

Don't say you didn't know

Fact sheet: Israel and international law

Israel is in daily breach of its obligations under international law. Some of these breaches probably amount to war crimes.

The Fourth Geneva Convention 1949 (Convention relative to the Protection of Civilian Persons in Time of War)

Drafted by Richard Kuper and Daniella Jaff-Klein with thanks to Azem Bishara.
Text posted 7th December 2004. Addition to section C posted on 22nd August 2005.

A: Background

1. The purpose of the Fourth Geneva Convention

- The Fourth Geneva Convention was specifically designed to protect civilians in time of war and focuses on the treatment of civilians in the hands of the adversary, whether in occupied territories or in internment.
- It was adopted on 12 August 1949 and entered into force on 21 October 1950.

2. Applicability of the Fourth Geneva Convention to the Occupied Territories

- Israel ratified the Fourth Geneva Convention with effect from 6 July 1951.
- The convention is considered to have been elevated to the status of 'customary international law', which means it applies irrespective of whether a State has ratified it.
- Apart from Israel, the entire international community, has unambiguously accepted the applicability of the Fourth Geneva Convention to those territories captured and occupied by Israel in the 1967 war, which include the West Bank and Gaza.
- Both the Security Council and the General Assembly have consistently issued resolutions calling on Israel to recognise the applicability of the Convention, a view that has been endorsed by the International Committee of the Red Cross.

3. Scope of the Fourth Geneva Convention

- The Convention deals specifically with the treatment of what it calls 'protected persons' - civilians who find themselves in enemy hands as a result of a conflict or an occupation.
- The Convention prohibits, among other things, violence to life and person, torture, taking of hostages, humiliating and degrading treatment, sentencing and execution without due legal process, and collective punishments of any kind, with respect to all 'protected persons'. It calls for them to be humanely treated at all times, with no physical or moral coercion, intimidation, deportation.
- It specifies 'grave breaches' of the Convention as including willful killing; torture or inhuman treatment; willfully causing great suffering or serious injury to body or health; unlawful deportation or transfer or unlawful confinement of a protected person; willfully depriving a protected person of the rights of fair and regular trial; taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

B: Israel's violation of specific provisions of the Fourth Geneva Convention

a) Humane treatment

Article 27: 'Protected persons are entitled, in 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.'

Violations:

- Every day tens of thousands of Palestinians are subjected to a checkpoint system involving body searches, humiliation and inconvenience.
- B'Tselem (The Israeli Information Center for Human Rights in the Occupied Territories) reports many incidents of violence, at times gross violence against Palestinians that are unnecessary and without justification. Many claims of police brutality remain uninvestigated and have become the norm.¹
- The building of the Wall/ 'Security Barrier', has created an area between the barrier and the Green Line referred to as the 'seam area'. B'Tselem estimates that this section of the barrier alone 'will infringe the human rights of more than 210,000 Palestinians who live in 67 towns and villages: 13 communities, containing 11,700 residents, will become enclaves trapped between the barrier and the Green Line; the barrier's winding route and the additional barrier (the depth barrier) east of the separation barrier will turn 19 other villages, in which 128,500 Palestinians live, into enclaves; 36 villages situated east of the separation barrier or depth barrier, containing 72,200 residents, will be separated from a substantial part of their farmland, which lies west of the barriers.'²
- Only Palestinians are required to apply for a permit in order to remain living within the seam area and separate permits to enter the seam area to carry out activities such as farming. Such permits are subject to renewal. The criteria for obtaining a permit are unclear and allow complete discretion to the Civil Administration to deny the permit and thus eject Palestinians from their homes or refuse them entry to their fields. In June 2004 B'Tselem reported that 'Palestinians wanting to obtain a permit face a bureaucratic nightmare'.³
- The Family Unification Law, forbids Israelis married to, or who will marry in the future, residents of the Occupied Territories to live in Israel with their spouses. This law does not apply to spouses who are not residents of the Occupied Territories and is therefore discriminatory.

b) No use of torture or brutality

Article 31: 'No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.'

Article 32 prohibits the use of 'any measure of such a character as to cause the physical suffering or extermination of protected persons', a prohibition that applies not just to murder, torture etc 'but also to any other measures of brutality whether applied by civilian or military agents'.

