MEDICINE UNDER SIEGE:
ISRAELI ATTACKS UPON THE PALESTINIAN MEDICAL ESTABLISHMENT DURING THE SECOND *INTIFADA*

AL-HAQ
WEST BANK AFFILIATE OF THE INTERNATIONAL COMMISSION OF JURISTS-GENEVA
AN ORGANISATION IN SPECIAL CONSULTATIVE STATUS WITH THE ECONOMIC AND SOCIAL COUNCIL OF THE UNITED NATIONS

MICHAEL LOTZE
LEGAL RESEARCHER

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Al-Haq
PO Box 1413, Ramallah, West Bank
Tel: +972-2-295-4646/9
Fax: +972-2-295-4903
Email: haq@alhaq.org
Website: www.alhaq.org

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Abbreviations

CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CESCR	Committee on Economic, Social and Cultural Rights
CRC	Convention on the Rights of the Child
CT	Computerised Tomography
DCO	Israeli District Command Office
ECOSOC	Economic and Social Council
EMS	Emergency Medical Station
GA	General Assembly
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICTY	International Criminal Tribunal for the Former Yugoslavia
IDF	Israeli Defence Force
MDM	Me'decins du Monde
MRC	Medical Relief Committee
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
OPT	Occupied Palestinian Territories
PCHR	Palestinian Centre for Human Rights
PHG	Palestinian Hydrology Group
PHRI	Physicians for Human Rights - Israel
PNA	Palestinian National Authority
PRCS	Palestine Red Crescent Society
SC	Security Council
UDHR	Universal Declaration of Human Rights
UN	United Nations
UNRWA	United Nations Relief and Works Agency for Palestinian Refugees
USAID	United States Agency for International Development
UPMRC	Union of Palestinian Medical Relief Committees
WASH	Water, Sanitation and Hygiene
WHO	World Health Organization
WMA	World Medical Association

I. PREFACE

Born on 28 March 2000, Tabarak'Oda was the youngest of 'Oda's five children. During the first year and a half of her life Tabarak appeared to be a normal healthy baby. However, in November 2001 her health began to deteriorate. Her frantic parents took her from their village of Deir al-Hatab to the nearby city of Nablus where tests revealed that Tabarak suffered from a rare neurological disorder. Detected quickly the disease was controlled, and with medication and regular checkups Tabarak's condition quickly began to improve. Towards the end of February 2002 Tabarak went for what would turn out to be her final checkup at the office of Dr. Hamid Al-Masri in Nablus. Dr. Al-Masri expressed satisfaction at Tabarak's progress and prescribed a new round of medication.

On 6 April 2002, three days after Israeli forces invaded Nablus as a part of "Operation Defensive Shield", Tabarak's medication ran out. Her father desperately phoned the Palestine Red Crescent Society (PRCS) and the International Committee of the Red Cross (ICRC) to request the delivery of a new batch of medication, but due to the siege and movement restrictions both organisations were unable to provide him with assistance. He also contacted Dr. Al-Masri, but the doctor informed him that he would be unable to help due to his own inability to move. Tabarak's father then went to his village doctor and visited surrounding villages, but was informed that the medication he required was only available in Nablus. As his daughter's condition continued to deteriorate he began calling the media and non-governmental organisations in a frantic attempt to gain assistance for Tabarak. His efforts eventually put him in touch with Dr. Mustafa Bargouthi, head of the Union of Palestinian Medical Relief Committees (UPMRC) to whom he explained his daughter's condition. Despite Dr. Bargouthi's desire to help, no ambulance was able to reach the village to transport his daughter to Nablus until 15 April. During the intervening period Tabarak's father made several attempts to reach the hospital in his private car, but was forced to turn back by tanks and shooting during each attempt. A UPMRC ambulance arrived at his home around 11:00 am on 15 April and transported Tabarak the four miles from her home to the hospital. Facing soldiers, tanks, and checkpoints the trip took three hours. Unfortunately the ambulances arrived too late. When she arrived at the hospital Tabarak was already in a coma and three hours later she died.[1]

The death of Tabarak Oda is sadly not the only preventable death to have occurred over the course of the *Intifada* beginning in 2000. Israeli restrictions on movement through closures and curfews have repeatedly resulted in delays and blocked access to medical care leading to deaths and health complications. Palestinian medical teams risk their lives to save others on a daily basis,

1. Al-Haq Affidavit No. 732, May 2002.

circumventing roadblocks and passing through checkpoints in order to provide patients with needed assistance. All too often the persistence of these medical teams is met with violence by Israeli occupying forces who have repeatedly harassed, beaten, opened fire upon, injured, and on a number of occasions killed medical personnel as they attempt to carry out their duties. Hospitals and medical centres have also not been immune to attack. Since the outbreak of the *Intifada*, especially during the incursions of 2002, many hospitals and medical centres were raided or attacked. On several occasions patients were detained by soldiers from their hospital beds, and several hospitals and clinics were taken over and used as military bases while their staff and patients were forced to flee.

The extent of Israel's violations of Palestinians' right to medical care and its attacks upon the Palestinian medical establishment became overwhelmingly apparent during "Operation Defensive Shield" which occurred during March and April of 2002. Throughout the incursion Al-Haq received daily reports of atrocities and attacks on ambulances, hospitals, and medical teams. At the start of the incursions Al-Haq's staff made their private phone numbers available to the Palestinian public by broadcasting them on local television stations, and offering to provide legal advice and assistance to the public during the crisis. The many calls received by Al-Haq's staff from the families of people in need of medical attention (including Jaber Oda) such as diabetics who were out of insulin, individuals in need of kidney dialysis, relatives of individuals who had been shot and were slowly bleeding to death because no medical attention could reach them, etc., left Al-Haq's staff haunted. People were pleading for help and dying while Al-Haq's staff was powerless.

Soon after the Israeli forces lifted the sieges off the West Bank cities invaded during the incursions, Al-Haq saw the need to publish a report on the blockage of access to medical care and attacks on medical personnel and hospitals. However, other factors intervened, and the report was delayed. In the two years that have passed since the conclusion of "Operation Defensive Shield" the situation on the ground in the Occupied Palestinian Territories (OPT) has continued to deteriorate. Hundreds of thousands of Palestinians remain trapped in their homes under curfew with movement restrictions tightened. Patients remain blocked from reaching hospitals, and medical personnel continue to be attacked, beaten, and killed while carrying out their duties. It is for this reason that Al-Haq now puts forward this report.

Randa Siniora
General Director
May 2004

II. INTRODUCTION

"It won't be possible to reach an agreement with them before the Palestinians are hit hard. Now they have to be hit. If they aren't badly beaten, there won't be any negotiations. Only after they are beaten will we be able to conduct talks. I want an agreement, but first they have to be beaten so they get the thought out of their minds that they can impose an agreement on Israel that Israel does not want... They must be beaten: the Palestinian Authority, its forces, and the terrorists. If they aren't beaten there won't be any political horizon...

"...we have to cause them heavy casualties and then they'll know they can't keep using terror and win political achievements"[2]

- Israeli Prime Minister Ariel Sharon speaking before the Israeli Knesset on 4 March 2002.

"Just like any other war, this is not a clean war... This is a dirty war. You cannot judge it in humanitarian terms."[3]

- The Israeli army colonel in command of the Nablus area speaking to the New York Times in October 2002.

These two statements together exemplify the approach taken by Israel in its dealings with the Palestinian population in the OPT over the course of the *Intifada*. Attack has followed upon attack as movement restrictions are tightened and freedoms are taken away. On various occasions, Israeli Prime Minister Sharon has voiced his belief that the Palestinians must be hit hard, to eliminate what he considers to be the infrastructure for "terrorism". Israeli military authorities have sought to justify all sorts of measures that it has taken over the course of the *Intifada*, including closures, curfews, movement restrictions, and property destruction. Not only have these and other measures caused hardship and suffering to the general Palestinian civilian population to actions also constitute measures of collective punishment.

This report deals with the impact that Israeli restrictions have had upon the Palestinian medical establishment. It details how Israeli restrictions and attacks have worked collectively to undermine the ability of hospitals and medical centres to assist patients and respond to emergencies. It also details the blockage of access to medical care and includes information on attacks carried out against hospitals, medical centres, ambulances, and emergency medical teams during the current *Intifada*.

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2. Verter, Yossi and Gideon Alon, "Sharon: First we'll beat them badly, then we can negotiate"*Ha'aretz* 5 March 2002.

3. Bennet, James, "An Israeli's Sorrowful Rule Over a Sullen Nablus" *The New York Times*, 3 October 2002.

In the first section of the report entitled "The Right to Medical Care", Al-Haq provides a basic legal background on the right to health, and an overview of the applicability of human rights and humanitarian law in the OPT. This is followed by a brief legal analysis of the right to free movement. Since many of the violations detailed in this report have resulted directly from the movement restrictions imposed by Israel in the OPT, it remains necessary to briefly outline both Israeli and Palestinian rights in this regard. The section also makes references to recent petitions that were submitted to the Israeli High Court of Justice related to the right to health.

In the second section, the report attempts to detail the impact of Israeli actions in the OPT during the *Intifada* on hospitals, medical clinics, and the provision of health services. It draws upon information from hospitals, NGOs, and other health care providers to highlight the impact that the current *Intifada* has had upon the health infrastructure, and attempts to give information on attacks carried out by Israeli occupying forces upon hospitals and medical clinics in the OPT.

In the third section, Al-Haq seeks to examine the issue of patient access and the impact of restrictions upon emergency medical services. It includes a series of case studies drawn from affidavits gathered by Al-Haq's fieldworkers. Through this section, the report examines the denial by Israeli occupying forces of access by patients to medical care provided by emergency medical teams. It also gives an account of attacks by Israeli forces upon ambulances and emergency medical personnel and briefly looks at some of the added set of difficulties experienced by the medical establishment resulting from the Israeli incursions of 2002.

In the final section of this report, Al-Haq analyses the justifications given by Israeli authorities for the delays of and attacks upon ambulances and medical personnel. For this purpose it seeks to compare statements and official justifications made by the Israeli government with the actual information provided by Israel to support these statements.

The report concludes with a brief analysis of Israel's responsibility before the law and with comments by Al-Haq regarding the legal responsibility of the international community to address the situation.

III. BACKGROUND - THE SECOND *INTIFADA*, CLOSURE, AND CURFEW

This *Intifada* began on 29 September 2000, when Israeli Prime Minister Ariel Sharon visited Al-Aqsa Mosque compound accompanied by over 1,000 Israeli security forces. Despite warnings prior to Sharon's visit that Palestinians would likely view the visit as a purposeful act of provocation, and that it would be met by protests, the Israeli police and government allowed the visit to take place. As predicted, Palestinians took to the streets to protest, and Israeli police and military forces responded by firing both rubber-coated steel and live bullets into crowds of unarmed demonstrators, thereby killing five Palestinian civilians. A second day of demonstrations followed in which another ten Palestinians were killed. By the end of the first week of protests Israeli security forces had killed 62 Palestinians, including 13 minors, and injured hundreds more. This excessive and indiscriminate response by Israeli police and military forces to Palestinian protests exacerbated angers and spurred on the *Intifada*. Nearly four years later, the number of Palestinians killed has mounted to approximately 2,430, and approximately another 27,000 more have been injured.[4]

During the current *Intifada*, violations of Palestinians' human rights by Israel have reached unprecedented levels. Al-Haq and other human rights organisations have documented thousands of serious violations of Palestinians' rights including the denial of medical care, the clearing of privately owned agricultural land, the destruction of property, restrictions on Palestinians' freedom of movement, curfews, beatings, torture, wilful killings and targeted assassinations, and the shelling and bombing of residential areas, schools, and hospitals, including offices of ICRC.

These violations are all part of a demonstrable pattern of abuse of Palestinians by Israel. The deterioration in respect for human rights and the rule of law have been accompanied by a dramatic deterioration in the Palestinian economy. By mid-2002 the number of jobs lost in the OPT had surpassed the number of those created between 1995 and September 2000.[5] Recent surveys indicate that about 60% of the population are now below the poverty line, 40% of working-age people are unemployed and have given up hope of finding jobs.[6] In September 2000, unemployment levels were just under 10%.[7] Ongoing human rights violations, the destruction of the Palestinian economy, and Israeli incursions into Palestinian areas have all undermined the working of the Palestinian National Authority (PNA), paralyzed the peace process, and enabled Israel to exert its control over all areas of the OPT.

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4. PRCS statistics, see http://www.palestinercs.org/intifadasummary.htm . This and all subsequent websites cited were accessed between late 2003 and February 2004.
5. Roy, Sara, "Ending the Palestinian Economy", *Middle East Policy*, No. 4, vol. 9, 1 December 2002, p. 122.
6. United Nations Office for the Coordination of Humanitarian Affairs (OCHA) "Occupied Palestinian Territories 2004", www.reliefweb.int
7. Roy, Sara, *supra* note 5.

Each of these changes has impacted the health infrastructure in the OPT to various degrees. The impact of certain violations such as attacks on hospitals and ambulances are obvious. The impact of other factors such as the destruction of the Palestinian economy is no less felt, even if less visible. However, the factors that have most impacted the Palestinian health infrastructure are the closures and curfews imposed by Israel in the OPT.

The closures imposed on the OPT can generally be divided into two distinct forms: general closure and internal closure. Following Israel's 1967 occupation of the Palestinian territories, the West Bank and Gaza Strip were declared closed military areas, and Palestinians were required to obtain permission from the Israeli authorities to enter Israel. After 1967, international travel was also controlled and special permission was needed for Palestinians to leave the OPT. In 1972 a general permit was issued allowing most Palestinians entry into Israel. However, despite the issuance of the general permit, restrictions remained in place on Palestinians' freedom of movement into Israel, and certain individuals were denied a right to leave the OPT.

In 1991, the general permit was suspended during the Gulf War and special permission from the Israeli authorities was again required for any Palestinian wanting to enter Israel and occupied East Jerusalem from the West Bank or Gaza Strip. The general permit of 1972 was formally rescinded in 1993 when official closure orders (which have yet to be lifted) were issued in the West Bank and Gaza. The right of all Palestinians to leave the OPT and to enter into Israel and occupied East Jerusalem became dependent upon special permits issued by the Israeli military authorities. During this period, restrictions on internal movement inside the West Bank also began to be implemented. Since 1993 the OPT have thus remained effectively divided into three isolated areas (the West Bank, Gaza, and East Jerusalem) and closed off from the outside world. As a part of the peace agreements the matter of the issuance of permits to Palestinians for entry into Israel and to travel between the West Bank, the Gaza Strip and East Jerusalem for work, educational, medical, or other reasons was addressed, a limited number of permits were issued, and the comprehensive closure was loosened. However, the Israeli Civil Administration and General Security Services continued to exercise strict control over the issuing of permits throughout this period, and any real or anticipated political unrest in the West Bank or Gaza resulted in the cancellation of all travel permits and a reinstitution of general closure.

Since the outbreak of the current *Intifada*, the OPT have been under general closures. Nearly all permits to enter Israel and occupied East Jerusalem have been canceled, thereby prohibiting any Palestinian from leaving the OPT as a whole, or to travel between the West Bank, the Gaza Strip, and Occupied East Jerusalem.

This comprehensive closure has been combined with internal closures to a

devastating effect. Internal closure was first introduced in 1996 during the "tunnel riots" which erupted in response to the Israeli decision to open the Hasmonean Tunnel in Jerusalem. Internal closure is a product of the Oslo period, and involves the restriction of movement inside the OPT through the placement of blockades, checkpoints, and barriers around and between individual cities, towns, and villages with the aim of stopping movement into or out of the surrounded areas.

Since September 2000, a strict internal closure has been placed on most towns and villages in the West Bank and Gaza Strip. Approximately 70 manned checkpoints have been placed throughout the West Bank, with at least 7 more in the Gaza Strip. These checkpoints, in combination with hundreds of unmanned roadblocks and physical barriers that block roads, currently make travel between towns and villages nearly impossible. In the West Bank trips that at one time took 15 to 30 minutes can now take up to four hours or more, if at all possible in the first place. Travel from Hebron in the south of the West Bank to Jenin in the north (once a two hour trip) can sometimes take more than 12 hours. In the Gaza Strip, travel from the north to the south of the Strip (a distance that can be covered in approximately one hour) is now often an all day affair. In many locations throughout the OPT unmanned barricades made by placing earthen mounds, cement blocks, and trenches across roadways have been used to hermetically close one area from another. Travel through manned checkpoints is forbidden in many locations with any Palestinian who approaches these checkpoints putting themselves at risk of being shot. Settler bypass roads, which were ostensibly built for the benefit of both Palestinians and illegal Israeli settlers in the OPT,[8] are now closed off to Palestinian use, thereby effectively splitting the West Bank into cantons. Similarly, the main thoroughfares traveling north-south and east-west of the Gaza Strip have also been closed by checkpoints, and have effectively split up the Strip into three separate areas.

