



Briefing Paper

The Use of Palestinian Civilians as Human Shields by the Israeli Army

July 2003

Introduction: During al-Aqsa Intifada, the Israeli army has used Palestinian civilians as human shields and/or as hostages during the course of military operations. Israeli soldiers have forced Palestinian civilians to: (i) enter buildings to check if they are booby-trapped; (ii) remove suspicious objects from roads used by the army; (iii) stand inside houses where soldiers have set up military positions, so that Palestinians will not fire at the soldiers; and (iv) walk in front of soldiers to shield them from gunfire, while the soldiers hold a gun behind their backs and sometimes fire over their shoulders. Local and international human rights organizations, including Amnesty International and Human Rights Watch, have produced extensive documentary evidence of these practices.¹

Supreme Court Petition Filed: On 5 May 2002, Adalah, on behalf of seven Israeli and Palestinian NGOs, filed a petition to the Supreme Court of Israel seeking an order instructing the Israeli army to stop using Palestinian civilians as human shields and/or as hostages. The petitioners' also requested an immediate injunction to stop the Israeli army's illegal and abusive practices.²

Petitioners' Arguments: The petitioners' argued that the army's use of Palestinian civilians as human shields and/or as hostages is inhuman treatment and violates the right to life, physical integrity, and dignity. These actions, the petitioners' argued, are a violation of Articles 27, 28, 31, 32, 33, 34, and 51 of the Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War (1949). For example, Article 28 of the Geneva Convention (IV) states *inter alia* that: "The presence of a protected person may not be used to render certain points or areas immune from military operations." Article 51 of the Geneva Convention (IV) states *inter alia* that: "The Occupying Power may not compel protected persons to serve in its armed or auxiliary forces." The Israeli military's use of Palestinian civilians as human shields and/or as hostages amounts to a grave breach of the Geneva Convention (IV), pursuant to Article 147, and thus, these actions constitute a war crime. The army's actions also violate Articles 45, 46, and 50 of the Hague Regulations (1907), as well as Articles 51, 57 and 58 of Protocol I to the Geneva Conventions of 12 August 1949 (1977). Article 51(7) of Protocol I states *inter alia* that: "The presence or movements of the civilian population or individual civilians shall not be used to render certain points or areas immune from military operations, in particular in attempts to shield military objectives from attacks or to shield military objectives from attacks or to shield, favour or impede military operations. The Parties to the conflict shall not direct the movement of the civilian population or individual civilians in order to attempts to shield military objectives from attacks or to shield military operations."

State's Response to Request for Injunction: On 7 May 2002, the Attorney General's Office submitted a response that implicitly confirmed the Israeli army's use of Palestinian civilians as human shields and as hostages. Specifically, the respondents stated that:

- In light of the information specified in the petition, and without admitting or denying any of the allegations, "the IDF decided to immediately issue a decisive order ... imposing an absolute ban on all of the forces in the field from using civilians ... as a means to 'humanly shield' from fire or terrorist attacks by the Palestinian side or as hostages."
- Regarding complaints specified in the petition involving the Israeli army's use of Palestinian residents to enter the homes of other Palestinian residents during military operations, "it was decided in the IDF to clarify that even this activity is forbidden, in those cases in which the commander in the field thinks, that a

danger to the body of the civilian might arise. In addition, the military authorities intend to examine in the coming days the various aspects of the issue of being assisted by Palestinian residents.”

- "Furthermore, in regard to the complaints specified in the petition, it was decided to conduct within the IDF a comprehensive investigation on this issue, but naturally, there was not enough time for the respondents to do that in the time that has passed since the petition was submitted."
- "In light of the fact that the respondents decided to immediately issue an order, as mentioned ... the respondents are of the opinion that the need for the requested injunction is moot."

