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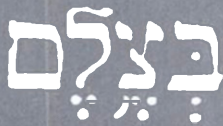
POSITION PAPER

January 2000

Jerusalem

Legislation Allowing the Use of Physical Force and Mental Coercion in Interrogations by the General Security Service





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מרכז המידע הישראלי לזכויות האדם בשטחים [ע.ר.]

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شارع عيمك رفايم ٤٣، (الطابق الثاني) القدس ٩٣١٤١

تلفون ٥٦١٧٢٧١-٢. فاكس ٥٦١٠٧٥٦-٢.

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ISSN 1565-1746

B'Tselem thanks the following attorneys and human rights organizations, who provided much of the information presented in this document and worked as partners over the years to end torture in GSS interrogations:

Attorney Eliahu Abrams
Attorney Allegra Pacheco
Attorney Andre Rosenthal
Attorney Leah Tsemel
Attorney Dan Yakir
Attorney Mustafa Yihye

The Association for Civil Rights in Israel
HaMoked: Center for the Defence of the Individual
Physicians for Human Rights
The Public Committee Against Torture in Israel

Special thanks to Profs. David Heyd and David Kretzmer for their comments on this document.

B'Tselem also thanks the volunteers who assisted in collecting the information: Heidi Altman, Sharon Geva, Guy Grossman, Noa Mann, Ya'akov Sinai, Ilan Steir, Reli Tsury and others.

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Design and production by Studio **Efrat**, Jerusalem

Executive Summary

The Supreme Court took a decisive step to place Israel among the liberal democracies of the world when it ruled that the General Security Service's [GSS] use of coercive methods of interrogation is illegal and forbidden. Following the decision, some public figures called for enactment of a law that would allow the GSS to continue to use physical force in interrogations, and the Ministerial Committee for GSS Matters established a commission to examine the subject.

This document examines the implications of enacting such legislation. It does not relate solely to the question of the "ticking bomb," on which the debate in Israel focuses. The question of what methods of interrogation are legitimate in a democratic state has profound and widespread ramifications, extending beyond the parameters of the "ticking-bomb" case. Thus, this document will address the social, moral, and political consequences that would result from such legislation.

Repercussions of Legislation Allowing Force in Interrogations - Lessons from the Landau Commission

Examination of the implementation of the recommendations of the Landau Commission of Inquiry [Landau Commission], of 1987, which permitted "moderate physical pressure" in interrogations of detainees suspected of hostile terrorist activity, is relevant because, in addition to arranging interrogation methods by statute, prospective legislation would be in a format similar to the recommendations made by the Landau Commission. The legislation would also seek to reduce the scope of pressure allowed, to ensure that it does not reach the level of torture.

However, Israel's experience since adoption of the Landau Commission's recommendations refutes the notion that it is possible to limit the scope and degree of pressure. Methods comprising torture have been used over the past twelve years against thousands of interrogees. Of these, some were innocent of any offense and many were released without being indicted or administratively detained.

Many people argue that establishing a mechanism to oversee the activities of the GSS would ensure that physical force is used only where human life is at stake and would not reach the level of torture. This argument would be reasonable if experience did not prove otherwise. Since the Landau Commission's recommendations were adopted in 1987, GSS interrogations have been supervised

and reviewed by several bodies. However, other than the recent decision of the High Court of Justice, the review mechanisms failed almost completely to question GSS activity. This despite the affidavits, petitions, testimonies, and articles in the press that pointed out time and again that the GSS tortures most Palestinians detained for interrogation. Supervision of GSS interrogations was extremely superficial, and, where the rules were violated, the authorities responded, if at all, forgivingly.

The failure of the supervisory mechanisms to prevent widespread use of torture was largely expected and inherent in the framework established by the Landau Commission. The root of the problem lies not in the functioning or effectiveness of the supervision, but in allowing the use of physical force during interrogations.

From the moment the absolute prohibition against harming an interrogee is removed, supervisory mechanisms, as effective as they may be, will have difficulty distinguishing between "moderate physical pressure" and "increased physical pressure," and between these methods and actual torture. They will also be unable to prevent the almost total immunity granted to security services for acts against Palestinian detainees. Only by tenaciously clinging to the absolute prohibition on any form of physical force can this deterioration be prevented.

Combating Terrorism in a Democratic Country

There is no truth to the claim that other "democratic countries" confronted with terrorism use physical force in interrogations. Although cases can be found where security services in other countries used severe violence in interrogations to obtain information or a confession, these cases were exceptional, unauthorized, and non-institutionalized. This was not the situation in Israel from the time that the government adopted the methods recommended by the Landau Commission until the High Court's decision prohibited their use.

In liberal democracies, the use of physical force during interrogations is explicitly prohibited by law, and offenders are duly tried for their offenses. In these countries, violence and ill-treatment are not considered and approved by a governmental commission, a parliamentary committee and the State Comptroller are not entrusted to oversee their execution, and courts are not required to approve judicial machinations to sanction them.

The normative difference between Israel and other democratic countries is reflected in the scope of the use of torture in interrogations. Whereas Israel used torture routinely, having tortured thousands of interrogees, other countries rarely used torture.

Effectiveness of the Use of Force in Interrogations

Those in favor of allowing torture during GSS interrogations argue that physical force is the only way to extract information vital to combating terrorist groups and preventing terrorist attacks. They ridicule and belittle other methods of interrogation, claiming that "it is impossible to conduct an interrogation over a cup of coffee." However, those who argue that there is no alternative to the use of physical force in interrogations in order to prevent attacks have not provided a shred of evidence that force is the only or even the most effective means. They offer no illustrations of cases where physical force during interrogations was necessary to prevent terrorist attacks, because we do not know what the result would have been if the GSS had refrained from using force and had used other means instead.

Prohibiting the use of physical force during interrogations does not mean that nothing can be done to prevent attacks. GSS agents can act, as security services personnel do in many other countries, resolutely, imaginatively, and professionally using proper methods to try to extract information from the interrogee without the use of force. Such methods appear, for example, in the interrogations manual for CIA agents. Many security officials in Israel and abroad believe that interrogations that do not include the use of physical force are more effective, and that the use of physical force does not ensure a successful interrogation.

Security services warnings that they cannot prevent attacks if not allowed to use force during interrogations must not be taken at face value. Such warnings have proven false in the past. Perjury of GSS agents illustrates the readiness of security personnel to exaggerate the danger. GSS agents did not deny the practice of perjury, but justified it on grounds that "there was no option" to lying, because it is forbidden to make interrogation techniques public. Now, after publication of testimonies of interrogees, affidavits submitted to the High Court, and official state documents, the public is aware of the methods. Despite this, it is not argued that state security has been prejudiced.

Effect on Israel's Status in the International Community

Allowing security services to intentionally inflict mental and physical suffering on defenseless persons under interrogation severely affects a country's international status. The recommendations of the Landau Commission and the manner they were implemented led to stinging criticism of Israel. Enactment of a law explicitly allowing the use of physical force in interrogations would result in much greater censure. Israel would become the first country in the second half of the twentieth century to legalize the use of force during interrogations.

Such a statute would erode one of the most basic principles of international law on human rights - the absolute prohibition on torture and ill-treatment. The international community would perceive Israel as showing utter contempt toward its international commitments, and as objecting to the international community's efforts to strengthen the prohibition on torture throughout the world.

International Law

Any statute allowing the GSS to use physical force or intentionally inflict mental suffering during interrogations - even if limited to the purpose of saving lives, and even if the use of torture is explicitly prohibited - contravenes one of the most basic principles of international law: the absolute prohibition on torture and cruel, inhuman, or degrading treatment or punishment. As in the cases of slavery, genocide, and war crimes, international law perceives torture as unjustifiable under any circumstances. All attempts to allow, however minimally, such methods by justifying torture or ill-treatment on the grounds that they are necessary to combat terrorism or ensure national security, have been rejected outright by international courts.

According to international law and decisions of international bodies, the prohibition does not only apply to methods causing severe pain and suffering, but to all methods of interrogation that intentionally inflict physical or mental pain or suffering to obtain information or a confession. The prohibition applies to the use of any kind of physical force in interrogations. International law does not provide any conditions or reservations that sanction the use of torture or ill-treatment in interrogations.

The Moral Aspect - "Physical Force" as the "Lesser of Two Evils"

Those who support interrogations with physical force argue that it is the only way to prevent the death of innocent persons, and is justified as the "lesser of two evils." This position is based on the perception that the legitimacy of an act is measured according to a single criterion: does its utility exceed its harm?

However, thorough examination of this perception indicates that it leads to conclusions that most of us reject as abhorrent and exceed even what the state is willing to embrace. The principle of "the lesser of two evils" would justify the most brutal forms of torture, including electric shock and breaking of bones to obtain life-saving information. Relying solely on weighing the harm against the utility of an act would also allow the torture of innocent persons, provided that the results prevent a greater evil, such as the death of many people from a bomb planted in a crowded building.

This view is so appalling that it is not surprising that none of the supporters of the GSS's use of physical force in interrogations go this far. Most of them establish limitations on who may be the subject of physical force in interrogations and on what degree of force may be applied. A democratic state, grounded on the rule of law, cannot act solely according to utilitarian considerations. It is often compelled to forego measures that, based solely on short-term interests, appear effective and tempting to save lives.

A review of Israel's position on other matters reveals that its policy is generally the result of a number of considerations. Considerations based solely on utility and harm are often rejected, even where lives are involved, in favor of other considerations.

Torture is, by its nature, absolute evil. For this reason, it is prohibited. The evil inherent in torture is not found in its importance relative to other evils, but in the nature of the act itself. Torture is an intentional assault on the physical and mental integrity and human dignity of a helpless and totally dependent individual. The use of physical force and torture to obtain information turns the interrogee into a tool serving objectives external to himself or herself- and no other purpose.

When the ends justify the means, the difference between terrorism and those who combat it becomes increasingly blurred. Terrorism does not differ from other forms of struggle in the kind of objectives it seeks to attain. Rather, terrorism is morally reprehensible because of the willingness to adopt even the most reprehensible means. A state that allows its security services to torture detainees as part of the

fight against its enemies adopts the position that the ends justify the means. Such conduct completely contradicts the basic values of a democratic state.

Conclusions

Any law allowing the GSS to use physical force, even in exceptional circumstances, is equivalent to sanctioning torture or other forms of cruel, inhuman or degrading treatment. This conclusion is inevitable in light of the manner in which the Landau Commission's recommendations were implemented over the past twelve years, showing that, in practice, physical force during interrogations cannot be maintained at a sub-torture level, and its routine use cannot be prevented.

Israel's dilemma is not to decide between deaths of innocent persons and allowing physical force during interrogations in the exceptional cases of "ticking bombs." The real dilemma is between allowing torture of hundreds and thousands of persons and adopting alternative means of interrogation and investigation, as other states combating terrorism have done.

Fifty-one years since the establishment of the State of Israel, and in the midst of a process that is intended to lead to conciliation between Israelis and Palestinians, the time has come for Israel to enact a statute prohibiting torture. Israel should also regulate the powers of the GSS by statute without allowing the use of force during interrogations, neither "moderate" nor "increased," neither under the guise of "exceptional measures" nor as "special permissions," neither according to the discretion of the director of the GSS nor by approval of the prime minister.

Legislation prohibiting torture would reinforce the moral, legal, and international strength of Israel and further shape its character as a democratic state. Only then will Israel be able to proclaim, at the start of the 21st century, what Victor Hugo stated in 1874: "Torture ceased to exist."

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Introduction

The Supreme Court took a decisive step toward placing Israel among the world's democratic nations when it ruled that interrogation methods among those regularly used by the General Security Service (GSS) are illegal and forbidden. The justices made this ruling despite heavy pressure by the defense establishment, representatives of the state, and substantial segments of the public.

The justices adopted the argument raised by jurists and human rights organizations in Israel and abroad opposing interrogation methods permitted by the Landau Commission. They ruled that the GSS has no authority to use physical force during interrogations, and that such acts are illegal. However, the justices stated that, "If the State wishes to enable GSS investigators to utilize physical means of interrogations, it must seek the enactment of legislation for this purpose."¹

Following the decision, some public figures called for enactment of legislation that would allow the GSS to continue to use coercive measures during interrogations. The Knesset's Likud faction recently submitted a proposed law along these lines.² Also, on 15 September 1999, the Ministerial Committee for GSS Matters, headed by Prime Minister Barak, appointed a committee of experts "to find a lawful solution to the use of physical force in interrogations of terrorist suspects, where there is an immediate security danger ("ticking bomb")."³

Each time that the subject of GSS interrogation methods arises, public debate in Israel focuses almost exclusively on the "ticking bomb" scenario: is it justifiable to torture a person who planted a bomb that will soon explode, in order to compel him or her to provide the GSS with information necessary to defuse it and thereby save lives? This hypothetical situation indeed creates a difficult moral dilemma and poses interesting philosophical questions. However, the question of which methods of interrogation are legitimate in a democratic society combating terrorism has widespread and profound ramifications, extending beyond the parameters of this case. As Supreme Court President Aharon Barak stated in the recent decision:

1. HCJ 5100/94, *Public Committee Against Torture in Israel v. The State of Israel et al.* and six other petitions (hereafter: the *HCJ on GSS Interrogations*), par. 37.

2. Proposed Criminal Procedure (Powers and Special Investigation Methods for Security Offenses) Law, 5760-1999.

3. *Ha'aretz*, 16 September 1999.

... the Legislator, if he so desires, may express his views on the social, ethical and political problems connected to authorizing the use of physical means in an interrogation.⁴

This document addresses those social, ethical, and political problems raised by the legalization of the use of physical force and intentional infliction of mental suffering during GSS interrogations. In doing this, we hope to contribute to the public debate before the matter is decided.

Throughout its ten years of existence, B'Tselem has monitored GSS interrogations perhaps more than any other non-governmental organization in Israel or abroad. It was the first Israeli human rights organization to publish a report on the subject,⁵ and has published seven subsequent reports dealing with GSS interrogations.⁶ Over the years, B'Tselem has provided information on GSS interrogations to government ministers and Members of Knesset, diplomats and decision-makers from abroad, and committees in Israel⁷ and abroad.⁸

Not surprisingly, because of Israel's security situation, these reports, which reviewed and criticized the interrogation techniques that the GSS used until the recent High Court decision, often provoked stormy responses. B'Tselem is aware of Israel's security needs and the necessity of providing the GSS tools enabling it to defend its citizens. However, as citizens of Israel and human rights activists, we are obligated to monitor GSS interrogations and warn about methods that harm the dignity and well-being of interrogees. We must do what we can to prevent the assault - committed in interrogations hidden from public eye and in the name of our security - on the humanity of thousands of persons, challenging basic moral values, violating human rights, and ravaging the rule of law.

This document addresses the following subjects:

Chapter 1 discusses the *morality* of empowering GSS agents to use physical force against detainees. This chapter examines the moral perception that the state relies

4. HCI on GSS Interrogations, par. 37.

5. B'Tselem, *Interrogation of Palestinians during the Intifada: Ill-Treatment, "Moderate Physical Pressure," or Torture?*

6. *The Interrogation of Palestinians during the Intifada: Follow-up Report; The Death of Mustafa Barakat in the Interrogation Wing of the Tulkarem Prison; "The New Procedure" in GSS Interrogation: The Case of 'Abd a-Nasser 'Ubeid; Torture during Interrogations: Testimony of Palestinian Detainees, Testimony of the Interrogators; Detention and Interrogation of Salem and Hanan 'Ali., of Bani Na'im Village; Legitimizing Torture: The Israeli High Court of Justice Rulings in the Bilbeisi, Hamdan and Mubarak Cases; Routine Torture: Interrogation Methods of the General Security Service.*

7. The Vardi Commission; the Joint Committee of the Foreign Affairs and Defense Committee and the Law, Constitution, and Justice Committee, which discussed the subject of a GSS law.

8. The UN Committee Against Torture; the UN Human Rights Committee.

upon, that physical force during interrogations is "the lesser of two evils," and points out the defects inherent in this perception. This chapter indicates how, in other areas, Israeli policy is not based on narrow considerations of cost-benefit analysis - even when saving lives is involved - and most of its decisions result from complex considerations, where immediate results are not given supreme importance. The unique features of physical force and intentional infliction of mental suffering during interrogations, which make it one of the most morally reprehensible acts committed by a state, are also discussed.

Chapter 2 discusses *international law*. It emphasizes the degree to which the absolute prohibition - both on torture and on cruel, inhuman or degrading treatment - is incorporated into every document, agreement, or decision of international bodies dealing with the subject. This chapter reviews the relevant instruments, which relate to torture as they do to slavery, genocide, and war crimes - acts that are never justifiable. These instruments clearly state that the prohibition on torture and ill-treatment⁹ in international law includes all methods of interrogation that intentionally inflict pain or suffering, physical or mental. Against this background, the chapter presents the position of UN human rights institutions, which hold that GSS interrogations conducted prior to the High Court decision constitute torture.

Chapter 3 discusses the *lessons learned from the implementation of the Landau Commission's recommendations*. This chapter does not criticize the interrogation methods used by the GSS pursuant to the Commission's recommendations, because they are no longer in use following the High Court's recent decision. However, an examination of the implementation of the Landau Commission's recommendations in practice is relevant to a discussion of legislation dealing with powers of the GSS. Such legislation would likely be in a format similar to the Commission's recommendations; it would seek to limit the scope of the permissions allowing the use of physical force and mental coercion, and ensure that the methods allowed do not reach the level of torture. We shall show that the experience accumulated in Israel during the twelve years since the Landau Commission issued its recommendations refutes the belief that it is possible to allow "moderate" physical pressure without it leading to the torture of thousands of detainees, some of whom are innocent of any offense.