While the internal closure system began as an *ad hoc* network of checkpoints and blockades, over the last two years it has become increasingly formalised. Starting in May 2002 a new permit system was introduced whereby Palestinians in the West Bank were required to obtain permits from the Israeli authorities to travel from one city to another.[9] Thousands of teachers, merchants, businessmen, and doctors, among others, who reside in places other than where they work, have been negatively affected by these restrictions, which have destroyed the Palestinian economy. The effect of these restrictions has been felt most harshly by

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[8] In 1983 the Israeli military Planning Department issued what became known as road plan Number 50. This plan laid out the framework for a new system or roads that were to crisscross the West Bank, connecting illegal Israeli settlements and bypassing Palestinian built up areas. A petition against the road plan was heard by the Israeli High Court of Justice. In answering the petition, the Israeli military authorities argued that the scheme was justified by the fact that it was "designed to benefit the local population". Justice Barak accepted this argument, stating that the road plan was legal and was being built to benefit the local population. See Shehadeh, Raja, *Occupier's Law: Israel and the West Bank*, Institute for Palestine Studies, Washington DC: 1988, pp. 54-5.

[9] Hass, Amira, "Israel forces internal movement permits on Palestinians", *Ha'aretz* 19 May 2002.

residents of villages and rural areas.

Curfews have also been used as a form of control over the Palestinian population since the onset of the occupation. Curfews have been imposed regularly over towns, cities, and villages as a form of collective punishment, during periods of political unrest, during Israeli holidays, and at times when Israeli military authorities suspect that an attack on an Israeli target might be imminent. During the first *Intifada* curfews were used extensively to control the Palestinian population. However, with the launch of the Oslo process and the transfer of limited control over most major population centres in the OPT to the PNA, the imposition of curfews became a rare occurrence.[10] However, this changed after September 2000.

On March 12, 2002 Shafa Sleiman Tawil was at home with her mother and daughters when Israeli occupying forces invaded Ramallah and placed the city under curfew. Tanks were deployed in her neighbourhood, and all movement was forbidden. Around 9:00 pm, one of Shafa's daughters measured the blood sugar level of her grandmother, who is diabetic, and found that it was low. Shafa's mother was out of insulin so instead of taking an insulin injection, she ate some food to bring her blood sugar level up. Approximately one hour later one of Shafa's daughters went to check on her grandmother and found her lying unconscious. Shafa called the Ramallah hospital for assistance. The hospital asked her to transport her mother to the hospital immediately. She informed them that she could not leave her home due to the curfew and asked for emergency assistance, but the hospital informed her that all movement by the ICRC and PRCS had been halted due to several attacks on medical personnel by Israeli forces earlier that day. Shafa also called the American embassy for assistance, as her mother was an American citizen, but was informed by the embassy that they could do nothing to assist her. Throughout the evening, doctors at the hospital gave her advice over the phone, but by midnight it was clear to Shafa that her mother had died and that further attempts to revive her would be of no use. Despite repeated calls for assistance no ambulance was able to reach Shafa's home to take away the body. Shafa and her daughters were forced to remain with their mother/grandmother's body until 16 March, when the curfew over Ramallah was lifted and the body was buried.
Summary from Al-Haq Affidavit No. 575/2002

During 2002 and 2003 the most pernicious violations of Palestinians' freedom of movement arose from Israel's imposition of curfews over each of the major Palestinian cities in the West Bank. For much of the first year and a half of the *Intifada* curfews were only used to a limited extent, and almost exclusively in the Hebron and Nablus areas in the West Bank. However, towards the end of 2001, curfews began to be imposed over Palestinian villages, towns, and cities with more frequency, reaching a peak during "Operation Defensive Shield" in March and

[10] The imposition of an extended curfew over the Palestinian residents of Hebron following the massacre of worshipers at the Ibrahimi Mosque by Baruch Goldstein is one of several major exceptions to this trend.

April 2002 when the cities of Ramallah, Bethlehem, Jenin, Nablus, Toulkarem, Hebron and Qalqiliya were all placed under prolonged curfews. During these curfews, the residents of each of these cities were only allowed to leave their homes every three to four days for periods ranging from two to four hours for the purpose of purchasing food and essential supplies. The curfews were enforced by Israeli military patrols, tanks, and snipers. Those found violating the curfews risked being either killed or arrested. In addition, restrictions on movement were enforced without distinction on medical personnel, journalists, and humanitarian workers, all of whom repeatedly came under attack while carrying out their duties. The protected status afforded to such individuals by international law was often ignored.

Following the end of "Operation Defensive Shield" the curfews imposed during the incursions were lifted. However, beginning on 18 June 2002, each of these cities were re-invaded and curfews were re-imposed over the Palestinian population.[11] Starting in November 2002 these curfews began to be lifted, but have been periodically re-imposed in accordance with political changes. Statistics comparing the extent of curfews imposed on the West Bank indicate that between 19 June 2002 and 19 April 2003, the residents of Qalqiliya spent the minimum time (2,038 hours) under curfew, while the residents of Nablus spent the maximum number of hours (4,232 hours) under curfew, with Hebron a close second (4,218 hours).[12] During the first months of 2003, curfews were used only infrequently in most areas of the West Bank (with the notable exceptions of Hebron and Nablus). However, in most of the locations not placed under curfew, Israeli forces continue to surround the Palestinian controlled areas and have merely withdrawn from the heart of "Area A".[13] Today, these cities effectively remain under the control of the Israeli occupying forces, which carries out arrest raids in these areas on a daily basis, and which is effectively capable of imposing a curfew at any time.

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11. In areas such as Hebron where Palestinians live side by side with Israeli settlers, curfews are only imposed over Palestinians and not on Israeli settlers.

12. PRCS, "Curfew Tracking Slides", www.palestinercs.org.

13. In 1995, the Israeli-Palestinian Interim Agreement (Oslo II) extended arrangements made for Palestinian self-government throughout the West Bank and Gaza Strip. By virtue of this agreement, PNA assumed "the powers and responsibilities for internal security and public order," and the administration of specific civil spheres in Area A (17%), while the larger remaining territories were divided into Areas B (24%) and C (59%) where Israel retained predominant responsibility for military and security-related responsibilities.

IV. THE LEGAL RIGHT TO MEDICAL CARE

The OPT are subject to four sets of law. The primary body of law governing situations of Occupation is international humanitarian law, which includes the Hague Regulations Annexed to the Convention Respecting the Laws and Customs of War on Land (Hague Regulations), and the Fourth Geneva Conventions Relative to the Protection of Civilian Persons in Time of War of 12 August 1949 (Fourth Geneva Convention). The applicability of the regime of international humanitarian law during an armed conflict does not preclude the application of international human rights law. Additionally, local laws and legislation in force prior to Israel's occupation and military orders issued by Israel since 1967, the later of which can be reviewed by the Israeli High Court of Justice, form the basis of local law. Finally, laws issued by the PNA since 1994 are also applicable in areas under their authority. This report deals primarily with the first two areas of legislation and briefly with the third. While there is little dispute as to the applicability of the second set of laws in the OPT, Israel has disputed the applicability of both international human rights and humanitarian law to them. Before discussing Israel's obligations under in international law, it is therefore necessary to briefly address the issue of the applicability of both bodies of law to the OPT.

A. THE APPLICABILITY OF INTERNATIONAL HUMANITARIAN LAW

International humanitarian law is the primary body of law addressing situations of war and belligerent occupation. Two documents that are of great relevance in the OPT are the Fourth Geneva Convention and the Hague Regulations.[14] These two treaties are augmented by the two additional protocols to the Geneva Conventions and by case law.

The Hague Regulations of 1907 are considered part of customary international law. Israeli officials have accepted this view. Despite having effective control of the OPT since 1967, Israel contests the *de jure* applicability of the Fourth Geneva Convention. Israel claims that the West Bank and Gaza Strip are not occupied, but rather "administered territories". As a result, Israel claims that the Convention is not fully applicable in the OPT, and that it will only abide by the "humanitarian provisions" of the Convention, although it has never clarified which provisions it considers "humanitarian" in nature.

The vast majority of the international legal community has rejected these claims and agrees that Israel can not evade the obligations tat it has committed to undertake. Repeated United Nations (UN) resolutions and statements issued by governments around the world have affirmed the *de jure* applicability of the Fourth Geneva Convention to the OPT. The convention's applicability was most recently

[14] Specifically Articles 42 to 56.

reaffirmed in a statement issued at the conclusion of a meeting of the High Contracting Parties to the Fourth Geneva Convention held on 5 December 2001, which reiterated that:

> Taking into account Article 1 of the Fourth Geneva Convention of 1949, and bearing in mind the UN General Assembly (GA) Resolution ES-10/7, the participating High Contracting parties reaffirm the applicability of the Convention to the Occupied Palestinian Territories, including East Jerusalem and reiterate the need for full respect for the provisions of the said Convention in that territory.

Additionally, in 1990 the UN Security Council (SC) passed Resolution 681 which called upon Israel to "accept the *de jure* application of the Fourth Geneva Convention" to the OPT. Similarly, in 2001, the GA passed Resolution 56/60 which also reaffirmed the applicability of the Fourth Geneva Convention in the OPT including Jerusalem.

While the protections afforded by human rights law tend to be limited in scope to prescriptive rights that afford individuals a right to health, the rules of humanitarian law are much broader. The regulations laid down in the Fourth Geneva Convention not only call upon High Contracting Parties to protect individuals in times of war and belligerent occupation, and provide for their health and well being, but also to ensure the protection of health care providers, including both fixed and mobile medical units. While states may claim a certain right to derogate during times of conflict, international humanitarian law was developed with the explicit aim of regulating States' actions during conflict and in times of belligerent occupation. While certain derogations may still be granted under this body of law, they are more limited and arguably most of the protections afforded to the civilian population by international humanitarian law are stronger than those provided by international human rights law.

In the case of the Hague Regulations, its provisions hardly addressed the issue of health. In this regard Article 27 states that the siege and bombardment of "hospitals, and places where the sick and wounded are collected" is prohibited. The horrors and systematic abuses of both combatants and civilians witnessed during the two world wars brought about a gradual realisation that more explicit protection needs to be developed. To this end, a number of provisions addressing the rights of the sick and wounded, medical personnel, hospitals, and medical transports were included in the four Geneva Conventions.

One of the basic issues that the Geneva Conventions attempted to address was the plight of the sick and wounded. This is clearly expressed in Common Article 3(2), which bluntly states that, "the wounded and sick shall be collected

and cared for." While Common Article 3 was initially included in the conventions to provide basic protections in conflicts not of an international character, since the drafting of the conventions it has come to be regarded as an expression of the basic principles upon which the four conventions were based. As noted by the trial Chamber of the International Criminal Tribunal for the former Yugoslavia in the *Prosecutor v. Tadic*. The rights laid out in Article 3 have come to be viewed as customary in nature.

Regarding paragraph 2 of Common Article 3, the ICRC Commentary notes that "Article 3 here reaffirms, in generalized form, the fundamental principle underlying the original Geneva Convention… it is concise and particularly forceful. It needs no explanation."[15] The right to health as stated in Article 3 is expanded upon in Article 16 of the Fourth Geneva Convention, which states that, "the wounded and sick, as well as the infirm, and expectant mothers, shall be the object of particular protection and respect."

The call for both "protection and respect" included in this article is important. It demands that High Contracting Parties not only refrain from harming protected persons, but that they take proactive steps to defend, help, and support them.[16] These words make it unlawful to kill, ill-treat or in any way injure an unarmed enemy, while at the same time [they] impose an obligation to come to his aid and give him any care of which he stands in need. This right allows for no derogation and applies to all sick and wounded individuals.[17]

In Article 18 of the Fourth Geneva Convention, the protections afforded to civilians begin to broaden as it provides for the protection of hospitals and medical centres. It stipulates that, "civilian hospitals organized to give care to the wounded and sick, the infirm and maternity cases, may in no circumstances be the object of attack, but shall at all times be respected and protected…" This article was based directly on Article 27 of the Hague Regulations, and constitutes a central provision of the Convention.

Although the definition of what qualifies as a civilian hospital is not explicitly laid out in the Convention, the ICRC Commentary provides some insight into this matter.

> A civilian hospital must have the staff (including administrative staff and the equipment required to fulfill its purpose. It must be organized to give hospital care. That is the essential point. It is not necessary for the hospital to function permanently as a hospital. The

15. Pictet, Jean, *Commentary IV Geneva Convention Relative to the Protection of Civilian Persons in Time of War,* ICRC, 1958, p. 40.
16. *Ibid,* p. 134.
17. *Ibid*.

> Diplomatic Conference considered that establishments converted into auxiliary hospitals as an emergency measure consequent upon the Convention, as such hospitals are very often established in the combat area itself, and their need for protection is thus all the greater. The deciding factor is. that it must be effectively possible to give hospital treatment…[18]

The Commentary states that "hospitals, clinics, sanatoria, health centres, ophthalmic, psychiatric or child clinics" all qualify as hospitals within the meaning of the article.[19] According to this definition, field hospitals and emergency medical centres such as those set up in the West Bank during "Operation Defensive Shield" as well as formal hospitals and medical centres deserve such protection.

None of the above-mentioned locations may be subject to deliberate attack so long as their sole task is the provision of assistance to the sick and wounded. Although the article recognises that in times of conflict incidental damage may be caused to hospitals or medical centres that are located near to the front line or legitimate military targets, the attacking force must take all steps to minimise such damage. Should a hospital be used to house or hide either active belligerents or arms it may lose its protected status, but only after warning has been given. According to Article 19 of the Convention, "the protection to which civilian hospitals are entitled shall not cease unless they are used to commit, outside their humanitarian duties, acts harmful to the enemy. *Protection may, however, cease only after due warning has been given…*" [emphasis added].

According to Article 20 of the same Convention hospital staff and emergency medical personnel are also afforded protection:

> Persons regularly and solely engaged in the operation and administration of civilian hospitals, including the personnel engaged in the search for, removal and transportation of and caring for wounded and sick civilians, the infirm and maternity cases shall be respected and protected.
>
> Other personnel who are engaged in the operation and administration of civilian hospitals shall be entitled to respect and protection… as provided in and under the conditions prescribed in this Article, while they are employed on such duties.

Accordingly all personnel engaged in work related to the operation of a hospital, including emergency personnel such as ambulance drivers and field teams,

18. *Ibid,* p. 144.
19. *Ibid*.

are afforded protection and may not be attacked. The neutrality of these teams must be respected and all efforts should be made to facilitate their work. According to the Fourth Geneva Convention, protection is afforded so long as an individual is employed in health related work. Taking up arms or otherwise acting outside of their humanitarian duty would negate an individual's protected status. However, as the ICRC Commentary notes, under no circumstances may the accomplishment of a humanitarian duty "be described as an act harmful to the enemy", even if the medical activities in question interfere with tactical operations.[20]

Article 21 of the Fourth Geneva Convention also offers protection to those engaged in locating and collecting the sick and wounded by calling for the protection of "convoys of vehicles or hospital trains on land. conveying wounded and sick civilians, the infirm and maternity cases"[21] in the same manner as is provided hospitals under Article 18. Thus convoys of ambulances and other vehicles engaged in assisting the wounded should be both protected and assisted in their duties. According to the ICRC Commentary:

> To respect medical convoys means, in the first place, not to attack them, not to harm them in any way, which also means not to interfere with their running. The enemy should avoid interfering with them, but that is not enough; he must also allow them to carry out their work.

> To protect medical convoys etc. means to ensure that they are respected; it may even involve ensuring that they are respected by a third party. It also means giving them help in case of need.

Protection is again dependent upon the strict abstention of medical transports from either direct or indirect participation in hostile acts.[22] As the ICRC Commentary notes:

> ..that does not mean that where such conditions are not fulfilled where such conditions are not fulfilled, the means of transport or the wounded.[23]

Finally, Article 23 of the Convention demands that,

20. *Ibid.*
21. Article 21, *Ibid.*
22. *Ibid.*
23. *Ibid*, p. 172.

Each High Contracting Party shall allow the free passage of all consignments of medical and hospital stores. intended only for civilians of another High Contracting Party, even if the latter is an adversary. It shall likewise permit the free passage of all consignments of essential foodstuffs, clothing and tonics intended for children under fifteen, expectant mothers and maternity cases.

While many limitations are set on this right, including limitations on what goods a state must allow through, who can receive relief supplies, the reality on the ground in the OPT undermines the argument that imposing such limitations is justified or necessary. As Israel exerts effective control over all of the OPT and controls all imports and trade, there is little room for the argument that medical supplies intended for use in the Occupied Territories could be abused, or that medical transports could be used to smuggle contraband materials. This being the case, there is little if any reason why any restrictions should be placed on the movement of such items in the OPT, and when it may be necessary to place such restrictions, they should be extremely limited in nature.