¹ See e.g. 'Sarraf Checkpoint – a Week of Severe Abuse'

http://www.btselem.org/English/Press_Releases/2004/040104.asp

² See 'The Separation Barrier: Phase One Completed - Hundreds of Thousands Palestinians Directly Harmed' http://www.btselem.org/english/separation_barrier/background.asp

³ See 'Permit System to Cross Separation Barrier is Racist'

http://www.btselem.org/English/Press_Releases/2004/040616.asp

Violations:

- According to a recent report by the Public Committee Against Torture in Israel and other human rights organisations, there is evidence of systematic and routine torture of Palestinian prisoners causing ‘severe pain or suffering, whether physical or mental’.⁴
- According to the report, violence, painful tying, humiliations and many other forms of ill-treatment, including detention under inhuman conditions, are a matter of course.
- The ill-treatment of Palestinian detainees by IDF soldiers and other detaining forces is manifested through ill-treatment of relatives of the detainee; violence during arrest and on the way to the detention facility; shackling of detainees with ‘azikonim’ (small handcuffs); inhuman conditions of detention; and other means of ill-treatment, including being suspended with legs up, ‘goal’ (a stone-throwing contest at the detainee), forcing the detainee to run blindfolded and tripping him, stripping (sometimes to complete nakedness), intimidation using a dog, cocking a weapon as if intending a summary execution, and more.
- According to the same report, and based on official data, Israel’s General Security Service (GSS) agents have interrogated thousands of Palestinians per year during the Second Intifada, and over 200 at any given moment.⁵ In July 2002, the GSS related to the press that 90 Palestinians were defined as ‘ticking bombs’ and were tortured (that is, were exposed to ‘physical pressure’).⁶ Research by the Public Committee Against Torture in Israel shows that the number tortured is actually much greater.
- Information obtained by the Public Committee Against Torture in Israel shows that the official sources have admitted to using a large portion of the torture methods, including slapping, ‘bending,’ shaking, sleep deprivation, and prolonged shackling.
- Israel’s policy of targeting and killing Palestinians believed to have some connection to hostilities, is also a clear violation of this provision.

c) No collective punishment

Article 33: ‘No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.’

Violations:

- The Family Unification Law (see above), is a form of collective punishment.
- The sweeping nature of restriction of movement in the form of closure, siege and curfew constitutes a form of collective punishment. Since the outbreak of the second Second Intifada, Israel has imposed a total closure on the occupied territories and has prohibited Palestinian movement between the occupied territories and Israel and between the West Bank and Gaza, unless they have a special permit. Since 2000 Israel has issued no new entry permits.
- Israel also imposes internal closures on specific towns and villages. Since October 2000, most Palestinian communities in the West Bank have been closed off by staffed checkpoints, concrete blocks, dirt piles or deep trenches. During curfews, residents are completely prohibited from leaving their homes. As B’Tselem has put it: ‘The sweeping nature of the restrictions imposed by Israel, the specific timing that it employs when deciding to ease or intensify them, and the destructive human

⁴ Back to a Routine of Torture: Torture and Ill-treatment of Palestinian Detainees during Arrest, Detention and Interrogation September 2001 – April 2003 at

<http://www.stoptorture.org.il/eng/publications.asp?menu=5&submenu=1>

⁵ This statistic was given to the Knesset Law and Constitution Committee on 19 May 2003 by IPS Deputy Commissioner Dani Avidan - based on an article that appeared on the *Ha’aretz* website on 20 May 2003 (but not in the print version of the paper). See:

<http://www.haaretz.co.il/hasite/pages/ShArt/jhtml?itemNo=295174>

⁶ Yoav Limor, ‘90 Palestinian Detainees Defined as ‘Ticking Bombs,’ *Maariv*, 25 July 2002

consequences turn its policy into a clear form of collective punishment. Such punishment is absolutely prohibited by the Fourth Geneva Convention.⁷

- The requirement of all Palestinians who wish to remain living in or to enter the 'seam area' to apply for the permits is a form of collective punishment. Residents in this area, as well as those who wish to enter the area, will now be dependent on the benevolence of the defense establishment, even though they are suspected of no wrongdoing. These residents are affected solely because of their poor luck in living or working east of the route where Israel decided to construct the barrier.
- House demolitions are carried out under the emergency regulations (DER 119) of the British mandate which provide for an authority to demolish a house as a response against persons suspected of taking part in or directly supporting criminal or guerilla activities. Recently, application of DER 119 has become limited to instances in which an attack was launched from a specific house or cases in which an "inhabitant" of the house was suspected of involvement in an offense. The term "inhabitant," however, has been broadly defined to include persons who do not necessarily reside in said house regularly, and often is applied to family homes in which a suspected offender previously resided. The regular occupants' knowledge of the offense has been deemed irrelevant by the Israeli authorities. This is clearly a form of collective punishment.⁸

d) No deportations

Article 49 states: 'Individual or mass forcible transfers, as well as deportations of protected persons from occupied territory to the territory of the Occupying Power or to that of any other country, occupied or not, are prohibited, regardless of their motive.' In addition, 'The Occupying Power shall not deport or transfer parts of its own civilian population into the territory it occupies.'