Chapter 4 discusses *ways in which democratic countries cope with terror*. This chapter refutes the widely-held belief in Israel that every democratic country

9. We shall use the term ill-treatment to refer to the legal term "cruel, inhuman or degrading treatment or punishment."

threatened by terror and terrorist attacks uses physical force during interrogations as a means to protect their citizens. The chapter points out the differences in norms and practices in interrogation methods used in democratic countries confronting terrorism, such as Great Britain and the United States - where the use of force in interrogation is the exception, and is neither institutionalized nor permitted - and Israel's practice from the time that the government adopted the methods recommended by the Landau Commission until the High Court's recent decision.

Chapter 5 discusses the effectiveness of the use of force in interrogations. B'Tselem does not profess to examine the effectiveness of the various interrogation methods, or to propose to the GSS effective alternative means. However, in the heat of the argument being waged over GSS interrogations, one often gets the impression that the choice is between using force and questioning the detainee "over a cup of coffee." This chapter shows that the question of the effectiveness of force in interrogations is much more complex.

Comment regarding terminology in the document: We prefer to use the term "force", "pressure" or "coercion" and not only "torture" in order to avoid providing even the slightest basis for the presumption that legislation that prohibits "torture" but allows physical force or the intentional infliction of mental suffering against the interrogee is appropriate. As we shall argue below, the use of physical force and the intentional infliction of mental suffering constitute torture or cruel, inhuman, or degrading treatment, and are, therefore, absolutely forbidden.

Chapter 1: The Moral Aspect - Physical Force as "The Lesser of Two Evils"

A. "The Lesser of Two Evils"

Those who support allowing GSS interrogators to use force in interrogations, and even those who support the use of torture, do not argue that torture is, in and of itself, desirable. Also in their view, ill-treatment of persons and violation of their dignity, however grave the suspicions against them, are reprehensible and generally unjustifiable. They make an exception where ill-treatment is the only way to prevent that individual from victimizing innocent civilians.

This position is based on a simple weighing of interests: what is more important, or what is more important to protect - the dignity and bodily integrity of one person, or the lives and limbs of many persons? More to the point: the dignity and bodily integrity of a murderer, who seeks to kill indiscriminately as many innocent people as possible, is weighed against the lives and welfare of those innocent persons. On this point, the Landau Commission took the following position:

To put it bluntly, the alternative is: are we to accept the offense of assault entailed in slapping a suspect's face, or threatening him, in order to induce him to talk and reveal a cache of explosive materials meant for use in carrying out an act of mass terror against a civilian population, and thereby prevent the greater evil which is about to occur? The answer is self-evident.

Everything depends on weighing the two evils against each other.¹⁰

The ethical support for this position holds that the morality of an act is measured according to a single criterion: does the resulting utility exceed the resulting harm? According to this argument, the perception of every human life as sacred is precisely what justifies action to save the lives of the greatest number of persons when faced with the need to choose between two evils.¹¹

However, a close look at this approach - which holds that the result of an act is decisive and the sanctity of life outweighs every other value under any

10. Landau Commission Report, secs. 3.15 - 3.16.

11. Rudolph, pp. 218-219.

circumstance - reveals that it leads to results that most people find abhorrent and to the use of methods that even the state is not willing to adopt.

According to the principle of "the lesser of two evils," there is no logical or ethical reason to limit the use of force to less severe means than torture or ill-treatment. In the words of Lord Gardiner, a member of the Parker Commission (a British commission of inquiry appointed, in 1972, to review the interrogation methods used against IRA suspects):

If it is to be made legal to employ methods not now legal against a man whom the police believe to have, but who may not have, information which the police desire to obtain, I, like many of our witnesses, have searched for, but been unable to find, either in logic or in morals, any limit to the degree of ill-treatment to be legalised. The only logical limit to the degree of ill-treatment to be legalised would appear to be whatever degree of ill-treatment proves to be necessary to get the information out of him, which would include, if necessary, extreme torture.¹²

Thus, according to the principle of "the lesser of two evils," it would be immoral to forbid torture to the point of death if it could save lives. This was the conclusion reached by Shai Nitzan, the attorney for the state in the High Court hearing, who held steadfastly to this position:

When a particular method is used, two interests have to be weighed. The defense of necessity is not something that leads to a result, it is a formulation that has two components. The defense of necessity may be used provided that it is reasonable. *As regards the statute, even an act causing death, if justified, is acceptable.* This situation is that of the ticking bomb, when a person has information on a bomb that is about to explode. Here the defense of necessity applies. It is hard to dispute this thesis. Many commentators who have prohibited torture say there are cases, as I presented, to which the defense of necessity applies. In those concrete situations, it is permissible to do something exceptional. The degree of necessity dictates the degree of the methods we shall use.¹³

Indeed, relying solely on weighing the harm against the utility of an act would also allow especially brutal torture such as electric shock, removal of organs, and rape, even torturing the interrogee to death, to obtain information to save lives when

12. The Parker Commission, Lord Gardiner's opinion, par. 20(2).

13. *HCI on GSS Interrogations*, hearing on 20 May 1998, Protocol, p. 5 (our emphasis).

"moderate physical pressure" is insufficient. All according to "the degree of necessity," in the words of attorney Nitzan.

"The lesser of two evils" principle even sanctions torture of innocent persons. Thus, not only would it be permissible to torture the person who placed the bomb, it would also be moral to torture, for example, the perpetrator's young daughter, to pressure him to provide the information when he cannot be found, provided that the result prevents a greater evil, such as the bombing of a crowded building.¹⁴

However, this view is so abhorrent that it is not surprising that no supporters of the use of physical force during interrogations, including state officials, consider such details. Most supporters of force during interrogations, including those who limit it to ticking-bomb cases, establish limitations on who the subject of physical force in interrogations may be and the degree of force that may be used. The Landau Commission itself, which supported the principle of "the lesser of two evils", emphasized the risk with "respect to the interrogation methods of a security service, which is always in danger of sliding towards methods practiced in regimes which we abhor."¹⁵ Accordingly, the Commission limited the cases in which it is allowed to use physical pressure against detainees and stated that, "the pressure must never reach the level of physical torture or maltreatment of the suspect or grievous harm to his honor which deprives him of his human dignity."¹⁶

Examination of the state's position on other matters indicates that policy is usually based on complex considerations. Narrow cost-benefit considerations, even where human life is involved, are often rejected in favor of other considerations.

A democratic state, founded on the rule of law, cannot act solely according to utilitarian considerations, and often has to forego, at times painfully, short cuts that appear effective and tempting to save lives. Thus, police are often compelled to stand helpless against a drug dealer who roams freely selling drugs to adults and children. Police could plant drugs on him and arrest him, but in a state that recognizes the rule of law, the police conduct a lengthy and frustrating and at times dangerous surveillance until they obtain the evidence necessary to indict the offender. In the meantime, additional persons may fall victim to the drug dealer. Under the rule of law, judges are frequently compelled to release a suspect if the prosecutor does not present sufficient evidence to prove guilt, even though they believe that the suspect is a dangerous criminal. Judges can bend the law slightly to ensure that justice triumphs and society is saved from a dangerous person, but

14. See Moore, at pp. 291-292, where a similar case is posited.

15. Landau Commission Report, sec. 4.2.

16. *Ibid.*, sec. 3.16.

in a state subject to the rule of law, the judge will find the defendant in this case innocent and release him or her. Under the rule of law, physicians are helpless in the face of patients needing organ transplants. They could kill terminally-ill patients lying in the next room and transplant their organs to several persons whose lives would be substantially prolonged, but in a state operating within the confines of the rule of law, physicians will refrain from acting in that manner.

Choosing the easy way may lead to immediate benefit and saving of lives. But Israel refrained from taking any of these actions, knowing that the easy and efficient short-term solution would undermine the state's most basic values, which it is unwilling to relinquish even at a heavy cost.

The above discussion indicates that, while the state argues "the lesser of two evils" and cost-benefit considerations to justify the use of physical force during GSS interrogations, in other matters it takes additional considerations into account.

This conclusion raises the suspicion that the basis for justifying physical force in interrogations is not the candid and declared concern for saving lives, but also, and possibly primarily, the fact that the persons tortured are mostly Palestinians.¹⁷ This concern is bolstered by the comments of GSS Director Ami Ayalon, who hinted that, when GSS actions involve Jews, prevention of an attack against crowds of people does not suddenly constitute a paramount consideration. According to Ayalon, "it is forbidden to use agents in Jewish groups in the way that the GSS acts within Hamas, even at a cost of serious attacks."¹⁸

Also if we only use cost-benefit analysis in determining whether the GSS should be allowed to use physical force in interrogations, all possible ramifications must be considered, one being the weakening of Israel's justifiable demand that Israeli POWs receive humane treatment and are not tortured. During war, some captive soldiers and officers have information whose immediate revelation would save lives, and not only where the bomb is ticking, but is exploding right and left. Under Israel's approach, the captors could argue that the soldier has information, such as sites to be bombed, thereby justifying them, based on the "lesser of two evils" principle, to torture the captive. These states could rely on the permissions given in Israel to GSS interrogators and quote Israeli security officials who justified it.

We do not argue that allowing the use of force would result in the torture of Israeli soldiers, since torture of Israeli soldiers existed prior to the Landau Commission's

17. Regarding the nationality aspect lying behind Israel's policy on GSS interrogations, see Kremnitzer and Segev, pp. 680-681, and Statman, p. 179.

18. *Kol Ha'Ir*, 30 July 1999.

recommendations and may occur in the future, regardless of any legislation that may be enacted. However, relying on the principle of "the lesser of two evils" in order to sanction the use of physical force of any type in interrogations would cause Israel to lose its moral and legal right to demand other states not to harm Israeli POWs.¹⁹

B. The Absolute Prohibition on Torture

The opposite approach to justifying the use of physical force during interrogations on the basis of the "lesser of two evils" principle holds that torture - like murder, slavery, rape, and other reprehensible acts - comprises absolute evil and thus is prohibited absolutely. The evil inherent in torture lies not in its comparison to other evils, but in the act itself. The prohibition on torture is unrelated to the question of what result would be attained by the use of torture, also if it would prevent harm to other values, like the sanctity of life. The international community adopted this approach by prohibiting torture and ill-treatment under any circumstances, even to save many lives.²⁰

The principal reason that cost-benefit analysis is unacceptable when discussing torture, and the reason why the international community adopted the moral view prohibiting it in all circumstances, lies in the meaning inherent in authorizing the intentional infliction of pain and suffering on another person. Although this meaning is ostensibly obvious, concern for the interrogatee's suffering is theoretical for many participants in the public debate on this subject in Israel, while identification with the suffering of victims of attacks and their families is easier. This attitude results, in part, from the fact that, while all of us (Israeli citizens) are potential victims of terrorism, the likelihood that GSS interrogators will use physical force and torture against us is almost non-existent. However, it is vital when considering enactment of legislation dealing with GSS interrogations that we understand the significance of using force against another person.

The use of coercion of any kind in interrogations is intended to break the detainee. This is accomplished by increasing the physical and psychological pressure applied, and by its accumulative effects.²¹ Coercion is a planned assault on the physical and psychological well-being and dignity of the interrogatee, who is rendered helpless and completely dependent on those harming him or her.

19. See the article of Ronny Talmor in *Tarbut Ma'ariv*, 1 October 1999, annexed as Appendix 2.

20. See Chapter 2 for an extended discussion on this point.

21. See Lippman, p. 7.

According to the CIA's manual for interrogators, of 1963, "The usual effect of coercion is regression. The interrogee's mature defenses crumble as he becomes more childlike." The manual quotes research conducted by Farber showing that the response to coercion typically contains "...at least three important elements: debility, dependency, and dread."²² Unlike punishment, the detainee does not know when the interrogation will end. This uncertainty adds to the detainee's sense of anxiety and fear.

Applying physical force in interrogation in order to obtain information turns the interrogee into a tool intended solely to serve as a means - and no other purpose. The interrogee's individuality, wishes, pain, and suffering are ignored except insofar as they serve that purpose. The sole result of ill-treatment to which the interrogators attribute any significance is whether the interrogation succeeds. The suffering of the interrogee is irrelevant to them.

This approach was apparent in a GSS agent's testimony before a military court in the matter of Sa'id Zo'arub. A segment of the cross-examination of the GSS agent, given the name "Jerry," concerning the method he described as "tightening the handcuffs to the smallest possible circumference on the detainee's wrist," follows:

Q [attorney Leah Tsemel]: Did you intend to cause him discomfort or pain?

A: I already said that the objective is to obtain vital information.

Q: A painful means?

A: I described the measures and the objective, and it is not inflicting pain.²³

And regarding the method described in the GSS document as "standing with hands over his head":

Q: And what was the measure intended to cause the defendant this time: tickling, pain, discomfort?

A: The measure was intended to make progress on getting vital information that the interrogee did not want to divulge.

Q: You would agree with me that this measure causes pain and physical torment, mental weakness - or at least is intended to cause these results?

22. These instructions, which allowed the use of coercion during interrogations, are no longer in effect. In 1985, the CIA issued directives prohibiting "the use of force, mental torture, threats, insults or exposure to unpleasant and inhumane treatment of any kind as an aid to interrogation." *International Herald Tribune*, 6 March 1998.

23. *The Military Prosecutor v. Sa'id Salem Ibrahim Zo'arub*, Protocol, p. 35.

A: The measure is intended to reach the same objective that I described, and I don't want to repeat it.

Q: Why do you think that if you do this, it will make him talk?

A: I told you the objective, I explained in detail the measure. I also said that, in any event, the intention is not to torture him.²⁴

Viewing the individual solely as a means to an end was rejected by Supreme Court President Barak when he related to the Basic Law: Human Dignity and Liberty:

"Human Dignity and Liberty" teaches us that various rights are involved in the process of the interrogation... Interrogation methods are not allowed where the individual is turned into a means for supplying information, interrogation must not enable the individual's identity as a human being to be denied, and punishment harming the individual's humanity must not be allowed.²⁵

When the ends justify the means, the difference between terrorism and those who combat it becomes increasingly blurred. From the aspect of the kind of objectives it wishes to attain, terrorism is not different from other forms of struggle. Terrorists often fight to realize legitimate, and even lofty goals, in the eyes of many, such as freedom, independence, social justice, and minority rights. The content of these objectives is often strongly debated. Terrorism is considered morally reprehensible not necessarily because of its objectives, but because of the unwillingness of terrorists to reject certain means to attain those objectives. A state that allows its security services to torture detainees in its fight against its enemies adopts the position that the ends justify the means. However, acting in this manner completely opposes the basic values of a democratic state. As Justice Barak stated, "This is the destiny of democracy, as not all means are acceptable to it, and not all practices employed by its enemies are open before it."²⁶

24. *Ibid.*, p. 36.

25. Aharon Barak, *Judicial Interpretation* (in Hebrew), p. 422.

26. *HCI on GSS Interrogations*, par. 39.

Chapter 2: International Law²⁷

Any statute allowing GSS agents to use physical force or intentionally inflict mental suffering in interrogations - also if restricted to life-saving cases and also if torture is explicitly prohibited - would contravene one of the most fundamental principles of international law: the absolute prohibition on torture and ill-treatment.

This prohibition appears in every document, agreement, and decision of international organizations dealing with this subject, and decisions of international courts unequivocally support this absolute prohibition. Torture is treated, like slavery, genocide, and war crimes, as unjustifiable at all times and in all circumstances.

According to international law and decisions of international tribunals, the prohibition does not only apply to methods that cause severe pain and suffering, but to methods of interrogation that intentionally cause physical or mental pain or suffering to obtain information or a confession. The prohibition applies to every use of physical force in interrogations. International law does not provide any conditions or reservations pursuant to which torture or ill-treatment is considered legal.

A. The Absolute Prohibition on Torture and Ill-treatment - "No Exceptional Circumstances"

1. Human Rights Instruments

(a) The UN System

The international community formulated numerous human rights declarations and conventions prohibiting the use of interrogation methods that constitute torture or ill-treatment. Article 5 of the UN Declaration of Human Rights, of 1948, states that, "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." Despite the substantial moral force of the Declaration, it is not legally binding. Thus, legally binding conventions were drafted to obligate the signatory parties. An identical provision is found in article 7 of the UN

27. For an extended discussion on the relevant international law, see the domestic law and comparative law sources - supplemental arguments and appendixes on behalf of HaMoked: Center for the Defence of the Individual in HCJ on GSS Interrogations.

International Covenant on Civil and Political Rights, of 1966, which Israel ratified in 1991.²⁸

Drafters of the Covenant on Civil and Political Rights agreed that, in emergency conditions, it would be impossible to safeguard all rights incorporated within the convention to the same degree as in peacetime. As a result, there are rights that may be restricted temporarily, "to the extent strictly required by the exigencies of the situation," after a state of emergency has been officially proclaimed. However, it was agreed and stipulated that some rights, among them the prohibition on torture and ill-treatment, must be honored in every situation and condition, without reservation or exception.²⁹ The logic in this demand was explained by the British delegate, who took part in formulating the European Convention on Human Rights, which contains a similar article, in the proposal raised in one of the drafting committees:

The Consultative Assembly takes this opportunity of declaring that all forms of torture are inconsistent with civilized society ... they are offenses against heaven and humanity and must be prohibited. It declares that this prohibition must be absolute and that torture cannot be permitted for any purpose whatsoever, either for extracting evidence, to save life, or even for the safety of the state.³⁰

The UN Human Rights Committee, which operates pursuant to the UN International Covenant on Civil and Political Rights and whose members are international-law experts, published a General Comment regarding article 7 of the Covenant. The committee stated:

The text of article 7 allows of no limitation. The Committee also reaffirms that, even in situations of public emergency such as those referred to in article 4 of the Covenant, no derogation from the provision of article 7 is allowed and its provisions must remain in force. The Committee likewise observes that no justification or extenuating circumstances may be invoked to excuse a violation of article 7 for any reasons, including those based on an order from a superior officer or public authority.³¹

28. An identical provision, except for the omission of the word "cruel," is also found in article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (1953).