B. THE APPLICABILITY OF INTERNATIONAL HUMAN RIGHTS LAW

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.
- Article 12 (1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services.
- Article 25 of the Universal Declaration of Human Rights (UDHR).

States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.
- Article 24(1) of the UN Convention on the Rights of the Child (CRC).

According to the United Nations Committee on Economic, Social, and Cultural Rights (CESCR), the right to health is a "fundamental right indispensable for the exercise of other human rights."[24] One of the first documents to explicitly address this right was the Constitution of the World Health Organisation (WHO),[25] which states that, "the enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race,

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24. CESCR, General Comment 14 (1), E/C.12/2000/4, www.unhchr.ch.
25. Rodrigues, Luis Valencia, "Racial Discrimination in Economic, Social and Cultural Life" ***United to Combat Racism: Selected Articles and Standard-setting Instruments***, United Nations Economic Social and Cultural Organisation, 2001, p. 129.

religion, political belief and economic or social condition." Two years later, with the drafting of the UDHR, the right to health was formalised as a basic human right, and has since then been recognized as such in numerous international human rights instruments.

In addition to the instruments listed above the right to health is prescribed in Article 5(e) (iv) of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), which guarantees "the right to public health, medical care, social security and social services". Article 12 of the Convention on the Elimination of all forms of Discrimination against Women (CEDAW) also guarantees the right to health, as does Article 11 of the European Social Charter. The African Charter on Human and Peoples' Rights states that "every individual shall have the right to enjoy the best attainable state of physical and mental health" in Article 16, and the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (1988) guarantees in Article 10 that "everyone shall have the right to health, understood to mean the enjoyment of the highest level of physical, mental and social well being."

The right to health as outlined in these treaties and documents is not the right to be healthy, but rather the right to control ones own body, to be free from outside interference (i.e., torture or non-consensual medical experimentation), and the right to certain entitlements including basic health services provided equally and at the highest attainable level.[26] While States are therefore not ultimately responsible for guaranteeing the physical health of every individual living under their jurisdiction, they are responsible for ensuring that the said individual is provided with the highest level of health services available. As noted by the CESCR, "the right to health must be understood as a right to the enjoyment of a variety of facilities, goods, services and conditions necessary for the realization of the highest attainable standard of health."[27]

According to CESCR, the right to health contains four essential elements: availability, accessibility, acceptability, and quality. Since Israeli authorities exercise effective control over the OPT, the element of accessibility becomes the most significant element to consider. Accessibility signifies that health facilities, goods and services must remain safely accessible to everyone without distinction, with special emphasis put on ensuring that vulnerable groups such as women, children, refugees, the elderly, etc. are able to access assistance. This is explicitly addressed in Article 12(2)(d) of the ICESCR which demands "the creation of conditions, which would assure to all medical service and medical attention in the event of sickness."

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[26] CESCR General Comment No. 14 "The Right to the Highest Attainable Standard of Health", *supra* note 24 paragraph (8).

[27] *Ibid*, paragraph (9).

Furthermore,

> The right to health, like all human rights, imposes three types of levels of obligations on States parties: the obligations to respect, protect, and fulfill. In turn, the obligation to fulfill contains obligations to facilitate, provide and promote. The obligation to respect requires States to refrain from interfering directly or indirectly with the enjoyment of the right to health. The obligation to protect requires States to take measures that prevent third parties from interfering with article 12 guarantees. Finally, the obligation to fulfill requires States to adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of the right to health.[28]

States are particularly obliged to respect the right to health by refraining from denying or limiting access for any persons regardless of their status.[29] In the case of Israel these obligations would require that Israeli authorities take all possible steps to ensure the continued functioning, protection, and improvement of medical services in the OPT.

While Israel might be able to claim certain derogations from its obligations to provide for the health of the Palestinian population in the OPT due to the ongoing conflict in the area, certain rights can not be derogated from under international law. These include but are not limited to,

1. The right to access health facilities, goods and services on a non-discriminatory basis;
2. The right to access minimum essential food;
3. The right to access to essential drugs as defined by WHO's Action Program on Essential Drugs;
4. The need for states to adopt a national public health strategy and plan of action that addresses health concerns for the whole population and which aims to address deficiencies in the provision of medical services. [30]

If a state is unwilling or unable to fulfill its obligations to provide for the health of the population living under its control, it must still justify its actions. Furthermore, violations of the right to health are not only limited to direct actions taken by states but can also involve omissions and can evolve from inaction.[31]

Finally, the World Medical Association (WMA) has determined that even in times of armed conflict, "...every person, military or civilian must receive promptly

28. *Ibid*, paragraph (33).
29. *Ibid*, paragraph (34).
30. *Ibid*, paragraph (43).
31. *Ibid*, paragraph (47-8).

the care he needs without consideration of sex, race, nationality, religion, political affiliation or any other similar criterion".[32] The WMA has also stated that, "members of medical and auxiliary professions must be granted all assistance necessary to enable them to fulfill their responsibilities. In addition, free passage should be granted whenever their assistance is required. They should be afforded complete professional independence."[33]

In its report to the UN Human Rights Committee on its fulfillment of its obligations under the International Covenant on Civil and Political Rights (ICCPR), Israel articulated its position as follows:

> The Covenant does not apply to areas that are not subject to its [Israel's] sovereign territory and jurisdiction. This position is based on the well-established distinction between human rights and humanitarian law under international law. Accordingly, in Israel's view, the Committee's mandate cannot relate to events in the West Bank and the Gaza Strip, inasmuch as they are part and parcel of the context of armed conflict as distinct from a relationship of human rights.[34]

In its report to the 19th session of the CESCR in 1998, Israel made similar arguments regarding the applicability of the ICESCR.

While the ICCPR, the ICESCR, and other human rights treaties to which Israeli is a signatory such as the Convention on the Rights of the Child allow for limited derogations in times of emergency, the Israeli position stands in direct contradiction to the intentions of the framers of these documents. As has been noted,

> The inclusion of Article 4 in the Covenant on Civil and Political Rights constitutes an attempt to regulate departures from the usual standards during times of acute crisis, that is, to extend the Rule of Law to this domain rather than created an exception to it.[35]

It is thus clear that the derogations clause in the ICCPR (as well as in other human rights treaties) was included because the drafters of the Covenant agreed that the protections afforded therein by the Covenant were applicable in emergency situations including situations of armed conflict and belligerent occupation.

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32. WMA, Regulations in Times of Armed Conflict Rules Governing the Care of Sick and Wounded, particularly in Time of Conflict, Article A (1).
33. *Ibid*, Article B (2).
34. United Nations Human Rights Committee, Second Periodic Report: Addendum, Israel, UN Doc. CCPR/c/ISR/2001/2, 4 December 2001, paragraph. 8.
35. O'Donnell, Daniel, "Commentary by the Rapporteur on Derogations," *Human Rights Quarterly*, Vol. 7, No. 1, 1985, p. 30.

Even in "emergencies threatening the life of the nation" the right of states to derogate from the principles laid out in the major human rights treaties is limited. Certain rights may never be derogated from, while in the case of those rights which are derogable, the burden of justifying a state's actions falls on the state, and its actions must be carefully scrutinised by both the state and outside parties to prevent abuse. States must, to the greatest extent possible, make all efforts to fully respect the provisions of the human rights treaties, even in times of emergency.[36]

Israel's position is also opposed to that of the Human Rights Committee which has stated regarding Israel's obligations under the ICCPR that,

> The applicability of rules of humanitarian law does not by itself impede the applicability of the Covenant or the accountability of the State under article 2, paragraph 1, for the actions of its authorities. The Committee is therefore of the view that, under the circumstances, the Covenant must be held applicable to the occupied territories.[37]

Furthermore, the applicability of human rights law in situations of armed conflict has repeatedly been reaffirmed in UN GA and SC Resolutions including UN GA Resolution 2546, UN SC Resolution 259, and UN SC Resolution 237, which state that, "...human rights should be respected even during the vicissitudes of war".

As a secondary argument, Israel has also stated that it should no longer be considered an occupying power as a result of it having "effectively ceded power over "A" areas to the Palestinian National Authority". Israel argues that by handing control of "A" areas over to the PNA, the Palestinian people were granted limited self-determination, and that therefore they relinquish any responsibility for human rights in these areas. Based on this analysis Israel has further argued that due to the presence of the PNA and the changing reality on the ground, Israel cannot be held "internationally responsible" for ensuring human rights in areas governed by the PNA. [38]

In 2000, the Human Rights Inquiry Commission established to investigate causes of the current *Intifada*,[39] examined the issue of control in the OPT and addressed some of the complications that the establishment of the Palestinian Authority has caused. It rejected Israel's contentions stating that,

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36. O'Donnell, *ibid*, pp. 28-31.

37. Concluding Observations of the Human Rights Committee: Israel, UN Doc. CCPR/C/79/Add.93, 18 August 1999, paragraph 10.

38. Second Periodic Report: Addendum, Israel, *supra* note 34, paragraph 8.

39. On 19 October 2000, the Commission on Human Rights adopted resolution S-5/1 establishing a commission of inquiry to investigate violations of human rights and humanitarian law in the OPT after 28 September 2000 and to provide the Commission on Human Rights with its conclusions and recommendations.

> The argument that Israel is no longer an occupying Power because it lacks effective control over "A" areas of the OPT [Occupied Palestinian Territories] carries more weight, but is likewise untenable. The test for the application of the legal regime of occupation is not whether the occupying Power fails to exercise effective control over the territory, but whether it has the ability to exercise such power, a principle affirmed by the United States Military Tribunal at Nierenberg... The Oslo Accords leave Israel with the ultimate legal control over the OPT and the fact that for political reasons it has chosen not to exercise this control, when it undoubtedly has the military capacity to do so, cannot relieve Israel of its responsibilities as an occupying Power.[40]

Israel's invasions of nearly every Palestinian city in the West Bank, its imposition of sieges on the West Bank and Gaza Strip, and its systematic destruction of the PNA infrastructure over the past several years further undermine Israel's arguments. Today Israeli authorities retain effective administrative and military control over all aspects of Palestinian life in the vast majority of the area of the OPT. Thus it is untenable for Israel to argue that it should not be held responsible for its actions in this area.

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40. Commission on Human Rights, "Question of the Violation of Human Rights in the Occupied Arab Territories, Including Palestine: Report of the Human Rights Inquiry Commission Established Pursuant to Commission resolution S-5/1 of 19 October 2000. (ECOSOC, E/CN.4/2001/121), 16 March 2001, p. 13.

V. THE RIGHT TO FREEDOM OF MOVEMENT

It is important to note that the right to health is related to and directly dependent upon other rights including the right to freedom of movement. Many of the violations of Palestinians' right to health currently occurring in the OPT are directly related to restrictions placed upon Palestinians' freedom of movement. One of the most vicious effects of the current closure has been the impact that it has had on the Palestinian medical infrastructure. Palestinian civilians are unable to travel to hospitals and medical centres for care, and emergency medical teams are often unable to reach those in need of assistance. Every day Palestinians are needlessly delayed as they try to reach medical care. It is therefore necessary to examine the right to free movement under international law.

At the heart of the Fourth Geneva Convention is Article 27, which proclaims the principle of respect for the human person and the inviolable character of the basic rights of individual men and women. However, Article 27 is tempered by a reservation within the article that allows for certain rights to be restricted by security measures that a state may take "as may be necessary as a result of war". The ICRC Commentary notes that no specifications are made as to what specific security measures may be considered legitimate actions for a state to take in a time of emergency, which leaves a great deal of discretion to the parties to a conflict. However, the Commentary stresses that what is essential is that "the measures of constraint [States] adopt should not affect the fundamental rights of the persons concerned. As has been seen, those rights must be respected even when measures of constraint are justified."[41] Thus Israel has a right under international humanitarian law to place limited restrictions over Palestinians freedom of movement. However, any such restrictions must be justified and must not infringe upon Palestinians' other basic rights.

The Trial Chamber of the ICTY in the case of *Kordic and Cerkez* confirmed the approach of the commentaries to the reservations found in Article 27 stating,

> The reservation in paragraph 4 [of Article 27] leaves a wide margin of discretion to the belligerents with regard to the choice of measures, which can range from imposing a duty to register to the internment of civilians. However, what is fundamental is that, even if these measures of constraint are justified and made absolutely necessary based on the requirements of State security, the fundamental rights of the persons must be respected.[42]

The right to freedom of movement as delineated in the ICCPR also allows for restrictions as "necessary to protect national security, public order (*ordre public*)

41. Pictet, *supra* note 15, p. 207.

42. *Prosecutor v Kordic and Cerkez*, "Lasva Valley", IT-95-14/2, Trial Chamber III of the ICTY, 26/2/2001, para. 282.

public health or morals or the rights and freedoms of others" and in a manner "consistent with the other rights recognized in the present Covenant". The operative term in this limitation however is necessary. If states find it necessary to place restrictions upon individuals' freedom of movement they,

> should always be guided by the principle that the restrictions must not impair the essence of the right; the relation between right and restriction, between norm and exception, must not be reversed. The laws authorizing the application of restrictions should use precise criteria and may not confer unfettered discretion on those charged with their execution.[43]

Additionally, any restrictions imposed on this right must be proportionate to the threat they are designed to counter and must not be discriminatory in nature or violate any of the other rights laid out in the Covenant.

Thus, while in accordance with the law the Israeli occupying forces may in certain circumstances restrict the movement of protected persons within the OPT, both previous and ongoing closures in areas occupied by Israel, which have entailed severe violations of the fundamental rights of the Palestinian people, are illegal under international law. Israel's restrictions on Palestinians' freedoms have been institutionalised so as to become norms, and the right to free movement has been turned into a privilege. Restrictions have not been proportionate; they have affected all Palestinians regardless of identity and are often imposed as a form of collective punishment. Restrictions in certain locations have also been clearly discriminatory, as in Hebron where Palestinian residents of the city have been forced to live under curfew while Israeli settlers living in the same areas are allowed to move freely about the city. Finally the restrictions placed by Israel over Palestinians' freedom of movement have engendered severe violations of Palestinians' rights in all other areas be they civil, political, economic, social, or cultural.

[43]. United Nations Human Rights Committee, General Comment 27, Freedom of Movement (Article12), UN Doc. CCPR/ C/21/Rev.1/Add.9, 2/11/1999, paragraph 14.

VI. RECENT CASES BEFORE THE ISRAELI HIGH COURT OF JUSTICE

Since the outbreak of the current Intifada the human rights organisation Physicians for Human Rights - Israel(PHRI) has petitioned the Israeli High Court of Justice regarding violations of Palestinians' right to health arising from the *Intifada* on at least four occasions. The High Court rejected two of these petitions and ruled in favor of the State in the remaining two cases.

The first case was brought before the Court in late 2000 to address restrictions on access to medical care. Brought by PHRI and PRCS, the petition addressed the erection of roadblocks and how they prevented the sick from reaching checkpoints and gaining access to medical centers. To do so, it focused on two specific incidents in which complications and death resulted from villagers being denied from access to medical care. [44] Nevertheless the Court declined to accept the affidavits submitted by PRCS regarding 121 cases which highlighted the denial of access of ambulances to patients and medical centres, and of prevention of passage of patients or medical personnel, stating that the cases which it detailed were unsubstantiated. In addition, and despite evidence to the contrary, the Court rejected the petition, and chose to accept the state's argument that there were no areas in the OPT where at least one access road was not left open.[45]

Following attacks by Israeli forces upon two Palestinian ambulances that had resulted in the deaths of two medical personnel, a second petition was filed by PHRI before the High Court on 8 March 2002.[46] During the initial hearing on 14 March 2002, the court requested that PHRI provide additional information, and delayed hearings on the case. This time the petition requested that the Court intervenes to cease attacks by the Israeli military authorities upon Palestinian medical institutions and personnel that were taking place during Israel's "Operation Defensive Shield" in the OPT. The petition included information on 14 specific incidents detailing how Israeli occupying forces had used the Red Crescent Maternity hospital in Al-Bireh as a military barrack. The Court heard the petition and immediately issued its ruling later on in the day. In its ruling, the Court accepted the position of the state that the Israeli military forces were abiding by humanitarian provisions and standards, and refused to issue a ruling that would have demanded the protection of medical institutions and personnel beyond measures which the military was ostensibly already taking.[47]

Following this ruling, the High Court issued its ruling on a third petition,[48] in which it repeated much of its earlier rationale, and again placed emphasis on

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[44] *HCJ 9242/00, PHRI v. the Military Commander of the West Bank* http://www.phr.org.il.