Case Developments:

May 2002 - Supreme Court Refuses to Issue an Injunction Prohibiting the Army's Use of this Practice

The Supreme Court refused to issue an injunction, claiming that the military's alleged order to stop using civilians as human shields was sufficient. At a hearing on 21 May 2002, pursuant to the petitioners' argument, the Court ordered the army to submit a written copy of its orders, and to clarify the question of what is and what is not permitted regarding the issue of obtaining assistance from Palestinian civilians during military operations. The Court also ordered the army to identify the legal basis for its practices. State to respond to petition in 30 days.

August 2002 - Palestinian Civilian Killed While Being Used as a Human Shield; Supreme Court Issues a Temporary Injunction Based on Petitioners' Request

On 18 August 2002, Adalah, on behalf of the petitioners, filed another motion for an injunction as part of the existing petition. The motion for injunction included the request to ban any use of Palestinian civilians as human shields and/or as hostages, including through the "neighbor procedure" (a practice in which Israeli soldiers use Palestinian civilians to perform military operations. For example, neighbors of target homes or buildings are called upon to knock on doors, check suspicious objects, and to walk in front of soldiers as the army surrounds its targets), and to prohibit reliance on the discretion of the military commander as to the existence of any danger to the Palestinian civilian. The petitioners re-emphasized their position that the "neighbor procedure" is the same as using human beings as shields or hostages. The petitioners argued that: "It is an action in which the 'assistant' is forced to perform, under the influence of the Israeli military, in order to protect the soldiers involved in the military operation." Further, the petitioners added that the Israeli army is a well-trained force, and its purpose by definition, is to perform military assignments without involving civilians, unnecessarily endangering their lives, and disrespecting their rights to life and dignity.

The petitioners also addressed the state's assurances that army commanders use their discretion in utilizing the "neighbor procedure." The petitioners argued that: "In practice, the army commanders in the field praise the use of 'civilian assistants' because it protects the lives of soldiers while endangering the lives of civilians. Reliance should not be placed on the discretion of the commander in the field; from his point of view, the lives and dignity of the civilians are irrelevant. The commander's primary interest is to ensure the efficiency and success of the military operation. It is not enough to condemn this instrumental approach to civilian life and dignity; there is a duty to prevent the continuous use of these illegal actions."

On 18 August 2002, the Supreme Court issued a temporary injunction as requested by the petitioners. The Court ordered the state to respond within seven days.

November 2002 – Petitioners File Motion for Contempt Against the Israeli Army Based on its Continued Use of Palestinian Civilians as Human Shields

On 20 November 2002, Adalah, on behalf of the petitioners, filed a motion for a contempt of court against the respondents based on their continued use of Palestinians as human shields, despite the Court's 18 August 2002 injunction. The motion was based on a report released by B'Tselem on 14 November 2002, entitled "Human Shield: Use of Palestinian Civilians as Human Shields in Violation of High Court Order."³ In the report, B'Tselem

provides evidence of at least five separate instances in which the Israeli army has used Palestinian civilians as human shields since the Supreme Court issued the injunction.

December 2002 – Israeli Army Continues to Use Palestinian Civilians as Human Shields; Army Adopts “Prior Warning” Order

On 24 December 2002, the petitioners made a further submission to the Supreme Court detailing the army’s continued breach of the injunction. The submission presented four new cases of Palestinians being used as human shields as documented by B’Tselem.⁴ For example: On 11 December 2002, Israeli soldiers forced Nabhan Najjar to search the home of the Badra family in Nablus. At gunpoint, Mr. Najjar was made to participate in an extensive search of the home, during which the soldiers accompanying him repeatedly fired shots into closets, storage spaces and ceilings. In the course of this operation, Osama Badra was shot and later died.

The petitioners’ submission also addressed written arguments filed by the state on 5 December 2002, in response to the petition, petitioners’ motion for injunction, and petitioners’ motion for contempt of court. In the submission, the state contended that the army had issued an order prohibiting the use of Palestinian civilians as human shields or as hostages in the course of its operations in the Occupied Territories. The response also stated that an investigation committee had been established, and that investigations were taking place into evidence presented by the organizations in their petition and in the recent motion for contempt of court. Further, the State claimed that the army has begun disciplinary proceedings against a lieutenant for using a Palestinian woman as a human shield.

