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**Cooperation project on  
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migration, and the movement of persons**



Robert Schuman Centre  
*for advanced studies*

**Leena Abu-Mukh**

***Movement to and from the  
Palestinian Territories under Israeli  
Occupation after Oslo (1993-2006)***

Research Reports 2006/02

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**EUROPEAN UNIVERSITY INSTITUTE, FLORENCE**  
**ROBERT SCHUMAN CENTRE FOR ADVANCED STUDIES**

***Movement to and from the Palestinian Territories under Israeli Occupation  
after Oslo (1993-2006)***

**LEENA ABU-MUKH**

**CARIM**

**Euro-Mediterranean Consortium for Applied Research on International  
Migration**

**Research Report, CARIM-RR 2006/02**

**BADIA FIESOLANA, SAN DOMENICO DI FIESOLE (FI)**

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## **CARIM**

### **The Euro-Mediterranean Consortium for Applied Research on International Migration**

In November 1995, the European and Mediterranean Ministries of Foreign Affairs met in Barcelona in order to establish the basis of a new partnership, which is described in the Barcelona Declaration. The main goal is to transform the Mediterranean region in a peaceful and prosperous area, and to progressively establish a Euro-Mediterranean free-market zone. In order to promote dialogue, stability and good governance values in the Region, as envisaged by the Barcelona process, the Valencia Ministerial Meeting in April 2002 outlined a regional cooperation programme on justice, police and migration issues, which was adopted by the European Commission in December 2002.

The present report is produced in the framework of the “Cooperation project on the social integration of immigrants, migration and the movement of persons” (EuroMed Migration), which is a MEDA regional initiative launched by the European Commission (EuropeAid Cooperation Office) in February 2004 as part of the above programme. It aims at creating an instrument for observing, analysing and forecasting the migratory movements, their causes and their impact, in the EU and in the Mediterranean partners Morocco, Algeria, Tunisia, Egypt, Palestinian Territories, Israel, Jordan, Lebanon, Syria and Turkey.

The Euro-Mediterranean Consortium for Applied Research on International Migration (CARIM) has been set up in order to implement the EuroMed Migration project. The Consortium is composed of a coordinating unit established at the Robert Schuman Centre for Advanced Studies of the European University Institute (Florence), and a network of thirty scientific correspondents based in Mediterranean partner countries. External experts from the north and the south also contribute to its activities. CARIM carries out the following activities: setting up and updating of a Mediterranean migration database, studies and research training.

*For further information:*

CARIM

Robert Schuman Centre for Advanced Studies

European University Institute

Via delle Fontanelle, 19

50016 San Domenico di Fiesole (FI), Italy

Fax: + 39 055 4685 770

E-mail: [carim@iue.it](mailto:carim@iue.it)

Web site: <http://www.carim.org/>

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## **Abstract**

Since 1967, Israel has been in total control of the West Bank and the Gaza Strip, particularly, concerning movement of people within these territories and from it abroad and vice versa. Signing the Oslo agreements in 1993 has raised expectations to improved freedom of movement of Palestinians as a consequence of undertakings of the Israeli and the Palestinian sides to safeguard human rights, and the freedom of movement as a fundamental part of these rights. However, the Israeli closure policy, the lack of identified criteria for obtaining a permit to travel abroad, to move between the West Bank and the Gaza Strip or to move within the checkpoints in the occupied territories put a huge question mark on the existence of the freedom of movement of Palestinians under the Israeli occupation. The restrictions on movement imposed by Israeli forces in the OPT are in contravention of Israel's obligations under international law, especially international human rights law and international humanitarian law as well as the Oslo agreements signed between Israel and the Palestinian Liberation Organization.

The most important change concerning the movement of Palestinians in the occupied territories after the start of the peace process in 1993 was brought in the framework of the disengagement of Israel from the Gaza Strip in September 2005. For the first time, the Palestinians manage their movement to and from the Gaza Strip with no foreigner sovereignty. On the other hand, the Israeli control of the Palestinians' movement in the West Bank and the closure of the safe passage between the West Bank and the Gaza Strip since the Al-Aqsa *Intifada* in 2000 makes it extremely difficult to assume that the Oslo agreements between Israel and the Palestinians has brought any improvements concerning the movement of the Palestinians in the occupied territories.



## Introduction

One of the defining characteristics of the transition from a feudal system to a modern, liberal society is the removal of internal borders and the institution of freedom of action and freedom of passage, '*laissez faire, laissez passer*'. One of the most important aspects of the freedom of movement is the right to leave one's country. This right is enshrined in key human rights instruments.<sup>1</sup> In a famous U.S. case dealing with freedom of movement, the judges illustrated the value of this freedom of movement by stating:

Freedom of movement across frontiers in either direction, and inside frontiers as well, is a part of our heritage. Travel abroad, like travel within the country ... may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of movement is basic in our scheme of values.<sup>2</sup>

For Palestinians in the Occupied Palestinian Territories (OPT)<sup>3</sup> neither freedom of movement nor the right to leave one's country are guaranteed. Since the onset of the Israeli occupation of the OPT in 1967, Israel has imposed severe restrictions on the movement of Palestinian residents in the area. The magnitude of the restriction has changed from time to time as a result of different variables in the region.

Since the first *intifada* in 1987, Israel has imposed severe restrictions on movement. These restrictions were tightened following the start of the *Al-Aqsa intifada* (the second *intifada*) in October 2000 so that Palestinians need permits to move within the OPT, and between the OPT and East Jerusalem and Israel. Crossing international borders did not need prior permit unless the Palestinian wishing to move was classified by Israel as 'prohibited for security reasons'. Israel has placed progressively more restrictions on the movement of Palestinians in the OPT. A permit is now needed to pass internal checkpoints within the OPT, between the Gaza Strip and the West Bank and between both these areas and East Jerusalem and Israel. A permit is not needed to pass through the international crossings, but owing to security prohibitions imposed by the Israeli military, many Palestinians are forced to make prior coordination for passage there too.

In 1993 the start of the Israeli-Palestinian peace process with the signing of the interim agreements,<sup>4</sup> raised expectations of improved freedom of movement and human rights protection.<sup>5</sup> However, the improvements were limited in both content and timing.

Although some administrative responsibilities were transferred to the Palestinian Authority (PA) by the Interim Agreement, the Israeli military forces have maintained control of all borders and border crossings around the OPT.<sup>6</sup> This restricts the access of people and goods to and from these areas, between Gaza and the West Bank, PA areas and Israel, and between Jordan and abroad. As a consequence Israel has maintained *de facto* control over the movement of the Palestinians.

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1 Art. 13(2) of the UN Universal Declaration of Human Rights (1948); Art. 12(2) of the International Covenant on Civil and Political Rights; Art. 2(2) of the Fourth Geneva Protocol to the European Convention on Human Rights; Art. 22(2) of the American Declaration of Rights and Duties of Man. See also, I. Brownlie, *Basic Documents on Human Rights* (Oxford, 1992) 24, 129, 346, 504; H. Hannum, *The Right to Leave and to Return in International Law and Practice* (Dordrecht, 1987) 10.

2 *Kent v. Dulles*, 375 U.S. 116, 126-27 (1958).

3 The Occupied Palestinian Territories (OPT) refer to the Palestinian lands occupied by Israel in 1967, and include the Gaza Strip and the West Bank which in turn includes East Jerusalem.

4 The interim agreements include: the 1993 Declaration of Principles on Interim Self-Government (Declaration of Principles), the 1994 Agreement on the Gaza Strip and the Jericho Areas (Cairo Agreement) and the Israeli Palestinian Interim Agreement on the West Bank and the Gaza Strip. Signed in Washington, DC on 28 September 1995.

5 Art. 19, Interim Agreement; Art. 11(1), Annex 1, Interim Agreement.

6 Art. 1(1), Interim Agreement.



East Jerusalem was excluded from the interim agreements and was left to the final status talks assuming that the joint administering of this city would require a level of trust between Palestinians and Israelis possible only after a prolonged process of reconciliation.<sup>7</sup> As a consequence, Jerusalem remains subject to Israeli law after its annexation to Israel in 1967. Its Palestinian population have the status of ‘permanent residents’ and carry Israeli identity cards. The status of East Jerusalem in Israeli law affects the status of its Palestinian population and the rules governing their movement.

The restrictions on movement imposed by Israeli forces in the OPT are in contravention of Israel’s obligations under international law, especially international human rights law and international humanitarian law. Furthermore, they are in violation of the Oslo Accords signed and ratified between Israel and the Palestinian Liberation Organization (PLO). The status of the OPT and the status of Israel in the OPT are controversial, and as a result determining precisely which body of law applies to the Palestinian residents of the OPT and their movement in the OPT is also controversial. Changes to Israeli military rules and practices in the OPT make the task of surveying the rules governing the movement of Palestinians extremely difficult.

This report outlines the range of positions regarding the status of the OPT, following Israeli occupation and the rules applicable in each case. The report is a legal survey of the regulations governing the movement of Palestinians to and from the OPT in the post-Oslo period and a critique of the administrative practices governing this. Reference to the historical and political background will be made to the extent that it highlights developments in policy and practice.

## **The legal status of the OPT and the legal system that applies**

The legal status of the OPT and the legal system that applies there is mainly regulated by international law, in particular the law of occupation<sup>8</sup> otherwise known as international humanitarian law, contains an extensive array of norms: Articles 42–56 of the Hague Regulations annexed to the Fourth Hague Convention Respecting the Law of Customs of War on Land (the Hague Regulations); Articles 27–34 and 47–135 of the Fourth Geneva Convention relative to the Protection of Civilian Persons in Time of War (1949) (the Geneva Convention); Protocol Additional to the Geneva Conventions (1949), and relating to the protection of victims of international armed conflicts (Protocol I) (1977) and the Rome Statute of the International Criminal Court. It also includes customary norms derived from the general practice of states over time. Israeli courts have repeatedly recognized that the West Bank and the Gaza Strip are held by the State of Israel in belligerent occupation. This means that Israeli law is not applicable in these areas, and that the legal regime which applies in these areas is determined by international law on belligerent occupation.<sup>9</sup>

According to international law, Israel is considered an occupier in the OPT until a sovereign Palestinian state is established. The Interim Agreement itself does not change the status of the OPT because it leaves many powers within Israeli jurisdiction and does not provide the PA with absolute legislative power.<sup>10</sup>

International humanitarian law is also a legal source of the rights of the population as ‘protected persons’<sup>11</sup> who are entitled:

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7 Y. Klein Halevi, “Jerusalem Dispatch”, The New Republic on Line, available at: [http://www.travelbrochuregraphics.com/extra/fenced\\_in.htm](http://www.travelbrochuregraphics.com/extra/fenced_in.htm)

8 For this view see recent decisions of the Israeli Supreme Court sitting as a high court of justice: H CJ 7957/04 Mara’abe v. The Prime Minister of Israel, para. 14 (not yet published); H CJ 1661/05 Gaza Coast Regional Council v. the Knesset et al. (not yet published), para. 3. These decisions are available at the Israeli Supreme Court website: [www.court.gov.il](http://www.court.gov.il).

9 H CJ 7957/04, Mara’abe and H CJ 1661/05 Gaza Coast Regional Council, *ibid*.

10 Art. 11(1), Arts. 18(4)–18(6) of Interim Agreement.

11 Art. 27, Geneva Convention.

[i]n all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected especially against all acts of violence or threats thereof and against insults and public curiosity...

In addition, international conventions on human rights anchor the rights of the protected persons in the OPT. The principal conventions to which Israel is party are: the International Convention on the Elimination of All Forms of Racial Discrimination, (1965); the International Covenant on Civil and Political Rights (1966); the International Covenant on Economic, Social and Cultural Rights (1966); the Convention on the Elimination of All Forms of Discrimination against Women (1979); the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (1984); and the Convention on the Rights of the Child (1989). Israel ratified the first of these instruments in 1979 and the other five in 1991.

The core idea of the international rule on belligerent occupation is that it should be transitional, for a limited period, and that one of its objectives should be to enable the inhabitants of an occupied territory to live as 'normally' as possible. Under customary international humanitarian law, an occupying power has the duty to balance its own security needs against the welfare of the occupied population. Pursuant to Article 43 of the Hague Regulations on Land Warfare, the occupier:

Shall take all steps [...] to re-establish and insure as far as possible, public order and safety, while respecting, unless absolutely prevented, the law in force in the country.

However, the phrase 'public order and safety' translated from the French text of the Hague Regulations is an inadequate translation of the original '*l'ordre et la vie publics*'. A duty to restore '*l'ordre et la vie publics*' goes beyond the mere restoration of public order to include the life of the country in general. The occupant is thus under a duty to respect law and order.<sup>12</sup>

### ***International humanitarian law and international human rights law in the OPT***

Article 43 of the Hague Regulations was developed by the 1949 Geneva Convention. Over the years, Israel has refused to recognize the de jure applicability of the Convention in the OPT, contending that it applies only to territory previously under the sovereignty of a foreign state.<sup>13</sup> Nevertheless, Israel agreed to accept de facto the 'humanitarian provisions' of the Convention throughout the OPT.<sup>14</sup>

Since the signing of the Oslo Accords, Israel has argued that it was no longer obliged to comply *de facto* with some provisions of the Geneva Convention in those areas that had been transferred to the control of the PA (Area A in the West Bank and their counterparts, the 'white areas', in the Gaza Strip). This claim was rejected by many international bodies, including the International Red Cross, which is responsible for interpreting the Convention and monitoring its implementation. Israel argued that, following the transfer of powers, it was no longer responsible for administering the affairs of the population, and that the civil administration, which Israel had established to handle such matters, had ceased to operate. In the language of the State Attorney's Office, following the Oslo Accords,

Israel ceased exercising powers of the military government regarding the areas under Palestinian security responsibility in the territories.... The practical legal significance of the said reality was

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12 Christopher Greenwood, 'The Administration of the Occupied Territories in International Law', in Emma Playfair (ed.), *International Law and the Administration of Occupied Territories* (Oxford: Clarendon Press, 1992), p. 246.

13 Egypt never annexed the Gaza Strip, and Jordan's annexation of the West Bank was not recognized by the international community.

14 This position was formulated by the then Israeli Attorney General, Meir Shamgar. See M. Shamgar, 'International Law and the Administered Territories', 1 *Israel Yearbook on Human Rights* (1971).

the cessation of applicability of the rules of international law relating to belligerent occupation, in those areas in which the Israeli administration ceased to operate.<sup>15</sup>

Furthermore, the Israeli High Court of Justice (HCJ) maintains that the Geneva Convention cannot be dealt with in Israeli courts because the Convention's contractual status in international law requires that the state legislature ratify the Convention into national law before the High Court can apply it.<sup>16</sup> Israel ratified the Convention on 6 July 1951, but the Israeli legislature has never ratified the Convention in national law. On the other hand, the Israeli High Court considers the Hague Convention and its annexed regulations (the Hague Regulations) on the rules of occupation, which precede the Geneva Convention, as binding law.<sup>17</sup> In its view, the Hague Regulations codify customary international law and thus have automatic application unless they conflict with national law.<sup>18</sup>

Thus, Israel accepts the applicability of the Hague Regulations in the OPT as part of the customary law. On the contrary, the Israeli government and the Israeli High Court reject the overall *de jure* applicability of the Geneva Conventions (1949) to the OPT on the grounds that the status of the territories occupied by Israel in 1967 was uncertain.