29. UN Covenant on Civil and Political Rights, article 4.

30. Collected Edition of the *Travaux Préparatoires*, pp. 252-254.

31. General Comment No. 20.

Numerous other rules and declarations passed by the UN also prohibit absolutely the use of torture and ill-treatment. An example is article 5 of the Code of Conduct for Law Enforcement Officials, adopted by the UN on 17 December 1979, which provides:

No law enforcement official may inflict, instigate or tolerate any act of torture or other cruel, inhuman or degrading treatment or punishment, nor may any law enforcement official invoke superior orders or exceptional circumstances such as a state of war or a threat of war, a threat to national security, internal political instability or any other public emergency as a justification of torture or other cruel, inhuman or degrading treatment or punishment.³²

In 1984, the UN General Assembly adopted the Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment. The Convention took effect in 1987 and was ratified by Israel in 1991. It imposes on the state parties duties such as enacting legislation to prevent acts of torture and ill-treatment, punishing offenders, and refraining from extraditing persons to states where it is believed the persons will be subject to torture. This Convention also stipulates that, "No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture."³³ Burgers and Danelius, who were among the principal drafters of the Convention, wrote that, according to this article:

The prohibition of torture is absolute and without exception. No exceptional situation, such as a state of war or internal instability, can ever justify torture.... The background is that, while under several human rights conventions States are allowed to derogate from their obligations in time of war or in other emergencies, no such derogation is allowed in respect of a few fundamental rights of the individual, including the right not to be subjected to torture or other inhuman or degrading treatment or punishment.³⁴

32. See, also, Standard Minimum Rules for the Treatment of Prisoners, adopted in 1955 by the Economic and Social Council of the UN, particularly article 31; Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted by the UN General Assembly in 1975 (which served as a basis for the UN convention on the subject), particularly article 3.

33. Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment, sec. 2(2).

34. Burgers and Danelius, p. 124.

Israel argued in the High Court that, although there is an absolute prohibition on torture, the prohibition on methods of interrogation constituting ill-treatment "are not absolutely prohibited, and [the prohibition] may be limited in times of emergency."³⁵ However, this position is imprecise, because article 16 of the Convention against Torture prohibits ill-treatment by requiring the signatory states to prevent "acts of cruel, inhuman or degrading treatment or punishment." To eliminate the possibility of interpreting the prohibition on these acts as less than the prohibition on torture, paragraph 2 of the article states:

The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.

Israel is party to the UN Covenant on Civil and Political Rights and to the Fourth Geneva Convention, both of which explicitly prohibit such treatment and punishment. Thus, Israel is unable to argue that it is allowed to ill-treat Palestinian detainees in exceptional circumstances if the treatment does not reach the level of torture. To so argue would contravene Israel's self-imposed commitments under international law.³⁶

According to Israeli law, international conventions are not part of Israeli domestic law unless incorporated within it. This has not been done in the matter of torture. However, customary international law is part of domestic law. There is currently almost no dispute that the absolute prohibition on torture and ill-treatment is included within customary law, thus binding Israel. This fact is reflected in the judicial policy of most countries and in the positions taken by states, courts, and international-law experts.

The great importance that international law places on the prohibition on torture and ill-treatment is also illustrated by the fact that all the tribunals that tried war criminals - from the Nuremberg trials in the 1940s to the trials dealing with Rwanda and the former Yugoslavia in the 1990s - tried and convicted defendants for committing torture. A defendant charged with torture has never been acquitted on the grounds that his actions were lawful or justified under the circumstances. The

35. Response of the State in *HCIJ on GSS Interrogation Methods*, par. 31(D).

36. The legal definition of customary international law appears in article 38(1)(c) of the Statute of the International Court. For the definition of the prohibition on torture under customary international law, see the decisions in *Filartiga* and *Pinochet*. For the position of international-law experts, see, for example, Meron, p. 23; Evans and Morgan, p. 62; Rodley, pp. 65-67.

Statute of the International Criminal Court, adopted in Rome in 1998, defines torture and ill-treatment as "crimes against humanity,"³⁷ and as "war crimes."³⁸ No delegates participating in the drafting of the Statute objected to these provisions. The only case in which a head of state was prosecuted by another state, that of Auguste Pinochet by Spain, involved his responsibility for acts of torture.

(b) The European System

The human rights system in Europe is the most developed and effective in the world on this subject. Although Israel is not part of this system, consideration of the manner in which it deals with torture is important because Israel, and the Landau Commission previously, relied on this system when defending GSS methods of interrogation. It is also important because of the widespread argument that other democratic states, among them members of the European community, when faced with a security situation comparable to Israel's, also allow the use of physical force against interrogees.³⁹ Furthermore, decisions of the European Court of Human Rights (ECHR) have great weight on other human rights bodies around the world.

More than any other international organization, the ECHR has dealt at length with the prohibition on torturing detainees in the context of combating terrorism and other emergency situations. Without exception, the Court emphasizes that the prohibition applies regardless of the circumstances. The ECHR hermetically sealed the prohibition on torture and ill-treatment, and utterly rejected any attempt to allow any opening that would justify such treatment on grounds that it is necessary in the fight against terrorism or to ensure national security.

In *Aksoy*,⁴⁰ for example, the ECHR ruled on Turkish security forces' treatment of a detainee suspected of membership and activity on behalf of the PKK, a Kurdish militant organization operating against the Turkish government. Following violent activity of the organization, the Turkish government proclaimed a state of emergency in southeast Turkey. The ECHR did not dispute the legality of this proclamation. In relating to violations of article 3 of the European Convention for the Protection of Human Rights and Fundamental Freedoms, which prohibits torture and ill-treatment, the Court stated:

37. Article 7(f), (k) of the Statute of the International Criminal Court.

38. In articles 8(2)(a)(ii) and 8(2)(c)(ii) of the Statute.

39. On this subject, see Chapter 4.

40. *Aksoy* (1996). See also *Aydin* (1997).

Article 3, as the Court has observed on many occasions, enshrines one of the fundamental values of democratic society. Even in the most difficult of circumstances, such as the fight against organized terrorism and crime, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment.⁴¹

The ECHR held that Aksoy had been tortured by Turkish security forces. Turkey did not attempt to justify the torture of the petitioner, but denied the facts presented by him.

In *Chahal*,⁴² Great Britain ordered the deportation of an Indian citizen to India on grounds that he was active in extremist Sikh organizations in England, was suspected of planning terrorist and other violent acts in the country, and was affiliated with a separatist movement in the State of Punjab. Chahal argued that, if deported, he would be tortured in India, and thus Great Britain did not have the right to deport him. The Court accepted his argument and rejected Great Britain's argument that national security considerations and the struggle against terrorism justify his deportation and the risk that he would be tortured in India. In their decision, the judges stated:

The Court is well aware of the immense difficulties faced by States in modern times in protecting their communities from terrorist violence. However, even in these circumstances, the Convention prohibits in absolute terms torture or inhuman or degrading treatment or punishment, irrespective of the victim's conduct....

The prohibition provided by article 3 against ill-treatment is equally absolute in expulsion cases. Thus, whenever substantial grounds have been shown for believing that an individual would face a real risk of being subjected to treatment contrary to article 3 if removed to another State, the responsibility of the Contracting State to safeguard him or her against such treatment is engaged in the event of expulsion... In these circumstances, the activities of the individual in question, however undesirable or dangerous, cannot be a material consideration.⁴³

41. Par. 62 of the judgment.

42. *Chahal*, 1996.

43. Pars. 79-80 of the decision. See also *Tomasi* below. All the decisions mentioned here were based in large part on the ECHR's decision in *Ireland v. United Kingdom*, of 1978. On this decision, see Chapter 4 below.

In addition to the European Convention on Human Rights, European states drafted the Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. The convention establishes a committee to oversee compliance with the Convention, which is done by visiting the signatory states' detention facilities. The committee is authorized to visit any detention facility without notice, enter any area within the facility, and meet privately with any detainee or prisoner. The committee meets with officials, detainees, and prisoners, and submits reports to the relevant states. In reply, the states send their reports to the committee.

The committee's position on terrorism and torture is unequivocal. In the case of Northern Ireland, for example, the committee stated:

At the outset of this report, the CPT wishes to underscore that it abhors terrorism, a crime which is all the more despicable in a democratic society such as Northern Ireland. Further, it is fully conscious of the great difficulties facing the security forces in their struggle against this destructive phenomenon.

Terrorist activities rightly meet with a strong response from State institutions. However, under no circumstances should that response be allowed to degenerate into acts of ill-treatment by law enforcement officials. Such acts are both grave violations of human rights and fundamentally flawed methods of obtaining reliable evidence for combating crime. They are also degrading to the officials who inflict or authorize them. Worse still, they can ultimately undermine the very structure of a democratic society.⁴⁴

No European state, including those combating terrorism, has tried to justify the use of torture or ill-treatment on grounds of security needs.

The above discussion indicates that the international community rejected and continues to reject any attempt to rely on utilitarian arguments to justify violation of the prohibition on torture and ill-treatment, and adopted the absolutist moral approach regarding those rights. Professor Nigel Rodley, a leading academic expert on the subject, who also serves as UN Special Rapporteur on Torture, summarized the international legal position as follows:

44. CPT Report on visit to the UK (Northern Ireland), par. 10. The Committee used similar language in reports on Turkey and a report on Spain.

The present position on 'justifiability' as an element in the concepts of torture and other ill-treatment may be summarized as follows: the notion is not available as a defence against the charge of violating the prohibition against torture and other ill-treatment; this prohibition is absolute. Nor can it be used to excuse acts of torture or ill-treatment on the general utilitarian grounds that they are intended to serve a greater good.⁴⁵

2. International Humanitarian Law

The laws adopted by the international community prohibiting torture and ill-treatment also cover the most violent and extreme circumstances - wartime - including the use of force to obtain information from detainees and POWs. The prohibition appears, for example, in the Fourth Geneva Convention of 1949, which allows no exceptions.⁴⁶ The laws of war are relevant because Israel continues to hold the status of occupier of the Occupied Territories, and Palestinian detainees are considered "protected persons" within the meaning of the Fourth Geneva Convention, which defines the duties of an occupying state toward the population in occupied territory.⁴⁷ Article 32 of the Convention states:

The High Contracting Parties specifically agree that each of them is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishments, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.

In his commentary to the Fourth Geneva Convention, published by the International Committee of the Red Cross, Jean Pictet states regarding this provision:

45. Rodley, p. 84.

46. This prohibition appears in one of the first instruments attempting to regulate actions taken during wartime, the codification of the laws of war, of 1863, by Prof. Lieber (Lieber Code), which the army of the United States used during the Civil War. Article 16 of the Code provides that, "Military necessity does not admit of cruelty ... nor of torture to extort confessions." See also the Hague Regulations of 1907: article 4 - regarding prisoners of war, and article 44 - regarding civilians; article 3(1) common to the four Geneva conventions of 1949 - regarding a conflict that is not international; Third Geneva Convention, articles 13-17 - regarding prisoners of war; and Fourth Geneva Convention, articles 27, 31, and 32 - regarding civilians held by the occupier or one of the belligerents.

47. See B'Tselem, *Israeli Settlement in the Occupied Territories as a Violation of Human Rights*, pp. 9-15.

The prohibition of torture set forth in this Article is absolute; it covers all forms of torture, whether they form part of penal procedure or are quasi- or extra-judicial acts, and whatever the means employed. There need not be any attack on physical integrity since the "progress" of science has enabled the use of procedures which, while they involve physical suffering, do not necessarily cause bodily injury.⁴⁸

B. Scope of the Prohibition on Torture and Ill-treatment

In determining whether to enact a statute allowing forceful means during interrogation, it is necessary to consider the scope of the prohibition on torture and ill-treatment in international law, and the line dividing permissible methods of interrogation and those prohibited under international law.

Israel interprets the prohibition in international law narrowly, applying it only to especially cruel methods of interrogation. For example, it argued that, "The definition of 'torture' is limited to extreme cases of inhuman and forbidden physical acts, like electric shock, extracting fingernails, rape, harming sexual organs, penetrating objects into the body, and the like."⁴⁹ The state also argued that, "For an act to constitute 'torture,' it must meet a very high degree of severity, and even harsh physical violence is not necessarily considered 'torture.'"⁵⁰

The state used this interpretation to justify GSS methods of interrogation until the recent High Court decision, arguing that they are not prohibited by international law. The state, like the Landau Commission, relied on the ECHR's decision in *Ireland v. United Kingdom* (1978), which will be discussed in Chapter 4.

However, Israel's interpretation contradicts the position taken by relevant international bodies, which prohibits a much broader range of methods of interrogation.

The UN Convention against Torture defines torture as

any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession... or intimidating or coercing him or a third person... when such pain or suffering is inflicted

48. Pictet, p. 223.

49. Response of the state in *IICJ on GSS Interrogation Methods*, par. 31(A). Emphasis in the original.

50. *Ibid.*, par. 35.

by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity....⁵¹

Ill-treatment is not defined in the Convention, but the Convention and other instruments indicate that torture is an aggravated form of ill-treatment.⁵² In practice, it is unnecessary to draw a line between torture and other forms of ill-treatment to decide whether a certain method is lawful, because "any distinctions between torture, inhuman and degrading treatments or punishments are academic in the sense that all of them are equally prohibited by the international instruments."⁵³

The UN Human Rights Committee, the UN Committee Against Torture, the Special Rapporteur of the UN on Torture, the ECHR, and the European Human Rights Commission repeatedly held that the use of physical force is prohibited under international law.

For example, the ECHR ruled that interrogation lasting fourteen hours, during which the detainee was beaten and suffered superficial wounds, constitutes inhuman treatment, and thus violates the prohibition on torture and ill-treatment stated in article 3 of the European Convention for the Protection of Human Rights. The court ruled that, "The requirements of the investigation and the undeniable difficulties inherent in the fight against crime, particularly with regard to terrorism, cannot result in limits being placed on the protection to be afforded in respect of the physical integrity of individuals."⁵⁴ In another case, the court unanimously ruled that a detainee beaten, degraded, and threatened by French security personnel was tortured.⁵⁵ The court added:

Certain acts which were classified in the past as "inhuman and degrading treatment" as opposed to "torture" could be classified differently in future. It takes the view that the increasingly high standard being required in the area of the protection of human rights and fundamental liberties correspondingly and inevitably requires greater firmness in assessing breaches of the fundamental values of democratic societies.⁵⁶

51. Article 1(1) of the Convention Against Torture.

52. See article 16(1) of the Convention Against Torture and article 2(1) of the Declaration on the Protection against Torture.

53. Sieghart, p. 162. International law contains certain duties relating to torture that do not relate to ill-treatment (such as the duty to extradite anyone who committed torture) but these are not relevant to the absolute prohibition on both torture and ill-treatment.

54. *Tomasi*, par. 115 of the judgment.

55. *Selmouni*, par. 105 of the judgment.

56. *Ibid.*, p. 101.

The committee overseeing compliance with the European Convention for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment stated that any use of force is forbidden. The committee defined continuous beating, slapping, or kicking as "ill-treatment" or "physical ill-treatment," whether or not conducted during interrogation.⁵⁷

Israel's definition of torture ignores the fact that causing mental suffering, without any accompanying physical force, is also prohibited. The definition of torture in the Convention Against Torture includes infliction of severe mental pain or suffering. Also, the UN Committee on Human Rights' General Comment relating to article 7 of the Covenant on Civil and Political Rights states, in part:

The aim of the provisions of article 7... is to protect both the dignity and the physical and mental integrity of the individual.... The prohibition in article 7 relates not only to acts that cause physical pain but also to acts that cause mental suffering to the victim.⁵⁸

Evans and Morgan write that it would be unreasonable to prohibit physical force and allow mental coercion, which can also cause great suffering. In this context, they explain that, since torture is currently illegal and acts of torture are concealed, states prefer use of psychological torture, which leaves no physical marks:

Even more difficult to discern and prove after the event are those favored psychological tactics designed to wear suspects down: deprivation of sleep, threats against family or loved ones, incessant interrogative harassment, petty humiliations, disorienting noise, bright lights, blindfolding or hooding, low or high cell temperatures, prolonged isolation in dark or otherwise sensory deprived circumstances, use of physically stressful constant standing or crouching while handcuffed to a pipe or radiator.... If the custody is incommunicado, a provision often permitted under emergency anti-terrorist or anti-organized-crime legislation, then the incremental piling of one psychological assault upon another can be achieved without resort to cruder more immediate visceral methods leaving their tell-tale somatic traces.⁵⁹

57. See, for example, the committee's reports regarding Malta (1990), par. 29; Greece (1993), par. 20; Portugal (1996), par. 8; Slovenia (1995), par. 12.

58. General Comment No. 20.

59. Evans and Morgan, pp. 59-60.

C. Legality, According to UN Institutions, of GSS Methods of Interrogation

In matters related to GSS methods of interrogation, UN institutions have applied the unequivocal international-law prohibition regarding the absolute nature and scope of the prohibition. Every international body or official that has examined GSS methods of interrogation strongly rejected the state's argument that the security situation facing Israel justifies deviation from the absolute prohibition on torture or ill-treatment. Also, Israel has not been able to convince even one international official or body that these methods do not constitute torture or ill-treatment.

