemies who are fighting against Israel, with all that implies, while committing fatal terror attacks and intending to commit additional attacks-all without counter measures by the Palestinian Authority<sup>22</sup>."*

As the West Bank and the Gaza Strip are occupied territories, Israel's practices should be judged within the parameters of international humanitarian law. The main legal instruments that must be used as a guiding foil upon which to judge Israeli practices are the Fourth Hague Convention Respecting the Laws and Customs of War on Land and the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War. The Palestinian population under the rubric of international humanitarian law are regarded as protected persons and therefore enjoy all the protective guarantees of a civilian population in territory occupied. Article 4(1) of the Fourth Geneva Convention defines protected persons as: *...those who, at a given moment and in any manner whatsoever, find themselves, in case of a conflict or occupation, in the hands of a party to the conflict of which they are not nationals.* Pursuant to its occupation, Israel is under a legal obligation to abide by the Convention's provisions.

According to article 27(1) of the Fourth Geneva Convention: *Protected persons are entitled, in all circumstances, to respect for their persons and honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats there of and against insults and public curiosity.*

Article 32 of the same Convention stipulates: *The High Contracting Parties specifically agree that each is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical scientific experiments not necessitated by the medical treatment of a protected person but also to any other measures of brutality whether applied by civilian or military agents.*

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<sup>22</sup>Moshe Rienfield, "Liquidations legal acts in times of war, state tells court." Ha'aretz. 13 February 2001. A legal opinion by Attorney General Elyakim Rubenstein.

Though international humanitarian law gives substantial leeway to the occupying power to safe guard public order and safety, as well as to ensure the security of its personnel, whatever measures are taken, they must not infringe upon the rights that protected persons are entitled to as enshrined in article 27 of the Convention<sup>23</sup>. If an individual protected person is suspected of hostile activity deemed to be a security concern for the occupying power, the occupying power is entitled to attempt to arrest and detain them. According to article 5:.... *Where in occupied territory an individual protected person is detained as a spy or saboteur, or as a person under definite suspicion of activity hostile to the security of the occupying power, such person shall, in those cases where absolute military security so requires, be regarded as having forfeited rights of communication under the present Convention.*

*In each case, such persons shall nevertheless be treated with humanity, and in case of trial, shall not be deprived of the rights of fair and regular trial prescribed by the present Convention. They shall also be granted the full rights and privileges of a protected person under the present Convention at the earliest date consistent with the security of the state or occupying power, as the case may be.*

A humanitarian reading of the article should lead to the conclusion that the right which is derogated by an individual who is suspected of engaging in hostile activity against the occupying power is that of communication, and the occupying power is essentially under an obligation to attempt to arrest and detain a suspect. As illustrated above, no effort was expended to attempt to arrest and detain the suspects in question, indicating a clear intent to kill.

Even if the individuals in question had taken part in hostile activity against the occupying forces, they nonetheless retain their civilian status and only lose their protective status under international humanitarian law for the duration of their participation in armed action.<sup>24</sup> Article 51(3) of Protocol I Additional to the Geneva Conventions stipulates: *civilians shall enjoy the protection afforded by this section, unless and for such time as they take a direct part in hostilities.* (Emphasis added) They can only be lawfully killed during an active engagement and when posing an immediate danger to the occupying forces. As they are not combatants, they cannot be killed when not engaged in armed hostile activity. There is no legal foundation

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<sup>23</sup>Article 43 of the Fourth Hague Convention Respecting the Laws and Customs of War on Land of 1907 stipulates: The authority of the legitimate power having in fact passed into the hands of the occupant, the latter shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety, while respecting, unless absolutely prevented, the laws in force in the country.

<sup>24</sup>International humanitarian law recognizes two categories of person, combatant and non-combatant.

under international humanitarian law for killing protected persons on the basis of suspicion or even on the basis of evidence of their supposedly threatening activities or possible future actions. As indicated above, article 27 of the Fourth Geneva Convention provides for the respect of persons and article 32 explicitly prohibits killing<sup>25</sup>.

The manner in which those suspected of hostile activities were assassinated, in contravention of fair trial standards, with Israeli security officials acting as judge, jury and executioner, is in complete disregard for the humanitarian principles inherent to the Convention. Those accused of a crime committed against the occupying power should be apprehended and tried. Provisions for this possibility are laid out in article 71 of the Convention: "*No sentence shall be pronounced by the competent courts of the Occupying Power except after a regular trial. Accused persons who are prosecuted by the Occupying Power shall be promptly informed, in writing, in a language which they understand, of the particulars of the charges preferred against them, and shall be brought to trial as rapidly as possible. ...*"

Article 72: "*Accused persons shall be given the right to present evidence necessary to their defense and may, in particular, call witnesses. They shall have the right to be assisted by a qualified advocate or counsel of their own choice, who shall be able to visit them freely and shall enjoy the necessary facilities to prepare the defense. ...*"

Article 75: "*In no case shall persons condemned to death be deprived of the right of petition for pardon or reprieve. No death sentence shall be carried out before the expiration of a period of at least six months from the date of receipt of the Protecting Power of the notification of the final judgment confirming such death sentence, or of an order denying pardon or reprieve. ...*"

Moreover, the Principles of Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions of 24 May 1989 stipulates:

*1. Governments shall prohibit by law all extra-legal, arbitrary and summary executions and shall ensure that any such executions are recognized as offences*

Combatant generally refers to an individual who is part of the armed forces of a state, which is a party to a conflict. Non-combatant generally refers to individuals who are civilians and who find themselves in the midst of an armed conflict. Non-combatant also refers to individuals who are residents of a territory that has come under the control of hostile forces of which they are not citizens. Individuals who are citizens of an "enemy state" resident in the enemy country are also protected under humanitarian law. Soldiers who are injured or captured during the course of hostilities are also protected by the Geneva Conventions.