The Geneva Convention provides a detailed regime of protection for the population living under occupation. Both the government of Israel and the Israeli courts have stated that they will respect the 'humanitarian provisions' of the Geneva Convention, but the government of Israel has not defined the provisions of the Convention which are deemed humanitarian and therefore applicable.<sup>19</sup>

The vast majority of states, the ICRC and the United Nations, agree that international humanitarian law is applicable in the OPT. UN Security Council Decision No. 681 on 20 December 1990<sup>20</sup> affirms the applicability of the Geneva Convention to the OPT and demands that Israel, as the occupier, applies the Convention *de jure* in respect of the territories which it *de facto* occupies. The decision requests High Contracting parties to the Geneva Convention to fulfil their obligations under Article I.

In its Advisory Opinion of 9 July 2004 on the 'separation wall' the International Court of Justice (ICJ) examined Israel's argument regarding the *de jure* inapplicability of the Geneva Convention and concluded the general view affirming the full applicability of the Hague Regulations and the Geneva Convention to 'the Palestinian territories which before the conflict lay to the east of the "green line" and which, during that conflict, were occupied by Israel'.<sup>21</sup> It added that the application of the Geneva Convention is not conditional upon the willingness of Israel to uphold its provisions. The ICJ's Advisory Opinion contains a determination regarding the co-application of the international humanitarian law and human rights law in the OPT.

Regarding human rights conventions, Israel has consistently argued that these are not applicable in the OPT since they are intended to apply only in the sovereign territory of the states, and continues to make this claim especially after the implementation of the Disengagement Plan and its withdrawal

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15 HCJ 769/02 The Public Committee against Torture in Israel et al. v. Government of Israel et al. Supplemental Response by the State Attorney's Office, of 2 February 2003, Sections 8–46.

16 E. Cohen, *Human Rights in the Israeli Occupied Territories, 1967–1982* (1985), p. 53.

17 See HCJ 390/79 Izat Mohammed Dwaikatet al. v. Government of Israel, 34(1) P.D. 1; HCJ 606/78 and HCJ 610/78 Ayoub v. Minister of Defence, 33(2) P.D. 113.

18 HCJ 2056/04 Beit Sourik Village Council v. Government of Israel 58(5) P.D. 807, para. 23. See also, HCJ 7957/04 Mara'abe v. The Prime Minister of Israel (not yet published).

19 HCJ 2056/04 Beit Sourik Village Council v. Government of Israel 58(5).

20 Jean S. Pictet, 'Commentary: IV Geneva Convention Relative to the Protection of Civilians in Time of War', *International Committee of the Red Cross*, 1958 Geneva, at p. 32.

21 See ICJ Advisory Opinion on legal consequences of the construction of the wall in the OPT, 9 July 2004, general list, no. 131, para 101, paras 96-99. For a transcript, see 'Advisory Opinion on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory' (2005) 38(1–2) *Israel Law Review* 17.]. The decision is also available at the ICJ website: <http://www.icj-cij.org/icjwww/idocket/imwp/imwframe.htm>

from the Gaza Strip in September 2005. In its reports to the UN committees responsible for implementing the treaties—which are, unlike other UN bodies, composed of independent experts and not state representatives—Israel repeated this argument. Furthermore, Israel contended that with the transfer of powers to the PA in certain areas, it was no longer required to protect the human rights of the residents in those areas.<sup>22</sup> The UN committees have consistently rejected Israel’s position.<sup>23</sup>

In the past when the question of the applicability of international conventions on human rights in the OPT was raised by the Israeli Supreme Court sitting as a High Court of Justice, it was left open and the court was willing, without deciding the matter, to rely upon international conventions.<sup>24</sup>

In addition to international humanitarian law and international human rights law, there is an additional source of law which applies to the state of Israel’s belligerent occupation in the OPT, that is, the basic principles of Israeli administrative law regarding the use of public official’s governing power. These principles include rules of substantive and procedural fairness, the duty to act reasonably, and rules of proportionality.<sup>25</sup> As the Israeli High Court determined:

Indeed, every Israeli soldier carries in his pack the rules of customary public international law regarding the law of war, and the fundamental rules of Israeli administrative law.<sup>26</sup>

Moreover, the Israeli Palestinian Interim Agreement on the West Bank and the Gaza Strip was granted legal status in the OPT by military and national Israeli legislation,<sup>27</sup> in addition to its political status on the international stage. The Israeli Supreme Court supported this opinion in several decisions.<sup>28</sup>

## Movement between the OPT and Israel

### *Background*

At the end of the 1967 war the Gaza Strip and the West Bank were declared a ‘closed military area’.<sup>29</sup> This meant that entry to, or exit from, these areas was forbidden without a permit from the Israeli defence forces (IDF) commander.<sup>30</sup>

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22 Israel also argued that, insofar as international humanitarian law, which deals with war and occupation, applies, another system of laws, the main purpose of which is the protection of human rights in peacetime, cannot be applied. See, for example, State of Israel, Implementation of the International Covenant on Economic, Social and Cultural Rights, Second Periodic Report, 3 August 2001, paras. 5–8, UN Doc. E/1990/6/Add.32 (2001); State of Israel, International Covenant on Civil and Political Rights, Second Periodic Report, 20 November 2001, para. 8, UN Doc. CCPR/C/ISR/2001/2 (2001).

23 For an extensive survey of Israel’s arguments and a critique of those arguments, see O. Ben-Naftali and Y. Shani, ‘Living in Denial: the Application of Human Rights in the Occupied Territories’, 37 *Israel Law Review* 1 (2004).

24 HCJ 13/86, *Shahin v. the Commander of IDF Forces in the Judea and Samaria Area*, 41(1) P.D. 197, 210. HCJ 1890/03, *The Betlehem Municipality & 21 others v. the State of Israel et al.* para. 15 (not yet published). HCJ 7957/04, *Mara’abe v. The Prime Minister of Israel*, para. 27 (not yet published).

25 HCJ 7957/04, *ibid.*, para.14. See also, HCJ 393/82 *Jami’at Ascan el-Malmun el-Mahdudeh el-Musauliyeh, Communal Society Registered at the Judea and Samaria Area Headquarters v. the Commander of IDF Forces in the Judea and Samaria Area*, 37(4) P.D. 785, at 810.

26 HCJ 393/82, *ibid.*, pp. 798.

27 See Decree Regarding Implementation of the Interim Agreement (Judea and Samaria) (No.7) 5756-1995; Decree Regarding Implementation of the Interim Agreement (the Gaza Strip) (No. 5) 1995.

28 HCJ 7957/04, *supra* n. 24, para. 20; HCJ 1661/05, *Gaza Coast Regional Council v. The Knesset et al.* (not yet published), para. 3; Y. Zinger ‘The Israeli-Palestinian Interim agreement regarding autonomy arrangements in the West Bank and the Gaza Strip: some legal aspects’, 27 *Mishpatim* 605 (1997).

29 Closure of Area Order (Gaza Strip and Northern Sinai) (No. 1) 5727/1967 which was replaced with Closure of Area Order (Gaza Strip area) (No. 144), 5728/1968, and the Military Order Concerning Closure of the Territory (West Bank area) (No. 34), 5727/1967.

30 Art. 90, Order Concerning Military Matters (Judea and Samaria) (No. 378), 1970.

In June 1968 Israel changed its policy on the entry of Palestinians to Israeli territory by adopting a decision which allowed Palestinian workers to enter Israel, subject to their obtaining special permits and in accordance with a quota set by the Ministry of Labour in consultation with the HISTADRUT General Labour Federation.<sup>31</sup>

In 1972, the IDF issued orders declaring a 'general exit permit' from the Gaza Strip and the West Bank.<sup>32</sup> This permit gave Palestinians the right to enter Israel, including East Jerusalem, without a special permit,<sup>33</sup> except between 1 a.m. and 5 a.m., including moving between the Gaza Strip and the West Bank which automatically means crossing Israeli territory. This movement was allowed unless the IDF commander declared a certain area closed.

After the outbreak of the first *intifada* in 1987, Israel's policy on the freedom of movement of Palestinians in the OPT changed. In June 1989 it introduced magnetic cards containing coded information on the holder for Gaza Strip residents. Only magnetic card holders were allowed to enter Israel. West Bank Palestinians with a 'security record', and thus forbidden to leave the West Bank, were issued green ID cards which were easily distinguishable from the standard orange ID cards then in use. In January 1991, during the Gulf War, Israel abolished the 1972 general exit permit so that any Palestinian in the OPT wishing to enter Israel needed to obtain an individual entry permit from the civil administration.<sup>34</sup> For a long time the measure did not affect OPT residents because Israel issued a great many permits for long periods. Israel tightened its policy as time passed, and fewer Palestinians were able to obtain permits. The suppression of the general exit permit marked the beginning of the closure policy.

### ***Israeli policy***

Since the early 1990s Israel has systematically restricted the movement of Palestinians in the OPT mainly by means of closure, siege and curfew.<sup>35</sup>

*General and comprehensive closure* means a total ban on Palestinian residents of the OPT entering Israel unless they have a special permit. As a result of the general closure, the OPT were divided into three areas: the West Bank, the Gaza Strip and East Jerusalem which Israel annexed in contravention of international law.

In January 1991, during the Gulf War, Israel changed the policy its long-standing policy on the entry of Palestinians into its territories. The general exit permit for entry into Israel (1972) was suppressed and any Palestinian resident in the OPT wishing to enter Israel needed a 'personal entry permit'. For the first time Israel imposed a prolonged and continuous comprehensive closure lasting 41 days.

In March 1993, in response to attacks by Palestinians in Israel, a general closure was imposed on the OPT 'until further notice' and checkpoints were set up to enforce it. The aim was to institutionalize the 'individual entry permit' system established in 1991. Palestinians were for the first time given renewed permissions to travel to their work places in Israel. This general closure has remained in effect ever since.

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31 S. Gazit, *The Stick and the Carrot, Israeli Policy in Judea and Samaria, 1967–1968* (Tel-Aviv, Zemora Beitan, 1985) pp. 350–54.

32 General Exit Permit (No. 5) (Judea and Samaria), 5732-1972, and General Exit Permit (Gaza Strip) (No. 2) 1972.

33 This permit related only to the exit from the opt per se, unlike the permit required for work in Israel.

34 Order Regarding Suspension of the General Exit Permit (No. 5) (Temporary Order) (Judea and Samaria), 5751–1991. A similar order was issued for the Gaza Strip.

35 For further details see the website of the Israeli Information Center for Human Rights in the Occupied Territories, B'tselem at [www.btselem.org.il](http://www.btselem.org.il)

In the period 1994–1997 closures were frequently imposed for long periods in response to suicide attacks by Palestinians. Since October 1997, after Israel release of Sheikh Ahmed Yassin, the founder of the Hamas movement and as a consequence of calm in the political platform until the beginning of the second *intifada* in September 2000, no prolonged closures were imposed. Comprehensive closures were only imposed for a few days generally in the wake of a Palestinian suicide attack, Jewish holidays and intelligence warnings of intended attacks.

On 8 October 2000 after the outbreak of the second *intifada*, a comprehensive closure was imposed on the OPT in response to the increase in violent demonstrations in the OPT. This closure is still in force and the entry of Palestinians into Israel for any purpose has been completely prohibited. Permits to enter Israel and permits to use the safe passage which linked the West Bank with the Gaza Strip were revoked, and the safe passage itself has been closed ever since.

The closure policy has caused an almost total separation between the West Bank and the Gaza Strip because movement between the two regions entails crossing Israeli territory. Palestinians who remain in Israel without a permit are subject to expulsion back to the Occupied Territories, a fine or imprisonment. The Israeli authorities did not publicly state the criteria for obtaining a permit, and many applications are rejected without explanation. There is a variety of permits which are given to Palestinians, e.g. transit permit from the Gaza Strip to the West Bank is for one day, work permit is for limited hours during the day, entry to Israel permit for other purposes such as to have a medical treatment is valid till the end of the treatment and etc. Each permit has its own duration and expiry date according to the decisions of the Israeli civil administrations.

Until the second *intifada*, the general closure was not strictly enforced. For Palestinians in the Gaza Strip, however, it is impossible to leave without a permit from the IDF because the border with Israel is relatively impermeable. During the comprehensive closure Israel closed all the crossing points. Even when the crossing points were open, the movement of Palestinians was limited due to many difficulties in reaching them such as siege and curfew.

*Siege* is a kind of internal closure imposed on towns, villages and areas in the West Bank and the Gaza Strip that prevents entry and exit. The first siege was imposed in the West Bank in March 1996 following suicide attacks in Tel-Aviv and Jerusalem. Since then, internal closures were imposed selectively as a punishment for violent acts committed by one of the community's residents. Easing internal closure by removing roadblocks or moving back tanks stationed at the entrance to specific Palestinian area, depends on the location. This was carried out as a 'gesture' or 'confidence-building measure' following political developments in the region.

*Curfew* is the most extreme restriction on movement. During curfew residents cannot leave their homes. Israel rarely imposes curfews, except in certain areas, such as Area H-1 in Hebron<sup>36</sup>, and during incursions into areas under the responsibility of the PA.

### ***The Oslo period***<sup>37</sup> (1993-1999)

The Interim Agreement states that the entry of persons (not only residents) from the West Bank and the Gaza Strip into Israel is subject to Israeli law and procedures. Residents of the West Bank and the

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<sup>36</sup> According to the interim agreement, annex I, the city of Hebron was divided into two areas, H-1, and H-2. In H-1 area, Israel has redeployed its military forces (the same as area A in the West Bank) but in area H-2 Israel has retained all powers and responsibilities for internal security and public order. See article VII of annex I of the interim agreement.

<sup>37</sup> The Oslo period refers to the five years interim period identified by article XXIII.3 of the interim agreement. According to it, the arrangements of the transitional period, which must start no later than May 4, 1996, are to be replaced by the permanent status arrangements no later than May 4, 1999. "The five-year interim period referred to in the DOP (declaration of principles, L.A.M.) commences on the date of the signing of this agreement" (4th May 1994).

Gaza Strip are required to carry an identity card as well as documentation specified by Israel and notified through the CAC (Joint Civil Affairs Coordination and Cooperation Committee) to the Council.<sup>38</sup>

The Interim Agreement stipulates that passage between the Gaza Strip and Israel can take place at four crossing points: Erez, Nahal Oz, Sufa, and Karni (commercial, for goods only).<sup>39</sup> However, *de facto*, entry to Israel was only allowed via the Erez checkpoint and all the traffic of Palestinians was directed there creating heavy congestion. In addition, the security checks of those passing through gradually became more exacting, and their number fell slowly as a result of Israeli policy.

Israelis and tourists to Israel have been allowed to pass between the Gaza Strip and Israel, in addition to the four crossing points of Karni, Kisufim, Kerem Shalom and Elei Sinai. In reality, Israelis and tourists use these crossing points but not the Palestinian crossing points mentioned above.

Israel's right to close the border crossing between Israel and the OPT is incorporated in the Interim Agreement which provides that it:

[s]hall not prejudice Israel's right, for security and safety considerations, to close the crossing points to Israel and to prohibit or limit the entry into Israel of persons and of vehicles from the West Bank and the Gaza Strip. [...] the provisions of this agreement shall not prejudice the use of the safe passage.<sup>40</sup>

Israel has denied Palestinian freedom of movement by imposing a general closure on the OPT in March 1993 which has remained in effect ever since.<sup>41</sup> The Palestinians are closed in on all sides by Israel and must obtain an individual exit permit when wishing to enter Israel or to travel between the Gaza Strip and the West Bank. Obtaining a permit means having to face bureaucratic obstacles and arbitrary decision-making by the Israeli authorities.

Furthermore, the Interim Agreement added another layer of bureaucracy, that of the Palestinian administration, in handling movement permits. The Interim Agreement of 1995 entailed the setting up of a Joint Civil Affairs Coordination and Cooperation Committee, Regional Committee (West Bank and Gaza Strip) and District Committee (West Bank) to coordinate and cooperate in matters of civil affairs between the Palestinians and the Israelis.