[45] *Ibid.*

[46] *HCJ 2117/02, PHRI v. the Military Commander of the West Bank.*

[47] *Ibid.*

[48] *HCJ 2936/02, PHRI v. the Military Commander of the West Bank .*

the assumption that the Israeli military was a "humane" army, despite evidence of contrary actions. In its rulings, the Court blamed Israeli violations on the Palestinian medical establishment, and which it accused of acting outside of its humanitarian role and thereby susceptible to the loss of its status as a civilian target. The ruling in part stated that,

> … we see fit to emphasize that our combat forces are obliged to abide by the humanitarian rules regarding care for the wounded, the ill, and the bodies of the deceased. The abuse committed by medical personnel in hospitals and in ambulances obliges the Israeli Defence Force (IDF) [sic] to act in order to avoid such activities, but does not, in and of itself, make sweeping breaches of humanitarian rules permissible. And, indeed, this is the declared position of the State. This position is appropriate not only based on international law, on which the Petitioners based their arguments, but also in light of the values of the State of Israel as a Jewish and democratic state.
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> The IDF [sic] hall once again remind the combat forces, down to the level of the single soldier in the field, of this commitment of our forces, based on law and morality - and according to the state, even on utility - through concrete instructions which will prevent, to the extent possible, and even in sever situations, activities which are not in line with the rule of humanitarian aid."
>
> Certainly these concrete instructions, which are to be given to soldiers, requiring, among other things, warning to medical teams in reasonable and fair time, are subject to circumstances, and will be carried out by the IDF [sic] in a way which balances between the danger *expected* [emphasis added] from Palestinian fighters camouflaged as medical teams, and legal and moral obligations to uphold the humanitarian rules regarding treatment of the wounded and sick. Such a balance will take into consideration among other things, the extent to which the danger is immediate and severe.[49]

While the military was instructed to reiterate to soldiers the need to respect medical establishments and personnel, the wording of the Court's ruling suggests that such attacks are inevitable and does not forcefully rule on its illegality. Responsibility is largely placed on the shoulders of the Palestinian medical establishment, and the military is given a great deal of leeway to act as it sees fit. The arguments of the state were accepted while detailed information regarding actions carried out by the Israeli occupying forces that contradict the State's claims was ignored.

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49. *Ibid.*

One other case brought by PHRI was submitted and ruled upon on 8 April 2002, in which the petitioners once more called upon the High Court to request that the military provides well grounded justifications for its attacks on medical establishments and personnel.[50] Additionally, the petitioners requested that the Court demands that emergency medical teams be allowed to work without facing impediments to their efforts of transporting wounded and sick people for treatment at hospitals, or to their efforts of collecting and burying the dead.[51] It also demanded that medical supplies be allowed into sealed off areas.[52] Petitioners argued that the refusal of members of the Israeli military to allow families to bury their dead expeditiously and in a dignified manner is disproportionate, an arbitrary act of revenge, and without justification. Moreover, it is in clear violation of international humanitarian law,[53] a legal, in blatant disregard for the rights to life and dignity. As an occupying power in effective control of the OPT, Israel thereby has the ability and obligation to allow for the evacuation of the killed and wounded and the respectful burial of the dead.

In its response the Israeli government agreed that the humanitarian situation in the OPT had deteriorated, but claimed that violations of medical neutrality by Palestinians made it difficult for Israeli occupying forces to take the actions requested. In addition, the government claimed that its forces were acting in a humanitarian fashion and in accordance with international humanitarian law.[54] After reviewing the parties' arguments, the Court's ruling was brief: although it ruled that the state must on a legal, moral and utilitarian basis present to its combat forces clear instructions that will prevent, to the greatest extent possible, any actions incompatible with humanitarian principles, it nevertheless chose not to challenge the Israeli military's argument that such instructions had been given and thereby rejected the petition.[55]

On 20 May 2004 during the Israeli incursions into Rafah area in the Gaza Strip, four Israeli human rights organisations submitted a petition demanding that the Israeli authorities allow the unconditional evacuation of the injured from Rafah and cease the unobstructed passage of ambulances and medical equipment between Rafah and the hospitals located outside the city. Petitioners also demanded that the Israeli forces cease harming or threatening medical teams and citizens

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50. HCJ 2941/02, *Badia Ra'ik Suabta, et al. v. Military Commander of the West Bank* joined for decision by the Court with a similar petition HCJ 2936/02, *PHRI v. Military Commander of the West Bank.*

51. On Tuesday, 2 April 2002, the `A'abdeh family, of Bethlehem, lost two of their relatives-the mother and her son-as a result of Israeli tank shelling. Because the area in which the family lives is under curfew and control of the Israeli occupying forces who barred resident from leaving their homes, their bodies remained in the family's home in Bethlehem. Transfer of the bodies to hospital in Bethlehem was allowed only 72 hours later, after their plight had attracted media attention. See Al-Haq Affidavit No. 769/2002.

52. *Ibid.*

53. Article 15 & 16 of the Fourth Geneva Convention and Article 43 of the Hague Regulations.

54. *Ibid.*

55. *Ibid.*

evacuating the injured or corpses; that they renew the supply of electricity, water, food and medical supplies to the residents of the village of Tel a-Sultan (which had been subject to total closure for more than three days) and allow access to the medical team assembled by PHRI.

In its ruling, the Court stated that, as an Occupying Power, Israel must not only refrain from harming the civilian population in areas in which it conducts operations, but also has a "positive obligation" to ensure that their humanitarian needs are met, and that the military authorities make necessary and advance preparations to ensure the provision of needs such as the supply of water, electricity, food, and medicine. In addition, the Court ruled that Israeli occupying forces had acted unlawfully when it required that the names and ID numbers of the wounded be provided before the army would allow them to be transferred from Rafah to hospitals outside the area.[56]

However, it nevertheless emphasized once more the fact that "…this Court will take no position regarding the manner in which combat is being conducted…[and that] we do not review the wisdom of the decision to take military action". As such, the justices reiterated that "…we presume that the operations in Rafah are necessary from a military standpoint…[and that] we do not stand in the stead if the military commander, and we do not substitute our discretion for his own."[57]

As is clear from the above cases, the Israeli High Court has done little to prevent attacks upon Palestinian medical centres and personnel and has refused to challenge the military necessity of the operations and actions by Israeli military, choosing instead to side with the state, thereby allowing for continued violations by Israeli occupying forces against the Palestinian civilian population.[58]

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56. *HCJ 4764/04, PHRI et al. v. Mitary Commander of the Gaza Strip.*

57. *Ibid.*

58. In this regard it is worth mentioning that on 27 May 2004, Adalah, the Palestinian Centre for Human Rights (PCHR) and Al-Haq filed a petition and a motion for injunction to the Supreme Court of Israel against the Israeli Ministry of Defence, asking the Court to define, for the first time, the scope of the legal term "military necessity" in accordance with international humanitarian law, the Rome Statute of the International Criminal Court, and recent decisions of the ICTY. See www.alhaq.org.

VII. HOSPITALS, MEDICAL CLINICS, AND THE PROVISION OF HEALTH SERVICES

On 15 April 2002 the Israel Office of the Coordinator of Government Activities in the Territories released a statement regarding the commitment of the Israeli civil and military authorities in the OPT to providing the Palestinian people with humanitarian assistance. The release stated that, "as a rule, the movement of emergency vehicles to evacuate those in need and provide medical help is permitted. In practice, the different agencies ask for their movements to be coordinated."[59] The statement then went on to detail several instance in which the Israeli authorities have allowed Palestinians in need of medical care or attention access into Israel and stated that "cancer patients may be taken for radiation treatment, as well as severe cases for whom no treatment is available within the Palestinian Authority, as well as patients with liver disease needing dialysis who have not managed to get to the Palestinian hospitals."[60] Unfortunately these statements are not matched by the reality on the ground as is shown in information gathered by Al-Haq, in hospital statistics, and in studies carried out by various Palestinian and international NGOs, governments, and intergovernmental organisations.

> "A Medical Relief Committee (MRC) ambulance carrying Mutasam Muhammad Zabayen, an eight- year-old cancer patient, was turned back at the Hizme checkpoint this afternoon. Mutasam was trying to receive treatment for his illness. Despite the fact that the boy had medical papers describing his condition, the ambulance was stopped for a half hour at the checkpoint. In the end, MRC's ambulance driver reported that a soldier told him I do not want to let you pass' and the ambulance was turned back."
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> -From UPMRC "Ambulance Carrying Eight Year-Old Cancer Patient Turned Back at Checkpoint", 9 January 2003

A. THE IMPACT OF ISRAELI ACTIONS ON THE HEALTH INFRASTRUCTURE

According to the Palestinian Ministry of Health, the restrictions on access to hospitals by doctors and patients in need of care have undermined their ability to operate to 30% of their maximum capacity.[61] In August 2002, a survey of Palestinian communities conducted by the Water and Sanitation, Hygiene (WASH) Monitoring Project found that access to public health facilities in 28% of the communities surveyed was either difficult or completely blocked.[62] A later survey

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59. Government of Israel Statement, "Humanitarian Assistance to the Palestinians", 15 April 2002, wwww.reliefweb.int.

60. *Ibid.*

61. Harem Brundtland, Dr. Gro, "Statement by the Director General of the World Health Organisation on the Health Situation of Palestinian people living in the occupied Palestinian territory", 27 September 2002.

62. Palestinian Hydrology Group (PHG): Water and Sanitation, Hygiene (WASH) Monitoring Project (West Bank and Gaza Strip), Impact of the Current Crisis: Technical Report #2, Jerusalem, August 2002, p. 8.

by the same group of 615 Palestinian communities found similar numbers, with a total of 37 communities reporting that access to public health centres was completely blocked.[63] Of hospitals and medical centres surveyed in Hebron, Jenin, and Toulkarem in January 2003, 69%, 100%, and 70% respectively reported that their operations had been severely undermined by closures and curfews during the period of time preceding the survey.[64]

A coalition of health care experts from Johns Hopkins University, al-Quds University, the Maram Project, CARE International and American Near East Refugee Aid working under the auspices of the WHO began documenting developments in the Palestinian health sector during 2002. As part of its work, the team carried out two surveys on access to medical care, the first of which covers the period of May to October 2002, while the second covers the period of October 2002 to February 2003. While improvements in access to medical care were observed during the second round of surveys, access still remained extremely restricted. According to their findings, 63.9% of those in need of kidney dialysis treatment during that period had no access to care, compared to 43.3% during the second period. Over 65% of patients requiring chemotherapy were unable to access care during the first round as compared to approximately 29% during the second round. The survey showed that 43.1% of patients needing diabetic care could not reach assistance during the first period surveyed compared with 15.6% during the second time framework.[65] During these periods, the main reason recorded for lack of access to medical care was closures and curfews.[66] It should be noted that restrictions on access do not only affect patients. Of hospitals reporting interruptions to their provision of services, approximately 90% cited a lack of trained staff due to curfews and closures as a major cause of disruptions.[67]

More than 70% of the Palestinian population lives in rural areas with few health facilities,[68] and it is the clinics and medical centres of these villages and outlying areas that have been most affected by internal closures and curfews imposed on major cities. The operation of many of the medical centres in such areas is dependent upon free access to the major cities of the OPT. When access is blocked, medicine and additional supplies cannot be delivered and clinics find themselves unable to provided needed services. These clinics are also not equipped to deal with serious injuries and cannot carry out simple procedures such as blood tests that require the transfer of samples to laboratories at larger hospitals, which are often inaccessible. Many clinics in small villages also only operate using a

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63. PHG: WASH Monitoring Project (West Bank and Gaza Strip), Impact of the Current Crisis: Technical Report #7 (Summary Report), Jerusalem, Mar ch 2003, pp. 5-9.
64. WHO, Health In Forum News "Health Sector Bi-weekly Report", Number 8 (10 January , 2003), vol. 2, 1 March 2003.
65. *Ibid*, Number 10, 26 March 2003 p. 9.
66. *Ibid*, p. 9-12.
67. *Ibid*, Number 5, 28 October 2002, vol. 1 no. 17, 15 December 2002.
68. Roy, *supra* note 5.

staff of trained nurses and medical assistants. Checkups and medical care are commonly provided in these areas by doctors who travel between several clinics in a particular area on a regular basis. Many of these doctors are from larger cities and have thus been unable to reach the villages in which they provide assistance. Some villages have reported not having received doctors' visits for months at a time. In other areas, one clinic serves several villages. Limitations on the freedom of movement between villages prevent many patients from reaching clinics. Where the clinic's doctor does not live in the village in which he/she works, he/she may also not be able to reach work. Prior to the *Intifada*, medical specialists from city hospitals who provided such services as pre- and post-natal care and gynecological checkups would regularly travel to village clinics to provide their services. However due to the closures many of these doctors have been forced to give up this practice.[69]

Information provided to Harvard researcher Sara Roy following a meeting of the United States Agency for International Development (USAID) Health Sector working group in Ramallah on 31 July 2001 highlights the negative impact that Israel's closure policy on the health infrastructure in the OPT.

> One illustration of this breakdown comes from the Ministry of Health, which reported a June 2000 budget of $18 million compared to a June 2001 budget of $5.3 million. Because of Israel's tightened closure and rising fiscal problems during the period September 2000-July 2001 for which data are available, 5-16% of health professionals could not reach work on any given day; drugs were in increasingly short supply; 40-50% of medical staff lost two to four hours per day due to transport difficulties; transport costs tripled.[70]

There has been a major drop in available funds due to both PNA budget shortfalls and high levels of poverty among the general population. This has made efforts to cover basic running costs and meet needs during the *Intifada* all the more difficult.[71] Salaries of health care workers have been cut by as much as 40% and several staff members had to be laid off.[72] Most long-term development projects and training programmes in the health sector have also been halted.[73]

Other indicators of the impact that closures and curfews have had upon the Palestinian medical establishment include dramatic increases in the number of high risk, complicated pregnancies, stillbirths and in-home deliveries, in addition

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69. For specific examples see, Weingarten, PHRI, "Blocked: A Visit to the Villages of Salem, Deir al Hatab and Azmut" 2 February 2003.
70. Roy, *supra* note 5.
71. World Bank, *Fifteen Months Intifada, Closures and Palestinian Economic Crisis: An Assessment,* March 2002, p. 46.
72. Roy, *supra* note 5.
73. World Bank, *supra* note 69, p. 45.

to a significant decrease in women seeking post-natal care.[74] By mid-2002, school immunizations programs decreased by 40%, and the overall immunization coverage rate in the OPT fell from 95% to 65%.[75] Finally hospitals and clinics continue to report shortages of supplies, equipment, blood, drugs, and vaccines.[76] At the beginning of the Palestinian Ministry of Health reported that it was out of stock of 130 medications.[77]

St. Luke's Hospital in the West Bank city of Nablus provides a clear example of the effect that the disruptions in access of both staff and patients to hospitals in the West Bank has had on them. As a small private hospital, it can house up to 60 patients at any one time. However in April 2003, the occupancy rate was 44, which is below average. Hospital administrators estimate that during 2002 the overall occupancy rate at the hospital dropped 33%, mostly a direct result of movement restrictions that prevented patients from reaching it.[78] The hospital also reported a 49% decline in outpatients, a 73% decline in users of specialty services, and a 53% decline in the number of surgical operations performed.[79]

The general restrictions on access, and the hardships faced by hospitals and medical clinics in the OPT since the outbreak of the *Intifada* were exacerbated by the Israeli incursions into Palestinian cities during 2002. During an interview with Dr. Husam al-Johary, Director of the Rafidiah Hospital in Nablus on 10 May 2002, Dr. al-Johary recounted to Al-Haq his experiences at the hospital during "Operation Defensive Shield." Following the start of the Israeli incursion into Nablus on 3 April 2002 the 14 staff members present at the hospital were forced to remain on duty for a continuous time period of 21 days. This directly resulted from the inability of replacement staff to reach the hospital to relieve those already present. Despite heavy fighting, the hospital received no patients during the first five days of the incursion because emergency medical personnel were prevented by the Israeli occupying forces from gaining free access to cities across the West Bank, and had opened fire upon many of the teams that attempted to assist wounded individuals without coordination, thereby wounding and killing several doctors and emergency medical personnel. After 8 April 2002, limited movement by PRCS ambulances was allowed into Nablus, and only if it had been first coordinated with the Israeli military authorities through the ICRC. Even with the aforementioned coordination taking place, movement remained extremely restricted and dangerous, and itself often took several hours.[80]

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74. WHO, Health Conditions of, and assistance to, the Arab population in the Occupied Arab Territories including Palestine: Supplementary report by the Secretariat, 14 May 2002, A55/33 Add.1, p. 2.
75. *Ibid.*
76. *Ibid.*
77. World Bank, *supra* note 69, p. 48.
78. Action by Churches Together (ACT), "ACT Appeal OPT: Assistance to civilian victims of conflict û MEPL-22 (Rev.1)", 23 April 2003, http://www.reliefweb.int/library/ACT_appeals/2003.
79. Harem Brundtland, *supra* note 56.
80. Al-Haq Interview with Dr. Husam Al-Johary, Director of Rafidiah Hospital in Nablus, 10 May 2002.