The State also explained that the army had adopted a new order called “prior warning” whereby Palestinian civilians could be used as “assistance” if they agree to the request. Such assistance may be provided when two conditions are met; i) the commander determines that there is no danger to the civilian; and ii) the civilian agrees to comply.⁵ This order contains provisions reflecting that the army is well aware that the use of civilians as “assistants” is inherently dangerous.⁶

The petitioners rejected the claim that “assistance” does not amount to participation in a military operation, arguing that all “assistance” is inherently dangerous and that no Palestinian would voluntarily agree to assist an occupying army carrying out its operation. The petitioners also requested that the Court maintain the existing temporary injunction against the use of Palestinian civilians and issue an *order nisi* requiring the respondents to explain the continued use of the practice. They also requested that fines be levied against the respondents for violating the injunction. A hearing on the petition was scheduled for 21 January 2003.

January 2003 - Supreme Court Limits Scope of Injunction and Permits Army to Act in Accordance with Prior Warning Order Despite Serious Questions Concerning its Legality

On 21 January 2003, a hearing was held at which the Supreme Court limited the injunction prohibiting the use of Palestinian civilians as human shields and/or hostages. The Court permitted the army to act pursuant to the new “prior warning” order. At the hearing, the Attorney General’s representative claimed that civilian use as “assistance” is done in order to prevent the loss of life. He added that the military’s new “assistance order” complies with the mandates of international law. In particular, he cited to Article 26 of the Hague Regulations (1907); Article 21 of the Geneva Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (1949); Article 19 of the Geneva Convention (IV); and Article 57 (2)(c) of Protocol I to the Geneva Conventions of 12 August 1949 (1977). He added that the new order was prepared after lengthy discussions and was approved by the Attorney General.

At the hearing, Adalah, representing the petitioners, argued that “assistance” amounts to the continued use of Palestinians as human shields and/or taking them hostage. Adalah also challenged the legal bases relied upon by the state for the military’s new “prior warning” order,” arguing that all of the provisions cited speak only of the duty of an attacking power to issue a warning prior to an attack. The provisions mention nothing about the

possibility of the military's use of civilians during their operations. Adalah further argued that the discretion of military commanders, in determining whether it is safe to involve Palestinian civilians in operations, cannot and should not be trusted.⁷ Adalah pointed to evidence previously brought before the Court by the petitioners which showed that the military commanders in the field continued to perceive the use of civilians in military operations as efficient and justified, even after the deaths of Palestinians killed while "assisting" the army in apprehending others.

The Supreme Court refused to hear arguments regarding the motion for contempt of court, despite the fact that the respondents did not submit any affidavits or any alternative version of the incidents as set forth by the petitioners evidencing the use of Palestinian civilians as human shields. The Court gave the petitioners 30 days to submit written arguments regarding the new order, and the respondents 30 days to respond to that submission.

February 2003 – Petitioners File Written Arguments Challenging the Legality of the Prior Warning Order

On 27 February 2003, Adalah, on behalf of the petitioners, submitted arguments to the Supreme Court challenging the Israeli army's "prior warning" order. The petitioners' requested that the Court declare the military's "prior warning" order illegal. In their submission, the petitioners included an expert opinion by Tel Aviv University International Law Professor Eyal Benvenisti, which concurred with their argument that international humanitarian law absolutely prohibits an occupying power from using civilians in the military operations of its forces, based on, *inter alia*, Articles 27 and 28 of the Geneva Convention (IV) and Articles 51, 57 and 58 of Protocol I to the Geneva Conventions. The petitioners also included further evidence of the army's continued practice of using Palestinian civilians as human shields despite the August 2002 injunction.⁸

The petitioners also presented evidence of further abuses committed by the Israeli army against Palestinian medical personnel and Palestinian civilians being treated by them, as reported by Physicians for Human Rights - Israel.⁹ On 26 January 2002, Israeli soldiers stopped five Palestinian ambulances near Nablus. The ambulance workers were then forced to stand between the soldiers and a group of stone-throwers. While the medical personnel were being used as human shields, a child, on his way to receive medical treatment, was kept waiting in one of the ambulances.