The responsibilities of the coordinating committees include questions regarding passage to and from the West Bank and the Gaza Strip, and safe passage between the West Bank and the Gaza Strip including crossing points and international crossings.<sup>42</sup>

### ***The recent situation***

Since the start of the second *intifada*, there has been a sharp increase in the restrictions on the movement of Palestinians. The West Bank was divided into three distinct areas, north, central and south. As it is described in the letter of Hamoked to the legal military advisor in the West Bank, Movement within these areas was relatively free, but travel was hampered by a combination of checkpoints, travel permits and physical obstacles. Letters to the legal military advisor in the West Bank were submitted by human rights organizations requesting that these practices be cancelled on the grounds that they harm the rights of the Palestinians to freedom of movement within their country, are

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38 Article IX(1)(C) of Annex I of the Interim Agreement, Protocol Concerning the Redeployment and Security Arrangements.

39 Article IX (3)(a) of Annex I of the Interim Agreement.

40 Article IX(1)(d) of Annex I.

41 Israel has anchored its security considerations concerning closing its borders in the interim agreement. See Article IX(1)(d) of Annex I, the interim agreement.

42 See article IV of the interim agreement, annex I.

in violation of international humanitarian law and international human rights law, and the constitutional law of the State of Israel.<sup>43</sup>

On 6 August 2003, the Nationality and Entry into Israel Law (Temporary Order)-2003 was published. As a temporary law, it was extended several times, and the law in its current version was published on 1 August 2005. The law includes, inter-alia, provisions which prevent Palestinians residents of the OPT from entering the territory of Israel and consequently, it prevents family reunification in Israel between Israeli spouses and their Palestinian spouses residents of the OPT:

“... despite what is said in any legal provision, including article 7 of the Citizenship Law, the Minister of the Interior shall not grant the inhabitant of an area citizenship on the basis of the Citizenship law, and shall not give him a license to reside in Israel on the basis of the Entry into Israel Law, and the Area Commander shall not grant a said inhabitant, a permit to stay in Israel, on the basis with the security legislation in the area.”<sup>44</sup>

A number of exceptions were stated in the law. Among them, the commander of the region is authorized to grant permits to stay in Israel for the wife of an Israeli citizen if she is over the age of 25, and to the husband of an Israeli citizen if he is over the age of 35.

A petition challenging the constitutionality of the law was submitted to the High Court of Justice on July 2003. On 14 May 2006, the High Court of Justice, in an expanded panel of 11 justices, delivered its ruling on the petitions. The majority ruled to reject the petitions.<sup>45</sup>

Justice Cheshin, has determined in his ruling that there is no justification for cancelling the law neither in its entirety nor in part. One of his foundations is that the State of Israel is at war (or quasi-war) with the Palestinian Authority and the terrorist organizations that operate from within it and that in a time of war a state is entitled to prevent the entry of enemy nationals into its territory, even if they are married to citizens of the state. According to J. Cheshin, the Palestinian residents of the OPT are enemy nationals, and as such, they constitute a risk group to the citizens and residents of Israel. For this reason, the state is entitled – for the protection of its citizens and residents – to legislate a law prohibiting their entry into the state.

In the contrary of the decision in HCJ 7052/03, the Agreement on Movement and Access<sup>46</sup> signed on 15 November 2005, included undertakings to ease the movement of Palestinians within the West Bank by reducing the checkpoints “to the maximum extent possible”.<sup>47</sup>

At the time of writing, the only thing changed is the ruling of the high court in HCJ 7052/03 abovementioned. Changes in the Israeli policy concerning entry of Palestinians into Israel’s territory following the high court ruling should be studied closely in the future.

### ***International law***

The comprehensive closure and restrictions on movement within the OPT, including movement between East Jerusalem and the Gaza Strip and the West Bank prevents the freedom of movement of Palestinians stipulated in Article 13 of the UN Universal Declaration of Human Rights, which

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43 See for example the letter of HaMoked, Center for the Defence of the Individual to the military legal advisor of the West Bank of 16 January 2005, available at: [www.hamoked.org.il/items/8250.pdf](http://www.hamoked.org.il/items/8250.pdf).

44 Section 2, The Nationality and Entry into Israel Law (Temporary Order)-2003 available at: [http://www.knesset.gov.il/laws/special/eng/citizenship\\_law.htm](http://www.knesset.gov.il/laws/special/eng/citizenship_law.htm).

45 HCJ 7052/03 Adalah et. al. v. The Minister of the Interior et. al. (yet unpublished) available at: <http://elyon1.court.gov.il/files/03/520/070/a47/03070520.a47.pdf>

46 The agreement is available at: <http://www.usa.no/usa/policy/article.html?id=5085>

47 Ibid, article 4.



stipulates that: ‘1. Everyone has the right to freedom of movement and residence within the borders of each state; 2. Everyone has the right to leave any country, including his own, and to return to his country.’

Israel justifies its policy on the entry of Palestinians into its territories on the grounds that international humanitarian law does not grant residents of occupied territories a vested right to enter the sovereign territory of the occupying power. Thus, Israel has contradicted its undertakings and obligations in the Oslo agreements on safeguarding human rights.

### ***Freedom of movement and the right to leave the country under Israeli law***

The Basic Law: Human Dignity and Liberty stipulates that: ‘every person is free to depart from Israel’.<sup>48</sup> By enacting this provision the Knesset followed the line decided by the Israeli Supreme Court which held that the right to leave one’s country is a recognized right and a basic principle of the Israeli legal system. This basic law confers the right to leave on all persons, Israeli citizens and foreigners alike. The constitutional nature of this right means that it cannot be restricted except as provided by law which was intended for an appropriate purpose and only to the extent necessary<sup>49</sup>.

## **Movement between the Gaza Strip and Egypt<sup>50</sup>**

### ***Background***

Since the beginning of the Israeli occupation on the OPT, the Gaza Strip was declared a closed area. In spite of the general exit permit which enabled Palestinians from the Gaza Strip to travel to Israel or the West Bank, the prohibition of travelling abroad without a permit from the military commander of the area remained in force. Despite the prohibition of travelling abroad without an exit permit, in the late 1980s Israel applied what was known as the ‘open bridges’ policy<sup>51</sup> (Allenby Bridge and Adam Bridge on the Jordan River), which allowed residents of the OPT to travel to Arab countries, and allowed residents of Arab countries to visit the OPT according to conditions as established on several occasions, such as exit conditional on spending time abroad, or permit given with standard minimum requirement of nine month abroad.<sup>52</sup>

Residents of the Gaza Strip, who were allowed by the Israeli authorities to travel abroad, were able to leave through three points: the Rafah crossing point in the south of the Gaza Strip, Allenby Bridge to the east of Jericho and Ben-Gurion Airport in Israel.

Despite the ‘open bridges’ policy, residents of the OPT were required to obtain an exit permit issued by the civil administration in the resident’s area of residence. This involved an exhausting bureaucratic procedure where the individual received a form from the civil administration which then had to be stamped by a number of officials (police, military governor, local council or village elder, income tax, value added tax and property tax offices), testifying that the applicant did not owe money to the authorities and was not wanted for interrogation. The resident then returned the signed form to the civil administration and waited for a period of generally two weeks to receive a reply. After

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48 Basic Law: Human Dignity and Liberty, Section 6(a) of 1992) S.H. no. 1391, p. 150.

49 Ibid, section 8.

50 Further details see: “One Big Prison” a publication of Hamoked: Center for the Defence of the Individual and T’Tselem (March 2005).

51 Policy adopted by Moshe Dayan after the Six Day War, 1967, to provide access and contacts for the Arabs who just came under Israeli rule to reach other Arabs.

52 “Restrictions on Travel Abroad for East Jerusalem and West Bank Palestinians”, publication of : The Hotline: Center for the Defence of the Individual (Jerusalem, 1992), pp. 10.

receiving a permit, the resident proceeded to one of the crossing points in the Gaza Strip, the West Bank or Israel. These permits were generally valid for three years and could be extended for an additional three years.

Over the years, many applications to travel have been rejected because the applicant is a released prisoner, belongs to a particular age group, or is resident in a village of a key activist and so forth.

In September 1991 the requirement to obtain an exit permit before travelling abroad was abolished. Residents of the OPT could go to the border-crossing point and obtain an exit permit on the spot. This change saved the bureaucratic procedure, but it also added an element of uncertainty because a Palestinian had to reach the border first before knowing whether he would be allowed to travel or not. This situation was particularly difficult for people needed to obtain medical treatment abroad, and those wanting to travel to attend family occasions (weddings, funerals, etc.).

As a consequence of the closure policy, according to which Palestinians were required to obtain personal permits in order to enter Israel, including crossing between the West Bank and the Gaza Strip, the ability of Palestinians from the Gaza Strip to travel abroad via Allenby Bridge or via Ben-Gurion airport was curtailed.

### *The Oslo period*

The exit of Palestinians of the OPT abroad via the Rafah crossing and Allenby Bridge were stipulated in the Interim Agreement signed in 1995.<sup>53</sup> There are three situations in which Israel is entitled to prevent a Palestinian from travelling abroad: 1) for reasons set forth in the agreement; 2) when a traveller does not have the required documents (passport or analogous document issued by the PA is sufficient to enable Palestinian to travel abroad);<sup>54</sup> 3) and where a warrant against the individual has been issued by the PA and forwarded to the Israeli authorities.<sup>55</sup>

The Oslo Accords do not require the Palestinian traveller with the right documents to obtain a permit from Israel, but the Israeli authorities have continued to act as though nothing has changed so that many Gaza residents who travel to the crossing point with the relevant documents were sent back after learning that they were classified by Israel as 'prohibited from travelling abroad'.

## **The border-crossing procedure**

### *Entry from Egypt<sup>56</sup>*

Those wishing to enter the Gaza Strip from Egypt through the Rafah crossing must go to the Palestinian wing of the crossing. Before entering the Palestinian wing, passengers must identify their luggage which can be inspected by both Israeli and Palestinian security personnel within their own checking area. When entering the Palestinian wing, persons will pass through a magnetic gate, with an Israeli and Palestinian policeman posted on each side of the gate. In suspect cases each side will be entitled to require a physical inspection. Those entering the Palestinian wing will then pass through one of two lanes for identification and document control. The first lane is for Palestinians residents from the West Bank and the Gaza Strip who then pass via the Palestinian counter where their

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53 Article 8, of Annex I the Interim Agreement.

54 Interim Agreement, Annex III, Appendix 1, Art. 28(7).

55 Annex I of the Interim Agreement, Appendix 5, section I, Article 4(A).

56 See Art. viii(3) Annex I, Interim Agreement.

documents (a valid Palestinian passport/travel document)<sup>57</sup> and identity “will be checked by an Israeli officer who will also check their identity indirectly in an invisible manner”.<sup>58</sup> The second lane is for visitors to the West Bank and the Gaza Strip who are then checked at the Israeli counter, and then continue to the Palestinian counter. Following this, passengers collect their luggage and proceed to the customs area. The Palestinian side provides passengers whose entry is approved with an entry permit stamped by the Palestinian side and attached to their documents.

### ***Exit to Egypt***

Passengers leaving for Egypt enter the terminal without their luggage. Thereafter, the same procedures as for entry from Egypt apply, except that the order of passing via the Israeli and Palestinian counters is reversed.<sup>59</sup>

### ***The Dahanya Palestinian airport***

In 1997, as a part of the Oslo Accords, an international Palestinian airport operated by the PA opened in the south of the Gaza Strip providing a limited number of weekly flights to Arab countries. Passengers leaving from the airport were taken by bus to the Rafah crossing where they were checked by Israel, in the same way as those leaving for Egypt by land, before being taken back to the airport.

### ***The second intifada***

Technically speaking, Israeli policy on leaving the Gaza Strip to go abroad remained unchanged following the outbreak of the second *intifada* in September 2000, but in fact Israel has actually and effectively restricted the ability of residents of the Gaza Strip to travel abroad.

The Rafah crossing is now the sole exit point from the Gaza Strip for travelling abroad. Thus, Israel has almost totally stopped issuing transit permits to the West Bank for travelling abroad via Allenby Bridge or permits via Ben-Gurion Airport. In addition, in January 2001, Israel closed the Palestinian airport in Dahanya and later destroyed it in an air attack. As a consequence, any decision by Israel to close the Rafah crossing meant imposing an almost total siege on the Gaza Strip.

During this period the Rafah crossing was repeatedly closed. Israeli and Palestinian human rights organization filed dozens of petitions to the High Court,<sup>60</sup> and Israeli and international bodies put pressure on and petitioned that the Rafah crossing be reopened. Closure of the Rafah crossing also damaged Gazans who had travelled abroad and wanted to re-enter Gaza.<sup>61</sup> Palestinians were forced to spend a very difficult time in difficult conditions in the Egyptian Rafah crossing waiting for it to be opened.<sup>62</sup>

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57 Interim Agreement, Annex I, Appendix 5, Section I (2)(a)(3); see also Interim Agreement, Annex III, Appendix I, Art. 28(7).

58 Interim Agreement, Annex I, art. VIII(3)(d)(1).

59 See Art. VIII(4) Annex I, Interim Agreement.

60 See HCJ 11714/04, HCJ 11715/04, HCJ 11762/04, HCJ 483/05, HCJ 488/05, HCJ 533/05, HCJ 538/05 etc. All available on the HaMoked website at [www.hamoked.org.il](http://www.hamoked.org.il).

61 Physicians for Human Rights Israel together with the Al-Mizan Center for Human Rights, Gaza Community of Mental Health Program and twelve residents of the Gaza Strip who were stranded on the Egyptian side of the Rafah border crossing, petitioned the Israeli high court demanding that the Israeli army immediately open the crossing or supply a sufficient solution of the Palestinian residents who were trapped in the border. The petition is available in the website: [www.phr.org.il](http://www.phr.org.il).

62 See World Health Organization, Medical Treatment Abroad for Gaza Residents, 31 January 2005; OCHA, Situation Report, Rafah Terminal, 19 January 2005.

The decision to concentrate the movement of Palestinians in Gaza Strip through the Rafah crossing meant long lines of Palestinians waiting for hours on end at the entrances to the crossing. This congestion was exacerbated by the cut back in the crossing's opening times from twenty-four hours to seven, and by the ban on travelling via Allenby Bridge for Gaza Strip residents which in turn increased travelling time and costs particularly for those travelling to Jordan.

In April 2004, a new military rule came into operation with a sweeping ban on Gaza 16–35 leaving the Gaza Strip for any destination. The only exceptions to this rule were, humanitarian cases, i.e. the sick. A month later, however, this restriction was eased when the ban was removed for women.

In May 2004, a group of seven doctors and pharmacists requested permission to leave Gaza to attend a professional conference on antenatal care in Beirut. Since the Rafah crossing was then closed they were unable to leave. When they applied to the Israeli coordinator to leave via the Rafah crossing they were rejected because they were under the age of 35. An Israeli association, Physicians for Human Right (PHR) applied to the Israeli High Court on their behalf, but withdrew their application when it became clear that the applicants would not be given a permit to leave, and the time which was left before the conference was too short to allow the legal process to take place.<sup>63</sup>

In addition to the restriction on the movement of Palestinians on the basis of age, scores of Palestinians residents of the Gaza Strip were defined as 'prohibited from travelling abroad for security reasons'. Israel has never implemented any procedure for informing the residents of the several restriction imposed on them. As a result, a person wishing to travel abroad only discovers the restriction imposed on him on arrival at the passport check at the Rafah crossing. The absence of notification severely harms the entire population, particularly those needing to travel on specific day such as, patients scheduled to undergo surgery abroad, students, etc. Moreover, it means that residents incur substantial expenses, such as the purchase of plane tickets from Egypt to their destination, which subsequently have to be cancelled.