In discussing the first report filed by Israel, the Committee Against Torture (CAT), in 1994, criticized the use of the defense of necessity to justify use of physical force against Palestinian interrogees. In its conclusions, the committee stated that, "It is a matter of deep concern that Israeli laws pertaining to the defenses of 'superior orders' and 'necessity' are in clear breach of that country's obligations under article 2 of the Convention against Torture."⁶⁰

In a hearing before the CAT, in 1997, which dealt with a special report on the defense of necessity submitted by Israel at the request of the committee, attorney Nili Arad, representing Israel, unequivocally stated that, "A defense of necessity, which was part of Israel's criminal law, was never a justification of torture or other cruel, inhuman or degrading treatment or punishment."⁶¹ Israel declared that it accepts the principle of absolute prohibition, both of torture and ill-treatment, even in the "ticking bomb" case:

Israel was a State based on the rule of law and as such prohibited the use of torture and any other act that was likely to cause severe pain or suffering in any circumstances. Any official or person who was found to have used torture would be punished. It was an incorrect assumption that, as long as Israel had not incorporated the Convention into its domestic legislation, its provisions were not binding.⁶²

Israel's position as stated above fully conforms to international law and is welcomed. The position is clear, unequivocal, and lacks any attempt to evade

60. Committee Against Torture, Consideration of the initial report of Israel, par. 43(3)(3).

61. Committee Against Torture, Special Report Submitted by Israel, 1997, Summary Record of the First Part (public), par. 4.

62. *Ibid.*, par. 3.

Israel's duties by use of the "ticking-bomb" scenario or defense of necessity. A year later, Israel repeated, word for word, this position at a hearing before the same committee.⁶³

Thus, the dispute between Israel and the CAT primarily involved the question of whether Israel's methods of interrogation amounted to cruel, inhuman or degrading treatment, or even torture. The committee reviewed the methods of interrogation used by the GSS, as provided by victims and official sources, and unequivocally held:

The methods of interrogation, which were described by non-governmental organizations on the basis of accounts given to them by interrogees and appear to be applied systematically, were neither confirmed nor denied by Israel. The Committee must therefore assume them to be accurate. Those methods ... are, in the Committee's view, breaches of article 16 and also constitute torture as defined in article 1 of the Convention. This conclusion is particularly evident where such methods of interrogation are used in combination, which appears to be the standard case.

The Committee acknowledges the terrible dilemma that Israel confronts in dealing with terrorist threats to its security, but as a State party to the Convention, Israel is precluded from raising before this Committee exceptional circumstances as justification for acts prohibited by article 1 of the Convention. This is plainly expressed in article 2 of the Convention.⁶⁴

In his annual report of that year, 1997, to the UN Commission on Human Rights, Prof. Rodley, the UN's Special Rapporteur on Torture, wrote:

The following forms of pressure during interrogation appear so consistently (and have not been denied in judicial proceedings) that the Special Rapporteur assumes them to be sanctioned under the approved but secret interrogation practices: sitting in a very low chair or standing arced against a wall (possibly in alternation with each other); hands and/or legs tightly manacled; subjection to loud noise; sleep deprivation;

63. Committee Against Torture, *Second Periodic Report of Israel*, 1998, Opening Statement, p. 6.

64. Committee Against Torture, Special Report Submitted by Israel, 1997, Concluding Observations, pars. 4-6.

hooding; being kept in cold air; violent shaking (an "exceptional" measure, used against 8,000 persons according to the late Prime Minister Rabin in 1995). Each of these measures on its own may not provoke severe pain or suffering. Together - and they are frequently used in combination - they may be expected to induce precisely such pain or suffering, especially if applied on a protracted basis of, say, several hours. In fact, they are sometimes apparently applied for days or even weeks on end. Under those circumstances, they can only be described as torture.⁶⁵

CAT repeated the same concluding observations in 1998 after reviewing Israel's second (regular) report, as did the Special Rapporteur. In 1998, Israel also submitted its first report to the UN Human Rights Committee, which is responsible for implementing the UN Covenant on Civil and Political Rights. This committee's concluding observations were also unequivocal:

The Committee is deeply concerned that under the guidelines for the conduct of interrogation of suspected terrorists, authority may be given to the security service to use "moderate physical pressure" to obtain information considered crucial to the "protection of life". ...The Committee notes also the admission by the State party delegation that the methods of handcuffing, hooding, shaking and sleep deprivation have been and continue to be used as interrogation techniques, either alone or in combination. The Committee is of the view that the guidelines can give rise to abuse and that the use of these methods constitutes a violation of article 7 of the Covenant in any circumstances. The Committee stresses that article 7 of the Covenant is a non-derogable prohibition of torture and all forms of cruel, inhuman or degrading treatment or punishment.⁶⁶

65. Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, par. 121.

66. Human Rights Committee, Concluding Observations, 1998. Israel.

Chapter 3: Repercussions of Legislation

Allowing Physical Force During Interrogations - Lessons from the Landau Commission

Ostensibly, following the decision of the High Court, discussion of methods now prohibited by the High Court may seem superfluous. However, examination of the manner of implementation of the recommendations that allowed the use of "moderate physical pressure" in GSS interrogations is relevant because it is reasonable to presume that, in addition to arranging the interrogation methods by statute, any legislation that would allow the use of physical force in interrogations would be similar in many ways to the Landau Commission's recommendations.

Thus, the legislation would also seek to reduce the scope of the permission, limit the methods allowed to those that do not reach the level of torture, and prevent a situation in which the GSS uses the allowed means in a wholesale manner. Like the recommendations of the Landau Commission, the legislation would likely establish supervisory mechanisms to ensure GSS compliance. It would almost certainly refrain from stating the specific methods allowed or prohibited, but would give a general authorization to the GSS to use physical force and intentionally inflict mental suffering where necessary to save lives, and authorize the enactment of secret regulations to regulate interrogation powers.⁶⁷

The Landau Commission report has received harsh, legal, ethical, and public condemnation, in Israel and abroad, in the twelve years since its publication. The criticism centered on the Commission's granting the GSS power to use physical force and psychological coercion, justifying it on the principle of "the lesser of two evils" and the Penal Law's defense of necessity.

We shall not discuss the legal criticism of the Commission's use of the defense of necessity as the legal basis to support physical force during interrogations, since the High Court made a clear statement on this point. This chapter will examine the Commission's attempt to limit the scope of the use of the permissions to use physical force and to limit it to "moderate physical pressure," and the impossibility - in theory and practice- of preventing the slippery slope.

67. This mechanism was proposed in a draft GSS law that included a section on GSS interrogations. See Version 10 of the Proposed General Security Service Law, 5756-1996, 12 January 1996.

A. The Slippery Slope in Theory⁶⁸

In its recommendations, the Landau Commission stated clearly that a democratic state faced with severe terrorism may use "non-violent psychological pressure" and a "moderate degree of physical pressure," while prohibiting methods of interrogation that reach the level of torture. Also, the Commission sought to ensure that the methods allowed would only be used against persons with information that could save lives.

This Commission's attempt received sharp criticism. Many critics argued that, in implementing the Commission's recommendations, it is impossible to limit the use of interrogation methods that were allowed in this manner.

1. Identity of the Interrogee

As noted in the first chapter, the Landau Commission relied on the principle of "the lesser of two evils" to morally justify allowing the GSS to use psychological pressure and moderate physical pressure in interrogations where extraction of information from the detainee is crucial for saving lives.

The "ticking bomb" case is usually raised in this context and, in public debate in Israel on GSS interrogations, is the basis given for justifying torture in interrogations. However, defining a person under interrogation as a "ticking-bomb" must be based on acceptance of many factual presumptions as certain. When interrogating such a person, doubt may arise, for example, as to each of the following or combination of them:

- was a bomb set to go off?
- will it explode?
- does the detainee know its location?
- if the location is known, is it possible to deactivate it?
- if the location is known, is it possible (in the alternative) to evacuate the area?
- will torture make the detainee provide the information?
- will the information given under torture be false?
- if torture is used, will we forego a more effective way of obtaining the information?

68. For an extensive analysis of the dangers inherent in the recommendations of the Landau Commission briefly described below, see the special edition of the *Israel Law Review*, vol. 23, nos. 2-3 (particularly Prof. Kremnitzer's article); Statman; and Kremnitzer and Segev.

- will we be able to torture the detainee such that he will not die, faint, or lose his mind, causing the vital information to be lost?

Transition from assertions that are definite to those only reasonably likely under existing circumstances is almost inevitable when danger to innocent persons is involved and the absolute prohibition on physical harm of the interrogee is withdrawn. Compromise on the level of certainty leads to torture of interrogees in a much greater variety of situations. However, as Prof. Statman argues, "To justify torture in this case, weak suppositions of the existence of the bomb and that John Doe has the information is not enough... Because torture is morally so grave and shocking, one who wants to justify it bears the heaviest burden of proof."⁶⁹

There is more than just the problem of certainty regarding the supposition that the detainee was involved in placing the bomb. Who should be interrogated in order to save lives? The "ticking bomb" scenario is used as justification to use physical force against an interrogee where there is a clear and present danger. But the Landau Commission and every governmental official who relied on the principle of "the lesser of two evils" when requesting approval for the use of physical force during interrogations argued that the methods should be allowed not only when the danger is immediate, but also when the need to prevent it is immediate. In the words of the Commission:

... when the clock wired to the explosive charge is already ticking, what difference does it make, in terms of the necessity to act, whether the charge is certain to be detonated in five minutes or in five days? The deciding factor is not the element of time, but the comparison between the gravity of the two evils - the evil of contravening the law as opposed to the evil which will occur sooner or later...⁷⁰

This argument has a certain internal logic: if the method is morally justifiable, then it is justifiable, even necessary, to use it as soon as possible, because unknown complications may arise on the way to preventing the danger once the information is obtained.

However, from the moment that the "ticking bomb" scenario is broadened to include cases where the danger to human life is not immediate, and the use of force is allowed in cases of immediate need, the exceptional case of the "ticking bomb" becomes the paradigm for almost every GSS interrogation. The thought process is as follows: if we do not torture now, today, the "lead" - that innocent Palestinian

69. Statman, p.173.

70. Landau Commission Report, sec. 3.15.

who refuses to provide information on non-violent political activity, which is likely to lead to information of more extremist political activity, and so on - the entire chain may be delayed, and the complicated and convoluted procedure of snaring the cell that planted the bomb will be delayed a day or two, during which the bomb may detonate and kill innocent persons.

For these reasons, limiting the use of force only to "ticking bomb" cases is bound to fail. Allowing only the torture of persons who planted bombs and distinguishing between persons planning a future attack and those who are not are extremely difficult: where should the line be drawn - between the person who planted the bomb and other members of the cell? Between members of the cell and those in charge of the organization? Between those in charge of militant activities within the organization and the political echelon? The borderline between the various categories and degrees of involvement is unclear. Also, the interrogator will ask himself: what is the big difference, for example, between torturing a person who knows about a bomb that will explode in another hour and a person who planned an attack that will take place a year from now, as regards the major tragedy that I could prevent?

2. Severity of the Methods of Interrogation

Another question relates to the degree of force allowed against the interrogee in order to obtain the information necessary to save lives. The Landau Commission wanted physical pressure to be used only as the final means, after other means available to the interrogator had failed:

The means of pressure should principally take the form of non-violent psychological pressure through a vigorous and extensive interrogation, with the use of stratagems, including acts of deception. However, when these do not attain their purpose, the exertion of a moderate measure of physical pressure cannot be avoided.⁷¹

However, the permission entails authorization of the use of the very means that the Commission wanted to limit. The moment that permission is granted to use force during interrogations, the slide down the slippery slope to more severe methods is inherent in the interrogation procedure.

The escalation results from the utilitarian considerations motivating GSS interrogators, who have the task of extracting information from the detainee. First,

71. Landau Commission Report, sec. 4.7.

the more moderate and controlled the interrogation, as the Commission wanted, the less effective it will be. If the detainee knows that the degree of force allowed is limited, he will not provide the information sought, because he can be confident that he will not be harmed further. In those situations, the interrogator is tempted to increase the degree of force to obtain the information. Second, approval of coercive methods creates an incentive to use them routinely against any detainee who is not cooperative. If the interrogator is allowed to use these methods, why waste time with other means, which may take longer to obtain the necessary information?

The 1963 interrogation manual for CIA agents states that it is ineffective to increase gradually the severity of the interrogation methods. The chapter on non-coercive interrogation methods states:

Although these methods appear here in an approximate order of increasing pressure, it should not be inferred that each is to be tried until the key fits the lock. On the contrary, a large part of the skill and the success of the experienced interrogator lies in his ability to match method to source. The use of unsuccessful techniques will of itself increase the interrogee's will and ability to resist. This principle also effects the decision to employ coercive techniques and governs the choice of these methods. If in the opinion of the interrogator a totally resistant source has the skill and determination to withstand any non-coercive method or combination of methods, it is better to avoid them completely.⁷²

From the moment that the psychological barrier and the moral-statutory prohibition on force are removed, the transition from psychological pressure to "moderate physical pressure" and from this to torture is easier. In the words of Prof. Kremnitzer:

A substantive difference exists between the restraining influence of a general, absolute, qualitative prohibition, and that of a quantitative prohibition concerned only with degrees. It is much easier to accept and internalize the more convincing norm that the suspect's body is sacrosanct and its injury taboo, than to convince oneself of a somewhat arbitrary rule which prohibits the third blow while allowing the first and second, or which forbids using fists while allowing palms.

72. CIA, *Kubark Counterintelligence Interrogation*. As noted, coercive interrogation methods of any kind are forbidden by the new directives, of 1985.

Psychologically, lowering this barrier may sweep away the dam. If a suspect's body is no longer taboo, what is one more blow relative to the sanctity of the cause?⁷³

B. The Slippery Slope in Practice

Examination of implementation of the Landau Commission's recommendations over the past twelve years indicates that the arguments raised above regarding the impossibility of limiting the scope of use and the nature of the means of interrogation were confirmed.

1. Broad Expansion of the Scope

The Landau Commission sought to limit the use of physical force, but its recommendations led instead to the systematic torture of hundreds of Palestinians each year.

Human rights organizations do not know the precise number of Palestinians against whom the methods of interrogation described below were used, because the GSS and the state's representatives in petitions to the High Court of Justice never responded to requests for these figures. According to estimates, in the twelve years that have passed since the Landau Commission sought to limit the scope of use of force during interrogations, GSS interrogators have tortured thousands, if not tens of thousands, of Palestinians.

According to former attorney general Michael Ben-Yair, from 1987 to 1994, the GSS interrogated some 23,000 Palestinians.⁷⁴ An al-Haq report based on interviews from 1988 to May 1992 with more than seven hundred Palestinians indicates that at least ninety-four percent of those interrogated by the GSS were tortured or ill-treated.⁷⁵ Based on a survey of cases handled by HaMoked: Center for the Defence of the Individual in 1996-1997, B'Tselem estimated that some eighty-five percent of persons interrogated by the GSS were interrogated by methods constituting torture. In an interview with the Voice of Israel, quoted in *Ha'aretz* of 30 July 1995, Prime Minister Yitzhak Rabin said that "shaking" had been used against 8,000 detainees.⁷⁶

73. Kremnitzer, p. 254.

74. *Ha'aretz*, 13 January 1995.

75. Al-Haq, *Torture for Security*.

76. *Ha'aretz*, 30 July 1995.

The same interrogation methods were mentioned in hundreds of testimonies given to human rights organizations, indicating that these methods were not limited to exceptional cases. GSS agents used the same methods for the same period of time against almost every Palestinian interrogee, indicating the existence of fixed interrogation procedures. Interrogations differed only in minor details, making interrogations bureaucratic and systematic. The interrogators documented the methods used, including the length of time each method was employed.

State officials admitted on several occasions that many of the methods are used routinely against Palestinians. For example, a GSS agent called "Roni" testified in the Jerusalem District Court, "What I said [the cuffing, hooding with a sack, and other methods] were not used only against the defendant, but are the methods used on persons interrogated in the facility."⁷⁷ Ben-Yair claimed that "the use of the interrogation method called shaking is a routinely-used method of interrogation."⁷⁸

In practice, not only was torture not limited to "persons who planted ticking bombs," it was not even limited to persons suspected of membership in terrorist organizations, or to persons suspected of criminal offenses. The GSS regularly tortured political activists of Islamic movements, students suspected of being pro-Islamic, religious sages, sheiks and religious leaders, and persons active in Islamic charitable organizations, the brothers and other relatives of persons listed as "wanted" (in an attempt to obtain information about them), and Palestinians in professions liable to be involved in preparing explosives - an almost infinite list. In a number of cases, wives of detainees were arrested during their husbands' detention, and the interrogators even ill-treated them to further pressure their husbands.⁷⁹ Also, GSS agents used torture to recruit collaborators.⁸⁰

A significant percentage of detainees interrogated by the GSS were either released without charge or administratively detained, so it is difficult to place them within the rubric of "ticking bombs," even according to Israel's broad interpretation of the term. Human rights organizations also requested, in vain, data on this point from GSS and other state officials. However, from a sample of 162 Palestinians tortured by the GSS about whom complete details are available regarding their post-interrogation fate, sixty-five were released without any proceedings having

77. Haim Pakovich, hearing on 29 April 1998, Protocol, p. 26.

78. *HaLishkah*, No. 27 (October 1995), p. 3.