April & May 2003 – Petitioners Submit Additional Testimonies to the Supreme Court of Palestinian Civilians Being Used as Human Shields by the Israeli Army

On 27 April 2003, Adalah, on behalf of the petitioners, submitted three new testimonies of Palestinian civilians being used as human shields and as hostages to the Supreme Court. B'Tselem gathered the new testimonies.¹⁰ For example: Ms. 'Ula 'Awad, 22-years-old, is married and the mother of four children. She lives in the Nablus district. Ms. 'Awad stated in her testimony that on 6 March 2003, at about 12:30 a.m., she heard a loud explosion and went outside of her home with other family members to see what was going on. A large number of Israeli soldiers were outside. Ms. 'Awad testified that the soldiers ordered her to walk in front of them and to go up to her parents' apartment. They told her that if they found any men inside, they would shoot them and her. The soldiers then told her to go into the rooms, one after the other, and they went in after her with their rifles pointing at her back.

On 22 May 2003, Adalah, on behalf of the petitioners, submitted one new affidavit and photographs taken by a woman activist who participates in "Checkpoint Watch." In the affidavit, the activist describes a Palestinian civilian being used as a human shield at the Za'atri checkpoint near the Jewish settlement of Tipuah on 8 May 2003. A series of photographs also documents this event.

July 2003 – Petitioners Submit Affidavit of Israeli Soldier Concerning the Prior Warning Order; State Says "Prior Warning" Practices are not Prohibited Under International Humanitarian Law; Supreme Court Continues to Permit Army to Act in Accordance with Prior Warning Order and Delays Issuance of Decision on Petition – May Enlarge Panel of Justices

On 3 July 2003, Adalah, on behalf of the petitioners, submitted a new affidavit given by an Israeli soldier who does his reserve service in the Occupied Territories. Regarding the issue of the “prior warning” order, particularly that of “consent” of a Palestinian civilian, the soldier stated that: “The commanders of my unit ... treated it like a joke ... One guy asked what we should do if the Palestinian did not agree to serve as a shield, to which the instructor answered - grinning and joking – ‘there is no such thing.’” Regarding the issue of discretion of the military commander in the field, he added that: “As for the second condition, which determined that the procedure may not be used if it places the Palestinian’s life in danger, the army simply ignores it.”

On 6 July 2003, the State filed its response to the petitioners’ February 2003 submission. The State claimed in its reply that using civilians as human shields or as hostages is prohibited, however, the “prior warning order” is not a case of using civilians as human shields or as hostages. It is based on the consent of a civilian as well as the discretion of the military commander in the field that there is no danger to the civilian. According to the state, this practice is not banned by international humanitarian law.

On 8 July 2003, a Supreme Court hearing was held on the petition. On behalf of the petitioners, Adalah argued that the prior warning order is illegal for the following reasons: (i) The purpose of the order is to allow the army to get assistance from Palestinian civilians, while conducting an arrest. This practice is inherently dangerous, as noted in the text of the order, which anticipates exchange of fire; (ii) Under international humanitarian law, the army may not approach a civilian to ask for his or her assistance in a military operation pursued by an occupying power; (iii) In practice, in the field, the Israeli military disregards the safety of Palestinian civilians, as also set forth in the prior warning order, and it is illogical that a Palestinian civilian would consent to assist the Israeli army due to the inherent dangerousness of its operations and the hostility of the Palestinian population to the occupier. The state’s attorney claimed that the purpose and actual implementation of the “prior warning” order is humanitarian, aimed at saving the lives of both Palestinians and Israeli soldiers.

The Supreme Court ruled that the January 2003 limited injunction would remain in effect; the Court refused to extend the scope of the injunction to include a prohibition on the use of “prior warning” practices. The Court also ruled that it will deliver a final judgment on the petition, as well as deciding on the legality of the prior warning order, at a future date to be determined, and that it may issue such a ruling with an expanded panel of justices. No new dates have been scheduled.