One indication of the increasingly strict approach taken by Israel on travel abroad by Gazans is the number of people who passed through the Rafah crossing in the periods before and after the second *intifada*. The Israel Airport Authority which was responsible for operating the crossing reports that 508,265 people, passed through the crossing in 1999, whereas in the period 2001–2004 The yearly average was approximately 197,100 people, that is, a drop of approximately 60% in the number of persons passing through in compare with 1999, as it displayed in the table below.

**Passengers traffic through the Rafah crossing “entries plus exits” between 1999-2004<sup>64</sup>**

<b>Year</b>	<b>1999</b>	<b>2000</b>	<b>2001</b>	<b>2002</b>	<b>2003</b>	<b>2004</b>
<b>Total passengers</b>	<b>508,265</b>	<b>441,555</b>	<b>192,338</b>	<b>204,402</b>	<b>259,386</b>	<b>209,016</b>
<b>Change in %</b>		<b>-15</b>	<b>-56</b>	<b>6.5</b>	<b>25</b>	<b>-19.4</b>

Source: Israeli Airports Authority

63 HCJ 4566/04 Abu Nada et al. v. the Commander of the IDF in the Gaza Strip (not published). The petition is available at: [www.phr.org.il](http://www.phr.org.il)

64 See the Israeli Airport Authority's website: <http://www.iaa.gov.il/Rashat/en-US/Borders/Rafiah/AbouttheTerminal/Statistics>

### ***International humanitarian law on travelling abroad***

International humanitarian law does not explicitly set forth the right of residents of an occupied territory to travel abroad or the ability of the occupier to limit such a right.<sup>65</sup> Thus, Israel's obligations in such matters are based on the general provisions relating to the daily lives of the residents, stipulated mainly in Article 43 of the Hague Regulations (1907). This article requires Israel to ensure 'public order and safety' (*la vie publica*) in the territory under its control.

Israel's High Court has written extensively on the practical impact of Article 43. For example, Justice Aharon Barak explained that:

The beginning of Article 43 of the Hague Regulations empowers and obligates the military government to restore order and public life [...] it covers order and public life in all their aspects. Therefore, in addition to security and military matters, this authority also applies to a variety of 'civil' issues, such as economics, societal matters, education, social welfare, sanitation, health, and *movement* with which modern society is involved.<sup>66</sup>

The ability to go abroad is a primary component of life in every modern society, and certainly in the Gaza Strip, where residents are dependent on visits abroad to meet their vital needs, such as obtaining medical treatment, higher education and employment opportunities. In view of this obligation, Israel must balance its security needs against the rights of the Palestinian population in general, and the right to go abroad, in particular. In the words of Justice Shlomo Levin:

The obligation of the military government [...] is to ensure order and the public life of the local population, while properly balancing the welfare of the population in the territories and military needs...<sup>67</sup>

In another decision, Justice Ayala Procaccia specifies the nature of this obligation:

The Hague Convention empowers the regional commander to act in two major fields: one—ensuring the legitimate security interest of the occupier of the territory, and two—ensuring the needs of the local population....<sup>68</sup>

### ***International human rights law***

On the assumption that the human rights covenants, derived from international law, also apply in occupied territories, there is nothing to prevent granting the right to leave to those residents of such territories who are citizens of the occupied power.<sup>69</sup> International human rights law expressly recognize the right of everyone to go abroad. Article 12 of the International Covenant on Civil and Political Rights (1966) which was signed by Israel on 19 December 1966 and ratified by the government of Israel on 3 October 1991, states explicitly and unambiguously that: '2. Everyone shall be free to leave any country, including his own', and that, '4. No one shall be arbitrarily deprived of the right to enter his own country'.

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65 See Y. Zilbershats 'The Right to Leave Israel and its Restriction on Security Grounds' (1994) 28 Israel Law Review 626, p. 679.

66 HCJ 393/82, Jam'iyat Iskan al-Mu'aliman al-Mahddudat al-Mus'uliyah, Teachers' Housing Cooperative Society, Duly Registered at Judea and Samaria Headquarters v. Commander of IDF Forces in Judea and Samaria et al., 37(4) P.D. 785, 798.

67 HCJ 2977/91, Haji v. Minister of Defense, 46 (5) P.D. 474.

68 HCJ 10356/02, Hass v. IDF Commander in the West Bank, 55(3) P.D. 443, P.455.

69 For this sort of approach see G.I.D.A. Draper, 'The Relation between Human Rights Regime and the Law of Armed Conflict' (1971), 1 Israel Year Book of Human Rights 191, p. 198. For a different approach see J.S. Pictet, *Humanitarian Law and the Law of War Victims* (1975) 13–15.

The Covenant permits restrictions on these rights on the grounds of ‘national security’, and ‘in time of public emergency’. However, according to both the Covenant and Israeli administrative law, a state may not arbitrarily or disproportionately deny exercise of this right, as the Covenant in Article 12(3) states:

The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedoms of others, and are consistent with the other rights recognized in the present covenant.

The Israeli High Court has declared that the state must provide substantial justification as to why a person should be prevented from travelling abroad, and that the burden of proof does not lie with the person wanting to exercise the right:

The freedom of a citizen to travel abroad is a natural and recognized right, an obvious right, in every democratic country [...]. The only significance of a permit is [...] not ‘positive’ but ‘negative’; it proclaims: We, the competent authorities, do not oppose you, Citizen John Doe, leaving the country if you so wish. That is, we have not found any reason to forbid you doing so. Therefore, *there must be grounds for prohibiting the citizen from, and not a reason why he should be allowed to leave the country*, for it is impossible to explain the absence of a reason.<sup>70</sup> (Italics added)

However, Israeli policy regarding residents of the Gaza Strip going abroad and their right to return to the Gaza Strip as they wish is arbitrary and lacks proportionality. Israel makes no attempt to balance the state’s interest to security with the rights of the Palestinians to freedom of movement. The lack of transparency regarding the reasons a person is denied the right to go abroad is one indication of arbitrariness and sweeping criteria of the policy. With no information provided regarding suspicions against an individual there is no real possibility to appeal against the decision.

Infringement of the right to go abroad entails the violation of other human rights, such as the right to work, health and education, which are enshrined in other human rights covenants such as the International Covenant on Economic, Social and Cultural Rights.

Finally, the prohibition on Palestinians going abroad is in flagrant violation of the Oslo Accords where both sides undertook to safeguard human rights,<sup>71</sup> which in Israel’s opinion too, continue to apply.<sup>72</sup>

### ***The Post-Disengagement Plan Period***

On 20 February 2005, 12 days after the Sharm el-Sheikh summit was held between President of the PA, Mahmoud Abbas, and the Israeli Prime Minister Ariel Sharon, the Israeli government obtained the necessary approval to carry out the Disengagement Plan which calls for the Israeli military to leave the Gaza Strip and for the evacuation of all Israeli settlements in Gaza. The Israeli government expressly stated that disengagement will ‘invalidate the claims against Israel regarding its responsibility for the Palestinians in the Gaza Strip’.<sup>73</sup>

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70 The opinion of Justice Turkel in HCJ 4706/02, Sheikh Raid Salah et al. v. Minister of the Interior, as quoted in HCJ 111/53, Kaufman v. Minister of the Interior.

71 For example Art. 19 of the Interim Agreement, Art. 11(1) of Annex 1 of the Interim Agreement; Art. II (C)(4) of the Wye Memorandum of 23 October 1998.

72 The Israeli government’s decision on the Disengagement Plan, of 6 June 2004, states that: ‘the plan’s activity do not derogate from existing relevant agreements between the State of Israel and the Palestinians. The relevant existing agreements shall continue to apply’ (italics added).

73 Government Decision 1996, 6 June 2004, ‘Amended Disengagement Plan, Continuation of Discussion’, Section 1 (f) the plan is available on the Prime Minister’s Office’s website at: [www.pmo.gov.il/PMO/Hitnatkut](http://www.pmo.gov.il/PMO/Hitnatkut).

### ***Israeli legal responsibility following Disengagement***

After the implementation of the Disengagement Plan and the evacuation of the IDF from the Gaza Strip in 12 September 2005, the IDF commander proclaimed: 'the military governance on the Gaza Strip is ended'.<sup>74</sup> But does disengagement really puts an end to Israel's responsibility for the population in the Gaza Strip? In order to answer this question we will take a brief look at the Disengagement Plan.

#### ***What is the Disengagement Plan?***

On 6 June 2004 the Israeli government adopted the amended Disengagement Plan.<sup>75</sup> Its key elements are the removal of armed forces from the Gaza Strip and the evacuation of all Jewish settlements. It also calls for the evacuation of four settlements and a few army posts in the northern West Bank. On 16 February 2005 the Knesset passed the final reading of the law implementing the Disengagement Plan, including the payment of compensation to evacuated settlers.<sup>76</sup> On 20 February 2005, the government approved the evacuation of settlements, and the Prime Minister and the Minister of Defence signed the evacuation orders.

The government's decision states that the Disengagement Plan is part of Israel's commitment to the peace process, in general, and to the road map drafted by US President Bush and approved by the UN Security Council, in particular. However, in the light of Israel's statement that 'there is no Palestinian partner with whom a bilateral peace process can progress', the government decided to disengage unilaterally, and not in the context of an agreement with the PA and without handing over powers to it.<sup>77</sup>

According to the plan, the disengagement from Gaza does not change the arrangements for Gazans entering Israel, including travel to the West Bank, or for Israelis entering the Gaza Strip. Workers will be allowed entry 'in accordance with existing criteria' with a long-term goal to 'reduce, to a total cessation, the number of Palestinian workers entering the State of Israel.'<sup>78</sup> In addition, Israel will continue to control the Philadelphi route, which runs along the Gaza-Egypt border, and that, 'in the future, the government will consider leaving this area'.<sup>79</sup> Moreover, Israel will maintain its control of the airspace and territorial waters of the Gaza Strip,<sup>80</sup> With a well to consider establishing a seaport and airport after leaving the Philadelphi route.<sup>81</sup> The plan states that the economic arrangements between Israel and the PA will remain in force.<sup>82</sup>

The most important of the plan's statements is the government's declaration that even after disengagement, the army will continue to operate in the Gaza Strip in a manner of: "preventive measures and responsive acts using force against threats emanating from the Gaza Strip".<sup>83</sup>

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74 The proclamation is available at: [www.hamoked.org.il](http://www.hamoked.org.il).

75 'Government Decision 1996, 6 June 2004, 'Amended Disengagement Plan, Continuation of Discussion', Section 1 (f) the plan is available on the Prime Minister's Office's website at: [www.pmo.gov.il/PMO/Hitnatkut](http://www.pmo.gov.il/PMO/Hitnatkut)

76 Implementation of the Disengagement Plan Law 5765/2005.

77 Disengagement Plan, Appendix 1, Section 1.

78 Disengagement Plan, Appendix 1, Section 10(e).

79 Disengagement Plan, Appendix 1, Section 6. This section states, in part, that the Israeli presence along the route is 'a vital security need', and that, 'in certain places, physical expansion of the territory in which the army is active may be necessary'.

80 Disengagement Plan, Section 3(1)(1).

81 Disengagement Plan, Section 6.

82 Disengagement Plan., Section 10.

83 Disengagement Plan, Section 3(a)(3).

Despite the abovementioned indications of the effective control that Israel will retain after disengagement, the government's decision states that, 'completion of the plan will invalidate the claims against Israel on its responsibility for the Palestinians in the Gaza Strip',<sup>84</sup> and that following the implementation of the plan, 'there will be no basis for the contention that the Gaza Strip is occupied territory'.<sup>85</sup>

### ***Applicability of international humanitarian Law following Disengagement***<sup>86</sup>

According to international humanitarian law, the moment that a piece of territory is occupied, the 'laws of belligerent occupation', apply.

Under international humanitarian law, the test for determining whether an occupation exists is "effective control" by a hostile army beyond its sovereign borders, not the positioning of troops.<sup>87</sup> According to the Hague Regulations of 1907:

Territory is considered occupied when it is actually placed in the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised.

Israel's position regarding its responsibility following disengagement is similar to its position regarding its responsibility after signing the Oslo Accords and the transferral of the civil administration to the PA in A areas. According to international law, the creation and continuation of belligerent occupation does not depend on the state's decision to maintain and operate a mechanism for administering the lives of the population, but only on its *military control* of the territory. The Israeli High Court has discussed this question in connection with Israel's activity in South Lebanon, and held that:

...Applicability of the third chapter of the Hague Regulations and applicability of the comparable provisions of the Fourth [Geneva] Convention are not dependent on the existence of a special organized system that takes the form of a military government. The duties and powers of the military forces, resulting from effective occupation of a particular territory, arise and are created as a result of military control of the territory, that is, even if the military forces maintain control only by means of its regular combat units, without having a special military framework for the [military] government's needs.<sup>88</sup>

Concerning permanent military presence in occupied territory, experts in international humanitarian law argue that effective control can exist even when the army only controls key points in the area but in such a way as to assert its control over the entire area and thus prevents the operation of a central government with enforcing authority.

The international court of justice, in its decision of 19 December 2005 regarding the activities of the Ugandan army in Congo territories stated that:

The court first observes that the territorial limits of any zone of occupation by Uganda in the DRC cannot be determined by simply drawing a line connecting the geographical location where Uganda troops were present, as has been done on the sketch-map presented by the DRC.<sup>89</sup>

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84 Disengagement Plan, Section 1(f).

85 Disengagement Plan, Section 2(a).

86 This section is based mainly on HPCR Policy Brief "Legal Aspects of Israel's Disengagement Plan under International Humanitarian Law" available at: [www.ihlresearch.org/opt](http://www.ihlresearch.org/opt)

87 G. Schwarzenberger, *Law as Applied by International Courts and Tribunals: Vol. II, The Law of Armed Conflict* (London: Stevens, 1968) 324.

88 HCJ 102/82, *Tsemel v. Minister of Defense et al.* 37 (3) P.D. 365, 371.

89 ICJ Case Concerning Armed Activities on the Territory of the Congo-Democratic Republic of Congo v. Uganda, p. 59; available at: [www.icj-cij.org](http://www.icj-cij.org).



The Nuremberg military tribunal set up to try Nazi war criminals after World War II has examined this question too. In one of its decisions, the tribunal dealt with whether Yugoslavia, Greece, and Norway were occupied or before occupation, when the defendants committed the alleged acts (terrifying and murdering masses of civilians)

While it is true that the partisans were able to control sections of these countries at various times, it is established that the Germans could at any time they desired assume physical control of any part of the country. The control of the resistance forces was temporary only and not such as would deprive the German Armed Forces of its status of an occupant.<sup>90</sup>

Israel's plan to maintain total control of the land borders, air space, coastline, and territorial waters of the Gaza strip which directly affects the local population's ability to conduct a normal life in addition to the Israel's control of the Gaza's telecommunications, water, electricity and sewage networks as well as the flow of people and goods into and out of the Gaza Strip, furthermore the declaration to take military action in the Gaza Strip, even as a 'preventive measure' make the Israeli claim of an end of the occupation in the Gaza Strip questionable.

In contrary to Israel's claims concerning the non-applicability of humanitarian law and human rights law in the Gaza Strip after the implementation of the Disengagement Plan, Article 47 of the Geneva Convention states:

Protected persons who are in occupied territory shall not be deprived, in any case or in any manner whatsoever, of the benefits of the Convention by any change introduced as a result of the occupation of territory, into the institutions or government of the said territory, nor by any agreement between the authorities of the occupied territories and the Occupying Power...