79. See, for example, B'Tselem, *Interrogation of Salem and Hanan 'Ali*.

80. See, for example, B'Tselem, *Collaborators in the Occupied Territories during the Intifada*.

been initiated against them and forty-one were placed in administrative detention. Only fifty-six were indicted.⁸¹

An argument could be made that the release of detainees without charges being filed against them does not necessarily indicate their innocence, but only that the GSS did not have sufficient admissible evidence to charge them. However, in a state under the rule of law, a person is innocent until proven guilty, and the place to prove guilt is in the courtroom and not in GSS interrogation chambers.

2. From "Non-Violent Psychological Pressure" and "Moderate Physical Pressure" to Torture

Not only did the Landau Commission seek to limit the scope of the use of physical force, it also wanted to limit the severity of the means used on interrogees. Concerns of critics of the Commission that allowing "moderate physical pressure" as a last resort would lead in practice to the routine use of torture were realized.

The Landau Commission stated that, "GSS interrogators should be guided by setting clear boundaries in this matter, in order to prevent use of inordinate physical pressure arbitrarily administered by the interrogator."⁸² For this purpose, in the secret part of its report, the Commission drafted guidelines for the interrogator, "which define, on the basis of past experience, and with as much precision as possible, the boundaries of what is permitted to the interrogator and mainly what is prohibited to him," and added:

We are convinced that if these boundaries are maintained exactly in letter and in spirit, the effectiveness of the interrogation will be assured, while at the same time it will be far from the use of physical or mental torture, maltreatment of the person being interrogated, or the degradation of his human dignity.⁸³

Over the years since the Commission filed its report, state officials have continually emphasized that GSS interrogators act according to clear instructions that limit the degree of force allowed, and that use of physical pressure against detainees is

81. The sample survey was based on data from HaMoked, the Public Committee Against Torture in Israel, B'Tselem, al-Haq, Human Rights Watch, Palestinian Human Rights Information Center, and Amnesty International.

82. Landau Commission Report, sec. 4.7.

83. Landau Commission Report, par. 4.8

limited and controlled. In practice, however, a totally different reality existed, in which the GSS adopted interrogation methods that amount to torture.

We do not have precise details on the degree of pressure allowed in each permitted method, because the part of the Landau Commission report that details guidelines for GSS interrogators remains confidential, as are the special permissions given by the Ministerial Committee on GSS Matters, which allowed more severe interrogation methods than those allowed by the Landau Commission. However, the hundreds of testimonies given by Palestinian interrogees to Israeli, Palestinian, and international human rights organizations, the affidavits submitted by detainees to the High Court of Justice, and the state's responses to petitions against torture, clearly illustrate the interrogation methods that were customarily used by the GSS. State officials and the State Attorney's Office confirmed the use of most of the methods, and the factual description appearing in the recent decision of the High Court further confirmed their use.

The methods of interrogation included several techniques: sleep deprivation for several days by binding the interrogee in painful positions; playing loud music; covering his head with a filthy sack; exposing the interrogee to extreme heat and cold; tying the interrogee to a low chair, tilting forward; tightly cuffing the interrogees hands; having the interrogee stand, hands tied and drawn upwards; having the interrogee lie on his back on a high stool with his body arched backwards; forcing the interrogee to crouch on his toes with his hands tied behind him; violent shaking of the detainee, the interrogator grasping and shaking him; threats and curses, and feeding him poor-quality and insufficient amounts of food.

These methods were usually used in combination to increase the pressure used on the interrogee. Thus, the interrogee was deprived sleep by means of loud music, the slanted chair, the tying-up, and at times by being forced to remain in positions such as standing or stretching his arms behind him. At the same time, the interrogators used methods of sensory deprivation by isolating him from the external world, playing loud music, and covering his head with a sack. To increase the physical pain, the interrogators tightened the cuffs as much as possible, compelled the interrogee to crouch on his toes, and shook him violently.

3. Effect of Torture on Interrogees

The routine use of torture in GSS interrogations of Palestinians and the legitimacy given by the Landau Commission and the Supreme Court until its recent decision led, among other things, to the fact that the public has for some time been unaware of the suffering inflicted on interrogees, and to this suffering not becoming part of

the public debate on interrogation methods. It is easy to ignore the suffering, primarily because GSS interrogations took place far from the public eye. What little was known came in bits of information to the media, in in camera court proceedings, in testimonies of interrogees, and in instances where protection of Israeli citizens was involved.

What makes it even harder to understand the victim's experience is what Elaine Scarry calls "the unsharability of pain."⁸⁴ The inaccessibility of the intensely personal reality of pain to anyone who does not experience it directly clearly affects public debate on the question of what is a legitimate method of interrogation.

Israeli officials described the interrogation methods mentioned above as "unpleasant"⁸⁵ or as "having 'onerous effects.'"⁸⁶ However, this description is detached from reality. GSS interrogation methods caused much suffering. Falah Abu-Rumeila, for example, described the effect of interrogations he underwent, in an affidavit he gave to attorney Leah Tsemel:

The sitting [like that] and the music together made me feel as if I would lose my mind any minute. I often cried when I felt like someone who is paralyzed and cannot move. It didn't even help when I begged or cried out or humiliated myself.⁸⁷

On 20 November 1998, attorney Tsemel wrote to attorney Osnat Mandel, of the High Court Petitions Department, of the State Attorney's Office, describing the situation of Hamed Dahud Ahmad 'Alameh:

I just returned shocked from my visit to my aforementioned client in the Russian Compound, in Jerusalem. He was brought to me from Cell 20, the GSS interrogation cell, by a jailer who works with the GSS. He was shattered and crying, and fell to the bench, his entire body crooked and his hands swollen, pus running from his eyes. He cried so much he couldn't speak. He indicated that he wanted water. They brought him water, and he drank it like someone who had lost his mind after walking through the desert for a long time. While he told me the events as stated in the affidavit, he was fainting and shaking continuously, wanting to die.

84. Scarry, p. 4.

85. In the statement of attorneys Nili Arad and Shai Nitzan to the UN Committee Against Torture, in 1997, par. 13.

86. Attorney Nitzan in *HCI on GSS Interrogations*, hearing on 13 January 1999, Protocol, p. 12.

87. The affidavit was given on 6 January 1998 in *HCI on GSS Interrogations, Summation of the Petitioners*, 7 January 1998, Appendix 2.

In 1991, Israeli journalist Ari Shavit published an article about his reserve duty as a guard in Gaza Prison:

At the end of the watch, while on your way from the tent to the shower, you sometimes hear terrible screams. You walk in your shorts and clogs, a towel slung over your shoulder, kit-bag in hand, and from the other side of the tin fence of the interrogation section you hear terrifying human screams... And they scream because other persons, with uniforms like yours, do things to them that make them scream... They are screaming because your Jewish state, your democratic state, in systematic, organized fashion and in total conformity with your law - your state makes them scream.⁸⁸

In his testimony to B'Tselem, Avigdor Askin, a Jewish right-wing activist, stated that, "I heard Arabs screaming dreadfully from the adjacent interrogations room, and then the music was turned on to drown out the screams."⁸⁹

Pain and suffering are not only inflicted by particularly cruel forms of torture, as is shown by Jean Amery's description of "the first blow:"

The first blow brings home to the prisoner that he is helpless, and thus it already contains in the bud everything that is to come.... They are permitted to punch me in the face, the victim feels in numb surprise and concludes in just as numb certainty: they will do with me what they want.... With the very first blow that descends on him he loses something we will temporarily call "trust in the world." Trust in the world...is the certainty that by reason of written or unwritten social contracts the other person will spare me - more precisely stated, that he will respect my physical, and with it also my metaphysical, being. The boundaries of my body are also the boundaries of my self. My skin surface shields me against the external world. If I am to have trust, I must feel on it only what I want to feel.⁹⁰

Supreme Court President Barak was aware of the suffering of interrogees resulting from the interrogation methods described above. In the recent decision, Barak wrote that shaking "violates his [the suspect's] dignity,"⁹¹ compelling the interrogee

88. Ari Shavit, "Twelve Days on the Gaza Coast," *Ha'aretz*, 3 May 1991.

89. The testimony was given to Yuval Ginbar at Askin's home on 12 June 1998.

90. Amery, pp. 27-28.

91. Judgment in *HCI on GSS Interrogations*, par. 24.

to crouch on the tips of his toes "is degrading and infringes upon an individual's human dignity,"⁹² and, regarding shabah, "there are other ways of preventing the suspect from fleeing from legal custody which do not involve causing the suspect pain and suffering."⁹³ As for the method of seating the suspect on a low chair, tilted forward, Barak wrote:

...there is no inherent investigative need for seating the suspect on a chair so low and tilted forward towards the ground, in a manner that causes him real pain and suffering. Clearly, the general power to conduct interrogations does not authorize seating a suspect on a forward tilting chair, in a manner that applies pressure and causes pain to his back, all the more so when his hands are tied behind the chair, in the manner described above. All these methods do not fall within the sphere of a "fair" interrogation. They are not reasonable. They impinge upon the suspect's dignity, his bodily integrity and his basic rights beyond what is necessary.⁹⁴

To illustrate the sense of humiliation and helplessness caused by GSS interrogation methods, we have included in the appendix the detailed testimony given to B'Tselem by Dr. Jamal Muhammad Musa 'Amr, Professor of Architecture at Bir Zeit University.⁹⁵ It should be noted that B'Tselem took testimonies from many interrogees that described in similar terms the methods of interrogation they underwent.

Because GSS methods of interrogation were not as cruel or brutal as those of infamous regimes and most did not leave physical scars, it is easy to get the impression that they did not cause severe suffering. For example, sleep deprivation, a common practice used by the GSS until the recent High Court decision, does not appear particularly harmful, particularly in comparison to direct physical force such as shaking or tying-up in painful positions. However, according to the professional literature, sleep deprivation is torture.⁹⁶ Patrick G. Wall, head of the Cerebral Functions Research Group at University College, London, states:

92. *Ibid.*, par. 25.

93. *Ibid.*, par. 26.

94. *Ibid.*, par. 27.

95. Dr. 'Amr gave the testimony in early 1998, but only recently allowed B'Tselem to reveal his identity. Following the disclosure, *Ha'aretz* journalist Gideon Levy interviewed him for an article, which appeared in the newspaper's Weekend Supplement of 17 September 1999.

96. See Freund, p. 21, in which the author writes that, "Sleep deprivation is a kind of torture, and was incorporated in the Russian and Chinese techniques of 'brainwashing.'" See, also, Basoglu *et al.*, p. 79.

Hunger, fear and exhaustion accelerate and exaggerate the disorientating effects of sensory isolation. It is a little old fashioned to state that no physical harm results from these methods as though this was the only responsibility of the interrogator and the mental wreckage is of no concern.⁹⁷

The degree of damage likely to result from sleep deprivation varies from person to person, but, as the literature indicates, it causes emotional and psychological injury, and sensitive persons are even liable to lose their sanity or suffer illnesses such as epilepsy.⁹⁸

C. Supervision of the GSS

A prevalent argument against the contention that it is impossible to prevent the slippery slope from the moment that permission to use physical force in interrogations is granted is that the legislation would also establish a mechanism to ensure that the GSS does not exceed the powers granted to it. In that way, the use of physical force would be limited only to extreme cases that the statute allows and there would be assurance that the force employed does not reach the level of torture.

This argument would be reasonable if experience did not prove otherwise. Since 1987, when the Landau Commission issued its recommendations, GSS interrogations have been inspected and reviewed by several bodies, among them judicial bodies. These governmental organs were supposed to ensure that the GSS used force only in those cases mentioned by the Commission; that force be limited to moderate physical pressure and psychological coercion; that it not reach the degree of torture; and that those who violate the rules be prosecuted.

Except for the High Court in its recent decision, the review mechanisms have failed almost completely to question GSS methods. This failure continued despite the affidavits, petitions, testimonies, and articles in the press that repeatedly showed that the GSS tortures most Palestinians it interrogates.

The review and inspection mechanisms not only failed to prevent the rapid slide down the slippery slope, in some cases it even contributed to it. In accordance with the Landau Commission's recommendations, a ministerial committee for GSS

97. Letter to *The Times*, 24 January 1971.

98. See Freund; McCarthy and Waters; and Luce and Segal. Regarding the effect of sleep deprivation on detainees, see also, the testimony of Menachem Begin in Chapter 5.

matters, headed by the prime minister, was established. This committee is responsible for the periodic review of the permissions given to GSS interrogators, and is empowered to amend the instructions given to interrogators, as required by changing circumstances. In September 1994, following several suicide attacks, the committee expanded the permissions given by the Landau Commission and allowed the GSS to use "increased physical pressure." Although the latter was granted for only three months, it was regularly extended. Thus, not only did this committee not block wide-scale use of torture, it initiated harsher means.

Even in the narrow area of reviewing implementation of the permissions that the Landau Commission granted to the GSS, supervision was extremely superficial, and, where the rules were violated, the authorities responded forgivingly, if at all.

The Landau Commission stated that,

In especially severe cases, where a basis for criminal charges is found, a GSS employee - and in that matter a GSS interrogator - cannot be immune from criminal prosecution in court.⁹⁹

According to a statement made by Minister of Defense Yitzhak Rabin in 1992,

The GSS relates to and handles every complaint, whether minor or major, by a person under interrogation, and examines the matter in depth. Where violations are found, and they are very few in number, they are prosecuted to the full extent of the law.¹⁰⁰

However, prosecution of GSS interrogators who violated the permissions granted by the Landau Commission was rare, although the GSS deviated several times from the permissions granted. In the few cases that were prosecuted, the interrogators were acquitted or convicted of light offenses and given symbolic sentences. The supervision and review mechanism did not succeed in preventing the still-existing situation in which GSS interrogators are essentially immune from prosecution for acts against Palestinian detainees.

To illustrate the argument regarding supervision of the permissions and the almost total immunity of GSS interrogators, we shall present three cases that took place at various times since the GSS was allowed to use torture in interrogations.

99. Landau Commission Report, sec. 4.19.

100. Response to a parliamentary query by MK Naomi Hazan in November 1992.

1. Gaza Prison - 1988-1992

One of the rare cases where GSS agents were prosecuted indicates the great gap between the permissions issued and the ensuing GSS interrogation methods.

Khalid Sheikh 'Ali died on 19 December 1989 from torture by GSS interrogators at the detention facility in Gaza. According to the autopsy, he was beaten in the stomach, which caused internal bleeding and death. The two interrogators involved in the incident were prosecuted. They were initially charged with manslaughter, but, following a plea bargain, the charge was reduced to causing death by negligence. The interrogators pleaded guilty, were convicted, and were sentenced to six months' imprisonment.¹⁰¹

Ten years later, in September 1999, the interrogators gave the media their full version of the incident. They made their revelations after then-director of the GSS, Ya'akov Perry, wrote in his book that the two interrogators were solely responsible for the death of Sheikh 'Ali.¹⁰²

According to their version, other interrogators also took part in the interrogation, but, due to pressure from other members of the team, the two of them, who were the most junior members, took full responsibility for the death. The other agents involved gave false testimony to the Police, with the knowledge and encouragement of Ya'akov Perry. In a television interview with Gadi Sukenik in September 1999, one of the convicted agents said that, "We took the blame thinking that, in effect, we were protecting the system, the method, the organization - the state, call it. That was clear to us."

The two claimed that interrogation methods they and the other GSS interrogators used against Sheikh 'Ali were the ordinary ones, and that use of force in violation of the Landau Commission permissions was the norm in the facility at that time:

There was the written method, what you call the Landau Report, but there was also the oral method, which is what was actually used... Everything we did in the interrogation rooms was out of the ordinary, not according to the books or the Landau Report... I want to point something out. We did not invent methods or initiate methods.¹⁰³

Their comments about the "oral law," which deviated from the written procedures and Landau Commission permissions, were confirmed by MK Gideon Ezra, former

101. District Court (Jerusalem) Crim. Com. 103/89, *State of Israel v. John Does*, Judge M. Arad presiding.

102. Perry, pp. 150-152.

103. "Five with Gadi Sukenik," Israeli television Channel 2, 14 September 1999.

deputy director of the GSS. The day after the television interview with Sukenik, Ezra was interviewed on the same program, during which he said, "I think there was a great deal of truth in what they [the two GSS agents] said... In my opinion, they knew the agency's instructions, and, on the other hand, there was an oral law that their supervisors had."¹⁰⁴

The findings of the State Comptroller's report on the GSS from 1988 to 1992 are the sole official disclosures on the degree of GSS compliance with the permissions. These findings support the two agents' contention that during those years the GSS used methods in violation of instructions. The State Comptroller, Miriam Ben-Porat, failed in her attempt to convince the political echelon to publish the findings of her report.¹⁰⁵ A summary of her report's findings was published five years after completion, in a press release by the Knesset's Subcommittee for Secret Services Matters. The press release stated:

The State Comptroller's report primarily examined the GSS interrogations facility in Gaza and found that methods of interrogation violated the Landau Commission recommendations. The report also questioned the reliability of some reports, which failed to meet the criteria of honesty and forthrightness that are expected of a vital governmental security agency.¹⁰⁶

The above indicates that the GSS was not satisfied with the permissions to use "moderate physical pressure" given by the Landau Commission, and added other methods, without obtaining permission or being granted the necessary authority. Furthermore, GSS interrogators continued to file false reports, even after the Landau Commission had claimed that lying in court - which had been common practice for fifteen years¹⁰⁷ and which the Commission had stated was a norm that "hoists a black flag that says, forbidden"¹⁰⁸ - was no longer practiced by the GSS.

Despite the State Comptroller's harsh findings regarding interrogation methods used from 1988 to 1992, the authorities did not prosecute any GSS agents, other than the two junior agents ultimately convicted of negligently causing the death of Sheikh 'Ali. There were no prosecutions for the routine violations of the Landau Commission permissions or for the filing of false reports.