Notes:

¹ See e.g., Amnesty International, “The Heavy Price of Israeli Incursions,” 12 April 2002 and “Preliminary findings of Amnesty International Delegates’ Visit to Jenin,” 22 April 2002. See also Human Rights Watch, “Jenin: IDF Military Operations,” 3 May 2002 and “In a Dark Hour: The Use of Civilians During IDF Arrest Operations,” 18 April 2002.

² See H.C. 3799/02, *Adalah, et. al. v. Yitzhak Eitan, Commander of the Israeli Army in the West Bank, et. al.* (case pending). The petitioners are Adalah, the Association for Civil Rights in Israel, Qanun (LAW): The Palestinian Society for the Protection of Law and the Environment, Physicians for Human Rights-Israel, B’Tselem: The Israeli Information Center for Human Rights in the Occupied Territories (“B’Tselem”), The Public Committee Against Torture in Israel and HaMoked: Center for the Defense of the Individual. The petitioners named as respondents Yitzhak Eitan, then-Commander of the Israeli Army in the West Bank; Shaul Mofaz, then-Chief of Staff of the Israeli Army (now Minister of Defense); Benjamin Ben-Eliezer, then-Minister of Defense; and Ariel Sharon, Prime Minister of Israel. The full petition, which includes tens of testimonies from Palestinian civilians concerning these practices that were gathered by the human rights organizations, is available in Hebrew and in English on Adalah’s website: www.adalah.org (Emergency Agenda – Occupied Territories).

³ This report is available on B’Tselem’s website: www.btselem.org.

⁴ See e.g., Adalah, “Israeli Army Continues to Breach Supreme Court Injunction Prohibiting Use of Palestinian Civilians as Human Shields,” 25 December 2002, on Adalah’s website www.adalah.org and B’Tselem: The Israeli Information Center for Human Rights in the Occupied Territories, “Testimonies about the Use of Human Shields by the Israeli Security Forces.” www.btselem.org.

⁵ The order, dated 26 November 2002, states that: “‘Prior warning’ is an operational procedure, utilized in activities to bring about the arrest of wanted persons. This procedure enables [the military force] to get assistance from a local Palestinian resident in order to limit the danger of harm to innocent civilians, as well as to the wanted person himself (arrest without bloodshed). Utilizing the assistance of a local resident is designated to provide prior warning to the residents of the house, in order to enable innocent civilians to leave the structure and the wanted persons to surrender, without having to use force that can endanger human life. Any activities utilized in the past during which a [military] force used the “neighbor” procedure is prohibited unless they completely match these procedures.”

⁶ According to the order: “It is adamantly prohibited to get the assistance of a local resident if the commander of the force is of the opinion that [the resident] is in danger, even if the resident consents... Getting assistance from a local resident shall immediately stop if the situation

deteriorates to use of force and or/exchange of fire... Upon ending the assistance from a local resident it should be ensured that he leaves the area; If during the assistance immediate military use of force is necessary, the commander of the military force will take all necessary steps to insure that the resident leaves the area immediately unharmed."

⁷ See "Report of the High Commissioner for Human Rights on her visit to the Occupied Palestinian Territories, Israel, Egypt, and Jordan (8-16 November 2000)," 29 November 2000 and "Report of the human rights inquiry commission established pursuant to Commission resolution S-5/1 of 19 October 2000," 16 March 2001 ["The Falk Report"], which document continuous, grave violations of the human rights of Palestinians by the Israeli army in the Occupied Territories and thus, discredit the legitimacy of relying on the discretion of military commanders in the field.

⁸ See e.g., B'Tselem, "Human Shields," www.btselem.org.

⁹ See: Physicians for Human Rights- Israel, "Medicine Under Attack: Critical Damage Inflicted on Medical Services in the Occupied Territories: An Interim Report," 4 April 2002, available at: www.phr.org.il/Phr/downloads/dl_114.doc

¹⁰ See e.g., B'Tselem, "Testimonies about the Use of Human Shields by the Israeli Security Forces," www.btselem.org.