J. S. Pictet in his official commentary on this article states:

During the Second World War whole populations were excluded from the application of the laws governing occupation and were thus denied the safeguards provided by those laws and left at the mercy of the Occupying Power.<sup>91</sup>

Furthermore, even if Israel no longer occupies the Gaza Strip, it would retain responsibilities for the welfare of the local population under its control as a party to the conflict even if it does not have effective control over the territory, including granting special protection to the wounded and sick, children under the age of fifteen, and expectant mothers, Israel must also allow the free passage of all consignments of medicine, essential foodstuffs, and objects for religious worship with the general prohibition from imposing collective punishments.<sup>92</sup>

### ***Applicability of international human rights law following Disengagement***

International human rights law also requires Israel to protect the human rights of residents of the Gaza Strip under its control following disengagement even if it does not has "effective control" on the Gaza strip as it was explained above.

Article 2 of the International Covenant on Civil and Political Rights states that States Parties undertake to respect and ensure to all individuals 'within its territory and subject to its jurisdiction' the rights in the Covenant. The UN Human Rights Committee, which is responsible for interpreting the Covenant, stated that these are two separate conditions, each of which renders the Covenant applicable. As the Committee has recently held:

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90 USA v. Wilhelm List et al., Law Reports of Trials of War Criminals, Vol. VIII (London: United Nations War Crimes Commission, 1949) 56.

91 J. S. Pictet, 'Commentary: IV Geneva Convention Relative to the Protection of Civilians in Time of War', International Committee of the Red Cross, 1958 Geneva, at p. 273

92 Art. 23, The Fourth Geneva Convention.

This means that a State party must respect and ensure the rights laid down in the Covenant to *anyone within the power or effective control of that State Party*, even if not situated within the territory of the State Party.<sup>93</sup> (Italian added)

This understanding was reflected in the Committee's decision on complaints made to it by persons claiming that their rights had been violated.<sup>94</sup> For example, in the case of a political activist from Uruguay who was abducted by Uruguayan secret service agents while he was in Argentina, the Committee held that, although the acts for which the complaint was filed took place outside Uruguay, the state had the responsibility to apply the Covenant in that incident where its agents violated the provisions of the Covenant.<sup>95</sup>

In its advisory opinion regarding the instruction of the 'separation wall' in the OPT the ICJ stated that the International Covenant on Civil and Political Rights (1966), the Covenant on Economic, Social and Cultural Rights (1966), and the Covenant on the Rights of the Child are applicable in the OPT.<sup>96</sup>

The Convention on the Elimination of All Forms of Racial Discrimination,<sup>97</sup> the Convention against Torture,<sup>98</sup> and the Convention on the Rights of the Child,<sup>99</sup> contains provisions stating that they apply to situations where the state imposes its authority on persons, without limitation, based on the status of the territory in which the situation exists. The Covenant on Economic, Social and Cultural Rights and the Convention on the Elimination of All Forms of Discrimination against Women do not contain explicit provisions defining its applicability. However, the UN committees responsible for interpreting them have adopted the interpretation of the Human Rights Committee, whereby they apply to any act taken by a party to the Convention, regardless of where the act occurred.<sup>100</sup> International judicial bodies, such as the European Court on Human Rights and the Inter-American Commission on Human Rights have on several occasions made states liable for actions taken outside their borders.<sup>101</sup>

This interpretation is dictated also by reading art. 1 of the Universal Declaration of Human Rights: 'All human beings are born free and equal in dignity and rights'.<sup>102</sup> Which expresses the right of every human being to such rights with no regard to their membership in any collective or on recognition of those rights by the state; rather, they are entitled to these rights *qua* human beings. Thus, Israel's reading of human rights conventions, according to which states will not be called to judgment for acts carried out beyond their borders, is inappropriate. The Israeli courts have not yet reached a decision on the responsibility of the State of Israel under international human rights law for any acts or omissions that violate the human rights of Gaza Strip residents following the implementation of the

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93 Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties on States Parties to the Covenant: 26 May 2004, UN Doc. CCPR/C/21Rev. 1/Add/13/.

94 The First Protocol Additional to the Geneva Conventions entitles persons residing in states party to the Protocol to file complaints for violation of their rights under the Covenant, subject to certain conditions (such as exhausting the remedies available in the state). Israel has not signed this protocol.

95 Human Rights Committee, Communication No. 52/1979: Lopez Burgos v. Uruguay, paras. 12.2 and 12.3, UN Doc. CCPR/C/13/D/52/1979.

96 See ICJ Advisory Opinion on the separation wall, *supra* n. 21.

97 Art. 3.

98 Art. 2(1).

99 Art. 2(1).

100 Regarding the Committee's position on the interpretation of the International Covenant on Economic, Social and Cultural Rights, see, for example, Committee on Economic, Social and Cultural Rights, General Comment 1 (Reporting by State Parties), UN Doc. E/1989/22 (1989).

101 See, for example, *Loizidou v. Turkey*, 310 European Court of Human Rights (1995); Inter-American Commission on Human Rights, Report No. 109/99, *Coard. v. the United States*, 29 September 1999.

102 Universal Declaration of Human Rights, Art. 1.

Disengagement Plan. For example, the human rights' association, HaMoked (the Center for the Defence of the Individual), is awaiting a decision on the responsibility of the Israel under international humanitarian law submitted to the courts in 13.03.06<sup>103</sup>

***Between the implementation of the Disengagement Plan and the Agreement on Movement and Access***<sup>104</sup>

Israeli military policy regarding the rules governing the movement of Palestinians in the OPT are not in the public domain. What we know has been learnt from judicial decisions or responses to petitions submitted to the Israeli courts regarding rights' violations by the IDF in the OPT.

Israeli recent policy on the movement of Palestinians abroad is illustrated by a response of the Israeli Attorney General to a petition submitted to the Israeli High Court.<sup>105</sup> A resident of the Gaza Strip whose application to travel to Egypt via the Rafah crossing for medical treatment was rejected by the Israeli IDF commander in the Gaza Strip petitioned the High Court of Justice requesting the IDF commander to determine temporary arrangements to enable Gazans to travel abroad in the interim period until the political level decide on a permanent one. In his response, the Attorney General stated that subsequent to the implementation of the Disengagement Plan, and the withdrawal of the Israeli military from the Gaza Strip in 12 September 2005, Israel no longer has authority on the issue of permissions of movements to and from the Gaza Strip and that this authority was ceded to the Palestinian Authority.

No more Israeli attendance in the Rafah crossing, and all the decisions regarding the opening of the Rafah crossing and its timetable were carried out according to political arrangements and co-ordination between the Israeli, the Palestinian and Egyptian sides.

When the Rafah crossing was open it was operated by the Palestinian police on the Palestinian side and there was no limitation on the identity of the passengers who were simply checked and were registered by passing.

Since the Israeli withdrawal, humanitarian cases have been dealt with by a Palestinian civil committee that then cedes them to the Israeli side which examines the applications and according to the degree of humanitarian need, the possibility of travelling abroad for a Gaza resident through the Erez Crossing or even the Ben-Gurion airport. All other applications concerning travelling abroad of the Palestinian residents of the Gaza Strip should have been submitted to the PA.

***The current situation***

On 15 November 2005 Israel and the Palestinians reached a deal on the Gaza border crossing after intense negotiations arranged by us Secretary of State, Condoleezza Rice. The details of the agreement are contained in two documents, the Agreement on Movement and Access, and the Agreed Principles for the Rafah Crossing.<sup>106</sup> According to the deal, the Rafah crossing will officially be under Palestinian control for the first time according to international standards in accordance with Palestinian law and subject to terms of the Agreement on Movement and Access. Monitors from the European Union will

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103 HCJ 2277/06 Hamoked v. The State of Israel et. al. (not yet decided) available at: <http://www.hamoked.org.il/items/8223.pdf> . see also HCJ 11120/05 Hamdan et. Al v. IDF Commander (not yet decided), the response of the state, available at: : [www.gisha.org/state-response-19-1-06.doc](http://www.gisha.org/state-response-19-1-06.doc)

104 The agreement is available at: <http://www.usa.no/usa/policy/>.

105 HCJ 9653/05 Alzen v. The IDF Commander of the Gaza Strip (not yet decided). The response of the Israeli attorney general is available on: <http://www.hamoked.org.il/items/7937.pdf> .

106 The agreement is available at: <http://www.usa.no/usa/policy/article.html?id=5085>

have the final say in any dispute about who and what is allowed in and out of the territory. The Israelis will monitor the situation via closed-circuit television.

Use of the Rafah crossing will be restricted to Palestinian ID holders and others by exception in agreed categories with prior notification to the government of Israel and approval by the senior leadership of the PA. The exempted categories are: diplomats, foreign investors, foreign representatives of recognized international organization and humanitarian cases. In such cases the PA should notify the government of Israel 48 hours in advance of the crossing. The government of Israel should respond within 24 hours with inclusive reasoning of the decision. The PA will notify the government of Israel of their decision within 24 hours and will include the reasons for their decision. These procedures will remain in place for a period of 12 months, unless the third party delivers a negative evaluation of the PA's operation of the Rafah crossing. This evaluation will be carried out in close coordination with both sides and will give due consideration to their opinions. Foreigners and Palestinians who are not registered in the population registration will not be allowed to enter the Gaza strip via Rafah crossing, but via the other crossings of the strip which are under the Israeli control after obtaining a permit from the Israeli authorities.

According to the agreement, the Rafah crossing will be the only crossing point between the Gaza Strip and Egypt (with the exception of Kerem Shalom for the agreed period). The PA will establish clear operating procedures. Until Rafah is operational, the PA will open the Rafah crossing on an *ad hoc* basis for humanitarian reasons such as the passage of religious pilgrims, medical patients, and others, in coordination with General Gilad's office on the Israeli side.

On 25 November 2005, the Council of the European Union established the European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah).<sup>107</sup> The aim of EU BAM Rafah is to provide a third-party presence at the Rafah Crossing Point (Gaza–Egypt Border) in order to facilitate, in cooperation with the Community's institution-building efforts, the opening of the Rafah crossing point and to build up confidence between the government of Israel and the PA. To this end the EU BAM shall monitor, evaluate and verify the performance of the PA with regard to the implementation of the agreements concluded between the parties; and the monitoring process should help building up the Palestinian capacity in all aspects of border management at Rafah. Responsibility for border and customs management will remain fully with the PA.

The Rafah crossing was opened on 26 November 2005 and the operational phase of EU BAM Rafah began on 30 November 2005 and will last for a period of 12 months.

At the time of writing the Rafah crossing is managed by the Palestinian authorities with the supervision of the EU BAM Rafah according to the agreement of movement and access as it was displayed above.

## **Movement between the Gaza Strip and the West Bank**

### ***Background***

Although the West Bank and the Gaza Strip are geographically separated, they are in many important ways a single political unit. This is by virtue of the collective consciousness that has developed since the 1967 occupation, and the fact that Israel administers them in a similar and coordinated manner.

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107 Council Joint Action 2005/889/CFSP of 12 December 2005 on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah). Available at:  
[http://www.consilium.europa.eu/uedocs/cmsUpload/060206%20EU%20\\_BAM\\_RAFAnew.pdf](http://www.consilium.europa.eu/uedocs/cmsUpload/060206%20EU%20_BAM_RAFAnew.pdf)

Since the end of the 1967 war until the start of the first *intifada* Israel allowed Palestinians from the two sides to move, almost, freely and without obstacles.<sup>108</sup> Thereafter any Palestinian wishing to enter Israel has had to obtain an entry permit. This permit was also valid for movement between the two areas. After a suicide attack in March 1993, a general and comprehensive closure was imposed on the OPT. As a consequence no permits were issued to Palestinians, except in some humanitarian cases.

In order to understand Israeli obligations regarding the movement of Palestinians between the two areas we need to examine the legal ties between the Gaza Strip and the West Bank. In the Declaration of Principles signed on 13 September 1993 the two sides defined the West Bank and the Gaza Strip as 'one territorial unit whose integrity will be preserved during the interim period'.<sup>109</sup> Pursuant agreements repeated this commitment, such as: Article 11, chapter 2 of the Interim Agreement, which states that:

The two sides view the West Bank and the Gaza Strip as a single territorial unit, the integrity and status of which will be preserved during the interim period.

Article 1(2) of Annex I of the interim agreement repeats:

in order to maintain the territorial integrity of the West Bank and the Gaza Strip as a single territorial unit, and to promote their economic growth and the demographic and geographical links between them, both sides shall implement the provisions of this annex, while respecting and preserving without obstacles, normal and smooth movement of people, vehicles and goods within the West Bank, and between the West Bank and the Gaza Strip.

The significance of seeing the West Bank and the Gaza Strip as a single territorial unit is derived from the fact that Israel is bound to implement the provisions of Article 12(1) of the International Covenant on Civil and Political Rights which states that:

Everyone lawfully within the territory of a state shall, within that territory, have the right to liberty of movement and freedom to choose his residence.

Israel ratified the Covenant in 1991 and is legally bound to its provisions regarding the treatment of persons under its control, including the Palestinians in the OPT.

### ***The Oslo period***

The peace process brought an expectation of improved freedom of movement between the Gaza Strip and the West Bank with the planned setting up of the 'safe passage'. In the Interim Agreement Israel undertook to provide safe passage between the two areas in order to facilitate the movement of people between the West Bank and the Gaza Strip and to assure that inspective entry to the state of Israel will not occur.

There shall be a safe passage connecting the West Bank with the Gaza Strip for movement of persons, vehicles and goods, as detailed in this Article.<sup>110</sup>

Two routes were to be designated as safe passages Israel was entitled, for security reasons, to close one of them or to alter the terms of entry, but should assure that one of the passages is always open.<sup>111</sup> Unfortunately, the real situation was less rosy. In 1995, about the time of the Israeli military's redeployment in the Gaza Strip pursuant to the Oslo Accords, Israel built a electric perimeter fence which runs along the Green Line encircling the Gaza Strip and separating it from Israel. This fence led to an almost total severance between the Gaza Strip and the West Bank, which is defined in the Interim Agreement a single territorial unit.

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108 See section entitled 'Movement between the OPT and Israel'.

109 Art. 4 of the Declaration of Principles.

110 Art. 10, Annex I, Interim Agreement.

111 Appendix I, para. (C)(4) X of Interim Agreement.

On 5 October 1999 the Protocol Concerning Safe Passage between the West Bank and the Gaza Strip<sup>112</sup> was signed between the Israeli and the PA.

### *The passage procedure*

According to the Protocol, residents of the West Bank and the Gaza Strip wishing to make use of safe passage must arrive at the safe passage terminal with a safe passage card<sup>113</sup> or an entry permit to Israel where they will identify themselves using their Palestinian passport or travel document.<sup>114</sup> On-duty Palestinian policemen and minors under the age of 14 were not required to receive a safe passage card for the use of safe passage. Minors under the age of 16 accompanied by a parent and registered on that parent's identity card were not required to carry individual safe passage cards. Unaccompanied minors may also use the safe passage without a safe passage card provided they are under the age of 14 as proven by a birth certificate or a certified copy of the parent's identity card on which they are registered; or if they are accompanied by an adult (18 or over). The safe passage card is valid for one year for multiple two-way journeys on the safe passage routes.

Persons who were denied entry into Israel were able to use safe passage by means of shuttle buses which were escorted by Israeli security forces vehicles, and which were operated from 7 a.m. to 2 p.m. on Mondays and Wednesdays each week.

After identification at the terminal and the validity check of the safe passage card, travellers will be issued with a safe passage slips.<sup>115</sup> The Palestinian side shall transfer to the Israeli side all applications for safe passage cards, after initial Palestinian security approval.<sup>116</sup> The Israeli side shall respond to the applications within two working days.

Safe passage cards were issued in the Israeli District Civil Liaison Office (DCL) in the West Bank or in the Regional Civil Affairs Subcommittee (RCAC) in the Gaza Strip. Men over 50 and women should generally receive their safe passage cards through the Palestinian side, except for special cases. Those whose applications for safe passage have been approved shall receive their safe passage cards at the Israeli side of the District Coordination Offices (DCOs). Upon completion of the journey, the safe passage slips and safe passage stickers shall be returned to the Israeli authorities at the destination crossing point.