During the incursion, both the city and hospital's water and electrical infrastructures were damaged. For the first four days of the incursion the hospital was without electricity except in the intensive care unit which received power from a small generator. The hospital staff requested permission from the Israeli District Command Office (DCO) to leave the shelter of the hospital buildings in order to fix the hospital's electrical system during this time, but were informed by the DCO that hospital staff would only be given 30 minutes to fix the problem after which time the DCO refused to vouch for their safety and said that they could be shot at. The allotted 30 minutes proved insufficient to fix the electrical and water systems. With water pipes cut, the hospital's water reserves soon began to run dry. The reserve tank, which can hold up to 200 cubic metres of water, at one point only held 36 centimetres of water at which time the water supply to all of the hospital with the exception of the intensive care unit had to be cut. Other vital medicines and supplies such as oxygen and blood also ran low during the incursion, and the limited supplies that were let in were often of little assistance, such as the three hour supply of oxygen that Israel allowed delivered to the hospital on the fifth day of the incursion after the hospitals reserve supply was depleted.[81]

Throughout the incursion Rafidiah hospital remained surrounded by Israeli tanks and forces, which blocked access to the hospital by private individuals and made it nearly impossible for ambulances to deliver patients. However, Rafidiah never came under direct fire from Israeli forces and soldiers never entered its premises.[82] Many other hospitals in the West Bank have not been nearly as fortunate.

B. ATTACKS ON HOSPITALS AND CLINICS

Under international humanitarian law hospitals, medical centres, ambulances, and medical personnel enjoy a special protected status. Hospitals and medical centres may not be subject to attack unless they have clearly taken steps to jeopardise their neutrality such as storing arms or sheltering able-bodied belligerents. Over the course of the *Intifada* Israel has failed to respect the neutral status of hospitals and medical centres in the OPT, with medical facilities being subject to repeated attacks and raids. While attacks on hospitals and medical centres increased dramatically in both number and severity during the incursions of 2002, they were not limited to this period as they began during the first months of the *Intifada* and continue to the present. The following are incidents of attacks and raids carried out by Israeli occupying forces during the *Intifada* and outside of the framework of "Operation Defensive Shield."

*On 31 December 2000, the PRCS headquarters in Ramallah/Al-Bireh came under fire from the Israeli military. The building was damaged as were six vehicles parked in front of the building.[83]

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81. *Ibid.*

82. *Ibid.*

83. PRCS, "EMS Status to Jan. 18th 2001", www.palestinercs.org

* On 8 February 2001, Israeli forces located near Pisgat Z'iev Settlement beside Al-Bireh opened fire towards residential areas of the city using tanks and heavy machine guns. The fire was indiscriminate and struck the main Ramallah/Al-Bireh offices of the PRCS. The building caught fire and suffered extensive damages. A PRCS transport was also damaged as were the telephone lines to the emergency response centre, which prevented the PRCS from receiving emergency aid calls.

* On 18 October 2001, Israeli forces entered into parts of the governorates of Ramallah and Al-Bireh and placed them under curfew. Khaled Surgery Hospital in Al-Bireh was located in one of these areas. Several Israeli tanks were placed in front of the hospital and denied all access to it. Patients and staff seeking to access the hospital were unable to reach it. During the first morning of the incursion Al-Haq heard from at least one patient who had been scheduled for urgent surgery and who was denied access to the hospital.

* On 20 October 2001, Israeli forces entered into the cities of Bethlehem and Beit Jala. Although Israeli forces entering the city did meet resistance, the fire from Israeli forces and tanks targeted the city in an indiscriminate fashion. Al-Husseini hospital was among the many locations that were struck by Israeli fire. During that period, it was reported that one ambulance driver was critically injured while in his ambulance, and a doctor was seriously injured when he was struck by a stray bullet while on duty inside the al-Husseini Hospital.[84]

* On 7 April 2002, Israeli occupying forces in the village of al-Khader near Bethlehem surrounded al-Yemama Hospital and denied patients access to it. On the same day, Israeli forces cut the water and electricity to al-Naser Hospital and the Yatta clinic located in the village of Yatta near Hebron was raided. It was also reported that most of its supplies were stolen.[85]

* On 7 October 2002, during an attack in Khan Younes, Israeli occupying forces targeted the PRCS' al-Amal City Buildings despite the fact that Red Crescent flags and emblems were clearly visible on the buildings and in the area attacked. Israeli tanks and helicopters fired indiscriminately into the area and the main PRCS building suffered damaged up to the ninth story. Windows, doors, walls, equipment and furniture were all damaged or destroyed. Shelling also struck the engineering and administrative offices, the

84. Roy *supra* note 5.

85. Al-Haq, "Israeli Forces Systematically Attack Palestinian Medical Infrastructure", Press Release # 127, 7 April 2002.

medical equipment and supplies department, and several other buildings.[86]

* On 26 December 2002, Israeli forces attacked Ramallah Government Hospital killing one guard and arresting four others.[87]

* On 24 January 2003, St. Philip's Episcopal Church, located inside the compound of al-Ahli Arab Hospital in Gaza was struck by a guided missile fired by an Israeli attack helicopter. The explosion shattered windows throughout the hospital and caused severe structural damage. As one international NGO coalition noted, "the pediatric clinic sustained considerable damage when the false ceiling collapsed, along with the ventilation system. The resulting power surge destroyed the x-ray machine, and several other pieces of equipment were damaged when hit by glass shards. It is estimated that repairs will exceed a quarter of a million US dollars."[88]

* On 7 February 2003, Israeli occupying forces stationed near al-Wafa Hospital in Gaza City opened fire at the hospital. Two Palestinian nurses on the first floor of the hospital were shot. Both men died of their injuries.[89]

* On 5 May 2003, Israeli occupying forces invaded two UPMRC offices in Nablus and Ramallah. During the raids serious damage was done to the buildings, while computers, furniture, and doors were broken or destroyed, and equipment stolen. One doctor was also temporarily detained.[90]

* On 22 May 2003, Israeli occupying forces raided the UPMRC clinic in the al-Yasmina neighbourhood of Nablus. According to the family living above the clinic, Israeli soldiers surrounded the clinic and opened fire upon the building prior to entering inside. The soldiers then blew open the doors of the clinic and entered the building while still shooting. Furniture and supplies were destroyed. In addition, the residents of the building were informed that if the clinic continued to function, the military would destroy the building.[91]

During "Operation Defensive Shield," raids and attacks on hospitals and medical centres escalated dramatically. Increases in attacks on medical facilities were also observed during "Operation Determined Path," but not to the extent

86. PRCS, "Israeli Army targets PRCS Al-Amal (Hope) City Compound", 8 October 2002

87. UPMRC, "Israeli Army Opens fire inside Ramallah Hospital and continues its Assault on Medical Teams", Press Release, 29 December 2002.

88. ACT, *supra* note 74.

89. Miftah, "Two Medics One Bullet", 7 February 2003.

90. UPMRC, "Stop Attacks on Medical Relief Services," Urgent Appeals, 5 May 2003.

91. UPMRC, "Stop Attacks on Medical Relief Services," Urgent Appeal, 22 May 2003

witnessed during "Operation Defensive Shield." During the first two weeks of "Operation Defensive Shield" there were attacks on hospitals and other medical facilities nearly on a daily basis. Several of these locations, including the PRCS Maternity Hospital in Ramallah, the PRCS Emergency Medical Station (EMS) in Yatta/al-Fawar, and the PRCS/EMS Station in Toulkarem, were all occupied by Israeli soldiers and were turned into military outposts. In the case of Ramallah Maternity Hospital there were patients in the building at the time of the incursion who had to be transferred to an alternate location. The Maternity Hospital was then turned into a base of operations for the Israeli military in Al-Bireh and the street in front of the hospital was used as a parking area for tanks, armored personnel carriers, and armored bulldozers. Although it should be noted that many hospitals were not attacked, all hospitals and medical centres in the areas occupied by Israeli forces during "Operation Defensive Shield" were effectively placed under siege, and with the exception of major hospitals most medical clinics and doctors' offices remained closed throughout the whole of the month long incursion. Although by no means comprehensive, a list of attacks endured by hospitals and medical centres carried out by the Israeli military during the first two weeks of the incursions is outlined below.[92]

* 29-31 March 2002 - Arab Care and Ramallah Government Hospitals in Ramallah are raided and searched and al-Sheik Za'ed Hospital is surrounded with all access to its services denied.
* 4 April 2002 - PRCS Maternity Hospital in Ramallah is raided and taken over. Two doctors, two nurses and a worker are detained. Jenin Ministry of Health Hospital is shelled.
* 5 April 2002 - The ICRC's offices in Toulkarem are raided.
* 6 April 2002 - The PRCS/EMS station in Toulkarem is occupied by the Israeli military forces. Israeli soldiers also break into the PRCS Academy in Ramallah and search its premises causing extensive damage to the building and facilities in the process.
* 7 April 2002 - The military occupies the PRCS/EMS station in Yatta/al-Fawar and EMS teams are forbidden to leave. Jenin Hospital is shelled and an UNRWA clinic in Jenin is raided.
* 8 April 2002 - Soldiers in Nablus attempt to raid the field hospital in the old city. Staff stop them, but are eventually obliged to let the soldiers search the premises.
* 10 April 2002 - Al-Bireh hospital is surrounded by tanks and closed off. Al- Razi Hospital in Jenin is shelled and several staff are injured.
* 11 April 2002 - Shooting at the Jenin Hospital is reported in the evening.

These attacks and raids upon hospitals and medical centres in the OPT have seriously impeded the functioning of the Palestinian medical system and have placed both patients and doctors in unnecessary and unacceptable danger.

92. Information on these raids is taken from PRCS Releases and Updates from between the dates of 29 March and 12 April 2002, in addition to an ICRC Press Statement dated 5 April 2002. For further information refer to the PRCS website at www.palestinercs.org.

These attacks when taken together with the damage caused to the Palestinian medical system as a result of closure and curfews have resulted in serious deteriorations in access to care and the ability of health care providers to assist those in need of care.

VIII. PATIENT ACCESS AND EMERGENCY MEDICAL SERVICES

A. BLOCKED ACCESS

On 13 May 2003, Israeli forces prevented at least 21 ambulances from passing through checkpoints located to the west of Nablus. Nine ambulances were held at the Qousiu checkpoint. Eight were released after two and a half hours following intensive negotiations facilitated by PHRI. The remaining ambulance, which contained an elderly man who had injured his leg, was detained for an additional half hour. Twelve other ambulances were detained at the Beit-Iba checkpoint for approximately four and a half hours.[93] During attempts to coordinate the passage of the Ambulances through the checkpoints, PHRI was informed that an order had been issued by the regional military commander to the effect that "ambulances in the Nablus region should be treated like all other private Palestinian vehicles and not allowed passage, even after having been checked."[94] According to the Israeli military authorities, this order was issued in response to "security alerts" in the area,[95] and is in direct contradiction with the statements of the Israeli office of the Coordinator of Government Activities in the Territories regarding Israel's commitment to provide humanitarian assistance to Palestinians cited earlier in the report. While to the knowledge of Al-Haq this was the first instance in which access by ambulances was explicitly was denied based on Israeli military orders, denying ambulances and emergency medical teams and patients seeking medical attention access to medical care has been a regular feature of the *Intifada.*

Restrictions on Palestinians' freedom of movement have resulted in a situation in which ambulances are able to pick up patients at their requested location only 30% of the time. At all other times, patients must meet the ambulances at checkpoints or roadblocks.[96] Between 29 September 2000 and 9 May 2002 the PRCS registered a total of 838 instances of denial of access to ambulances by Israeli occupying forces.[97] However this number does not account for delays of access. It also does not include instances of denial of access to ambulances owned by private hospitals, medical NGOs, United Nations Relief and Works Agency (UNRWA) etc. If all instances of denied access from each of these organisations are added up, the number of instances of denial of access stretches into the thousands.

Emergency medical teams and ambulances immediately felt the impact of internal closure restrictions when they were first imposed over the OPT in 1996 through the placement of checkpoints and roadblocks between cities and villages.

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93. PHRI "Ambulances are Regular Vehicles" " 21 Ambulances Delayed for Hours in the Nablus Region- "Regulations" become Synonym for Human Rights Violations," Update, 13 May 2003
94. *Ibid.*
95. *Ibid.*
96. Derfner, Larry, "Bad War, Bad Medicine" *The Jerusalem Post,* 7 November 2002.
97. PRCS, "Attacks on Ambulances by Week", www.palestinercs.org/graphs/attackweek2.jpg.

In one particular instance noted at the time, a woman in labor was delayed at a checkpoint for more than an hour. As a result of the delay, her twin newborn babies subsequently died.[98] In response PHRI submitted a petition to the Israeli High Court of Justice that called upon the Israeli Ministry of Defence to publish official procedures for distribution on the treatment of Palestinian civilians at checkpoints who are in need of medical attention.[99] The Israeli Minister of Defence subsequently agreed to this request and the case was not heard. In addition, the regulations quoted below were released.

Procedure for Processing a Resident of the Judea and Samaria [sic] Area arriving at a Checkpoint in an Urgent Medical Emergency Situation

> 1. This procedure regulates cases in which a person arrives at a checkpoint in the Judea and Samaria [sic] area in an urgent medical emergency situation and asks to pass the checkpoint in order to reach a medical institution at which he can receive medical treatment, in Israel or in the Area, during calm, closure or internal closure.
>
> 2. As a general rule, the checkpoint commander shall permit the passage of the person at the checkpoint (including entry into Israel) for the purpose of obtaining medical treatment, even if that person does not have the requisite permit, if the case is an urgent medical emergency situation. An urgent medical emergency situation shall be, for example: a situation in which a woman in labor arrives at the checkpoint; a situation in which a case of severe bleeding arrives at the checkpoint; a case in which a person with severe burns arrives at the checkpoint, etc.
>
> 3. The discretion regarding the question as to whether the case is an urgent medical emergency situation rests with the commander of the checkpoint. As far as time limitations permit, the checkpoint commander shall consult a medical source.
>
> 4. In the event of doubt as to whether the case is an urgent medical emergency situation, the benefit of doubt shall be in the resident's favour.
>
> 5. A soldier at the checkpoint who encounters an urgent medical case shall immediately notify the commander present at the checkpoint.
>
> 6. The checkpoint commander shall consider the possibility of accompanying the resident facing an urgent medical emergency situation, using a vehicle at the disposal of the forces, or shall consider

98. PHRI "A Legacy of Injustice: A critique of Israeli Approaches to the Right to Health of Palestinians in the Occupied Territories", November 2002, p. 42.
99. HCJ 9109/96, *PHRI v. Israel Minister of Defence.*

transferring the resident to a vehicle or ambulance of our forces, so it can to take him to his destination.
7. This procedure shall be distributed to all IDF [sic] and Border Guard soldiers at the checkpoints.[100]

Israeli practices also directly contradict statements made in a letter sent to the Israeli newspaper the *Jerusalem Post* in response to questions posed by the paper to the Israeli military regarding the obstruction and denying access to medical care. In their response to the letter of the *Jerusalem Post*, Israeli military authorities stated that,

> even when there are restrictions on movement, the clear cut standing order is to enable public mobility in humanitarian cases, particularly in cases of medical need. There is no basis to the claim that a policy of collective punishment is being carried out against the Palestinian population.[101]

The Israeli military's handling of humanitarian cases was also sharply criticised in the Israeli State Comptroller's Report of 31 July 2002. Drawing upon the findings of the Israeli military's Operations Division the report stated that,

> actions at checkpoints do not observe the IDF [sic] orders and specific procedures; there is no supervisory mechanism to monitor the activities of IDF [sic] soldiers at the checkpoint and ensure control.[102]

Instances recorded of Palestinian women being stopped and giving birth at checkpoints.

* On 11 July 2001, Firyal Mahmoud J'eid, 34, and her husband from the village of Al-Malih near Jenin were delayed by the soldiers at a checkpoint while Firyal was in labor. Firyal's husband begged to be let through to reach a hospital, but the soldiers refused his requests. Firyal delivered at that checkpoint and the baby died minutes later.

* On 7 August 2001, Amna 'Abd-al-Karim al-Safadi, 19, suffered a miscarriage after being delayed at an Israeli checkpoint near the Huwwarah military post near Nablus for five hours. When she was finally able to reach Al-Ittihad Hospital in Nablus she was bleeding severely.

* On 23 September 2001, Ra'ida Jamil Muhammad Shalabi, 25, from Jenin

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100. *Ibid,* p. 43 (translation from Hebrew by PHRI).
101. Derfner, *supra* note 91.
102. *Ibid.*

miscarried after suffering from severe shock when Israeli occupying forces opened fire upon the ambulance that was transporting her to hospital.

* On 1 October 2001, Nahla Mairouf Khalil Hasan, 30, delivered her baby at the Surda checkpoint north of Ramallah after the ambulance that was carrying her to Ramallah Hospital was denied access to Ramallah by the soldiers at the checkpoint.