104. "Five with Gadi Sukenik," Israeli television Channel 2, 15 September 1999.

105. See Aluf Benn, "The GSS Enveloped in Darkness," *Ha'aretz*, 23 July 1997.

106. The press release was issued on 22 July 1997 on behalf of the Subcommittee by MKs Ran Cohen and Uzi Landau.

107. In its report, for example, at sec. 2.33. The discussion on this phenomenon is found in secs. 2.27 to 2.53.

108. *Ibid.*, sec. 4.22.

2. The Harizat Case - 1995

The GSS arrested 'Abd a-Samad Harizat on 22 April 1995 and interrogated him in the Russian Compound [police facility], in Jerusalem. According to the state, Harizat was shaken several times during the interrogation, mostly "by grasping the front part of his garment," and twice "by grasping his shoulders or the garment on his shoulders," which violates the way interrogators are instructed to shake detainees.¹⁰⁹ Approximately twelve hours after the interrogation started, Harizat collapsed. Following examination by a medic, he was taken to the hospital, where he died on 25 April 1995.

The pathologist's report found that the shaking had caused his death, though it was impossible to state unequivocally that the way of shaking conducted in violation of the guidelines was the causal factor, or whether shaking performed in accordance with the directives added to a cumulative effect that led to his death.

Although the interrogators violated the directives, and although the report of the Department for the Investigation of Police (DIP) stated that "the DIP knows the cause of death to a high degree of reasonableness and also knows the identity of the interrogator who shook the deceased by grasping his shoulders," the DIP concluded that the interrogator, the director of the GSS, and members of the Ministerial Committee for GSS Matters, who allowed the use of this method, should not be held criminally responsible. The DIP settled for disciplinary action against the relevant interrogator. The State Attorney's Office accepted the DIP's recommendation.¹¹⁰

Furthermore, the authorities did not demand that shaking during interrogations cease, although it had in fact caused a death and despite the pathologist's report indicating that shaking can, albeit in rare cases, result in death. According to the state, following Harizat's death, "the Ministerial Committee for GSS Matters added more restrictions to the interrogation procedures dealing with shaking, in addition to the earlier restrictions."¹¹¹ But shaking itself was not forbidden.

Furthermore, following Harizat's death, the Ministerial Committee learned that GSS interrogators shake detainees differently than the way it was demonstrated to the Committee. According to Michael Ben-Yair, the attorney general at the time,

109. Response of the state in HCI 5380/95, pars. 10 and 13.

110. On the improper considerations weighed by the DIP and the State Attorney's Office, see the petition in HCI 5380/95, which was filed by attorneys Avigdor Feldman and Leah Tsemel on behalf of the Public Committee Against Torture in Israel and Israeli-Palestinian Physicians for Human Rights.

111. State's response in HCI 5380/95, par. 32.

The demonstration of shaking shown to the Ministerial Committee for GSS Matters in the previous government, following which the procedure was drafted for the permissions, which we extended every three months, is not the same shaking that is done in interrogations.¹¹²

Even after the Committee realized that GSS officials had lied to them, and that they were violating the directives - as noted, 8,000 Palestinians had been shaken before Harizat - nobody was prosecuted and shaking was not prohibited. The supervisory mechanisms, which should have prevented deaths of detainees during GSS interrogations and the use of methods that may lead to death, did not prosecute those responsible, but rather justified the interrogators' acts.

3. The Ghaneimat Case - 1997¹¹³

'Omar 'Abd a-Rahman Ghaneimat was arrested in April 1997 and tortured for forty-five days. Only then was he allowed to meet with his attorney, Allegra Pacheco. Pacheco petitioned the High Court of Justice to stop the torture.¹¹⁴ Ghaneimat was present at the hearing, the signs of torture on his body clearly visible. GSS interrogators demonstrated for the justices, *in camera*, the means of torture they had used against Ghaneimat. In its response, the state admitted using sleep deprivation, *shabah*, painful shackling, and playing loud music. The justices rejected the petition and refused to issue an interim injunction directing the GSS to cease the torture.

After being released, Ghaneimat was examined by medical specialists, who found that he had suffered permanent physical injuries. However, the DIP only superficially and unprofessionally examined the marks on his body and did not have him examined by a physician. In his findings, Eran Shendar, head of the DIP, wrote:

In summation, considering that the findings indicate that the methods used on the petitioner complied with the approved interrogation permissions and procedures and had received the approval of the duly authorized officials, and considering that the findings did not indicate any deviation from the procedures, I did not find it appropriate to recommend that action be taken against any of petitioner's interrogators.

112. *HaLishkah*, No. 27 (October 1995), p. 4.

113. On this case and the references supporting the comments made below, see B'Tselem, *Routine Torture*, pp. 39-67.

114. HCl 3282/97.

In this manner DIP determined that GSS interrogators are allowed to cause physical injury and also disability to the interrogee, without considering its commission of a criminal, or even a disciplinary, offense.

These three cases illustrate the laxity of Israeli law-enforcement authorities when dealing with criminal offenses by GSS interrogators. Attorney General Elyakim Rubinstein admitted that supervision of the GSS is rather superficial, and agreed that "the bottom line is that supervision was incomplete, taking into account the agency's scope of activity and the subjects it handles."¹¹⁵

This is the same conclusion that arises from the interview given by the state attorney, Edna Arbel, to Gideon Alon for *HaLishkah*. When asked, "How do you, a prosecutor and former judge, explain the inconsistency between the necessity of providing the GSS with the tools to perform its duty to thwart attacks and the necessity of ensuring that GSS interrogations are conducted humanely and in accordance with the principles of the Basic Law: Human Dignity and Liberty?" Arbel responded:

There are three possible answers to the question: first, GSS activity lies in the twilight zone and is above the law. Heaven forbid such an opinion, because that is how totalitarian regimes, which we do not want to copy, operate. *The second possibility, which contains a great deal of self-righteousness, is that the GSS must operate within the framework of the law, and the slightest deviation or violation must be prosecuted. I think that in the harsh reality in which we live, it would be difficult to live with this extreme attitude.* The third possibility represents the attitude formulated by the Landau Commission, according to which we live in a reality that at times is one of war. When we find ourselves in a period of disturbances and terrorist acts, energetic interrogations of one kind or another are sometimes required, and periodically we are compelled to use, in special circumstances like the "ticking bomb," moderate physical pressure.¹¹⁶

We are not arguing that the malfunctions of the supervision and control mechanisms and the manner in which these mechanisms handled complaints against GSS interrogators can be explained by the candid belief in the vital work performed by the GSS in safeguarding public welfare. As Kremnitzer and Segev wrote:

¹¹⁵ Elyakim Rubinstein, p. 58.

¹¹⁶ *HaLishkah*, No. 32 (September 1996), p. 8 (our emphasis).

The presumption may be raised that most members of Israeli society, including High Court justices, prefer not to know the unpleasant details of how citizens of the state are protected from terrorist acts. Since no one disputes the importance of the fight against terrorism, and since it is clear that there is no elegant way to cope with it - the easiest way is to give a free hand to those in charge of performing that mission, without supervising their activity.¹¹⁷

Thus, the failure of the supervisory mechanisms to prevent wide-scale use of torture was, in large part, expected and inherent in the framework established by the Landau Commission. The root of the problem lies not in the functioning or effectiveness of the supervision, but in allowing physical force in interrogations in the first place.

From the moment that the absolute prohibition on harming the person under interrogation is removed, supervisory mechanisms, as effective as they might be, will have difficulty defining the boundary between "moderate physical pressure" and "increased physical pressure," and between these methods and actual torture. How can a member of the Ministerial Committee on GSS Matters tell the head of the GSS that a particular means is not necessary, or that the use of one degree or another of force is not appropriate to meet the anticipated danger? In addition, those responsible for supervision will encounter the arbitrary nature of the distinction between interrogees who themselves planted a "ticking bomb" and those who are liable to plant a bomb at some time in the future, and others who have ties with those who may plant it.

The supervisory mechanisms will not stop the slide down the slippery slope, which turns democracies into abhorrent regimes where security forces are above the law and immune from punishment whenever acts against Palestinian interrogees are involved. Only stubborn compliance with the absolute prohibition on any kind of physical force can prevent this slide.

117. Kremnitzer and Segev, p. 680.

Chapter 4: "The Hypocrites' Way?" - How Democratic States Fight Terrorism

A common argument heard in Israel supporting use of physical force by the GSS is that other democratic countries facing terrorist threats and attacks also use such kinds of interrogations to defend their citizens. The Landau Commission was the first to make this argument: "The customary practice is the same in democratic countries subject to threats of terrorism."¹¹⁸ Since then, representatives of the Israeli government have raised this argument in international forums and before the Supreme Court.¹¹⁹ For example, in January 1999, attorney Yehuda Shefer, of the State Attorney's Office, argued before the High Court of Justice that, "all liberal democracies faced with such dilemmas acted similarly."¹²⁰

Those making this argument often state that openly admitting use of "physical interrogation means" and seeking to regulate these means by statute - thereby limiting their use and ensuring proper supervision - is preferable to "that [the way] of hypocrites, who declare that they abide by the rule of law, but turn a blind eye to what goes on beneath the surface," as the Landau Commission put it.¹²¹

The argument inherent in this assumption is that physical force during interrogations is necessary to save lives, therefore even the most democratic countries resort to such means against terrorist groups that do not hesitate to use any means to accomplish their objectives.

The argument was faulty when the Landau Commission made it, and is certainly faulty now. Liberal democracies, among which Israel wants to be included, include those which have to cope with brutal terrorism, have never sought to legislate force during interrogations, and have for some time ceased its systematic and institutionalized use.

To refute this frequently made argument - that even the most democratic states are forced to use physical force during interrogations in their attempt to prevent attacks - we shall describe relevant actions taken by Great Britain, which has experienced

118. Landau Commission Report, sec. 3.29.

119. The special report that Israel submitted to the UN Committee Against Torture, in 1997, includes the phrase "moderate physical pressure (also used in other democratic countries)." In the first report it submitted to the Committee, it used a similar phrase, "not unknown in other democratic countries."

120. *HCJ on GSS Interrogations*, hearing on 13 January 1999. Protocol, p. 15.

121. Landau Commission Report, sec. 4.4.

a long and bloody struggle in Northern Ireland, and the United States, which is forced to cope with a great number of terrorist attacks year after year.

A. Great Britain

The British experience is instructive because it is often mentioned in this context, and also because the United Kingdom is frequently considered the "mother of democracies."¹²² Most importantly, the British case was the sole relevant legal support that the Landau Commission brought for its determination that "human conduct is the same throughout the world" - the claim of Ireland against Great Britain in the European Commission and European Human Rights Court.¹²³ Since the Landau Commission, Israel's representatives have repeatedly raised this case in the attempt to prove that GSS interrogation methods, which included physical force and psychological coercion, are not unique to Israel, and do not constitute torture.

The early 1970s was the most violent period Northern Ireland had experienced in recent history: from 1971 to March 1975, more than 1,100 persons were killed and 11,500 wounded. During 1971 and 1972 alone, 1,130 planted bombs exploded, and an armed group, the IRA, was responsible for these attacks.¹²⁴ During a short period in 1971, British security forces in Northern Ireland used coercive interrogation methods against fourteen IRA suspects. These methods, known as "the five techniques," were the subject of the action in *Ireland v. United Kingdom*. The European Human Rights Court described them as follows:

- 1) *Wall-standing*: Forcing the detainees to remain for periods of some hours in a "stress position," described by those who underwent it as being "spread-eagled against the wall, with their fingers put high above the head against the wall, the legs spread apart and the feet back,

122. For example, Dan Margalit wrote, "What does Calderon want? That Israel imitate the West he so exalts, and permit violent interrogations, and have the prime minister lie to the Knesset and say that it never happened? Like what happens in the mother of democracies in London?" "Satan's Satanism," *Ha'aretz*, 20 September 1991. More generally, Reuven Merhav wrote, "From the little we know about the conduct of the mother of democracies in North Ireland, our human rights record is no poorer than hers." "Why They Succeed," *Ha'aretz*, 5 December 1997.

123. *Ireland v. United Kingdom* (1978). The other case mentioned by the Landau Commission (in sec. 3.23 of its report) to support its contention regarding conduct of "democratic countries" was the claim of several countries against Greece, *Denmark et al. v. Greece* (1969). At that time, Greece was under a brutal military dictatorship, and the petitioners complained about treatment of its citizens. Thus, the case did not involve an "enlightened government subject to threats of terror." The case is, therefore, irrelevant to our discussion.

124. *Ireland v. United Kingdom*, particularly the historical background, pars. 11-34 and 48.

causing them to stand on their toes with the weight of the body mainly on the fingers";

2) *Hooding*: Putting a black or navy colored bag over the detainees' heads and, at least initially, keeping it there all the time except during interrogation;

3) *Subjection to noise*: Pending their interrogations, holding the detainees in a room where there was a continuous loud and hissing noise;

4) *Deprivation of sleep*: Pending their interrogations, depriving the detainees of sleep;

5) *Deprivation of food and drink*: Subjecting the detainees to a reduced diet during their stay at the center and pending interrogations.¹²⁵

Israel relied on the majority ruling of the ECHR that, even if these methods constitute "inhuman" and "degrading" treatment, and are prohibited, they are not considered torture. Israel also argued that, "a comparison of the five methods ruled on by the court in that decision to the methods that are the subject of the petitions before this court clearly indicates that the methods involved in that case are certainly more severe than those in our case."¹²⁶

However, a comparison of Britain's "five techniques" and the GSS's methods of interrogation leads to a different conclusion:

1. *Direct violence*: The British interrogations did not include direct physical violence. In contrast, the GSS used violent means, such as shaking, painful shackling, slapping, beatings.
2. *Length of use of the method*: Clearly, the longer the GSS uses methods like painful positions, hooding, playing of loud music, and sleep deprivation, the greater the suffering. The total time they were used in Britain was four to five days. In contrast, the GSS often used its methods for weeks. Thus, the British method of keeping the detainee in a painful position was used for no more than twenty to thirty hours, which included several rest breaks. The GSS methods involving painful positions lasted, according to the GSS itself, up to sixty hours (less time for interrogations, though this, too, was likely conducted while the detainee was seated bound on a low chair). With longer breaks for "rest," they went on for weeks and even months. The British deprived detainees of sleep for

125. *Ibid.*, par. 96.

126. Response of the state in *HCJ on GSS Interrogations*, par. 42.

no more than four to five days, also with interruptions. The GSS used sleep deprivation for much longer periods, at times for more than ten days.

3. *Deprivation of food and drink:* In Northern Ireland, British interrogators at times reduced detainees' food intake to bread and water, but the European bodies could not precisely state the degree of use of this technique. Detainees interrogated by the GSS often complained that the food was extremely poor quality, and that they were forced to eat with their hands in a filthy cell containing a toilet, and were only given a few minutes to eat.

The above indicates that the GSS used methods comparable to those used by the British in 1971, i.e., sleep deprivation, infliction of physical suffering, and sensory isolation. But the GSS used them for much longer periods, so the resulting pain and suffering were substantially greater. In addition, the GSS used direct violence. Thus, even if we accept the Landau Commission's contention that it recommended (at the time) more moderate methods than those used by the British,¹²⁷ in practice, the GSS methods were substantially more severe than those used by the British in 1971. The conclusions reached by the European court regarding "the five techniques" cannot, therefore, be applied to GSS methods of interrogation.

Furthermore, already in March 1972, before the ECHR had given its decision prohibiting use of the "five techniques," the British government, in the midst of a wave of terrorist attacks, stated that it would no longer use these interrogation methods.¹²⁸ Great Britain did not try to justify its use of the methods to the court, by arguing that the wave of terrorism and the need to obtain information to save lives required their use. Rather, it admitted that "the five techniques" were unacceptable and forbidden, and undertook to cease using them. Since the British government's decision in this matter, Great Britain has not deprived IRA interrogees of sleep, has not covered their heads, placed them in painful positions, or played loud music in their ears. If ill-treatment does occur, whether of terrorists or other detainees, the action is considered a criminal offense and the perpetrators are subject to punishment.

Thus, Israel in 1999 continued to rely on interrogation methods used in Great Britain in 1971, twenty-eight years ago, for an extremely short period against only fourteen persons, which ceased immediately afterwards and became absolutely prohibited. In the meantime, European and international legislation and case law have increasingly strengthened the prohibition on torture and ill-treatment. Not

127. Landau Commission report, sec. 4.13.

128. See, for example, *The Times*, 2 March 1972.

only are interrogation methods that inflict physical and mental suffering no longer used, other basic rights of detainees are also ensured, such as the right to meet with their attorneys shortly after being detained.