Individual safe passage slips were issued and stamped by the Israeli authorities at the crossing points with the time of departure and the estimated time of arrival. This estimated time should allow completion of the journey within a reasonable time.

In 1998, prior to the outbreak of the second *intifada*, the UN body of experts that monitors compliance with the International Covenant on Civil and Political Rights (ICCPR), the Human Rights Committee, expressed concern about the grave consequences of restriction on movement in the OPT, especially between the Gaza Strip and the West Bank.

while acknowledging the security concerns that have led to restrictions on movement, the Committee notes with regret the continued independents imposed on movement, *which affects, mostly, Palestinians travelling in and between East Jerusalem, the Gaza Strip and the West Bank* and which have grave consequences affecting nearly all areas of Palestinian life. (italics added)

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112 The Protocol is available at: <http://www.state.gov/p/nea/rls/22697.htm>

113 Art. 3(A) of the Protocol.

114 Para. 6, Art. 28, Appendix 1, Annex III to the Interim Agreement.

115 Art. 3(B) of the Protocol.

116 Art. 3(C) of the Protocol.

The committee considers this to raise serious issues under Article 12, in regard to persons in these areas, the council urges Israel to respect the right to freedom of movement provided for under Article 12...<sup>117</sup>

After a delay of some years the southern safe passage was opened in October 1999 as a part of the Wye Agreement signed in October 1998. This facilitated the movement of Palestinians between the Gaza Strip and the West Bank, but they still obliged to obtain transit permit from Israel and obliged to sustain security checks at the exit checkpoints.

Some uses of the safe passage were carried out by buses with an army escort. Thousands of Palestinians were allowed to use the safe passage; on the other hand, thousands were classified as 'absolutely forbidden' and were not allowed to use the safe passage even with an army escort.

### ***The permit system***

The main body responsible for administrating the permit system is the Israeli District Coordination Office (DCO), which was set up pursuant to the Interim Agreement. The Israeli DCO in Gaza is located inside the closed army compound in the industrial zone at the Erez checkpoint. The Israeli DCO does not have direct contact with the Palestinian population but conducts its activities through the Palestinian DCO, which acts as a mediator in matters regarding permits.<sup>118</sup> In fact, some Palestinian applicants are denied permits to move between the two parts without any explanation or the right to appeal.<sup>119</sup> The Israeli authorities appear to grant or deny permits in an entirely random way without any obvious grounds. Before the second *intifada* any Palestinian wishing to obtain a work permit for Israel (which was used also as a permit to move between the two areas) had to be over the age of 23, married and without a security or criminal record.

### ***The second intifada***

With the outbreak of the second *intifada* in September 2000 Israel closed the safe passage in October 2000 which had been in operation for less than a year, and it has been closed ever since. However, the Oslo agreements forbid such closure.

Since the onset of the second *intifada*, while the safe passage is closed, the Israeli policy which required Palestinians wishing to move between the two areas to apply for an entry permit to enter Israel was reinstated. As a consequence, less and less requests to use the safe passage were approved arbitrarily with no obvious criteria.

HaMoked, the Center for the Defence of the Individual, a human rights' association in Israel, made several requests to the IDF commander to set criteria and inform the public of its procedure for handling Palestinian requests for transit permits to travel between the West Bank and the Gaza Strip. When its request was not granted, Hamoked petitioned the High Court. In its response to the petition, the state contended that:

These requests are handled on substantive grounds and are examined ...in accordance with the specific circumstances in each particular case, so it would be in appropriate to set rules.<sup>120</sup>

The High Court adopted the state's position and rejected the petition.

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117 CCPR/C/79/Add 93, para. 22.

118 See Art. iii(3), Annex I, Interim Agreement.

119 See HCJ 6040/04, Maryam A'mor et v. Commander of IDF IN Gaza Strip (not yet published) response by the State Attorney's Office, section 4; available on the HaMoked website: [www.hamoked.org.il](http://www.hamoked.org.il).

120 HCJ 6040/04, in HCJ 6040/04, Maryam A'mor et v. Commander of IDF IN Gaza Strip (not published) response by the State Attorney's Office, section 4; the petition is available on the HaMoked website: [www.hamoked.org.il](http://www.hamoked.org.il).

Counter to the state's contention that every case is examined on 'substantive grounds' many requests were rejected on the basis of general criteria such as age or family status, regardless of whether the IDF has suspicions against the applicant. In a petition filed by ten residents of the Gaza Strip, who wanted to travel to the West Bank to study social work at Bethlehem University, the state admitted that its refusal:

Is not based on a particular examination of each of the petitioners, but on the assessment made by security officials whereby individual examinations are not conducted to eliminate the fear of a threat to regional and state security inherent in granting the petitioners permit to exit Gaza Strip, in light of their *risk profile* and because of intelligence reasons...<sup>121</sup>

The High Court accepted the state's argument and rejected the students' petition. The number of cases where the IDF commander first rejected and subsequently agreed to issue transit permits for travel between the West Bank and the Gaza Strip after the intervention of a lawyer or a human rights' organization, indicates the random and arbitrary nature of such decisions. This policy was in force until the implementation of the Disengagement Plan and the evacuation of the Israeli forces from the Gaza Strip.

### ***The post-Disengagement Plan period***

Israel's declared position and policy concerning movement between the two areas is that after the implementation of the Disengagement Plan and the evacuation of the IDF from the Gaza Strip in 12 September 2005, there is no right to enable movement of Palestinians between the two areas since the Gaza Strip is no longer under belligerent occupation and the West Bank is still declared as closed area, that as an occupying power, Israel declares that it is not legally obliged to enable movement of Palestinians through its sovereign territories. This statement was displayed by the Israeli Attorney General to the Supreme Court.<sup>122</sup> In his response, the State Attorney declared that:

In general, movement from Gaza Strip to Judea and Samaria is possible for limited categories that fit concrete criteria as follows:

- a. VIPs from the Palestinian authority and VIP businessmen, as they were defined by the PA and senior employees of international organizations that their passage is vital. The definition of these categories which their passage is possible is a political matter that is determined in the framework of the negotiations between Israel and the Palestinian authority. .... As to the recent security situation, only a few dozens are allowed to pass according to private applications..... the policy of permits to move between the Gaza Strip and Judea and Samaria is differential and changing in accordance with the security situation, the progress in the negotiations with the Palestinian side and with the decisions of the political level.
- b. Judea and Samaria residents who are existing in the Gaza Strip. Israel allows the return of residents to Judea and Samaria whose address is in the Judea and Samaria.
- c. Medical cases, humanitarian cases and exceptions according to examination of every case separately.'

Thus, the Minister of Defence has decided that residents of the Gaza Strip aged 15–36 would not be allowed to move to the West Bank since they are considered a 'dangerous category', as are students. It also means that movement between the West Bank and the Gaza Strip is seriously restricted. In normal conditions, 2,000 travelers are allowed to move between the two areas, only 200 of them request passage for humanitarian reasons. In closure times the number is reduced to 'some dozens' on the basis of individual applications. Moreover, this policy will remain valid unless a dramatic change in the security situation occurs and with accordance with the changes in the political level.

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121 HCJ 7960/04 Muhammed Alrazi et al. v. Commander of IDF in the Gaza Strip, response by the State Attorney's Office, section 12.

122 HCJ 11120/05 Hamdan et. al v. IDF Commander (not yet decided), para. 28 the response is available at: [www.gisha.org/state-response-19-1-06.doc](http://www.gisha.org/state-response-19-1-06.doc)



The International Agreement on Movement and Access signed on 16 November 2005 dealt mainly with the reopening of the Rafah crossing and reopening of the safe passage with secured shuttles so that the 'Link between Gaza and the West Bank: Israel will allow the passage of convoys to facilitate the movement of goods and persons'.<sup>123</sup> Under the agreement, Israel should establish bus convoys by 15 December 2005. It was also agreed that work to reduce the obstacles to freedom of movement to the maximum extent possible could be completed by 31 December 2005. At the time of writing there has been no change except for more restrictions since HAMAS won the parliamentary elections.

### ***Freedom of movement within a state in international law***

Freedom of movement is recognized as a basic right in international human rights law. Intrastate freedom of movement is protected in a long line of international conventions and declarations on human rights, most notably: the International Covenant on Civil and Political Rights (1966, §12); The Universal Declaration of Human Rights (1948, §13); Fourth Protocol (1963) of the European Convention on Human Rights (1950, §2).<sup>124</sup>

International human rights law stipulates in Article 12 of the International Covenant on Civil and Political Rights, the right to liberty of movement within the territory of a state. This article, however, is not absolute. Article 12(3) of the covenant states as follows:

the abovementioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals or the rights and freedom of others, and are consistent with other rights recognized in the present covenant.

The right of freedom of movement within a country is enshrined in Article 13(1) of the UN Universal Declaration of Human Rights. Israel's policy regarding the restrictions of movement between the two areas contradicts and is in violation of this article.

### ***Israeli law***

Some decisions of the Israeli high court recognise the freedom of movement as a key right of the individual, both as a basic right *per se*,<sup>125</sup> and as right derived from the right to liberty.<sup>126</sup> And there are some opinions which view freedom of movement as a derivation of human dignity.<sup>127</sup> However, all agree that the freedom of movement is located at the highest level of the hierarchy of rights in Israel.

The Israeli High Court makes a distinction between the right to leave the country and the right of movement within the country. The Court considers the latter more important, and that when it contradicts other interests, a high degree of certainty is needed as to the existence of the conflicting interests.<sup>128</sup>

In 1996 President Barak stated that the freedom of movement within the borders of the state is 'usually' placed on a constitutional level similar to that of freedom of expression.<sup>129</sup>

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123 Art. 3, Agreement on Movement and Access, *supra* n. 102.

124 Y. Zilbershatz views the Fourth Protocol of the European Convention on Human Rights as part of customary international law. See, Zilbershats, 'The Right to Leave Israel and its Restriction on Security Grounds' (1994) 28 Israel Law Review 626, pp. 627.

125 H CJ 672/87 Atamallah v. IDF Commander 42(4) P.D. 708, 709, 712; H CJ 153/83 Levi v. Southern District Commander, Israel Police, 38(2) P.D. 393, 401–402.

126 H CJ 5016/96 Horev v. Minister of Transportation, 51(4) P.D. 1, 147.

127 H CJ 5016/96, *ibid*, pp. 59.

128 H CJ Daher v. Minister of the Interior (1985) 40(ii) p.d. 701. For details, see Zilberschatz, *supra* n. 120, pp. 638.

129 H CJ 5016/96, *supra* n. 122, pp. 49.

The human rights of the local residents of the occupied territories include the whole gamut of human rights. Justice A. Proccaccia, discussed this point, noting: “in the frame work of his responsibility for the well being of the residents of the area, the commander must also work diligently to provide proper defence to the constitutional human rights of the local residents, subject to the limitations posed by the conditions and factual circumstances on the ground.... Included in these protected constitutional rights are freedom of movement ...the commander of the area must use his authority to preserve the public safety and order in the area, while protecting human rights.

Thus, we can conclude that Israeli policy on the movement of Palestinians between the two areas contradicts both international law and the constitutional law of the Israeli legal system.

## **Movement between the West Bank and Jordan**

### ***Background***

Section 1 of the Order Regarding Restricted Areas (West Bank Region) (No. 34), 1967 which came into force on 16 July 1967 provides that ‘the area of the West Bank is hereby declared a restricted area’;<sup>130</sup> that is, there is no right of exit from the West Bank. Departure from the West Bank to Jordan is regulated by the Order of Crossing Stations, Jordan bridges (Judea and Samaria) (No. 175/1967) (amendment 1973) section 2:

[t]he Ministry of the Interior and the Israeli police establish next to Allenby and Adam bridges over the Jordan stations in which visas and control arrangements will be maintained for persons wishing to cross from the East Bank of the Jordan in order to travel to Israel, or persons wishing to travel from Israel or the East Bank of the Jordan.<sup>131</sup>

The order does not provide a general permit to cross over to Jordan. Residents of the OPT are allowed to depart to Jordan if they wish, but only on the condition that they have passed the border control and have obtained a visa at the transit station at Allenby Bridge or Adam Bridge. As long as Order 34 of 1967 was in force, providing that the West Bank is restricted area, and there is no order permitting departure for any country apart from Israel and Jordan, residents of the West Bank cannot travel to any foreign country apart from Israel and Jordan.

*Prima facie*, it would be possible to allow departure from the West Bank to foreign countries under Regulation 111A of the Defence (Emergency) Regulations (1948) that still apply in the OPT.<sup>132</sup> According to Regulation 111A and the Proclamation of Law and Administration (West Bank Region) (No. 2) 1967 which has been in force since 7 June 1967, a person may leave the OPT unless the military governor, requires him by order to obtain a permit.

But order No. 34 of 1967 concerning the closed areas was issued by the governor on 16 July 1967 after the emergency regulations became law in the territories (i.e. 7 June 1967) under the proclamation of law and administration (West Bank Region) (No. 2) 1967 which provides in section 2 that:

The law in force in the region on 07.06.1967 shall remain in force as far as it is not inconsistent with this proclamation or with any proclamation or order issued by me, and subject to the modifications deriving from the establishment of the government of the IDF in the region.

As a consequence, Order No. 34 on closed area takes precedence over the provisions of Regulation 111A and can only be altered if a later order by the governor provides otherwise. Because such an

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130 See Preisler, *Legislation in Judea and Samaria* (1987), pp. 16.

131 Preisler, *ibid*, p. 29.

132 In accordance with the Order of Interpretation (Additional Provisions) (No. 5) (Judea and Samaria) (No. 224), 1968.

order which modifies the provisions of Order 34 is not available, there was no legal possibility to leave for countries other than Israel or Jordan.

By contrast to the legal situation, Israeli policy in the OPT was changed in the late 1980s into what was known as the 'open bridges' policy (see section dealing with movement from the Gaza Strip to Egypt).

### *The Oslo period*

Since the Interim Agreement was signed in 28 September 1995, the authority of the military commander to restrict the ability of West Bank residents to travel abroad was changed. The proclamation concerning the application of the Interim Agreement (Judea and Samaria) (No. 7) 1995, which came into force in 23 November 1995, applied the provisions of the Interim Agreement in the OPT.

A Supreme Court decision ruled that: 'the provisions of the Interim Agreement is a part of the law that apply in Judea and Samaria, in the condition that they were adopted, and to the same extent they were adopted by the proclamation'.<sup>133</sup>

Section 7 of the proclamation provides that the laws and the military jurisdiction in the region in force at the date proclamation comes into force would be valid, unless cancelled, changed or revoked respectively to the provisions of the proclamation or the provisions of the Interim Agreement. Thus, where the Interim Agreement sets specific arrangements for specific issues, the provisions of the Agreement change or revoke the relevant military legislation accordingly.<sup>134</sup>

The Agreement provides a specific arrangement for movement to and from the OPT via the Jordan bridges, and border-crossing procedures, including the powers of the authorities on each side to prevent passengers entering or leaving the OPT via the border-crossing points.<sup>135</sup>

Section 4(b) in section I of Appendix 5 provides three situations in which a passenger shall be denied to exit abroad.<sup>136</sup>

The Interim Agreement provides an identification of the required documents that entitle Palestinians to leave for abroad through the border crossings.

Israel recognizes the validity of the Palestinian passport/travel documents issued by the Palestinian side to Palestinian residents of the West Bank and the Gaza Strip in accordance with the Gaza Jericho agreement and this agreement. Such passport/travel documents shall entitle their holders to exit abroad through the passages or Israeli points of exit.<sup>137</sup>

The agreement does not include any requirement for an Israeli exit permit. Nevertheless, Israel acts as nothing has changed and still requires an exit permit.

