



## AL-HAQ POSITION PAPER:

### THE PERPETRATION OF WAR CRIMES DURING THE ISRAELI INCURSION INTO RAMALLAH, 4 JANUARY 2007

On the afternoon of Thursday, 4 January 2007, an Israeli military incursion took place in the centre of the West Bank city of Ramallah in the Occupied Palestinian Territory (OPT). After full investigation into the facts and circumstances of the incursion, Al-Haq presents its findings in the present report.

#### FACTUAL SYNOPSIS

At approximately 3:00 pm on 4 January 2007, an Israeli military undercover unit, consisting of at least four members, entered the al-Makateb building on al-Hisba Street, adjacent to the large open-air fruit and vegetable market in Ramallah city centre. The unit did so with the objective of locating and detaining Rabi' Hamed, an alleged senior member of the al-Aqsa Martyrs Brigades. Hamed realised that the men, dressed in civilian clothes and speaking Arabic, were undercover Israeli forces and attempted to flee. The undercover agents opened fire; Hamed was hit and wounded, but managed to escape. The shooting brought crowds to the scene and exposed the undercover agents. Back-up arrived almost immediately to rescue the undercover unit, and uniformed soldiers began firing live rounds at large groups of civilians in the vicinity of the market. In total, approximately 25 armoured jeeps arrived from three different directions, three military bulldozers were deployed, destroying cars and damaging buildings on the streets surrounding al-Manara square. Apache helicopters fired large-calibre bullets and tear gas from above. Some Palestinians returned fire at the ground troops from side-streets while youths threw stones at the Israeli soldiers and vehicles. The incursion and intensive shooting lasted almost two hours before the Israeli military withdrew, having killed four unarmed Palestinian civilians, one of whom was a child killed by a bullet to the head. The civilians killed were all shot on main roads in full daylight and were: Yousef 'Abd-al-Qader 'Adour, 22; Khalil Mustafa al-Bayrouti, 31; 'Ala' Fawwaz Humran, 16; and Jamal Jamil Jwailes, 29. A further 28 Palestinians were wounded by live ammunition and two more were hit by rubber bullets. The Israeli army captured four Palestinians whom they claimed had been wanted, but who were subsequently released. The damage caused to civilian property is estimated by the Palestinian National Authority at USD 5 million.

#### LEGAL ANALYSIS

##### *General Obligation of the Occupying Power*

Under Article 43 of the Hague Regulations, declaratory of customary international law, which Israel accepts itself to be bound by, the Occupying Power is charged with maintaining "public order and safety" in the occupied territory. By launching a military operation against a suspected militant in the middle of the day in a crowded city centre area, the Israeli authorities disregarded this obligation. In planning the arrest of an alleged militant, they must reasonably assume that he would be armed, and that fighting would likely ensue. Indeed, the last time a similar daytime arrest operation took place in

Ramallah city centre, in May 2006, similar clashes resulted, and four Palestinians were killed and many more wounded. Thus, the Israeli military was well aware of the risks to public order and safety in carrying out such an operation. To describe the incursion as a "routine" arrest operation, as Israeli officials did in the aftermath, is to recklessly overlook the obvious danger it created for the civilian population of Ramallah, which is protected under international humanitarian law. The operation was carried out in complete disregard of Israel's legal obligations regarding public order and safety, and resulted in numerous serious violations of international humanitarian law by the Israeli occupying forces pertaining to the use of force against protected persons and property.

### ***Excessive Use of Force***

Under international humanitarian law, the ability to use force is governed by the key principles of distinction, proportionality, and military necessity. These principles are all firmly embedded in customary international law. In order for the use of force by Israeli state agents to be lawful, therefore, it must conform to the specific requirements of each of these principles.

The principle of distinction obliges parties to a conflict to distinguish at all times between the civilian population and combatants, and between civilian objects and military objectives; and to accordingly direct their operations only against military targets. The killing and wounding of Palestinian civilians by intense and indiscriminate Israeli fire in the centre of Ramallah, as well as the substantial destruction of civilian property, convey the disregard in which the Israeli army held the principle of distinction in this instance.

While the principle of distinction protects civilians from direct attack, international humanitarian law concedes to the realities of combat, and accepts that the injury and death of innocent civilians may occur as a result of legitimate military operations. This must strictly conform, however, to the requirements of the principle of proportionality, which prohibits the carrying out of an operation where the foreseeable harm to civilians and/or civilian property would be excessive in relation to the real and direct military advantage anticipated. The intensity of the attack from ground troops and helicopters resulting in the loss of four civilian lives and the injury of over 20 more, and the destruction of millions of dollars worth of civilian property, are grossly disproportionate to the stated military objective of arresting one suspected militant. Moreover, this militant was posing no immediate threat at the time and could have been arrested in circumstances that would not have endangered civilian lives.

International humanitarian law exerts further constraint on the use of force through the principle of military necessity, which compliments the doctrines of distinction and proportionality. The principle holds that military actions, even where distinction and proportionality are respected, must contribute towards a concrete and identifiable military objective pertaining to the overcoming of enemy forces. Otherwise, such actions are not legitimate. Firing randomly into crowds of hundreds of civilians and bulldozing civilian property, for a significant period of time after the arrest operation had failed and the undercover unit had already been rescued, was not of any strategic military value to the Israeli forces. Israel thus has no grounds to invoke military necessity in defence of the incursion in Ramallah.