Terrorist acts in England and Northern Ireland did not cease in the 1970s. Despite this, protection of prisoner rights in particular has steadily improved. In accordance with the recommendations of the Bennett Commission, Great Britain enacted legislation ensuring the right of detainees - including those suspected of terrorist acts - to meet with their attorneys within forty-eight hours of being detained, and all interrogations are taped in their entirety. As a result, the number of complaints of torture and ill-treatment fell sharply.¹²⁹

The situation in Great Britain in the 1990s is described in the following quotation, taken from the report of the European Committee for the Prevention of Torture on its visit to Great Britain in 1994:

In the course of the visit, the delegation heard no allegations of torture of *detainees* (i.e. persons arrested) by police officers, either in the establishments visited or in other police establishments in England and Wales. Further, hardly any allegations were heard of other forms of ill-treatment of persons arrested by the police under the Police and Criminal Evidence Act 1984 (PACE) or the Prevention of Terrorism (Temporary Provisions) Act 1989 (PTA).¹³⁰

The U.S. State Department's report on human rights practices states several means used by Britain to ensure compliance with the law prohibiting torture. These include the following:

- In 1992, a senior attorney was appointed by the state to serve as independent ombudsman for detainees in detention facilities in Northern Ireland, and empowered to conduct surprise visits at the facilities, view interrogations, and interview detainees. The report mentioned that 176 such visits were made during 1997 alone.
- In February 1998, video cameras to document interrogations were placed in three detention facilities in Northern Ireland. Measures to arrange voice recordings of the interrogations were being made at the time the State Department report was being prepared.¹³¹

129. See Amnesty International, *Torture in the Eighties*, pp. 59-61.

130. CPT, *Report of Visit to the UK from 15 to 31 May 1994*, par. 16.

131. U.S. Department of State, "United Kingdom Country Report on Human Rights Practices for 1998."

Even the harsh legislation against terrorism, passed last year by the British Parliament following the bombing that killed scores of persons in Omagh, does not restrict the detainees' right to meet with their attorneys, and certainly does not allow interrogators to use physical or psychological pressure.¹³²

The normative difference between Israel and other democratic countries is reflected in the scope of the use of torture in interrogations. While Israel uses it routinely and against thousands of interrogees, in other liberal democracies, torture is exceptional and rare. According to Amnesty International, the number of complaints alleging torture in Great Britain, including Northern Ireland, from 1987 to 1998 is not high.¹³³ In contrast, in its reports on Israel since 1991, Amnesty International found that Israel made systematic use of torture.¹³⁴

B. United States

The prohibition on torture and ill-treatment is secured in the Eighth Amendment to the United States Constitution. In the precedent-setting *Miranda* case, the U.S. Supreme Court established the principles, subsequently called "the *Miranda* warnings," that constitute the cornerstone of the protection of persons upon arrest.¹³⁵ According to these principles, the individual must be told his rights, among them the right to remain silent and the right to an attorney. Failure to give the *Miranda* warnings results in suppression of confessions subsequently given by the suspect and of evidence attained as a result of such confessions.

The United States is confronted annually with hundreds of terrorist acts. Some forty percent of all world terrorism is directed against the United States.¹³⁶ Despite this, the FBI, the agency charged with combating terrorism and with interrogating terrorist suspects, is not allowed to use any physical force in interrogations or deny detainees their right to meet with an attorney.

For example, Timothy McVeigh was suspected and later convicted of perpetrating the deadliest terrorist attack in United States history, in Oklahoma City on 19 April 1995. The bombing killed 168 persons and injured scores of others. According to the affidavit of attorney Robert Nye, McVeigh's attorney, when McVeigh was

132. Criminal Justice (Terrorism and Conspiracy) Act, 1998.

133. The terms used by the authors of these reports are "some" or "several."

134. In Amnesty reports since 1991 regarding Israel, the phrase "systematic use of torture or ill-treatment" appears each time.

135. *Miranda v. Arizona*, 384 U.S. 436 (1996).

136. *Ha'aretz*, 9 September 1999.

arrested, two days after the bombing, the FBI did not know if he had acted alone, and suspected that he had at least one accomplice. The FBI thought that the perpetrators of the Oklahoma City bombing were involved in planning similar attacks elsewhere in the country. Despite the immediate danger, the FBI did not use any physical force, moderate or otherwise, on McVeigh either during or between interrogations. The affidavit states unequivocally that McVeigh was not deprived sleep, was not bound in painful positions, was not deprived of food, and was not forced to withstand loud music. Furthermore, he was allowed to meet with his attorney immediately upon his arrest, and his attorney was present whenever he was interrogated.¹³⁷

Another relevant case involved Gazi Ibrahim Abu Mezer, a Palestinian who emigrated to the United States. In July 1998, he was convicted of conspiracy to bomb the New York subway. The authorities searched his apartment at the time of his arrest, where they found a pipe filled with explosives ready for detonation. He did not deny his intention to commit an attack to kill as many Jews as possible, and argued in court that, "I came to the United States to punish it for its support of Israel."¹³⁸

An affidavit given by Abu Mezer's attorney, Lawrence Ruggiero, states that, when his client was arrested, the interrogators did not know if he had acted alone or with others.¹³⁹ Although the authorities encountered the need to prevent an attack that could kill many people, they allowed the suspect to meet with his attorney within an hour after his arrest. The interrogators used no force whatsoever.

Rule 5 of the U.S. Federal Rules of Criminal Procedure states that every person who is arrested, even if suspected of security offenses, is to be brought before a judge without unnecessary delay. The rule states that the judge is to inform the defendant of his or her right to be represented by a lawyer and gives the suspect sufficient time to consult with an attorney. According to attorney Ruggiero's affidavit, "The government's non-compliance with these procedures has been a grounds for dismissal of the charges against a defendant or suppression of all the defendant's statements made to the police during and as a result of the government's non-compliance..." Also, any ill-treatment, physical or psychological, of the interrogee is liable to result in civil suits against the government and personal claims against heads of the police force.

137. The affidavit was given on 8 January 1999.

138. *Ha'aretz*. 24 July 1998.

139. The Public Committee Against Torture in Israel submitted the affidavit during the course of the hearing on the petitions against GSS interrogation methods.

We do not argue that the United States does not violate human rights. Human rights organizations have on several occasions reported severe violations, for example the imposition of capital punishment and police brutality.¹⁴⁰ However, regarding interrogations, including cases where detainees are suspected of committing terrorist acts, torture or ill-treatment are, if they exist at all, exceptional and not an accepted norm.

140. See, for example, Human Rights Watch, *Shielded from Justice: Police Brutality and Accountability in the United States*; Amnesty International, *United States of America: Race, Rights and Police Brutality* and *United States of America: Speaking Out: Voices Against Death*.

Chapter 5: Effectiveness of Physical Force in Interrogations

B'Tselem's position is that any use of physical force on interrogees is absolutely forbidden. As regards the narrow issue of the effectiveness of force in obtaining information to save lives, the findings are inconclusive.

Those who argue in favor of allowing torture during GSS interrogations argue that using physical force is the only way to extract from interrogees information vital to combating terrorist groups and preventing terrorist attacks. Many of them ridicule and belittle other methods of interrogation, claiming that "it is impossible to conduct an interrogation over a cup of coffee." Consistent with this attitude, security officials have stated that the recent High Court decision, which prohibited the GSS from using the interrogation methods it had used since the Landau Commission made its recommendations, will prevent them from doing their work effectively, and not enable them to protect Israelis against attacks.¹⁴¹

However, those who make this argument have not provided a shred of evidence that physical force is the only or the most effective means to prevent attacks. It is not enough to present cases in which the GSS, after using force during interrogations, succeeded in preventing terrorist attacks, because we do not know what the result would have been had the GSS used other methods instead.

In recent years, the GSS has repeatedly provided data on victims of terrorism to justify the use of "energetic" means, in their terminology. But the data only express the scope of the problem and not the desired solution. Those victims were killed when, in fact, the GSS had authority to use force amounting to torture. Furthermore, the major attacks took place after the GSS had been allowed, in September 1994, to use increased force during interrogations. Some will argue, no doubt, that were it not for the GSS's use of these interrogation methods, many more

141. For example, Micah Koby, former head of GSS interrogators in Gaza, argued: "As one who has vast experience in interrogations, I state that it is impossible to perform thorough interrogations as dictated by the High Court... I expect a very great rise in the number of attacks and expansion of Hamas infrastructure, because the High Court's decision will encourage terrorist organizations to renew their terrorist activity." *Yediot Aharonot*, 7 September 1999. Deputy Defense Minister Ephraim Sneh said: "The decision will make it harder for the GSS to combat terrorism. It imposes on GSS interrogators restrictions that ignore reality." *Ha'aretz*, 7 September 1999. MK Gideon Ezra, former deputy director of the GSS, argued: "We are liable to pay a dear price for the High Court decision. It will be much harder for the GSS to thwart attacks." *Ha'aretz*, 7 September 1999.

persons would have been killed or wounded, but, in the absence of firm proof, this argument does not prove that torture is the most effective way to prevent terrorist attacks.

The argument that torture is the only way to prevent attacks was presented by Justice Michel Cheshin. In the hearing on the petition of Muhammad Hamdan to order the GSS to stop torturing him during interrogations, Justice Cheshin posited to petitioner's attorney, Andre Rosenthal, the hypothetical case: a bomb has been set to explode in Migdal Shalom [a high-rise office building in Tel-Aviv], it is impossible to vacate the building, and the interrogee knows where the bomb was planted and how to deactivate it. After Rosenthal argued that, in this case, too, torture is not justified, Justice Cheshin contended that, "this [your] position is the most amoral thing that I have ever heard. A thousand people are about to be killed, and you propose doing nothing?"¹⁴²

However, the choice is not between the use of force and "doing nothing." A third option exists, where GSS interrogators employ - like security service personnel in many other countries - persistence, sophistication, and technical proficiency, in methods allowed to them, to try to obtain the information from the interrogee without force. The Israel Police Force works in this manner, also when the investigation involves a dangerous band of criminals. Methods of this kind are mentioned, for example, in the chapter titled "Techniques of Non-Coercive Interrogation of Resistant Sources," in the 1963 manual for CIA interrogators.¹⁴³

This approach is supported by many security officials in Israel and abroad. They argue that it is preferable, from the aspect of effectiveness of interrogations, to use methods of interrogation that do not include the use of physical force. For example, Zvi Aharoni, who was involved in establishing the GSS and served as a former head of its interrogations department, stated:

I took part in building the internal security service and I was proud of it, of everything we did. Today I'm disgusted by it. Let me tell you one thing, when I was head of the interrogations department, nobody could touch a prisoner. Sure, you could do all kinds of tricks, you could bug them, listen in on their conversations. But beating them? Torturing them? And

142. *Ha'aretz*, 15 November 1996. Ultimately in this case, the High Court decided to allow the GSS to use "physical force" on Hamdan. Protocols of High Court hearings do not include comments of the justices. Attorney Rosenthal confirmed to B'Tselem that Cheshin made these remarks, and neither Justice Cheshin nor the Supreme Court denied they were made.

143. CIA, *Kubark Counterintelligence Interrogation*, pp. 64-80.

today not only is it being done, it's legal. Arabs can be tortured. It's legal and in my country.¹⁴⁴

Ya'akov Perry, while GSS Director, also questioned use of physical force during interrogations, and supported alternative means:

I personally never believed in torture or strong pressure, since you don't get the desired result in the end. Maybe you get an immediate result faster, maybe you win part of the battle, but you lose the war. There is nothing comparable to confronting the problem intellectually, using persuasion, and bringing the other party to understand that it would be better for him and the matter at hand if he let everything out.¹⁴⁵

The head of the Investigations Department of the Israel Police Force, Major General Yossi Levy, opposed coercive interrogations, and argued that it is possible to interrogate suspects by legal means:

An interrogator has a variety of lawful tools, which he is trained during his police training to use ... I think that all successful interrogations are not conducted with force, but with intelligence. A lot of intelligence and sophistication is needed in an interrogation. It is a mental confrontation between a criminal body and an interrogating body. Timing is also important in the interrogation. Many interrogations, if not done at the right time, lose momentum of obtaining evidence and preventing the crime.¹⁴⁶

Oliver Ravel, former deputy director of the FBI, claimed that he often argued with GSS personnel regarding interrogation methods the GSS used. According to Ravel:

I told them that they are taking shortcuts. It is not hard to bring in someone to interrogate, beat him up, and get information. They used to do that in the Soviet Union too. The wise thing is to obtain information by sophisticated means - lab work, eavesdropping, monitoring [suspect's] movements, advanced technology, infra-red cameras. Their means are often not effective - people will even admit they killed their grandmother, just to stop the beatings. They have to change their way of

144. In an interview with *The Guardian*, 16 July 1997.

145. *Ma'ariv*, 5 May 1995.

146. "Not with Force, but Intelligence," *Al Hamishmar*, 21 September 1994.

thinking. It is true that they now and then extract useful information, but not in most cases. I told them that, if they want Israel to be seen as a law-abiding country, it must cease violating international law.¹⁴⁷

In the early 1970s, when Great Britain was debating the use of coercive interrogation methods against IRA members, Cyril Cunningham, a senior psychologist who dealt, on behalf of the British government, with intelligence regarding prisoners of war, wrote:

If the Royal Ulster Constabulary...is using the methods reported, they are being singularly stupid and unimaginative... [such methods are used] in "field" interrogation which, by definition is a sorting process and traditionally and universally this is carried out by poorly equipped units and personnel who scarcely qualify for the description of interrogators in the modern sense. The second is where properly qualified interrogators are deprived of adequate aids and resources, usually by commanders and politicians who, in their ignorance, continue to regard interrogation simply as a hostile questioning by people whose only qualification is a loud voice and an overbearing manner. (The best interrogator I ever met, the one who trained me, had the demeanor of an unctuous parson!)...A variety of "backdoor" methods are available, all of which depend for their effectiveness upon the avoidance of brutality in any form.¹⁴⁸

On the same matter, L. St. Clare Grondona, commander of the interrogations center of the allied services in World War II, wrote:

In the early stages [of the Second World War] all our "guests" (and they were invariably so termed) were ... usually truculent Nazis [who] possessed valuable information of which it was our job to extract as much as possible; but *always* with proper regard to the Geneva Convention. So it was that our interrogators (then and thereafter) had to be as wily as they were resourceful. The methods they used were processes of "painless extraction" seasoned with legitimate guile. More often than not a "guest" would be unaware that he had given useful data. ... Comfortable quarters were provided, and prisoners' fare was precisely the same as for British personnel.

147. *Ha'aretz*, 9 September 1999.

148. From his letter published in *The Times*, 25 November 1971.

It is the simple truth to say that if one of our interrogators had suggested submitting any prisoner to *any* form of physical duress (which would certainly not have been permitted) he would have been a laughing-stock among his colleagues. Nevertheless, the "intelligence" we obtained (all the items of which were carefully correlated) was of inestimable value. In this regard, it may suffice to say that, had it not been for the information elicited by the CSDIC, it might have been London and not Hiroshima that was devastated by the first atom bomb.¹⁴⁹

Furthermore, the assumption that it is necessary to cause pain or suffering to obtain information from an interrogee fails to take into account that many interrogees are willing to say whatever the interrogator wants, and admit to any accusation raised against them just to stop the torture. The questionable effectiveness of the use of force to obtain reliable information is stated precisely and accurately in the saying common among Saigon police in the 1970s, that, "if they are not guilty, beat them until they are."¹⁵⁰

In this context, Prime Minister Menachem Begin described the consequences of depriving detainees of sleep from his experience in a Russian prison in the 1940s:

... and then there was another night without sleep and then a night of interrogations, and again, and again... Night after night, for weeks... In the head of the prisoner being interrogated a sort of strange fog developed: his spirit was tired to death; he stumbles and he desires only one thing: to sleep, to sleep a bit, not to get up, to lie there, to rest, to forget... Anyone who has felt this desire knows that neither hunger nor thirst can equal it... I have met prisoners who signed what they were ordered to only to get what the interrogator promised them... Undisturbed sleep.¹⁵¹

A case in which a person confessed just to stop the torture involved Jamal al-Hindi, who was arrested and interrogated by the GSS regarding the 1995 murder of two Israelis in Wadi Qelt Nature Reserve, in the West Bank. After being tortured for a month, he admitted to taking part in the murders and named three others. Al-Hindi subsequently proved that at the time of the murders he was working in a settlement. He was then released.¹⁵²

149. From his letter published in *The Times*, 27 November 1971.

150. Quoted in Lippman, p. 68.

151. Begin.

152. B'Tselem and LAW. *Cooperating Against Justice*.

However, some interrogees do not provide information even when particularly severe force is used. Ya'akov Perry describes a Hamas member who, despite "intensive" interrogation, did "not provide even a bit of new information." He added:

This is easy to understand. Only people with strong character, like him, can fill the position he held in Hamas. Such people can bear any discomfort and withstand any pressure, any temptation, during interrogation.¹⁵³

Security services' warnings that they would be unable to prevent attacks if not allowed to use physical force on interrogees, as the High Court recently decided, must not be accepted without question. Kremnitzer and Segev noted:

Security officials have a tendency to exaggerate the security danger, to ensure that all their demands are met and enable them freedom of action as broad as possible on grounds of effectiveness. This tendency is natural for persons given the task of protecting public security, because of the particularly great dangers inherent in this area, but just for that reason review by persons with balancing interests is necessary.¹⁵⁴

Regarding comments of GSS officials after the High Court's decision, the chair of the Knesset's Constitution, Law, and Justice Committee, Amnon Rubinstein, stated that, over the years, he learned to doubt such warnings. He presented, as an example, the warnings by law enforcement officials following the newly-enacted detentions law, which reduced the time for bringing the arrested suspect before a judge from forty-eight hours to twenty-four hours, and the opposition of security officials twenty years ago to judicial review of administrative detention. Rubinstein added that, "These measures were pronounced disastrous, but law enforcement and security officials learned to do an excellent job after the measures were instituted."¹⁵⁵

153. Perry., p. 166.

154. Kremnitzer and Segev, pp. 678-679. This tendency is not unique to Israel. For example, a report dealing with French interrogation methods in a number of African countries stated that, "to cast aspersions upon a body of public servants who have so much devotion and indeed so much heroism to their credit, would be unwise and might lead to serious consequences." In addition, the report stated, "to forbid any methods of interrogation other than those which are strictly legal... [would be to] plunge the police into a state of disorder and paralysis." Office of the Governor General, Civil Inspectorate-General in Algeria, "The Guillaume Report," (Algiers, 2 March 1955), quoted in Pierre Vidal Naguet, *Torture: Cancer of Democracy*, trans. Barry Richards (Middlesex: Penguin, 1963), p. 117, quoted in Lippman, pp. 67-68.