Regarding entry to the OPT from abroad, the Interim Agreement provides several rules, the main one being that there is no authority to prevent a resident from the OPT entering the OPT through the crossing point they left from. All the provisions of the Interim Agreement were ratified in the OPT by Israel in accordance with the proclamation of the 23 November 1995.

However Order No. 378 on the closure of the territories applies that the West Bank is a closed military area, the proclamation of 23 November 1995 and the provisions of the Interim Agreement changes the content of the order in all the matters concerning the entry and exit via the passages or Israeli points of exit.

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133 H CJ 2717/96, Wafa et. al. v. the Minister of Defence et al., n(ii) P.D. 848, pp. 853.

134 H CJ 2151/97, Shkeir et al. v. the Military Commander in Judea and Samarea, takdin 97(3) 49.

135 Art. VIII of the Annex I, and Appendix 5 of Annex I.

136 supra n. 51, and the accompanying text there.

137 Para. 7, Art. 28 of Appendix I to Annex III.

## **The crossing procedure**

### ***Entry from Jordan***<sup>138</sup>

The procedure of crossing the borders at the Jordan's bridges is similar to that of crossing through the Rafah crossing as abovementioned in the section of entry from Egypt, with the relevant changes.

### ***Exit to Jordan***

Passengers leaving for Jordan enter the terminal without their luggage. Thereafter, the same procedures as for entry from Jordan apply, except that the order of passing via the Israeli and Palestinian counters is reversed.<sup>139</sup>

## **Movement to and from East Jerusalem**

### ***Background***

Following the withdrawal of British forces in the region, the termination of the British Mandate, the 1948 war, and the creation of the State of Israel, the ceasefire lines between the combatants ran through the centre of Jerusalem, leaving the eastern and the western parts of the city respectively under Transjordanian and Israeli control. With the outbreak of the six-day war in 1967, Jordan attacked West Jerusalem. A few days later the IDF recovered the area which had been taken by the Jordanian army and dislocated its army from East Jerusalem and the West Bank. Opinions differ as to whether Israel was an aggressor or acting in lawful self-defence.<sup>140</sup>

When the fighting was over, measures were taken to annex East Jerusalem to Israeli jurisdiction: the Knesset passed a law authorising the government to apply the law,<sup>141</sup> jurisdiction and the administration of Israel to any area which was formerly part of Mandatory Palestine. Likewise the Municipalities' Ordinance was amended to allow the extension of the bounds of a municipality where a decision has been made as to the application of Israel's jurisdiction to a certain area. The government issued an order as a result of which Israeli law was applied to the eastern sector of Jerusalem<sup>142</sup> which was included within the jurisdiction of the Jerusalem municipality.

Annexation of occupied territory is a violation of Article 47 of the Geneva Convention unless it is carried out through a peace agreement with the occupied entity. Thus, the international community has not recognized Israel's annexation of East Jerusalem in 1967, and considers East Jerusalem to be occupied territory under international law.<sup>143</sup>

Concerning East Jerusalemites a special arrangement was made concerning nationality: Israel nationality was not imposed on residents of East Jerusalem, but it could be acquired by applications on their part.

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138 Art. VIII(3), annex I, interim agreement.

139 See Art. viii(4) Annex I, Interim Agreement.

140 R. Lapidot, , "Jerusalem and the Peace Process" 28 Isr. L. Rev. 402 (1994), pp. 407 and the text accompanying n. 21 there.

141 Law and Administration Ordinance (Amendment No. 11) Law, 1967, 21 L.S.I. 75.

142 Law and Administration Order (No. 1), of 28 June 1967, K.T. (1966/67) 2690. (K.T.= the Israeli orders series).

143 U.N. General Assembly Resolutions 181, 2253 and 2254.

In 1980 the Knesset adopted a new law on Jerusalem, the Basic Law: Jerusalem Capital of Israel,<sup>144</sup> which states that ‘Jerusalem, complete and united, is the capital of Israel’. The adoption of this law caused resentment in the international community and was considered by the UN Security Council to be: ‘a violation of international law’.<sup>145</sup>

In 1950 King Hussein of Jordan declared that he annexed the West Bank including Jerusalem, and in 1988 he announced that he intended to disengage the West Bank from Jordan legally and administratively, and in 1989 he formally renounced all links with the territories captured by Israel.

According to the Supreme Court, East Jerusalem is part of the state of Israel and thus governed by the domestic laws like other parts of the sovereign territories of the state of Israel.<sup>146</sup> By contrast, international law considers Jerusalem, like other lands occupied in 1967, as territory under belligerent occupation.

In its advisory opinion regarding the construction of the ‘security wall’, the ICJ had to determine the legal status of the OPT, including East Jerusalem.<sup>147</sup> The court analyzed the status of this territory in accordance with the 1907 Hague Convention and the 1949 Geneva Convention. Regarding the legal status of the West Bank including Jerusalem, the ICJ concluded as follows:

The territories situated between the green line (see para. 72 above) and former eastern boundary of Palestine under the mandate were occupied by Israel in 1967 during the armed conflict between Israel and Jordan. Under customary international law, these were therefore occupied territories in which Israel had the status of occupying power.<sup>148</sup>

Thus, as to the Advisory Opinion of the ICJ, East Jerusalem is occupied territory and Israel is the occupying power in this territory.<sup>149</sup> As a consequence, international humanitarian law applies and Israel is responsible for the welfare of its residents. This obligation remains until the status of Jerusalem is determined in the permanent status agreement.<sup>150</sup>

### ***Movement between Jerusalem and the OPT***

Since the annexation of East Jerusalem to Israel, its residents are subject to Israeli law which defines Palestinians living in East Jerusalem as permanent residents and not as citizens.

Regulation 5 of the Emergency (Foreign Travel) Regulations 1948<sup>151</sup> as amended in 1961 provides that: no person shall leave for any of the countries specified in section 2A of the Prevention of Infiltration (Offences and Jurisdiction) Law 1945, save with the permission of the Minister of the Interior, and an Israeli national or Israeli resident shall not enter any of those countries in any way save with such permission as aforesaid.

The countries to which departure was prohibited except by permit were ‘Lebanon, Syria, Egypt, Transjordan, Saudi Arabia, Iraq, Yemen and any part of Eretz Israel outside Israel...’<sup>152</sup>

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144 Basic Law: Jerusalem Capital of Israel, 34 L.S.I. 209.

145 Security Council Resolution 478, of 20 August 1980, UNSCOR, 35th year, 1980, Resolutions, p. 14.

146 Ruidi and Maches v. Military Court of Hebron District P.D. 24(ii) 419 (1970).

147 Advisory Opinion, paras. 68–69.

148 Advisory Opinion, para. 78.

149 Advisory Opinion on legal consequences of the construction of the wall in the OPT, 9 July 2004, general list, no. 131. For a transcript, see ‘Advisory Opinion on the Legal Consequences of the Construction of the Wall in the Occupied Palestinian Territory’ (2005) 38(1–2) Israel Law Review 17.

150 Art. 17(1) (a), Interim Agreement.

151 Regulation 5 of the Emergency (Foreign Travel) Regulations 1948, 15 L.S.I. 179.

Regulation 6 of the Emergency (Travel Abroad) Regulations 1948<sup>153</sup> provides that:

The Minister of the Interior may prohibit the departure of any person from Israel if there is basis for the suspicion that this departure is liable to harm state security.

After the six-day war the law was amended so that Regulation 1 of the Emergency (Foreign Travel) (Repeal of Regulations of Persons Leaving for Judea and Samaria, Gaza Strip and Northern Sinai) Order, 1968 states:

The Emergency (Foreign Travel) Regulation 1948 is repealed in respect of a person leaving for Judea and Samaria, the Gaza Strip or Northern Sinai provided he leaves by virtue of a permit, including the general permit, issued by the commander of the Israeli defence forces in that territory, as long as he complies with the conditions of that permit.

This means that the Minister of the Interior has no power to limit departure to the OPT on security grounds, since his power under Regulation 6 of the Emergency (Foreign Travel) Regulations does not apply where the departure is for the OPT.

In 1970 a general entry permit was issued by the military commander providing that any resident of Israel or foreign resident may enter the OPT without a passport or permit issued by the army.

Departure from Israel to the OPT can be restricted on security grounds within the power of the military commander and not of the Minister of the Interior. The general entry permit provides in section 3(a) that:

This permit shall not apply to a person in respect of whom the military governor has determined that his entry into the region is not to be permitted.

And section 3(b) of the general permit provides that:

In respect of a person that the military governor has determined that his stay in the region is not to be permitted, this permit shall be abrogated as from the time the military commander has so determined.

On the other hand, the Minister of the Interior can restrict departure from Israel of any person by virtue of the power conferred upon him by Regulation 6 of the Emergency (foreign travel) Regulations, so that departure to the OPT is also restricted. However, a person prevented from travelling abroad can still apply to the military commander in the OPT for a personal permit, and the commander has to consider if that person's departure to the OPT poses a security risk, and if not, can allow the person to enter the OPT under a personal permit.

In 1996 the OPT were again declared a closed military area. As a consequence, the entry of East Jerusalem residents to the OPT is forbidden unless the person wanting to enter obtains a permit from the IDF commander in the region.

### ***Travelling abroad***

As permanent residents of the State of Israel, Palestinian Jerusalemites are not entitled to an Israeli passport but to a travel document. According to Israeli law, in order to travel abroad, via Ben-Gurion airport in Tel-Aviv, Palestinian Jerusalemites need a '*laissez passer*' (travel document) which enables them to cross the borders. In order to leave via the Jordan bridges they require an exit permit and must

(Contd.) \_\_\_\_\_

152 Prevention of infiltration (offences and jurisdiction) (amendment) law, 1960. 14 L.S.I. 56. Egypt and Jordan were removed from this list, because they have signed peace treaties with Israel. The Israeli Minister of the Interior has issued a general exit permit to Egypt and Jordan. (for the permit to Jordan see the Israeli sub-legislation series 4247 1995 at p. 179 and for the permit to Sinai peninsula see sub-legislations series 3698 1988 422, and later for permit to Egypt see sub-legislations series 4010 1992 at p. 3353).

153 Regulation 6 of the Emergency (Travel Abroad) Regulations 1948, 15 L.S.I. 179.

make a payment of 17 \$ to the office of the Ministry of the Interior in Allenby Bridge at the frontier before receiving a travel document.

Any person leaving for abroad shall produce on departure before a border control officer a valid passport or travel document or other certificate issued him for this purpose by the Minister of the Interior.<sup>154</sup>

However, The Minister may at his discretion:

1) Refuse to grant or to extend the validity of a passport or *laissez passer*; .... (3) Cancel or shorten the validity of a passport or a *laissez passer* issued, and order the surrender thereof...<sup>155</sup>

Section 2(b)(1) of the Passport Law determines that travel document is an identity Israeli document but not a passport and that is issued for non-citizens (i.e. Palestinian Jerusalemites). Travel documents are valid for two years from the date of issue (section 5). Issuing of travel documents is at the discretion of the Minister of Interior (section 6).

The main destination of East Jerusalem residents wishing to travel abroad is Jordan. Until 1995 Jordan was considered an 'enemy country' according to Israeli law and any person wishing to visit it had to apply to the Minister of the Interior for an exit permit. East Jerusalem residents wishing to travel to Jordan had to apply to the minorities section of the Ministry of the Interior in West Jerusalem or to the Ministry's office in East Jerusalem. East Jerusalem residents wishing to travel overland to Jordan or to travel elsewhere via Jordan must have an exit permit card and a return permit. As an exit permit it is subject to regulations currently in force and as a return permit it is subject to the 1974 Entry into Israel regulations. The card is valid for three years from the date of leaving Israel but this three-year period is subject to the Entry into Israel regulations, and therefore, the expiry of permanent residence pursuant to the regulations may curtail the period of the card's effective validity.

As regards travelling abroad via Jordan, the situation of Jerusalemite men under the age of 36 is worse than for young men in the West Bank owing to the arbitrary and complicated procedure of the Ministry of Interior which deals with the exit permits of Jerusalemites wishing to travel to, or via, Jordan. The minority section in the Ministry of Interior in West Jerusalem is responsible for the applications of Jerusalemites up to the age of 36, while the Ministry of Interior in East Jerusalem is responsible for applications of Palestinians until the age of 36. In practice, the Ministry of the Interior in East Jerusalem does not respond to applications in a reasonable time, and takes almost ten month to provide an answer to applicants of East Jerusalem<sup>156</sup>.

### ***Jerusalem and the peace process***

At the end of the war in 1967 Israel annexed East Jerusalem in defiance of international law. The international community has not recognized Israel's annexation of East Jerusalem in 1967, and considers East Jerusalem, like other lands occupied in 1967, to be an occupied territory under belligerent occupation under international law.<sup>157</sup> Thus, international humanitarian law applies and Israel is responsible for the welfare of its residents until the status of Jerusalem is determined in the permanent status agreement (Art.17(1) (a), Interim Agreement). East Jerusalem is not bound by the Interim Agreement like the other OPT, and it still governed by Israeli national law and administrative practices.

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154 Regulation 1 of the Emergency Regulations (Foreign Travel)(amendment), 1961, L.S.I. 179.

155 Section 6 of the Passport Law (1952), L.S.I. 61/76.

156 "Restrictions on Travel Abroad for East Jerusalem and West Bank Palestinians" publication of the Hotline: Center for the Defence of the Individual (Jerusalem, December 1992), pp. 10. concerning the delay in responding applications of Jerusalemites in reasonable time see the report of the internal affairs and environment committee of the Knesset of 16 July 2003 on the deficits on the operations of the east Jerusalem office of the ministry of the interior: available at: <http://www.knesset.gov.il/protocols/data/rtf/pnim/2003-07-16.rtf> (Hebrew)

157 U.N. General Assembly Resolutions 181, 2253 and 2254, and Art. 47 of the Geneva Convention.

The laws governing the Palestinian Jerusalemites are almost the same as those governing citizens of Israel. The covert nature of the practices of the Ministry of the Interior on issuing exit permits or *laissez passer* are a legitimate instrument to restrict the movement of Palestinian Jerusalemites indiscriminately and with no obvious criteria.

### ***International law***

Seeing east Jerusalem as an occupied territory similar to the west bank and the Gaza strip leads us to conclude that the international humanitarian law and the international human rights law is applicable there too. With this assumption the section concerning the applicable humanitarian law and human rights law of the west bank and the Gaza Strip is available too.

Articles 35 and 37 of the Geneva Convention (1949) deal with the right to leave of ‘protected persons’, i.e. persons who find themselves during a conflict or conquest in the hands of one party to the conflict or conquest, not being citizens of that party.<sup>158</sup> Article 35 states that:

All protected persons who may desire to leave the territory at the outset of, or during a conflict, shall be entitled to do so, unless their departure is contrary to the national interests of the state.

Under Article 37 the right to departure of protected persons in war time from Israeli territory is not an absolute one, but is conditional on the departure not being contrary to the national interests of the state.

In a separate opinion in *Aptheker v. Secretary of State*<sup>159</sup> justice Douglas emphasized:

Freedom of movement at home and abroad is important for job and business opportunities—for cultural, political and social activities—for all the commingling which gregarious man enjoy.... Freedom of movement is akin to the right of assembly and the right of association...

### ***Freedom of movement and the right to leave the country under Israeli law***

As to the Israeli legal system, Palestinian east Jerusalemites, as permanent residents are bound to the Israeli domestic laws. As it abovementioned, the Basic Law: Human Dignity and Liberty stipulates that: ‘every person is free to depart from Israel’.<sup>160</sup> This basic law confers the right to leave on all persons, Israeli citizens and foreigners alike. The constitutional nature of this right means that it cannot be restricted except as provided by law which was intended for an appropriate purpose and only to the extent necessary<sup>161</sup>. Restrictions on the ability of the Jerusalemites to travel abroad or move freely within the territories of the state of Israel will be considered as a violation of the international law as well as the Israeli law.