* On 25 December 2001, Israeli occupying forces at a checkpoint located on the main Yamoun-Jenin Road denied a medical team assisting Kheiriyya Ibrahim permission to pass through the checkpoint to reach the hospital. After several unsuccessful attempts to convince the soldiers to allow them pass the medical team decided to take her to another nearby medical centre that was not equipped to handle deliveries. Following her delivery the clinic doctor told the medical team that the baby should be put in an incubator. However, the Israeli soldiers at the checkpoint continued to refuse to let Kheiriyya pass, thereby resulting in the death of the infant.

As noted previously, not all restrictions placed upon Palestinians' freedom of movement are inherently illegal. Under international law, Israel has a right to impose certain limitations upon Palestinians movement for imperative reasons of security, and vehicles, including ambulances and medical transports, may be searched at checkpoints. However, delays must be minimised and must only occur due to imperative security concerns. In this regard, the ICRC has stated that ambulances searches and delays at checkpoints and roadblocks should last no longer than 15 minutes. In discussions with Ms. Catherine Bertini, the UN Secretary General's Personal Humanitarian Envoy to the OPT, Israeli government officials committed to ensuring that all ambulances are cleared at checkpoints in less than 30 minutes and committed themselves to "establish[ing] mechanisms to permit the swift transit of checkpoint by Palestinians in need of critical medical services".[103] However, as Ms. Bertini noted in her report, "it should be recognized that these are small steps forward that address symptoms rather than causes."[104] It should also be noted that the 15-minute search time advocated by the ICRC, while perhaps acceptable in principle, does not address the difficulties and delays caused to ambulances that must pass through multiple checkpoints. Even a delay of 30 minutes could prove the difference between life and death in certain cases, and no actual follow-up regarding these commitments was seen on the ground.

Most importantly, restrictions on the freedom of movement do not only affect ambulances but have severely curtailed the ability of Palestinian civilians to reach medical services. The international medical relief organisation Me'dicins

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103. Bertini, Catherine, "Personal Humanitarian Envoy of the Secretary-General Mission Report: 11-19 August 2002".
104. *Ibid.*

du Monde (MDM)-France suspended its activities in the Gaza Strip on 13 May 2003, citing the new restrictions imposed on them by Israeli military authorities as the reason. On 9 May, the Israeli government issued a waver of responsibility for the safety of internationals entering the Gaza Strip to all organisations operating in the area and declared certain areas of the Gaza Strip closed zones even to aid organisations. The order effectively halted MDM and many other medical and humanitarian aid organisations from carrying out their work.[105] Medical provisions and assistance provided by other groups such as UNRWA and the ICRC have also been blocked.

Several cases of blocked access documented by Al-Haq are outlined in the following affidavits.

B. CASE STUDIES

Summary of an affidavit given by Bassam Mahmoud Suleiman 'Amara from al-Nabi Saleh.[106]

On Sunday, 1 July 2001, the witness was at home with his 61 year-old mother Mariam Muhammad Ibrahim 'Amara, when two Israeli military jeeps entered into the village and clashes erupted between Israeli occupying forces in their jeeps and Palestinian youths. The clashes occurred approximately 100 meters away from 'Amara's home, which greatly distressed Mariam. Her son Muhammad stayed with her until around 11:00 pm, when he felt that she had calmed down. However, at approximately 11:50 pm. His father called out to him from his room that his mother was experiencing chest pains.

Muhammad helped her to his car and drove her to visit Dr. Bassam Rimawi who lives in the village of Beit Rima, which is approximately three kilometers away. Dr. Rimawi examined his mother and told him to take her straight to the hospital in Ramallah. Ramallah is 23 kilometres from Beit Rima. It was 12:15 am when Muhammad set out for Ramallah in a taxi owned by his cousin Farah Tamimi 'Amara together with his father, wife, and a relative named Mujahed Tamimi.

They soon arrived at al-Nabi Saleh checkpoint and were then forced to wait for ten minutes before the soldiers at the checkpoint approached them. Muhammad told the soldiers that his mother was sick and that he needed to take her to the hospital. The soldier then left and came back with one of his companions who asked them for their papers and ID cards. Muhammad told him that they would be happy to leave their IDs with the soldiers as long as they could proceed to the hospital. However, the soldiers ignored his pleas. In the end they were told that they could not pass because Palestinians were not allowed to use the road

105. PRCS, "Medicins Du Monde-France suspends activities in the Gaza Strip", Press Release, 13 May 2003.
106. Al-Haq Affidavit No. 202/2001.

they were on. They were instead told to take an alternate route that involves traveling 75 kilometres through 13 villages to reach Ramallah. Muhammad then again explained that they urgently needed to reach the hospital and the soldiers began to talk among themselves. After 25 minutes the cars driver decided to risk driving on without the soldiers' approval and proceeded on his way. After 12 kilometres they reached the northern entrance to Bir-Zeit and were again stopped at a checkpoint for 25 minutes. After they were allowed to pass they proceeded to Surda where a third checkpoint blocked travel. They were halted there for an additional 15 minutes and thus did not arrive at Ramallah hospital until after 2:00 am.

Ten minutes after their arrival a doctor informed Muhammad that his mother had died. The doctor told him that she had suffered a stroke, and that she probably would have lived if she had received treatment promptly. However, the extended delay in reaching the hospital probably cost Mariam her life.

Affidavit given by Muhammad 'Adnan 'Adel Hababa an ambulance driver and emergency medical technician with the PRCS from Beit Iksa- Jerusalem.[107]

> Towards the beginning of September 2001 my colleague Ma'moun Manasra and I were on duty. We received a telephone call informing us that there was a sick person in the village of Mikhmas. At about 8:00 am we left for the village in an ambulance, intending to pass through Qalandiya checkpoint. The checkpoint was closed and extremely crowded. I therefore turned back to go along the Jawwal road towards Jalazon. While we were on the road that connects Surda and Jalazon, a military jeep stopped us. There were four Israeli soldiers in the jeep. All of them were in their military uniform. The officer asked us to park the ambulance across the road in order to block it. I obeyed the orders under threat of arms, as the soldiers were pointing their guns at us. After I had parked the ambulance, the officer in charge confiscated my keys. He threatened to detain me for two hours. I told him that there was a person critically ill in the village of Mikhmas, to which he responded that this matter did not concern him. The soldiers treated us with cruelty. They kept on yelling at us and then left with the keys still in their possession. I informed the ICRC and the PRCS what had happened. The ambulance remained held for four hours while soldiers watched us from a watchtower that was nearby. From time to time the officer came up to us to make sure that we stayed in place. After lengthy negotiations between the ICRC and the Israeli officer, the latter agreed to return the keys to me. We took the keys and left at 12:15 pm.

107. Al-Haq Affidavit No. 354/2001.

Summary of an affidavit taken from Nidal 'Mdwar Ali regarding the death of Ra'fat al-Malhi.[108]

On Thursday, 13 September 2001, at around 6:00 Nidal was driving between Beit Liquia and Lu with his two young children. Nidal reported to Al-Haq that when he approached the roadblock beside the road to the village of Kharbatha aMisbah, he noticed a pickup truck with yellow Israeli license plates attempting to go around the barrier. The driver of the truck was alone and an Israeli military jeep was stationed approximately 50 metres away. After the truck had come around the barrier the Israeli soldiers opened fire at it, but it did not stop. No prior warning was given by the soldiers beforehand.

The truck passed the jeep at a distance of about eight metres after which three or four soldiers exited from the jeep and began shooting at the truck from behind. The truck then traveled another 40 to 50 meters and stopped. The driver appeared to have been shot, but could control the car. The jeep then turned around and drove away. After the jeep left, Nidal and several youths in the area ran to the car to help the driver. They found a young man in the car. He was conscious and at first didn't appear to be bleeding. However, when he moved Nidal could see that he was bleeding and had been shot at least two times in the back. The men helped the driver out of the car, laid him on the ground, and then called for assistance.

After six minutes an Israeli police car arrived and stopped approximately 30 metres from the scene of the incident, but the police offered no assistance. Nidal again called for assistance and told the operator to tell the police to send an ambulance. However, he was informed that the police had told her that the matter was only a minor incident and that the victim had been shot by other Palestinians. Nidal then took the ID card of the man who had been shot and took it to one of the policemen who were nearby. When the policeman discovered that the victim held a Jerusalem ID card he immediately called for an ambulance. However, the ambulance was delayed in coming so Nidal took the man in his car and began to drive towards the hospital. Eight minutes later, he was stopped by the Israeli police. By that time, the man had already died and he was ordered to hand the victim's body over to the police. Nidal argued with them, but was eventually forced to hand over the body.

Nidal reiterated at the end that it was Israeli soldiers and not Palestinians who shot the victim, and that in his opinion, the man might have lived if medical care had been immediately afforded to him.

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108. Al-Haq Affidavit No. 309/2001.

Summary of an affidavit taken from 'Atallah Ibrahim 'Atiya Bsharat regarding the death of Shams Bsharat.[109]

'Atallah lives in the village of Jaba', which is located to the east of Ramallah and Jerusalem. On Saturday, 25 August 2001 at around 3:00 pm, his granddaughter Shams Bsharat who was one year and twelve days old fell from her bed and struck her head. Although there was no bleeding 'Atallah was worried and therefore left with her by car for al-Salam Medical Center, which is located about four kilometres from his home.

When he arrived at the main road that connects the villages of Jaba', Hizma, and al-Ram, and which leads to Jericho, he came upon a checkpoint where people's IDs were being checked and car registration papers were being scrutinised by Israeli occupying forces. Five cars were in line in front of him, so he approached the soldiers and told them that his granddaughter had hit her head, was unconscious, and needed urgent medical attention. The soldiers did not appear to care and told him that he had to wait in line with everyone else. He again tried to explain his situation to them, but the soldiers refused to listen. Twenty five minutes passed before the soldiers came to inspect his car. The search then took over 40 minutes. During that time Atallah had to wait by the side of the road. He begged the soldiers to come and see the baby for them, but they refused. They only told him that he would be allowed to pass "when the time is right." After one attempt to intervene with the soldiers he returned to his car only to find that Shams had died.

When a soldier finally signaled for him to leave 'Atallah told him that Shams had died. The soldier responded by telling him to "go away." When he finally arrived at al-Salam Medical Centre, he was officially informed that Shams had died thirty minutes before his arrival due to her not having received medical care. If not for the checkpoint it would have taken seven minutes to reach the medical centre in due time. Had it not been for the delay at the checkpoint, it would not have taken over an hour and a half to travel the four kilometre distance.

109. Al-Haq Affidavit No. 330/2001.

IX. ATTACKS UPON AMBULANCES AND EMERGENCY MEDICAL PERSONNEL

Delays and restrictions on free movement have not been the only obstacles faced by medical personnel. Since the outbreak of the current *Intifada*, Israeli occupying forces have also harassed and attacked Palestinian medical teams while carrying out their duties. Ambulances have regularly been fired upon at checkpoints and while collecting and driving patients. Emergency medical personnel have also been detained, arrested, used as human shields, beaten, and killed. These attacks have affected local as well as international medical teams. On 5 April 2002, following a series of attacks on ICRC personnel and offices, the ICRC officially suspended the vast majority of its activities in the OPT, stating that,

> Over the past two days, ICRC staff in Bethlehem have been threatened at gun point, warning shots have been fired at ICRC vehicles in Nablus and Ramallah, two ICRC vehicles were damaged by IDF [sic] tanks in Toulkarem and the ICRC premises in Toulkarem were broken into.[110]

Between September 2000 and March 2003, ICRC reported that attacks during that period resulted in the deaths of at least 25 ambulance drivers, doctors, nurses and hospital employees, and the injury of 419 more.[111] Between 29 September 2000 and 1 January 2003, the PRCS reported that 180 of its emergency medical technicians and 95 workers with the UPMRC were injured during the same period.[112] Between 29 March and 29 June 2002, over 70 medical personnel were detained or arrested on duty including PRCS President Younes al-Khatib who was stopped while traveling together with eight medics in a convoy of three ambulances, and who was beaten and forced to kneel on the ground in the rain and mud for an extended period of time.[113] He was released after one day, while some of the medics who had accompanied him remained in custody for a number of days.

Other instances of attacks on medical personnel and doctors include the detention and use as a human shield of UPMRC doctor Muhammad Iskafi during the first week of April 2002, and the shooting of medics Majid Majdalawi and Muhammad Abu-Shunnar on 29 December 2002 in Gaza. Dr. Iskafi was detained while on duty, and was forced to act as a human shield by Israeli soldiers who searched his home. In addition, should he fail to accompany the soldiers, he was threatened that the UPMRC offices which he oversees would be destroyed.[114]

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110. ICRC, "ICRC Restricts its Movements in the West Bank", Press Statement, 5 April 2002.
111. WHO, "Health In Forum News Vol 2., No. 23", 15 March 2003.
112. UPMRC, www.upmrc.org/content/support/medical_violations.html.
113. Amnesty International, "Update on Attacks on Health Personnel and Disrupted Health Care: Israel/Occupied Territories", 5 April 2002; PRCS, "Detentions of PRCS Personnel March 29, 2002 to June 29, 2002", www.Palestinercs.org/invasions2002/detentions.htm.
114. UPMRC, "Israeli Violations of Health Conventions: Press Conference Summary", 8 April 2002.

Majdalawi and Abu-Shunnar were injured while attempting to assist wounded individuals in the northern section of the Gaza Strip during and Israeli attack in the area. As they were bringing a wounded man into their ambulance they came under fire from an Israeli tank. Abu-Shanar was shot in the leg, but was able to crawl to safety. Majdalawi was also shot in the leg and then shot again in the arm. Before the night was over, Majdalawi had been shot five times. Being under constant fire, meant that he could not be evacuated. Two ambulances eventually had to drive between him and the tank to act as shields. These ambulances also came under fire and were damaged.[115]

In addition to affecting medical personnel, these attacks have severely damaged the emergency medical infrastructure. PRCS has recorded over 200 attacks on ambulances with live ammunition, rubber-coated metal bullets, and stones thrown by Israeli occupying forces and settlers, and over 25 ambulances have been completely destroyed by Israeli forces.[116] According the PRCS, over 80% of its ambulance fleet has been damaged.[117]

Between 11 and 17 March 2003, the PRCS recorded five attacks on ambulance teams in the Gaza Strip alone. In one incident, an EMT was injured and in another a passenger inside the attacked ambulance was shot.[118] In a one-week period at the beginning of March 2002,, three medical personnel were killed and at least seven were injured. On 4 March 2002 an ambulance carrying four medical personnel was attacked by Israeli forces while it attempted to pick up an injured man in Jenin Refugee Camp. Israeli forces fired upon the ambulance which caught fire and exploded. Dr. Khalil Suleiman was trapped in the ambulance and burned to death. Three crew members with him escaped with their lives, but were badly burned.[119] On 8 March 2002, Israeli occupying forces opened fire on two ambulances belonging to UNRWA and PRCS respectively. The driver of the UNRWA ambulance Kamal Salem was killed and his two crew members were injured, and PRCS driver Ibrahim Sa'ada was also killed and his two crew men were injured. The movement of both of these ambulances had been coordinated with the Israeli military.[120]

The cases detailed below are typical of the types of attacks faced by medical personnel in the OPT.

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115. Levy, Gideon, "Twilight Zone: In the Line of Duty" *Ha'aretz*, 3 January 2003.
116. *Ibid.*
117. PCHR, "Fact Sheet: Violations of the Right to Health Care", www.pchr.org/facts/fact8.htm.
118. PRCS, "Ambulances Under Fire in Gaza", 19 March 2003.
119. "Palestinian Doctor Dies in Ambulance Explosion", *Jerusalem Post*, 4 March 2003, Al-Haq Affidavit no. 582, and Al-Haq Fieldworker Report on the killing of Khalil Suleiman.
120. PHRI "Medicine under attack: Critical damage inflicted on medical services in the Occupied Territories - an Interim Report", 4 April 2002.

CASE STUDIES

Affidavit given by PRCS Ambulance Driver Talal 'Abd al-Malek 'Ida from the village of Surda.[121]

On 26 January 2001 at about 9:30 pm, we received a telephone call from a person in the village of Surda to the north of Ramallah telling us that someone in the village was sick and needed hospitalisation. I then left for the village together with Naji al-Barghouthi, a first aid officer. Before we arrived at the sick person's house we saw an Israeli military vehicle parked near the bus stop inside the village. As we advanced, Israeli occupying soldiers rushed towards us with their guns drawn. I reversed the ambulance about ten metres and then parked. The first aid officer raised his hands to gesture that we would not escape and to show that we were on duty. The soldiers asked me to switch the motor off and took our keys and radios. They then ordered Naji to get out of the ambulance. As he got down from the car the soldiers (there were six) ordered him to lie on the ground. Then they searched him keeping their guns pointed at him. Next they asked me to come out of the ambulance and to lie on the ground near Naji. The soldiers had taken our ID cards before they searched us.