Violations:

- The Israeli policy of deporting relatives of terror suspects from the West Bank to Gaza is a clear violation of the provision.
- The Israeli policy of authorizing houses and settlements in the West Bank and Gaza is clear violation of this provision and cannot be justified.

e) No imprisonment without due process

Article 71 states: 'No sentence shall be pronounced by the competent courts of the Occupying Power except after a regular trial.'

Violations

- According to the Public Committee against Torture in Israel, over 28,000 Palestinians were arrested between the beginning of the Second Intifada in September 2000, and the beginning of April 2003. (see above report)
- In May 2003, 5,362 Palestinians were being held in IDF and Israel Prison Service (IPS) detention and prison facilities, of whom 1,107 were detained but neither charged nor tried (i.e. were under administrative detention).

f) No destruction of personal property

Article 53 states: 'Any destruction by the Occupying Power of real or personal property belonging individually or collectively to private persons, or to the State, or to other public authorities, or to social

⁷ Civilians under Siege: Restrictions on Freedom of Movement as Collective Punishment, January 2001. Available for download at http://www.btselem.org/Download/Civilians_under_Siege_Eng.doc

⁸ See 'The legality of house demolitions under International Humanitarian Law', 1 June 2004 (United Nations Information System on the Question of Palestine website) <http://domino.un.org/UNISPAL.NSF/9a798adbf322aff38525617b006d88d7/13f65639b6eb7b9485256ea600641d69!OpenDocument>

or cooperative organizations, is prohibited, except where such destruction is rendered absolutely necessary by military operations.

Violations:

- Over 500 Palestinian homes have been demolished in the last 3 years. While the convention recognises a wide scope of discretion to the military commander, the concept of military necessity is not a 'carte blanche' to the military. There are criteria for assessing military necessity' (see below) and if the demolition fails to fulfill one of these criteria, it is illegal. It is impossible to sustain the view that the large number of demolitions have complied with these criteria.
- According to a recent Human Rights Watch report, the IDF has rendered 16 000 people homeless over the past four years, regardless of whether their homes posed a genuine military threat.⁹
- The uprooting of tens of thousands of olive and orange trees and the confiscation of large amounts of land to build the Wall/ 'security barrier' are in direct violation of this provision.
- A recent article in Ha'aretz describes how the military authorities have done nothing to prevent settlers from stealing Palestinian olive harvests. (30 Sept 2004)

g) Grave breaches

Article 147 specifies 'grave breaches' of the Convention as including willful killing; torture or inhuman treatment; willfully causing great suffering or serious injury to body or health; unlawful deportation or transfer or unlawful confinement of a protected person; willfully depriving a protected person of the rights of fair and regular trial; taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.

Violations:

As demonstrated above, each of the acts described as a grave breach has been carried out by the IDF or been sanctioned by the Israeli government. Clear and comprehensive records of these acts have been documented by reliable Israeli human-rights organizations and can be easily found on the internet.¹⁰

C: Israel's position

- Israel's official position that the Fourth Geneva Convention is not applicable is based on an extremely narrow interpretation of Article 2 of the Convention, claiming that the Convention only applies where a legitimate sovereign is evicted from the territory in question. According to this argument, since neither Egypt nor Jordan were recognized as legitimate sovereigns of the Gaza Strip and West Bank respectively prior to 1967, the Convention is not applicable.
- This argument has however been rejected by the entire international community, including the United States (and by many Israelis) since Article 2 explicitly sets out the conditions of application and is clearly intended to apply when an occupation begins during an armed conflict between two or more High Contracting parties. It makes no distinction regarding the status of the territory in question.
- Irrespective of the nature of the war in 1967, Israeli conquest of the Occupied Territories was the direct result of just such an 'armed conflict' between High Contracting Parties to the Convention. (This view is supported by the International Committee of the Red Cross's commentary on the Convention and recognises the fact that the Convention aims to protect the rights of the inhabitants of the occupied territories more so than those of the ousted sovereign.)

⁹ See the Human Rights Watch Report *Razing Rafah: Mass Home Demolitions in the Gaza Strip*, 18 October 2004 at <http://hrw.org/reports/2004/rafah1004>

¹⁰ See in particular www.btselem.org ; www.stoptorture.org.il ; www.hrw.org and <http://domino.un.org/unispal.nsf> (United Nations Information System on the Question of Palestine.)