### **Conclusion**

This report outlines the range of positions on the status of the OPT, following Israeli occupation and the rules applicable for movement between the OPT and Israel, between the Gaza Strip and Egypt, between the West Bank and Jordan, and in and out of East Jerusalem.

Prior to 1991 there was almost free movement of Palestinians within the OPT and abroad. The closure policy which followed the Gulf war, has restricted the movement of the Palestinians in several stages. Since 1991 movement of the Palestinians necessitated a personal permit issued by the civil

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158 Zilbershats, ‘The Right to Leave Israel and its Restriction on Security Grounds’ (1994) 28 Israel Law Review, pp. 660–61.

159 *Aptheker v. Secretary of State*, 378 U.S. 500, 514(1964).

160 Basic Law: Human Dignity and Liberty, Section 6(a) of 1992) S.H. no. 1391, p. 150.

161 *Ibid*, section 8.



administrative at the individuals locality. This change led to more and more restrictions on the movement of the Palestinians since the approval of the application for a permit lacks of transparency and proportionality which means no ability to change the decisions in means of appeal.

Signing the interim agreements brought an expectations for improved movement of Palestinians as it included a range of provisions concerning safeguarding the human rights of the Palestinians in the OPT in addition to a specific concern to the movement of the Palestinians to and from the OPT, and for movement between the Gaza strip and the West Bank, as it have established the “safe passage”. However, the Israeli closure policy since the signing of the Oslo agreements which was justified on security grounds, the arbitrary nature of the procedures and criteria for issuing permits and the policy’s imposition in an indiscriminate fashion on an entire population made it an act of collective punishment.

Following the outbreak of the second *intifada* in September 2000, the Israeli restrictions on the movement of the Palestinians were tightened. a comprehensive closure was imposed all over the OPT. The movement between the Gaza strip and the west bank was restricted due to the closure of the safe passage in October 2000 except of humanitarian cases who were allowed to move between the two areas, travelling abroad necessitated prior coordination to prevent additional cost as a consequence of the Israeli prohibition from travelling abroad laid on the Palestinian, with no prior announcement.

Concerning movement of the residents of the Gaza Strip, The implementation of the disengagement plan and the redeployment of the Israeli military forces in September 12, 2005 created a new reality on the ground. For the first time, the Rafah crossing, the only exit from Gaza strip to the outside word is officially under the Palestinian control and subject to Palestinian law and rules. This change, somehow, ended the Israeli control over the movement of the residents of the Gaza Strip. However, Israel will still manage the Palestinian population registry which will enable it to control movement of Palestinians in the Rafah crossing who do not hold the Palestinian ID as it stated in the agreement on movement and access which followed the Israeli disengagement from the Gaza Strip and was signed in November 15, 2005. This agreement contains undertakings to reduce obstacles on movement of Palestinians to the minimum extent possible including movement between the Gaza Strip and the West Bank.

The applicability of the international humanitarian law and the international human rights law continues to apply on the OPT as an occupied territories. The redeployment of the Israeli military forces from the Gaza Strip and other Palestinian territories in the future will not end Israel’s responsibility for the population in the Gaza Strip or in other evacuated territories since it still has an effective control over these territories till a Palestinian state is established as the Oslo agreements state.

## References

### *Agreements*

1. The Agreement on Movement and Access , available at: <http://www.usa.no/usa/policy/article.html?id=5085>
2. The Agreement on the Gaza Strip and the Jericho Areas (Cairo Agreement) 1994.
3. The American Declaration of Rights & Duties of Man.
4. Annex I of the Interim Agreement, Protocol Concerning the Redeployment and Security Arrangements.
5. Annex III of the Interim Agreement, Protocol Concerning Civil Affairs.
6. Committee on Economic, Social and Cultural Rights, *General Comment 1* (Reporting by State Parties), UN Doc. E/1989/22 (1989).
7. Council Joint Action 2005/889/CFSP of 12 December 2005 on establishing a European Union Border Assistance Mission for the Rafah Crossing Point (EU BAM Rafah). Available at: [http://europa.eu.int/eur-lex/lex/lexhriserv/site/en/oj/2005/l\\_32720051214en00280032.pdf](http://europa.eu.int/eur-lex/lex/lexhriserv/site/en/oj/2005/l_32720051214en00280032.pdf).
8. The Declaration of Principles on Interim Self-Government (1993).
9. The Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War, 75 U.N.T.S. 187 (1949).
10. The Fourth Protocol to the European Convention on Human Rights.
11. Human Rights Committee, Communication No 52/1979: Lopez Burgos v. Uruguay, UN Doc. CCPR/C/13/D/52/1979.
12. Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation Imposed on States Parties on States Parties to the Covenant: 26 May 2004, UN Doc. CCPR/C/21Rev. 1/Add/13/.27.
13. Inter-American Commission on Human Rights, Report No. 109/99.
14. The International Covenant on Civil and Political Rights (1966).
15. The International Covenant on Cultural, Economic and Social Rights (1966).
16. The Israeli Palestinian Interim Agreement on the West Bank and the Gaza Strip. Signed in Washington, DC on 28 September 1995.
17. Protocol Concerning Safe Passage Between the West Bank and the Gaza Strip (1999), available at: [www.state.gov/p/nea/rls/22697.htm](http://www.state.gov/p/nea/rls/22697.htm) .
18. Security Council Resolution 478, of 20 August 1980, UNSCOR, 35<sup>th</sup> year, 1980, Resolutions.
19. State of Israel, Implementation of the International Covenant on Economic, Social and Cultural Rights, - Second Periodic Report, 3 August 2001, Paragraphs 5-8, UN Doc. E/1990/6/Add.32 (2001).
20. State of Israel, International Covenant on Civil and Political Rights - Second Periodic Report, 20 November 2001, Paragraph 8, UN Doc. CCPR/C/ISR/2001/2 (2001).
21. U.N. General Assembly Resolutions 181, 2253 and 2254.
22. Universal Declaration of Human rights (1948).
23. U.N. General Assembly Resolutions 181, 2253 and 2254.

### *Articles*

1. O. Ben-Naftali and Y. Shani, "Living in Denial: the Application of Human Rights in the Occupied Territories," 37 *Israel Law Review* 1 (2004).
2. E. Benvenisti, "Responsibility for the Protection of Human Rights under the Interim Israeli-Palestinian Agreements" 28 *Isr. L. Rev.* 297 (1994).
3. I. Brownlie, *Basic Documents on Human Rights* (Oxford, 1992).
4. E. Cohen, *Human Rights in the Israeli Occupied Territories, 1967-1982*, (1985).
5. G.I.D.A. Draper, "The Relation between Human Rights Regime and the Law of Armed Conflict" (1971) 1 *Israel Year Book of Human Rights* 191.
6. S. Gazit, *The Stick and the Carrot, Israeli Policy in Judea and Samaria, 1967-1968* (Tel-Aviv: Zemora Beitan, 1985).
7. D. Gold "From Occupied Territories to Disputed Territories" (January 2002) available at: [www.jcpa.org/jl/vp470.htm](http://www.jcpa.org/jl/vp470.htm) .
8. C. Greenwood, "The Administration Of The Occupied Territories In International Law", In Emma Playfair, Ed., *International Law And The Administration Of Occupied Territories*, (Oxford: Clarendon Press, 1992).
9. H. Hannum, *The Right to Leave & to Return in International Law & Practice*, (Dordrecht, 1987).
10. D. Herling, "The Court, The Ministry and The Law: Awad and the Withdrawal of East Jerusalem Residence Rights" 33 *Isr. L. Rev.* 67 (1999).
11. M. Hirsch, "The Legal Status of Jerusalem following the ICJ Advisory Opinion on the Separation Barrier" 38 *Isr. L. Rev.* 298 (2005).
12. Information Sheet: Update November 1, 1989, Publication of B'Tselem, the Israeli Center for Human Rights in the Occupied Territories.
13. R. Lapidot, "Jerusalem and the Peace Process" 28 *Isr. L. Rev.* 402 (1994).
14. *Legal Aspects Of Israel's Disengagement Plan Under International Humanitarian Law*, Policy Brief, Harvard Program On Humanitarian Policy And Conflict Research. Available at : [www.ihlresearch.org/opt/pdfs/breifing3299.pdf](http://www.ihlresearch.org/opt/pdfs/breifing3299.pdf) .
15. "One Big Prison", Publication of Hamoked: Center for the Defence of the Individual, and B'Tselem the Israeli Center for Human Rights in the Occupied Territories (2005).
16. A. A. Pacheco, "Occupying an Uprising: the Geneva Law and Israeli Administrative Policy during the First Year of the Palestinian General Uprising" 21 *Colum. Hum. Rts. L. Rev.* 515(1989-1990).
17. J.S. Pictet, "Commentary : IV Geneva Convention Relative to the Protection of Civilians in Time of War" International Committee of the Red Cross, 1958 Geneva
18. J.S. Pictet, *Humanitarian Law and the Law of War Victims*, (1975).
19. G. Schwarzenberger, *Law as Applied by International Courts and Tribunals: Vol. II, The Law of Armed Conflict* (London: Stevens, 1968) 324.
20. Preisler, *Legislation in Judea and Samaria* (1987).
21. M. Shamgar, "International Law and the Administered Territories," 1 *Israel Yearbook on Human Rights* (1971).
22. World Health Organization, *Medical Treatment Abroad for Gaza Residents*, 31 January 2005.
23. Y. Zilbershats "The Right to Leave Israel and its Restriction on security Grounds"(1994) 28 *Israel law review* 626.
24. J. Zinger "The Declaration of Principles on Interim Self-Government Arrangements," 1 *Justice* 4 (1994).

25. Y. Zinger "The Israeli-Palestinian Interim Agreement Regarding Autonomy Arrangements in the West Bank and the Gaza Strip-Some Legal Aspects", 27 *Mishpatim* 605 (1997).

**Cases:**

1. Advisory opinion on legal consequences of the construction of the wall in the occupied Palestinian territory, 9 July 2004, general list, no. 131. for a transcript of this decision see: "advisory opinion on legal consequences of the construction of the wall in the occupied palestinian territory" (2005) 38(1-2) *Israel law review* 17.
2. ICJ Case Concerning Armed Activities on the Territory of the Congo- Democratic Republic of the Congo v. Uganda, available at: [www.icj-cij.org/icjwww/idocket/ico/icoframe.htm](http://www.icj-cij.org/icjwww/idocket/ico/icoframe.htm).
3. HCJ 11120/05 Hamdan et. Al v. IDF Commander (not yet decided), the response of the state, available at: [www.gisha.org/state-response-19-1-06.doc](http://www.gisha.org/state-response-19-1-06.doc).
4. HCJ 9653/05 Alzen v. The IDF Commander of the Gaza Strip (yet undecided), available at: [www.hamoked.org.il](http://www.hamoked.org.il)
5. HCJ 1661/05 the Gaza Coast Regional Council v. the Knesset et al. (yet unpublished).
6. HCJ 7960/04 Muhammed Alrazi et al. v. Commander of IDF in the Gaza Strip, response by the state attorney's office, section 12.
7. HCJ 7957/04 Mara'abe v. The Prime Minister of Israel,(yet unpublished)
8. HCJ 6040/04, response by the state attorney's office, section 4. available in Hamoked website: [www.hamoked.org.il](http://www.hamoked.org.il).
9. HCJ 4566/04 Abu Nada et al. v. the Commander of the IDF in the Gaza Strip (not Published)
10. HCJ 2056/04 Beit Sourik Village Council v. Government of Israel 58(5) P.D. 807.
11. HCJ 1890/03 The Betlehem Municipality & 21 others v. the State of Israel et al. (yet unpublished).
12. HCJ 10356/02, Hass v. IDF Commander in the West Bank, 55(3) P.D. 443.
13. HCJ 4706/02, Sheikh Raid Salah et al. v. Minister of the Interior 55(5) P.D. 695.
14. HCJ 769/02 The Public Committee against Torture in Israel et al. v. Government of Israel et al.
15. HCJ 2151/97 Shkeir et. al. v. the Military Commander in Judea and Samarea, Takdin 97(3) 49.
16. HCJ 5016/96 Horev v. Minister of Transportation, 51(4) P.D. 1.
17. HCJ 2717/96 Wafa et. al. v. the Minister of Defence et. al., 50(2) P.D. 848.
18. Loizidou v. Turkey, 310 *European Court of Human Rights* (1995).
19. HCJ 2977/91, Haji v. Minister of Defense, 46 (5) P.D. 474.
20. HCJ 672/87 Atamallah v. IDF Commander 42(4) P.D. 708.
21. HCJ 13/86 Shahin v. the Commander of IDF Forces in the Judea and Samaria Area, 41(1) P.D. 197.
22. HCJ Daher v. Minister of the Interior 40(ii) P.D. 701.
23. HCJ 153/83 Levi v. Southern District Commander, Israel Police, 38(2) P.D. 393.
24. HCJ 393/82, Jam'iyat Iskan al-Mu'aliman al-Mahddudat al-Mus'uliyah, Teachers' Housing Cooperative Society, Duly Registered at Judea and Samaria Headquarters v. Commander of IDF Forces in Judea and Samaria et al., 37(4) P.D. 785.
25. HCJ 102/82, Tsemel v. Minister of Defense et al. 37 (3) P.D. 365.
26. HCJ 390/79 Izat Mohammad Dwaikat v. Government of Israel, 34(1) P.D.1.
27. HCJ 606/78 & HCJ 610/78 Ayoub v. Minister of Defince, 33(2) P.D. 113.
28. Ruidi and Maches v. Military Court of Hebron District 24(2) P.D. 419 (1970).

29. *Aptheker v. Secretary of State*, 378 U.S. 500 (1964).
30. *Kent v. Dulles*, 375 U.S. 116 (1958).
31. HCJ 111/53, *Kaufman v. Minister of the Interior*. 7(1) P.D. 534.
32. *USA v. Wilhelm List et al.*, *Law Reports of Trials of War Criminals*, Vol. VIII (London: United Nations War Crimes Commission, 1949) 34.

### ***Laws***

1. Basic Law: Jerusalem Capital of Israel.
2. Basic Law: Human Dignity and Liberty.
3. Decree Regarding Implementation of the Interim Agreement (Judea and Samaria) (No.7) 5756-1995.
4. Decree Regarding Implementation of the Interim Agreement (The Gaza Strip) (No. 5) 1995.
5. Emergency (Foreign Travel) Regulations 1948.
6. General Exit Permit (No.5) (Judea and Samaria), 5732-1972.
7. General Exit Permit (Gaza Strip) (No.2) 1972.
8. Implementation of the Disengagement Plan Law, 5765-2005.
9. The Israeli Government's Decision 1996 on the Disengagement Plan, 6 June 2004. Government Decision 1996, 6 June 2004, "Amended Disengagement Plan- Continuation of Discussion", available on the prime minister's office's website at: [www.pmo.gov.il/PMO/Hitnatkut](http://www.pmo.gov.il/PMO/Hitnatkut).
10. Law and Administration Order (No. 1), 1967.
11. Law and Administration Ordinance (Amendment No. 11) Law, 1967.
12. Order Concerning Military Matters (Judea and Samaria) (No. 378), 1970.
13. Order Regarding Suspension of the General Exit Permit (no.5) (Temporary Order) (Judea and Samaria), 5751-1991.
14. The Passport Law, 1952.
15. Prevention of Infiltration (Offences and Jurisdiction) (Amendment) Law, 1960.