Later on, they ordered me to stand up because they wanted to search the ambulance. After the search, in which they found nothing, they ordered us to again lie on the ground. For some reason the soldiers ordered us to undress before we lay down on the ground again. We found ourselves obliged to obey. They also prevented us from talking to each other. When they noticed me talking to Naji they separated us. After two hours of lying outside on the ground in extremely cold weather I lost consciousness. I recovered consciousness (the next) Saturday and found myself in the hospital. My colleagues told me that they had come to the place where we were held after not hearing from us for several hours. When they came they found a large number of soldiers in the area. They soldiers ordered them to take off their clothes as well. Later an officer in the area allowed them to take me to the hospital.

121. Al-Haq Affidavitno. 143/2001.

Summary of an affidavit given by Ahmad Muhammad Kheir al-Din Ramadan, an ambulance driver and first aid officer from Ramallah.[122]

On 3 November 2000, clashes erupted between Palestinian youths and Israeli forces near the City Inn Hotel in the al-Irsal area of Ramallah. The witness traveled to the area in response to a call for emergency medical personnel to wait near the clashes. There were many people taking part in the clashes, which were intense. His job was to wait and to take anyone who was injured to the closest hospital.

When he tried to assist a wounded individual, soldiers threw a tear gas canister at his ambulance and opened fire towards it using live and rubber-coated metal bullets, despite the fact that the ambulance was clearly marked and that he was in uniform. He felt a pain in his arm, but continued to move forward. Suddenly a tear gas canister came through the ambulance's back window. The medical team and patient in the ambulance began to suffocate, but the witness was able to continue driving until he reached a field hospital run by the PRCS, which is located approximately half a kilometre away from the clashes. When he arrived at the hospital he lost consciousness. He made clear in his statement that the soldiers knowingly targeted the ambulance, which was clearly marked.

On another occasion, on 9 March 2001, at around noon the witnesses and a medical team went to the Surda checkpoint in response to clashes in the area between Israeli soldiers and Palestinian youths. As soon as they arrived at the checkpoint two Israeli soldiers stationed outside of a military vehicle opened fire randomly towards them. Bullets struck the front windshield of the ambulance and the witness was forced to throw himself to the floor of the ambulance to escape from being shot. He was injured by shrapnel on the left side of his head and suffered from a partial loss of hearing in his left ear. One of his colleges assisted him out of the ambulance, but he lost his balance and fell to the ground.

On 13 September 2001, the witness and several colleagues were in the PRCS headquarters when they received a call about an individual who needed to be transported to the hospital for treatment. As he exited from the headquarters of the PRCS in Al-Bireh to his ambulance in the parking area, Israeli soldiers stationed near the settlement of Psagot opened fire towards the ambulance. Several bullets hit the parking area and ambulance. The witness was forced to lie on the ground as bullets struck the ground and walls around him. He was struck in the arms by shrapnel and suffered light injuries. Since the shooting continued, he was forced to remain lying on the ground while bleeding for 15 minutes. None of his colleagues could reach him due to the shooting. After the shooting stopped he dragged himself to the nearby first aid clinic where he was treated before being taken to the Ramallah hospital. The area that came under fire was inside the PRCS compound

122. Al-Haq Affidavit No. 353/2001.

and was clearly marked with the Red Crescent emblem and flags. The witness was also wearing a Red Crescent uniform.

Affidavit given by Mirvat Bahjat Ahmad 'Umar from Jenin Refugee Camp.[123]

> On Monday 3 April 2002, at around 2:30 pm I was at home in the Jenin Refugee Camp. I was standing near the window at the time and was watching ambulances pass through the area as exchanges of fire escalated. Two minutes later, an ambulance was passing through the area when a shell exploded in the area by our house. The ambulance moved away quickly, but continued to try to reach the home of Sa'da Nijem who had been shot in the head while in her home.
>
> From the northern window I could see an ambulance moving very carefully in the area. Dr. Khalil Suleiman was sitting near the driver who was signaling to soldiers who had occupied the house of Muhammad Ahmad Umar, which is attached to our home. Suddenly there was intense shooting directed at the ambulance from the soldiers in Muhammad Umar's home. I moved away to avoid the shooting. When the shooting stopped I looked out the window and saw a red streak coming out of the house and towards the ambulance. The bomb hit the ambulance and I saw the ambulance and Dr. Khalil catch fire. His hands and stomach were burning and I saw him waving his hands and calling for help. Three other persons exited from the ambulance. Some young men from the neighborhood tired to approach the ambulance to help Dr. Khalil, but the soldiers shot at them and ordered them to go away. The three men from the ambulance walked towards the house of Mahmoud Turkman, which is eight meters from mine. They looked at me and told me to call for help. Dr. Khalil was still there and his chest was burning. The sound of his weak voice struck my ears while he called for help. Mahmoud Abu-Jum'a again tried to reach the ambulance, but the soldiers threatened to shoot him if he didn't return to his home. I then went and called the emergency response room in the city. All I said was that Dr. Khalil was burning under our house. I then ran back to the window and saw that Dr. Khalil's body had been completely burned and that the car was on fire. I then returned to the phone to call the emergency centre to describe what I had seen.
>
> Another ambulance was in the area. I could hear it, but it could not come through. The car burned for an hour after which the fire burned itself out. When the fire went out the soldiers allowed the

123. Al-Haq Affidavit No. 582/2002.

second ambulance to come in from the east and to approach Dr. Khalil. One of the ambulance team members asked me for some blankets, water, and a hammer. The rescue team poured the water on the door of the ambulance, removed the door, and pulled Dr. Khalil's body out. I saw his head and upper body, but not his legs. He was black. The body was covered and taken away in the ambulance. I can't recover from that horrifying scene. I had previously seen Dr. Khalil on several occasions helping people and providing assistance to people that he himself did not receive.

Affidavit given by Mu'taz Muhammad Husein, ambulance driver with the Palestinian Civil Defense Forces in Beit Sahour.[124]

At around 11:30 pm on 16 September 2001, I was at my work in the office of the Civil Defense Forces when it was reported that several people in the "tourist village" in Beit Sahour had been injured. The area had been shelled by tanks located at a military camp on Abu-Ghneim hill, which is about 500 metres away. The incident began around 10:30 pm.

I then left together with Muhammad 'Ayyash and Yihiya Sabayha in a civil defense ambulance to offer assistance to those in the tourist village that had been shelled. When we arrived, we stopped near the entrance to a tent. At the time it was calm and there was no shooting. We turned off the car, but left on the red emergency lights. We were all in our medical uniforms. As soon as we got down and reached the entrance to the tent we were exposed to shelling. I was one metre from my colleagues when a shell fell about 4 metres away from me. I was injured by shrapnel all over my body. The wounds were moderate to serious. A second shell fell and hit Yihiya directly. He was blown apart. Muhammad 'Ayyash was also injured by shrapnel. More shells were fired at us and machine gun fire continued for 15 minutes. Our ambulance was struck by bullets and destroyed. Another ambulance and personnel arrived to rescue the men we had come to help and to assist us.

I collected Yihiya in a nylon bag. I found his leg in one direction and his hand in one direction and his other remains scattered. I am certain that there was no firing coming from near us, and that the place was calm at the time of the incident. Additionally, when we were one half kilometre from the tourist village, we were informed by a colleague at the national security headquarters that our movement had been coordinated with the Israelis.

124. Al-Haq Affidavitno.310 /2001.

X. INCURSIONS AND THE REPERCUSSIONS OF ISRAELI-ENFORCED CURFEWS

During the incursions and curfews of 2002, the violations outlined above increased in frequency. Attacks on ambulances and hospitals became daily occurrences; medical teams were regularly delayed at checkpoints, and by Israeli occupying forces enforcing curfews, thereby resulting in denial of access to many areas by medical teams for days at a time. Bodies remained rotting in the streets and in homes, and many Palestinians bled to death or died slowly over a period of days because they were unable to access assistance. As Al-Haq noted from 7 April 2002:

> In Nablus medical teams remain prohibited from moving around. According to Al-Haq's fieldworkers in the city, at least 31 people have been killed there over the past week. Only two bodies have reached Nablus hospital. Residents of the old city of Nablus have reported that the stink from rotting bodies is becoming unbearable. An additional 65 people have been reported wounded in the old city of Nablus, 10 of them seriously. No medical teams have been allowed to attend to them. Medical teams are attempting to move on the outskirts of the city. The PRCS has reported that five of these teams have come under fire. Other teams have been stopped, ambulances have been searched, medical personnel have been forced to strip naked in the street and have been interrogated, and several personnel have been arrested. Clinics in and around Nablus have also reported that they are running out of supplies and will soon be unable to treat new patients.
>
> In Bethlehem medical teams are also still facing severe difficulties in moving about the city. Eight of those killed in Bethlehem have already been buried, but another four bodies remain uncollected in the city. A number of wounded individuals are being cared for inside the Church of the Nativity but have been provided with no professional aid. Medical teams have reported that Israeli forces have fired upon them, and clinics in Bethlehem report that they are running out of medical supplies. In the village of al-Khader near Bethlehem, Israeli forces have surrounded al-Yamama Hospital and it has been closed off to patients. In the village of Yatta near Hebron, the water and electricity for the Naser Hospital have been cut, and Yatta Clinic reports that Israeli forces have stolen most of its supplies. In Hebron ambulances have been stopped from moving in much of the city. In Ramallah medical teams are able to move, but if caught by Israeli forces they are often searched and turned around. In Jenin medical teams are still prohibited from entering into Jenin Refugee

> Camp where some of the most intensive fighting of the last two weeks has occurred. Bodies remain inside homes and in the streets. Many of them have been sitting for several days and are beginning to rot.

In Jenin Refugee Camp, during "Operation Defensive Shield" medical teams were forbidden to move or enter the camp from 3-15 April 2002. This occurred despite the fact that fighting stopped in the camp on 9 April, and that journalists were taken on a tour of the camp by the military on 11 April. During the later incursions and curfews that began in June 2002 and which continue in some areas of the West Bank restrictions on access to medical care eased slightly. However, the curfew continues to make it impossible for patients to travel to hospital and frequently stops medical teams from carrying out their duties.

A few cases regarding violations arising during the 2002 incursions are detailed below.

Case Studies

Affidavit given by Samar Muhammad Khaled Qa'dawi, a nurse at the al-Razi Hospital in Jenin.[125]

> On Saturday 6 April 2002 at 9:00 am, I was on duty at al-Razi hospital where I work as a nurse. At the time there was an emergency situation, as the Israeli military had invaded both the Jenin Refugee camp and city. A young man approached the hospital from the side located next to al-Said Mosque, which is to the east. He said that he had brought an injured man with him from al-Hara al-Sharqia, but could not bring him inside because there were Apache helicopters and tanks bombing the area. I hurried outside along with Dr. Manar 'Abboushi and two other nurses. There were three tanks positioned to the right of the entrance. One soldier shouted to me that he was going to shoot if I didn't return inside. One tank then fired a sound bomb to frighten us.
>
> I went back inside, but saw the injured man who was approximately three metres away from the entrance. I talked to him. He was shot in his arms and legs and was pleading for help. He said: "please help me, I am dying."
>
> I asked him to hold on and tried to reach him with my colleagues, but the tanks stopped us again. I asked him to keep his voice down so that the soldiers wouldn't notice him. He kept pleading

125. Al-Haq Affidavit No. 674, 2002.

for us to help him. The tanks started to shoot at the mosque, which forced us to go down to another floor. After 20 minutes, 3 colleagues and I snuck to the mosque and tried to persuade the man to crawl towards us but he said "I can't, please God, I am dying."

I tried to comfort him and asked him to keep his voice down. I couldn't see him, but he kept screaming. Then a soldier exited the tank and aimed his gun at the window of the mosque. I hurried away while the soldier was shooting. I went to the director Ziyad 'Isa and said that the tanks might not shoot at us if we all go out together. (This was after I had tried to go out with a white flag twice, but was threatened to be killed). Dr. Ziyad refused the suggestion because it was risky and called the ICRC to explain the situation to them. I went up to the second floor again and talked to the man. I shouted three times asking him if he could hear me after which he answered back that he could hear me. His voice was quiet as it had been during the past hours. Dr. Ziyad then told me that the PRCS had secured permission for us to move the man and to take him inside. I went out with Dr. Manar and the nurse Iman. The tanks were still positioned in the same place and the injured man was on the ground bleeding. I could not touch him or help in lifting him. Looking at him was extremely hard for me. My colleagues therefore helped him inside. When we examined him he was already dead. There were bullet wounds in his back and this led us to believe that he was shot in the back repeatedly by the soldiers just before we were allowed to help him. The body was kept in the Computed Tomography (CT)-scan room for two days because there were no fridges in the hospital in which to keep dead bodies. A man from the Palestinian police (Amin Al-Haj) came to the hospital when the curfew was lifted and identified the body, which was later transported with the help of the PRCS to Jalqamos. The body was buried there according to the wishes of the deceased's family. I suffered from the psychological effects of this event for some time.

Affidavit given by Manar Yusef Ahmad Abboushi a doctor at the Al-Raza Hospital in Jenin.[126]

On Saturday 6 April 2002 at 9:00, I was on duty at Al-Razi hospital while the Jenin Refugee Camp and city were being invaded by the Israeli military. A young man I didn't recognise came from the eastern entrance of the hospital. This entrance is beside Al-Said Mosque. The man told us that he had brought in an injured man called [Mundir] Bilal Al-Haj and had left him in front of the mosque.

126. Al-Haq Affidavit No. 675, 2002.

He couldn't bring him closer because a tank had started shooting at them. Some colleagues and I then went towards the mosque. We came within four metres of the injured man when a tank started to shoot at us 15 metres away. We talked to the man while we were inside the mosque and learned that he had been shot. He said he had been struck in the arms and legs. When I asked him to crawl towards us he said that he could not move. I then suggested that I hold a white flag and go out with a female colleague to try to help him. I took a white gown and put it on a stick and we went out. However, a soldier called to us over a loud speaker and threatened to shoot us if we didn't return inside. We went back inside and kept talking to the man. Another colleague later tried to approach the injured man again but was also turned back. The director of the hospital Ziyad Issa then tried to coordinate action with the ICRC. We were told that we would receive a positive answer quickly.

Before we received any response from them, we started hearing the sound of shooting coming from near the position of the injured man. We were then told that three of us could go outside in white gowns to reach the man. When I, together with the nurses Iman al-Shalabi and Samar Qa'dawi, reached the man to put him on the stretcher he was already dead. We took him towards the emergency room and noticed that the man had been shot repeatedly while he was lying on the ground. He had many bullets in his back, which he did not have when he was first lay in front of the hospital. The man had no papers to identify him and there is no morgue in the hospital. We therefore placed the body in the CT-scan room for two days until the curfew was lifted for a few hours and the family of the deceased was able to come to identify him. They then took him to be buried.

Affidavit given by Abdullah Issa Muhammad Wishahi from Jenin.[127]

On Friday 5 April 2002 at 2:00 pm, I was at home in the Al-Zahra area of the city of Jenin together with my parents and four brothers. That day, Apache helicopters and Israeli tanks were attacking the western part of the camp. My brother Munir Wishahi was in his room, which overlooks the University Street and the factory for making cinder blocks. Munir was in his last year of school and was studying for his final exams. In the house of Naief Turkoman, which is in front of our house, there were snipers. A tank was also positioned in front of our house.

[127] Al-Haq Affidavit No. 685, 2002.

I heard Munir screaming and saying that he was hurt in his stomach and back. I was about to enter his room when shots were directed at me, so I quickly turned away. My mother started to scream, but Munir called to her saying that he didn't want her to cry or scream. I called the PRCS and they sent an ambulance that stopped 40 metres from our gate. However, the soldiers opened fire at the vehicle and forced it to leave. Sniper fire prevented everyone from reaching Munir to help him. On Friday and Saturday Munir was still alive and we talked to him. He kept bleeding in his room for three days and died without us being able to help him.

On Sunday 7 April 2002, we felt that the shooting had stopped and that the soldiers had left the area. I tried to go to Munir's room again, but was again fired upon. Later when my mother Miriam Wishahi (50) went into Munir's room (Munir was 17) a shell exploded in the house. I could not tell what sort of shell it was, but I saw a lot of white smoke following the explosion. My brothers and I were very frightened and started to scream. Then there was another explosion in Munir's room. My mother was still inside the room. At that moment soldiers ordered us to leave the house. They threatened to destroy the house using bulldozers if we did not comply with their demands. I followed my father and brothers outside with our hands raised above our heads. I saw three tanks parked to the north of the house and many soldiers in houses to the east side. My brothers Luai' (14) and Thair (22) and I were handcuffed, blindfolded and were forced to remove our shirts. The soldiers then drove us to the Salem Military Camp. There we were held for three days before we were released in the village of Rummaneh. We lost contact with our father and our younger brother Muhanned (10).

Affidavit given by Dr. Muhammad Mustafa al-Qarini of Asker Refugee Camp.[128]

At the end of March and during April 2002 I witnessed the intentional delay of ambulances by Israeli occupying forces and their prevention of doctors from carrying out their duties in the West Bank, specifically in the city of Nablus.