- Israel has also argued that it has voluntarily applied the ‘humanitarian’ provisions of the Fourth Geneva Convention. This is disingenuous as the document is in its entirety a ‘humanitarian’ document, and, as a signatory, Israel is bound by the entire document, not just the parts it chooses to apply. Furthermore, the Israeli Supreme Court recognises the situation as one of ‘belligerent occupation’ and has recently applied the Convention on the basis that ‘the parties agree that the humanitarian rules of the Fourth Geneva Convention apply to the issue.’¹¹
- Israel argues it has valid claims to title in the occupied territories based on ‘its historic and religious connection to the land’, ‘its recognized security needs’ and the fact that it came under Israeli control ‘in a war of self-defense, imposed upon Israel’.[footnote] Nothing in the Convention leads credence to any of these arguments which are irrelevant in terms of international law.¹²
- The fact that the Fourth Geneva Convention has been recognized as legally binding and violations of it as prosecutable offenses, even war crimes, makes it of vital importance to those seeking to bring to justice those who are in breach of the Convention.
- **Addition made on 22nd August 2005:**
The question of the status of the territories has now been clearly and conclusively dealt with by the Israeli Supreme Court. In an attempt to prevent the government from removing them ‘the Gaza settlers took their case to the Israeli Supreme Court. The government asserted that it was, indeed, in belligerent occupation of the territories, and had always been so. Therefore Israeli settlements in them could only ever have been temporary and could be removed by the government. The Supreme Court decided in favour of the government by a 10:1 majority. It said that its decision applied to the West Bank as well as Gaza.

The importance with which the Court viewed the case is shown by the fact that it sat with all the justices and that the majority jointly wrote their opinion, whereas usually one justice writes the opinion and the others agree.’ (Arthur Goodman, letter sent for publication to the *Financial Times*, 18 Aug 2005)

D: The question of Military Necessity

- Article 27 of the Fourth Geneva Convention allows the Parties to the conflict to ‘take such measures of control and security in regard to protected persons as may be necessary as a result of the war.’
- Military necessity incorporates clear conditions:
 - (i) the presence of an immediate and concrete threat,
 - (ii) that the measures be an adequate response to the threat, and
 - (iii) that, even if the first two conditions are fulfilled, such measures must respect the principle of proportionality.

It is impossible to see how any but a handful of the violations of the Convention might be justified in these terms.

- Military necessity has been assessed in numerous Israeli supreme court judgments, many of which have found that actions by the IDF, including the building of the ‘Separation Barrier’ in certain areas, could not be justified on the basis of military necessity. (In a recent case, the court ordered a change of the route of the wall based on an administrative law test which obliges public authorities, including the army, to consider and choose the least damaging course of action, which they did not do in that case as there was an alternative route. This appears to equate to the test of proportionality in international law.)

¹¹ Beit Sourik Village Council v The Government of Israel, HJC 2056/04 para 1

¹² See Israeli Ministry of Foreign Affairs website ‘Israeli Settlements and International Law’, 20 May 2001 at <http://www.mfa.gov.il/mfa/peace+process/guide+to+the+peace+process/israeli+settlements+and+international+law.htm> (viewed 7 December 2004)

References and Further reading

For the full text of the Fourth Geneva Convention

<http://www.unhchr.ch/html/menu3/b/92.htm>

For discussions of the applicability of the convention to the Occupied Territories

Sigler, John, 'The Applicability of the Fourth Geneva Convention', 20 December 2000 at <http://www.eccmei.net/E/E001.html>

Brownlow, Ian & Goodwin-Gill, Guy S, 'Opinion: The protection afforded by international humanitarian law to the indigenous population of the West Bank and the Gaza Strip and to foreign citizens therein, with particular reference to the application of the 1949 Fourth Geneva Convention relative to the Protection of Civilian Persons in time of War', Public Interest Lawyers, 18 September 2003 at http://www.publicinterestlawyers.co.uk/legal_docs.htm

Roberts, A., 'Prolonged Military Occupation: The Israeli- Occupied Territories 1967-1988' in International Law and the Administration of Occupied Territories, Playfair (ed) 1992

Imseis, A., 'On the Fourth Geneva Convention and the Occupied Palestinian Territory', Harvard International Law Journal, Winter (2003) 65

For the monitoring of breaches or suspected breaches of the Convention

B'tselem at www.btselem.org

Public Committee against Torture in Israel at www.stoptorture.org.il

United Nations Information System on the Question of Palestine at

<http://domino.un.org/unispal.nsf>

Human Rights Watch at www.hrw.org

See also

'Breaking the Silence', soldiers from Hebron describe what they saw and did, October and November 2004, at <http://www.shovrimstika.org/files.asp>