The Israeli actions which stemmed from a failure to respect these and other core principles of international humanitarian law led to the commission of a number of war

crimes; namely wilful killing, destruction of property and perfidy, for which the agents who orchestrated and participated in the incursion are criminally responsible under customary international law.

### ***Wilful Killing***

Wilful killing is defined as a “grave breach” of the Fourth Geneva Convention under Article 147 thereof. Grave breaches comprise the most egregious violations of international humanitarian law and are subject to compulsory universal jurisdiction. The material element, or *actus reus*, for the commission of this grave breach is that the perpetrator killed or caused the death of one or more persons whom they knew (or, due to his or her position, should have known) to be protected under international humanitarian law. On 4 January 2007, Israeli soldiers did indeed kill four Palestinians, including a child, that they knew to be protected persons as civilian members of the occupied population of the OPT. Regarding the mental element, or *mens rea*, customary international criminal law, emanating from the jurisprudence of the post-World War II trials, holds that the notion of “wilful” can include “intent” and “recklessness”. The high-intensity indiscriminate firing in a crowded commercial centre was undeniably reckless. Moreover, Al-Haq’s field documentation shows that more than two-thirds of those killed or wounded by gunshot fire received bullets in the upper part of the body, indicating that the Israeli military officers concerned intended to cause death or serious bodily injury which they had to understand was likely to lead to death. They are thus responsible for the war crime of wilful killing.

### ***Destruction of Property***

As well as providing protection for civilians, international humanitarian law also safeguards civilian property. Article 53 of the Fourth Geneva Convention casts a broad prohibition on the destruction of real or personal property (belonging to private persons or to the state), unless rendered “absolutely” necessary by military operations. The use of military bulldozers to arbitrarily destroy cars and other obstacles on the streets of Ramallah falls well short of the requirements of absolute military necessity. Indeed, with estimated material damages of USD 5 million, the actions of the Israeli military were sufficiently severe as to amount to the grave breach of “extensive” destruction of property. The Geneva Conventions explicitly state that, for this grave breach to occur, the destruction must not be justifiable by military necessity, which in this case it clearly was not. Post-World War II judgments variously defined the mental element for destruction of property as “wantonly” and “wilfully and knowingly.” It is accepted that the mental element for this grave breach is satisfied if the architect of the offence acted with the intent to destroy the property in question or acted in reckless disregard of the likelihood of its destruction. With the incursion captured live by television cameras, the intent of the Israeli military was plain for all to see; bulldozers and armoured vehicles having been deployed to deliberately destroy cars and damage commercial and residential buildings.

### ***Perfidy***

The prohibition on killing, injuring or capturing an adversary by resort to perfidy is a long-standing rule of customary international law. Perfidy is distinguished from “ruses of war,” such as camouflage, which are lawful. The definition of perfidy includes the feigning of civilian, non-combatant status. Launching a military operation while doing so is therefore

proscribed. The attempted arrest of Rabi' Hamed was a military operation to capture a militant, as opposed to a policing operation to arrest a regular criminal. For an act of perfidy to be committed there must be a deliberate attempt to instil false confidence in the adversary, with an "intent to betray." By wearing plain clothes and speaking Arabic, the undercover Israeli agents were attempting to feign civilian status in order to deceive Hamed and those in the vicinity so as to get close enough to capture him. While the undercover unit failed in capturing Hamed, they did wound him with several bullets, and thereby committed an act of perfidy. The killing or wounding of an adversary by resort to perfidy is a war crime under customary international law, for which the perpetrators are liable to be punished.

### ***Individual Criminal Responsibility***

Under customary international law, individuals are criminally responsible for the war crimes they commit, plan or instigate. Commanders and other superiors are criminally responsible for war crimes committed pursuant to their orders. They are also criminally responsible for war crimes committed by their subordinates, if they knew, or had reason to know, that the subordinates were about to commit or were committing such crimes and did not take all necessary and reasonable measures in their power to prevent their commission, or if such crimes had been committed, to punish the persons responsible. Thus, those individual Israeli military agents who planned, ordered and took part in the incursion are criminally liable for the war crimes they committed, as is GOC Central Command Major General Yair Naveh who approved the operation, and subsequently admitted it was an "error of judgement." The then Chief of Staff of the Israeli military, Dan Halutz, and the Minister for Defence, Amir Peretz, denied prior knowledge of the raid, and publicly expressed disapproval. In light of the similar incident which occurred in Ramallah in May 2006, however, they cannot deny that they knew the potential consequences of incursions of this nature, which are regularly carried out in the West Bank by their subordinates. They can also be held accountable, therefore, should they fail to adequately punish those responsible for committing war crimes. A brief investigation already purportedly conducted by the Israeli military found no wrongdoing, although this inquiry appears to have been related to the timing of the incursion (coming as it did just hours before Prime Minister Ehud Olmert's meeting with Egyptian President Hosni Mubarak) rather than the nature of the incursion itself.

Should such impunity be allowed to continue, serious violations of international humanitarian law, such as those witnessed in Ramallah on 4 January 2007, will remain a core feature of Israel's occupation of the OPT. Al-Haq calls on the Israeli military authorities, therefore, to carry out a thorough and transparent investigation into the incursion. It is further imperative that the High Contracting Parties to the Fourth Geneva Convention take meaningful action towards upholding the obligations incumbent upon them to ensure respect for the convention and to actively pursue and prosecute perpetrators of grave breaches.