In preparation for an expected incursion into our area, doctors decided that we would make efforts to provide assistance to the wounded within our capacity. Especially to patients in 'Askar Refugee camp, which houses around 13,000 people. About 30 minutes after

128. Al-Haq Affidavit No. 731/ 2002.

the incursion began, which began at 10:30 pm, I received a call about a person who had been seriously injured in the head. I called the Red Crescent to send an ambulance, but it was delayed for three hours by Israeli soldiers. The wounded person was located near Israeli tanks, but was left bleeding. His name was Manar 'Arafat and he lived in the public residential area, which is home to around 5,000 people. He was left were he lay until around 12:00 the next day (i.e, for around 13 hours). When he was admitted to the hospital he was in critical condition, and he is still receiving treatment.

On 4 April I was told that Basem Qasem Dweikat had been shot by six bullets and that he had shrapnel wounds in his legs and in other parts of his body. He was left to bleed in the street for 12 hours. When I finally reached him his pulse was around 30 due to blood loss. I worked hard to save him, but didn't have any of the medicines that he required. While I was helping him I called the UPMRC. I asked them to transfer him to a hospital. I called them many times and called friends inside Israel and human rights organisations, but everyone refused to come because they said it was too dangerous to come to our area. An ambulance finally did reach the outskirts of the camp together with delegates of the ICRC. However, the Israeli army refused to allow them into the camp and they had to stop about 1,000 metres from Bassem. He then had to be carried over very dangerous roads to the ambulance. He was transferred to the Red Crescent Center where he remained for 48 hours even though he needed to be hospitalised and to undergo surgery.

During this incursion, I kept a low profile as I worked from there 4-15 April. I couldn't move openly and I never moved in front of the Israeli armor because I was afraid of being shot even though there were no clashes near my clinic or in the camp. On 7 April 2002 at around 6:30 pm, I received a call regarding an injured woman who lived around 200 metres from my clinic on Mount 'Askar. There were tanks in the area, so it took me around 30 minutes to reach her. Her name was Souna Hafeth Sira. When I reached her house Souna was lying in the garden next to her father. She had been shot in the right shoulder. The bullet had penetrated her lung from the back and then exited her chest, smashing her 8th and 9th ribs and leaving a hole 10 centimetres wide. She was bleeding heavily and had difficulty breathing. Her blood pressure was low.

I injected her with medicine and performed artificial

respiration. However, I knew that her lung was in terrible shape. Souna was having difficulty moving her right arm and leg. The wound was close to her spinal cord. She should have been receiving special treatment that was not available there. Her father who was lying next to her seemed unconscious to me. I examined him and found that he had also been shot, although his family didn't realise this. He had been hit in the left shoulder and the bullet had stopped in his heart. He died before I reached him. The family had thought that he had had a heart attack.

After I assisted Souna I called the Red Crescent but Dr. al-Shakhshir and another official told me that the Israeli military had forbidden them from moving after 5:00 pm. It was 7:00 pm when I called them, but Souna urgently needed to reach a hospital. I stayed with her until 11:00 pm. It seemed that fate was on her side, as her condition did not deteriorate. I thought about performing surgery on her at her house despite the high risk.

I returned to the medical centre with a plan to return to the patient with medications and supplies, but I couldn't return that night. On the following day an ambulance came close to Souna's house, but soldiers stopped it and after holding it from 10:00 am to 4:00 pm it was forced to turn back.

On 8 April , I went to check on Souna. I reached her at 6:30 pm. She was suffering from complications including bleeding in her lungs. I called for some supplies from the center and decided to perform surgery. However, I wasn't able to get the supplies even though the clinic was only 200 metres away. My sister tried to go to the center with me. She was in front of me. When we tried to cross a road soldiers opened fire at us and she was almost hit. We retreated and spent the night at Souna's house.

On the third day, 9 April, at around 8:30 I realised that Souna's condition was deteriorating and determined that I had to perform surgery on her. There was no other option. The surgery lasted for 45 minutes and her condition improved, but she still needed to reach a hospital. At around 2:00 pm, a PRCS ambulance arrived and transported her to a hospital. Souna's father was buried in the garden during the curfew, which made it difficult for his relatives to pay tribute to him. Souna's condition, thank God, is now improving.

I remember another story that occurred towards the beginning of the terrible events. A man called Muhammad Abu-Hatab was

shot, and I couldn't reach him due to heavy shooting towards me. I saw bullets ricocheting off the walls. I heard from the neighbours that he had died on the morning of April 4.

Kamel Freij, 51, was injured when he went onto his roof. Water supplies in the area were scarce and people would rush to their roofs to make sure that water was arriving and to collect what they could. On the morning of 16 April, I was in the clinic when I heard a helicopter and random firing. Several minutes later some young men arrived and told me that their father had been seriously wounded. I gave them a stretcher and asked them to fetch his as soon as possible. They brought him back five minutes later. He was hit in the abdomen and I could see his intestines coming out from his stomach. He was also wounded in the thigh, on his right side, legs, and feet. I gave him some medicine and called the Red Crescent. I told them that he was in critical condition and needed to be hospitalised. The response from both them and UPMRC was that the area was under attack and they couldn't come. I tried to call the UNRWA medical centre, but the doctor there said that they were also not able to move because of the Israeli military. I stayed with the wounded man until 5:00 am, but his condition worsened so I decided to take to the street. I carried the PRCS flag and a megaphone. I told the soldiers in Hebrew that I was with a wounded man. I talked to some soldiers who were about five metres from me. I told them that he had been injured while collecting water on his roof. They asked if an ambulance had been called and I told them yes. One of the soldiers used his radio and an ambulance was allowed into the area. This took 45 minutes. The ambulance then took him. I learned that he died later in the evening. Two of his sons were also injured by bullets and shrapnel.

Another case is that of Saleh Mahmoud 'Abed al-Nabi, 51, a father of seven children. Two members of his family died during the first *Intifada.* On 5 April he suffered strong chest pains for the first time in his life. Although UNRWA clinic staff tried to retrieve him from the camp, they were unable to reach him for 12 hours. After they reached him, the ambulance he was in was stopped by soldiers and forbidden from moving forward. It was forced to go to a PRCS clinic where Saleh stayed for 48 hours. He was later transferred to the national hospital where there is a cardiology department. When he was examined the doctors determined that he had suffered a heart attack. He later died. Treating him was useless because of the delays he had experienced in reaching the hospital, despite the fact that he needed urgent medical attention.

My brother Tahsin was shot near the mosque. His youngest son who is two and a half was with him. He was shot in the right knee. The main nerve and vein were hit, complicating the injury. I couldn't transfer him to a hospital, so I supervised his treatment. He is the father of nine children and their only bread winner. He now has a permanent handicap.

Hasan Yousef, 65, suffered from emphysema and was dependent on oxygen. Two weeks after the incursion began, he ran out of oxygen, so we tried to transfer him to the hospital. He died because of the curfew on 18 April 2002.

On 11 April, Husam al- 'Adssi (11) was in the street when an Israeli tank fired a round that hit him in the thigh. He was not transferred to the hospital due to the imposed closure. He was taken home and was treated there. When the Israelis withdrew he was taken to the hospital.

On 13 April, three civilians, Ahmad Warrad (11), Khalil Khaswan (2) and Jamal Khaswan (40), were wounded when Israeli soldiers opened fire towards them from a distance of 1,000 metres. Khalil was hit in the abdomen; Jamal in the right arm; and Ahmed in the right side and pelvis. They had to wait for three hours before an ambulance managed to reach them.

Another case is that of Muna Abu-Lughom (37), wife of Majed Sa'id of 'Askar Camp, and mother of seven children. She was injured when Israeli soldiers placed explosives on the front door of her home and exploded them without warning. She was close to the door when it exploded and was hit by shrapnel in her head and hand. The incident occurred around 2:00 am on 16 April. Her house is not far from the medical centre. However, after the explosion took place, her family was forced by the soldiers to stay in the house. She was given first aid by the soldiers. At around 4:00 pm we received a call from people in the house telling us that they needed a doctor to help her, but the Israeli soldiers refused to let anyone see her. They told us that there were 40 to 50 people in the house. At 7:00 pm the soldiers left and Muna was transferred to the hospital for treatment. Later on her condition stabilised.

XI. ISRAELI JUSTIFICATIONS FOR DELAYING AND ATTACKING AMBULANCES AND EMERGENCY MEDICAL PERSONNEL

In response to local and international condemnation of its attacks upon the Palestinian medical infrastructure and emergency response system, the Israeli government and military have justified their actions by claiming that Palestinians have abused medical neutrality by using ambulances and hospitals to shelter militants, and as bases from which to launch attacks upon Israeli targets.

> In recent months Palestinian terrorist organisations have increasingly made use of medical services for the purpose of disguising their terrorist activity. Many of their members travel in ambulances, transporting arms in them as well thus taking cynical advantage of the fact that ambulances are not subject to strict security checks.
>
> Terrorists also hide out in hospitals, even surrounding themselves with explosives, knowing that Israeli security forces will not enter medical institutions.
>
> In a recent case, terrorist organisations attempted to smuggle suicide bombers into Israel with the help of a doctor from Jenin who was on his way to deliver medicines."[129]

The above allegations were made by the Israeli Ministry of Foreign Affairs in a release that was accompanied by a list of purported incidents in which ambulances and hospitals had allegedly been misused by various Palestinian organisations and individuals. In response to questions asked by the Israeli newspaper the *Jerusalem Post* the Israeli military justified attacks on ambulances by stating that "Palestinian perpetrators of terror aimed at Israeli civilians do not separate themselves from the innocent population; on the contrary, they operate amid the civilian population while using it as a shield. For example, ambulances have even been used for the purpose of terror."[130]

However, with the exception of one case, Israel has provided no evidence to support its allegations. Repeated requests made to the Israeli military for substantive evidence to prove its allegations made by PHRI, the *Jerusalem Post*, and the ICRC have remained unanswered. The only information provided by the military has regarded a well - documented case of explosives found in a single ambulance on 27 March 2002. The driver of the ambulance was subsequently arrested and is in the process of being tried for his alleged actions. The alleged actions of this individual were disavowed by the PRCS and all other medical organisations. While such actions must be unequivocally condemned, no evidence has been put forward to indicate that this was not an isolated incident carried out by a lone individual.

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129. Israeli Ministry of Foreign Affairs, "Terrorist Misuse of Medical Services to Further Terrorist Activity", 26 August 2002.

130. Derfner, *supra* note.

On a number of other occasions, allegations made by the Israeli military that Palestinians had used ambulances to shelter militants, to transport explosives, and as bases from which to launch attacks turned out to be blatant fabrications. Following the death of Dr. Khalil Suleiman, the Israeli military authorities initially claimed that the ambulance burned after explosives which it was carrying had accidentally exploded. The Israeli military spokesman later changed his story stating that the ambulance had exploded after oxygen canisters which it was carrying exploded when stuck by Israeli military gunfire. In another incident, the Israeli military authorities claimed that it opened fire at a Palestinian ambulance in Toulkarem after a Palestinian medic opened fire at them. A videotape of the incident clearly showing that the Palestinian medics were unarmed and that they were attacked without provocation later forced the Israeli military to change its earlier claims.[131] On 22 August 2001, the Israeli military was also forced to admit that its earlier allegations asserting that Palestinian militants had fired at Israeli soldiers from the back of an ambulance and had thereby started clashes that led to the deaths of four Palestinians were false.[132]

While the one case of an ambulance being used for illegal purposes documented by Israel should be treated with the utmost seriousness, it cannot be used as grounds for revoking the general protection afforded to hospitals and medical personnel under international law. The Israeli military and government have systematically waged a propaganda war against the Palestinian medical establishment aimed at tarnishing the image of Palestinian medical workers. This campaign has included the distribution and propagation of blatant lies and falsehoods with the aim of cultivating a perception that Palestinian medical personnel are involved in armed conflict. Moreover, the lack of evidence offered by Israel to support its allegations highlights the fact that these incidents were individual cases that cannot be used as the legal basis for restrictions on ambulances.

In its justifications of the restrictions it has imposed on the movements and attacks upon of Palestinian medical personnel, ambulances, and hospitals Israel has also repeatedly made reference to past attacks by Palestinians upon Israeli targets, stating that fear of future attacks justifies those restrictions. The Israeli government has argued that Palestinian "terrorists" have blurred the distinction between themselves and other Palestinians, thereby allowing its forces to treat for all Palestinians as "suspects".

However, it remains doubtful that the justifications which Israeli military authorities have offered are justified. A quick glance at the responses by the Israeli government to past reports by PHRI, B'Tselem, the ICRC, and others suffices to make clear that Israel's practices are not proportionate to any threat, whether real or perceived, and are based on weak justifications to support its violations of human rights and measures of collective punishment carried out against the Palestinian civilian population in the OPT.

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131. PRCS, "PRCS Denounces False Israeli Reporting On Ambulance", Press Statement, 16 July 2001.

132. L'Agence France-Presse "Israel backs off from Israeli Top OfficialáAccusation about Palestinian Red Crescent Society Ambulance in Nablus", 23 Aug 2001, http://www.afp.com/english/home/.

XII. CONCLUSION

Although the Oslo Interim Agreements have transferred various powers to the PNA, Israel remains an Occupying Power in effective control of the West Bank and Gaza Strip. As this report sought to highlight, these interim agreements failed to end the system of control imposed by Israel over the everyday lives of the Palestinian civilian population. One of the most prominent manifestations of this control is the system of restrictions on the freedom of movement of Palestinians in the OPT, thereby leading to an acute crisis in Palestinian health system. Although access to health care and emergency medical services have been key issues since Israel's occupation of the West Bank and Gaza Strip began in 1967, restrictions on freedom of movement have become more severe since the outbreak of the *Intifada* in 2000, and have developed into one of the most pernicious violation of Palestinians' human rights in the OPT.

Unfortunately, the violations overviewed in this report are not individual incidents, but are a sample of hundreds of affidavits gathered by Al-Haq over the course of the Second *Intifada* that point to a systematic failure on the part of Israel to fulfill its obligations as an occupying power, and to respect and apply the fundamental provisions of international human rights and humanitarian law. Needless to say, many of these have not arisen in a vacuum, but are the direct outcome of Israel's continued belligerent occupation of the Palestinian Territories since 1967.

Nevertheless, the Israeli government continues to refuse to accept any responsibility for the fate of the population that is impacted by its policies. At the very minimum, Israeli authorities are obliged to initiate thorough, impartial and effective official investigations into allegations of illegal conduct by state agents in this particular case and similar cases in an effort to fulfill Israel's international legal obligations; take effective measures to prevent the commission of similar acts in the future; and enforce the protection afforded by international law to the Palestinian civilian population.

Moreover, despite the presence of clear and substantial evidence that confirms the detrimental impact that Israeli policies have had upon the right to health in the OPT, the Israeli High Court has often failed to challenge the actions of the Israeli military forces on the ground, including the disproportional and often unnecessary restrictions imposed on the freedom of movement of patients and medical personnel. Even in instances where the court has ruled in favor of petitioner's claim regarding alleged violations of Palestinians' right to medical access, it has done so without challenging the perspective of the military government that a military operation was indeed warranted by the security situation, or that it could have been resolved by other means.

As a result, the Palestinian civilian population has remained vulnerable without adequate means for redress. Instead, closures and curfews continue to tighten; attacks upon medical personnel and ambulances continue on a daily basis, and patients continue to be refused access to medical care.

However, Israel's human rights violations should not be viewed as an internal matter or as unfortunate actions for which there is no remedy. Numerous international humanitarian law treaties including the Hague Convention and its Regulations, the four Geneva Conventions and their Additional Protocols, all prohibit attacks on civilians, including intentional attacks against humanitarian medical personnel. Moreover, international law prohibits impunity for serious human rights violations such as war crimes,[133] and grave breaches of the Fourth Geneva Convention, and for which it mandates universal jurisdiction.[134] Therefore, a state party is not permitted to absolve itself or any other High Contracting Party of any liability incurred by itself or by any other High Contracting Party in respect of grave breaches. As Article 146 of the Fourth Geneva Convention states, it is their legal obligation to "provide effective penal sanctions for persons committing or ordering to be committed any of the grave breaches of the present Convention...and [to] bring such persons regardless of their nationality before their own courts". Therefore, and in order to put an end to these violations in the future, it is of utmost importance that the international community ensures that perpetrators of these crimes are brought to justice.

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133. Offences against the laws and customs of war, in addition to those described as grave breaches by the Four Geneva Convention and Additional Protocol remain war crimes and are punishable as such.

134. Grave breaches constitute war crimes and are concerned with individual responsibility for breaches of the laws of war. According to Article 147 of the Fourth Geneva Convention, these include amongst others: wilful killing, torture or inhuman treatment and wilfully causing great suffering or serious injury to body or health.