<sup>25</sup>Article 68 of the Fourth Geneva Convention places certain restrictions on the occupying power's use of the death penalty and requires a prior judicial trial.



*under their criminal laws, and are punishable by appropriate penalties, which take into account the seriousness of such offences. Exceptional circumstances including a state of war or threat of war, internal political instability or any other public emergency may not be invoked as a justification of such executions.*

*Such executions shall not be carried out in any circumstances including, but not limited to, situations of internal armed conflict, excessive or illegal use of force by a public official or other person acting in an official capacity or by a person acting at the instigation, or with the consent or acquiescence of such a person, and situations in which deaths occur in custody. This prohibition shall prevail over decrees issued by any governmental authority."*

Article 3 states that, "Governments shall prohibit orders from superior officers or public authorities authorizing or inciting other persons to carry out such extra-legal, arbitrary or summary executions. All persons shall have the right and the duty to defy such orders. Training of law enforcement officials shall emphasize the above provisions."

Article 19 also states, "Without prejudice to principle 3 above, an order from a superior officer or a public authority may not be invoked as a justification for extra-legal, arbitrary or summary executions. Superiors, officers or other public officials may be held responsible for acts committed by officials under their authority if they had a reasonable opportunity to prevent such acts. In no circumstances, including a state of war, siege or other public emergency, shall blanket immunity from prosecution be granted to any person allegedly involved in extra-legal, arbitrary or summary executions."

The accused person has a right to defend him/herself in a court of law in order to challenge any potential violations of their rights and ensure against any miscarriage of justice. The individuals who were accused of threatening the security of the occupying power and its citizens, of planning for the commission of such actions, or of ordering their implementation were not availed of these safeguards. The assassinations that were committed by the Israeli security forces were carried out without due regard for the basic guarantees provided by the relevant provisions of international humanitarian law and human rights principles. There was no attempt to arrest and detain, no credible evidence was furnished to the public domain for judicial scrutiny, those killed were not made aware of the charges against them, nor were they ever given the opportunity to refute the allegations that sent them to their deaths.

Moreover, there are a number of principles integral to international humanitarian law that should govern the conduct of an occupying authority. These are the

principles of proportionality, discrimination and necessity. The principle of proportionality implies that the force used should not exceed the level required to stop the threat and must be in proportion to the harm threatened.<sup>25</sup> Linked to the principle of proportionality is that of immediacy, which implies that the level of immediate threat should be taken into consideration before acting. The principle of discrimination entails that every effort must be made to avoid harm and to minimize harm that cannot be avoided. The principle of necessity means that no choice of means and no moment for deliberation is left. Adherence to these principles by members of the Israeli security forces were clearly lacking during the execution of the assassination policy. The fact that a number of bystanders were killed as in the killing of I'bayat and Razeq, clearly indicates that disproportionate force was used. The fact that those killed did not pose an immediate threat to life or limb to Israeli soldiers appears to indicate that those targeted for assassination were to die, regardless of whether or not they were in a position to cause harm. The killings were not necessary, in the sense that means were available other than killing such as arrest, which as in some cases that are illustrated above, could have been carried out without undue risk to the Israeli soldiers involved.

### **The Legal Ramifications Of Israeli Practice**

It is clear that the relevant provisions of public international law prohibit without exception any authority, whether a civil authority in a sovereign state or a military authority in an occupied territory from carrying out assassinations, deliberate killings and summary executions. Within this context, it must be clearly understood that Israel's policy of assassination is an extremely serious crime under public international law. Israel's assassination policy clearly amounts to intentional or wilful killing of protected persons. Wilful killing constitutes a grave breach of the Fourth Geneva Convention subject to international criminal prosecution under the universal jurisdiction principle. Articles 147 and 146 of the Convention sets down the grave breaches of the Convention and the implications of such breaches. According to article 146:

*The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be*

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<sup>25</sup>The principle of proportionality is used here under law enforcement standards rather than in a strictly military sense as in the case of the Occupied Palestinian Territories the Israeli army should perform a policing function akin to a national police force when dealing with the civilian population. From a military point of view the principle of proportionality involves proportionality in relation to the adversary's military actions or to the anticipated military value of one's own actions.

*committed, any of the grave breaches of the present Convention defined in the following Article.*

*Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts. It may also, if it prefers, and in accordance with the provisions of its legislation, hand such persons over for trial to another High Contracting Party concerned, provided such High Contracting Party has made out a prime facie case.*

*Each High Contracting Party shall take measures necessary for the suppression of all acts contrary to the provisions of the present Convention other than grave breaches defined in the following Article...*

Wilful killing is listed as a grave breach in article 147 of the Convention.

## **Conclusions**

Al-Haq is of the view that Israel's assassination policy amounts to wilful killing, which is a particularly grievous crime under public international law. The individuals targeted for assassination did not pose an immediate danger to the life or limb of Israeli soldiers. No effort was expended to attempt to arrest and detain the individuals in question. The policy to kill was deliberate and intentional, and was sanctioned at the highest political and military echelons of the State of Israel. Whatever the accuracy of the charges leveled against the individuals in question, a policy of extra-judicial execution cannot be justified. As illustrated throughout this brief, there are binding rules under international humanitarian law that should have governed Israel's conduct.