155. *The Jerusalem Post*, 16 September 1999.

Perjury by GSS agents in the courts also illustrates the tendency of security officials to exaggerate the dangers facing the state. In testimony before the Landau Commission, GSS agents did not deny the practice of perjury, but justified it on the grounds that "there was no option." The Commission found that,

The principal reason why GSS interrogators lied in court, during the trial within the trial, and denied applying any physical pressure whatsoever on person under interrogation, was the operative need not to expose the methods of interrogation.¹⁵⁶

Now, after publication of testimonies of persons who had been interrogated, affidavits submitted to the High Court of Justice, and official state documents, the public is aware of the interrogation methods. Despite this, the authorities do not argue that state security has been prejudiced.

Although GSS officials persistently testified to the Landau Commission that lying in court was necessary to combat terrorism, the Commission stated firmly that this practice must cease. Prof. Statman argues that the same conclusion must be reached regarding torture:

Regarding perjury in the courts, it was found that another way exists, and that the moral and social price entailed in the policy of perjury is too high... A similar structural change is also required regarding the use of coercion and torture against hundreds and thousands of Palestinian interrogees. Ostensibly, it seems that there is "no other option" but to beat bound interrogees even harder, place them for hours and days in a tiny cell with a filthy sack on their head, tie them hours on end in painful positions. But here, too, there is another way - the moral and social price entailed in this violent policy is too high.¹⁵⁷

As shown above, the choice is not between acting and not acting, and also not between methods that are always successful and those doomed to failure. Furthermore, perceiving the use of force as the only way to obtain reliable information is self-perpetuating and prevents the development of other interrogation means. As Prof. Kremnitzer stated:

The existence of the license to employ physical pressure - despite its qualifications and limitations in the Report - is also liable to constitute a

156. Landau. Commission Report, sec. 2.37.

157. Statman, pp. 196-197.

negative incentive regarding the development and perfection of non-violent means of interrogation, and thus to reduce the effectiveness of the interrogation and increase the number of cases in which recourse is made to physical pressure. What is supposed to be, according to the Commission, a last resort may become - out of considerations of efficiency and economy in personnel and time - the first method tried. Physical pressure may become a refuge for the lazy, impatient, unskillful interrogator.¹⁵⁸

158. Kremnitzer, p. 254.

Conclusions

1. In the attempt to regulate GSS interrogations statutorily, many persons may argue that, taking into account Israel's security problems, the normative arrangements established by the Landau Commission provide the proper balance between the need to protect civilian lives and the need to preserve Israel's character as a democratic country. According to this arrangement, physical force would be allowed in order to save lives, while interrogation methods that cause severe pain or suffering would be expressly forbidden.

However, as we tried to show in this document, any statute that permits the GSS to use physical force, however minimal, even in exceptional cases, is equivalent to sanctioning torture. This conclusion follows from the manner in which the Landau Commission's recommendations were implemented over the past twelve years. This experience indicates that it is impossible to limit the use of physical force in interrogation so that it does not reach the level of torture and is not used routinely.

2. For many years, GSS interrogators tortured thousands of persons on grounds of state security, and intentionally inflicted severe pain and suffering on them. Many of those interrogated were subsequently released without being indicted or were administratively detained. The torture was not limited to exceptional cases or to "ticking bombs." Quite the opposite: torture became a bureaucratic routine. The interrogators had standard torture equipment and kept a detailed record of the pain and suffering. Even the state's responses to petitions filed in the High Court of Justice contained repetitions of entire paragraphs routinely justifying supposedly exceptional acts. Supervision of the GSS was unsuccessful in preventing torture in Israel from becoming routine, systematic, and institutionalized.

The argument made by state representatives that GSS interrogation methods were only "unpleasant" and caused almost no suffering insults the intelligence and sensitivity of most human beings. It is not surprising that the state's arguments convince very few people, even in Israel. In a late 1998 survey conducted by DAHAF [a leading Israeli survey company], some seventy-six percent of those questioned stated that shaking, sleep deprivation for prolonged periods, and painful shackling in interrogation are "torture."

In a moment of unusual candor, a GSS interrogator said regarding legislation to regulate GSS interrogations that, "It is all semantics. It is possible to enact a statute that forbids torture and humiliation of terrorists suspected of planning

and committing attacks, and allow them [GSS interrogators] to use only increased physical force. In the end, it is almost the same thing."¹⁵⁹ Even Israel's closest ally, the United States, stated that, in some cases, the GSS used interrogation methods that constitute torture.¹⁶⁰

Whoever supports allowing limited physical force in interrogations faces the heavy burden of proof that in practice it is possible to prevent the rapid slide down the slippery slope leading to torture.

3. Even if it were possible to point to certain circumstances in which physical force in interrogations would save lives, any statutory permission to use such force in interrogations, no matter how minimal, must be rejected outright. Torture violates a person's dignity and humanity so gravely that it cannot be balanced or weighed in any manner.
4. There is no factual basis to the claim that other "democratic states" torture or ill-treat detainees as a matter of necessity when interrogating terrorist suspects, as Israel did until the High Court's recent decision.

We do not profess to argue that security forces in such countries have not used severe force on detainees and prisoners in various circumstances, including interrogations. But, as the situation in Britain and the United States indicates, the use of force to obtain information or a confession is the exceptional scenario, and is not an authorized and institutionalized practice, as was the case in Israel from the time that the government adopted the Landau Commission's permissions to the time that the High Court prohibited them.

In liberal democracies, the use of physical force is a clear violation of law, and judges punish the perpetrators. In such countries, the use of force and ill-treatment are not discussed and approved by a governmental committee; a parliamentary committee and the State Comptroller are not directed to supervise their execution; courts are not requested to approve legal sleight of hand to sanction them.

5. In deciding whether to legalize physical force or the intentional infliction of mental suffering during interrogations, consideration must also be given to how it will affect Israel's status in the world as a law-abiding democratic state that protects human rights, a consideration mentioned by commissions that have previously dealt with the subject. The Landau Commission noted that the

159. *Ha'aretz*, 6 September 1995.

160. U.S. Department of State, *Israel and the Occupied Territories - Country Report on Human Rights Practices for 1998*.

methods of security service interrogation in any given regime accurately reflects the character of the entire regime,¹⁶¹ and that:

It is true that strict care must be taken, lest a breach of the structure of prohibitions of the criminal law bring about a loosening of the reins, with each interrogator taking matters into his own hands through the unbridled, arbitrary use of coercion against a suspect. In this way the image of the State as a law-abiding polity which preserves the rights of the citizen, is liable to be irreparably perverted, with it coming to resemble those regimes which grant their security organs unbridled power.¹⁶²

The committee to examine legislation against torture and to consider the need to conform Israeli legislation to the provisions of the Convention Against Torture also related to this consideration in the Explanatory Notes to a proposed law prohibiting torture. The committee stated that, by passing such legislation, "Israel would proclaim to the world that it preserves its place among the group of enlightened states, which gave high priority to human rights, with the right to bodily integrity and protection of human dignity lying at their core."¹⁶³

A state that allows its security forces to intentionally harm the physical and mental well-being of interrogees who are completely within their control not only severely damages the state's democratic character but also its international standing. The recommendations of the Landau Commission and the manner in which they were implemented led to sharp international criticism. A statute that explicitly allows physical force in interrogations will lead to even greater censure. If the Knesset enacts such a statute, Israel would be the first country since the middle of the 20th century to pass a law allowing torture during interrogations. Such a law would at once erode the most deeply rooted principles of international law regarding human rights - the absolute prohibition on torture and ill-treatment. If such legislation is enacted, Israel would be perceived by the world community as showing contempt for its international commitments and challenging the international community's efforts to strengthen the prohibition on torture.

161. Landau Commission Report, sec. 4.2

162. *Ibid.*, sec. 3.16.

163. Introduction to the Explanatory Notes of the Proposed Penal Law (Amendment - Prohibition on Torture), 5755 - 1995. This proposed law has not yet been submitted to the Knesset.

These consequences were among the reasons why Lord Gardiner, a member of the Parker Commission in Britain, fervently opposed enacting legislation to permit the use of physical force in interrogations of IRA suspects. He argued that,

If, by a new Act of Parliament, we now depart from world standards which we have helped to create, I believe that we should both gravely damage our own reputation and deal a severe blow to the whole world movement to improve Human Rights.¹⁶⁴

6. The dilemma facing Israel is not between allowing physical force in interrogations in the exceptional cases of "ticking bombs" and having innocent persons die. The true dilemma is between allowing the torture of hundreds and thousands of persons and adopting alternative means of interrogation, as other countries combating terrorism have done.

Fifty-one years since the establishment of the State of Israel, and in the midst of the process that is supposed to lead to conciliation between Israelis and Palestinians, the time has come for Israel to enact a statute prohibiting torture. The statute should regulate the powers of the GSS without allowing the intentional infliction of mental suffering or use of physical force during interrogations, neither moderate nor increased, neither under the guise of "exceptional measures" nor as "special measures," neither according to the discretion of the head of the GSS nor by the approval of the prime minister.

Legislation prohibiting torture would reinforce the moral, legal, and international standing of Israel and add to its character as a democratic state. Only then will Israel be able to proclaim, at the beginning of the 21st century, what Victor Hugo stated in 1874: "Torture ceased to exist."¹⁶⁵

164. Quoted in *The Times*, 3 March 1972.

165. Peters, *Torture*.

Appendix 1: Interrogation by Torture of Dr. Jamal 'Amr

Testimony of Dr. Jamal Muhammad Musa 'Amr, 41, married with five children, Professor of Architecture, Bir Zeit University, resident of East Jerusalem

Given to Yuval Ginbar and Marwah J'bara-Tibi at Bir Zeit on 25 March 1998, and to Yuval Ginbar at Orient House, East Jerusalem on 2 April 1998

On the night of 8-9 January 1992, (between Wednesday and Thursday), Border Policemen and General Security Service agents came to my house. Among them was the GSS official responsible for the area, who identified himself as "Dvir." They knocked loudly on the door, and my wife woke me up. I went to look and saw the Border Police and GSS people. I opened the door. "Dvir" called me outside, took my identity card and said that he had to search the house. They didn't show me any search order. The children were crying with fright, because the policemen locked them by themselves in one room. The children are between two and thirteen years old.

The police searched all the cupboards and rooms and it lasted 3-4 hours. They gave me a list of articles they confiscated.

Yuval Ginbar notes: the list contained - telephone book, "hard disk" (even though Dr. 'Amr has no computer at home, and only a small regular diskette was taken), documents, letters, business cards, pocket diary, notebooks.

It was a very difficult moment when he said to me, "Put on your clothes, get ready, and say goodbye to your wife and children." I asked him, "Why?" and he answered, "You are active in an organization hostile to Israel." I replied, "Me?" He answered, "Yes." I said, "If you can prove it, I will come with you." He said, "No. There is an order that you come tonight."

I got dressed. I was sure that it would all be over in a few hours. I wanted to leave, but he said, "No, it will take a long time, say goodbye to everyone." He insisted on opening the room where the children were and that I say goodbye to them. This was torture for me. I didn't want them to see me in this condition. I said goodbye to them and left with the Border Police and GSS. "Dvir" disappeared, but he gave

my wife his telephone number and told her to contact him for news about me. There was no violence in the arrest procedure.

I was put into a Border Police jeep. It was around four o'clock in the morning. They took me to the Russian Compound, and at the gate, the Border Police handed me over to the police. The policemen straightaway said that I was guilty of being active in an illegal organization. The policeman asked me, "Do you plead guilty?" I said, "Of course not." The policeman said, "The GSS will prove it."

I was taken inside, we went upstairs, I sat down on a chair, and they photographed me. Afterwards, whenever they dealt with me, I saw that photograph on the card. The policeman took down my personal details, then he called another policeman, and for the first time I was handcuffed, my hands behind my back. I was taken to a doctor. He checked my pulse, temperature, undressed me and thoroughly examined me, told me to stand and sit, asked me if I had any illnesses. I said I had none.

The policeman took me along the corridors, until we passed a door with a curtain immediately behind it. He closed the door. On the floor was a pile of stinking sacks, beside them a large plastic bag containing garbage. I saw this every time that I passed there on my way to the doctor. Each time that I came from the Interrogation Wing, they took off the sack and placed it on the pile. Up to then I had not heard about the sacks.

The policeman spoke Hebrew all the time, slowly. I told him I didn't understand. He said in Arabic, "You're an ass. You're a professor and you don't understand Hebrew?" He spoke excellent Arabic. He released one hand and held the handcuffs. He told me to pick up a sack from the floor. I took a sack, and he yelled at me to put the sack on my head. I have a big head and it was very tight. In addition, the sack was made of material like army fatigues, but the part that was on the crown of the head was of some other material, harder and restricting.

The sack is a dreadful thing - there is nothing worse. Better to be beaten for twenty-four hours than to have the sack on you. The sack is narrow, and it is difficult to breathe. You sweat and the sweat trickles over your entire body. Three fluids mix together on your body - sweat, fluid from your nose, and saliva from your mouth - and your hands are not free to wipe yourself. And of course the sack is used by one prisoner after another. I never received a clean sack. Once the sack was particularly dreadful. I am positive that it had been in the toilet, for there was a smell of excrement. I asked a guard, a Russian (they told me he had been working sixteen years in the Russian Compound), to give me another sack. His response was like that of the interrogators: he beat and kicked me, and said, "What, you

think I'm your servant?" and went on to curse me using language that I can't repeat. He refused to change the sack. This was on the eleventh day of my arrest.

From the day of my arrest I realized that everything was planned and organized. They wear you down according to a plan that is thought-out and computerized down to the last minute.

The policeman who brought me opened the curtain. The place we entered was totally enclosed, with no windows. The policeman dragged me violently by the sack, as you would pull a horse or mule that refuses to move. I leaned backwards, because I was afraid I would fall. Several times I bumped against the walls, or trod on other prisoners who were sitting there. And others often trod on me. I had no idea there were things worse than blows, until I came to this place. The beatings are infinitely preferable.

We moved into the corridor. The policeman put me into a room. I could feel that I was treading on a mat. He made me sit down, on a thing that they call a chair, but its real name is torture. It stands about twenty centimeters high, its width is less than A4 paper, and it is slanted forward. There is a small back to the chair, about the same size as the seat. The chair itself is like a rabbit - long back legs and short front ones. There is a piece of iron with a hole in it projecting from the floor. A rope runs through the hole, tying the chair leg to the iron bar. The end of the bar can be lowered into the floor, concealing it, so that if someone comes into the room, he won't see what is going on. I saw this happen on one occasion.

The policeman told me to lower my hands. He undid the handcuffs and bound my hands behind my back, tying them to the chair, one hand in front of the chair back, one behind it. If you try to stretch because your shoulders are aching badly, the handcuffs tighten and your hands swell up. In the first twenty-four hours, my hands swelled badly and began to bleed where the handcuffs had been. Only in the last ten days did they give me treatment for this, and put sweat bands, like sportsmen wear, on me so that the marks on my hands would disappear.

An additional problem was that I developed allergies, with irritation all over my body. To this day, I have to scratch myself so much that I bleed. In all my life I never suffered from this, until the first day of the investigation.

After I had sat for quarter of an hour, the interrogation began. It was then about six or seven in the morning. The investigator came, took off the sack, and said to me: "*Ahlan, ahlan*, Dr. 'Amr, we've been wanting to talk to you for a long time now." He continued: "How about your giving us no problems? Your fate is in our hands. You're not in a prison, but in the slaughterhouse of the Russian Compound. You're an educated chap, you studied in Germany. Come on, let's cut it short. You make

things easy for us and we'll make things easy for you. If not - yours is a clear-cut case, and we'll make things hard for you." The interrogator's name was "Shawki." A tall fellow. He said his father was Circassian and his mother was Jewish. He had an athletic physique, very strong.

He said, "We consider you a very dangerous person." I said nothing. I was busy enjoying the relief from having the sack removed from my head. He continued: "If you don't make things easy for yourself, then nobody, not even your God, can help you, or get you out of our hands. Now you are under military interrogation. As for me, with these hands of mine I killed 'Abd a-Samad Harizat. I shook him till he died. Did you hear about him?" I said I hadn't. He said, "He was a tough case, like you, who didn't want to talk." I hadn't heard of this case. I lived in Germany for seventeen years, and when I returned in 1992, I didn't really get involved in these matters.

"Shawki" sat on the table, some distance from me. When I tried to look around me, he said, "Why are you looking up and down - look me in the eye." I was trying to find out what he wanted. Then he said, "I want you to tell me all about your connections with Hamas." I laughed: "Of all things, Hamas?" He said, "Yes, what's funny about that?" I said, "I thought you would ask me about my connections with Orient House. I have been an official adviser there since I returned from Germany in 1992." He said, "We've known about your connections with Hamas for a long time." Then he said, "Asses like you speak that way at the beginning, as you spoke just now. Afterwards they change their tune... you son of..." and he let loose a stream of abusive curses. Then he got up, picked up the sack, and put it on me. The questioning, with breaks, continued until mid-day, and "Amir" also took part. They didn't beat me, except that every time one of the interrogators left the room, he put the sack on me and hit me. Then the new interrogator came and took off the sack.

There were three interrogations daily, each lasting two to three hours. Six people questioned me "Shawki", "Abu Hatem", "Amir", "Martin", "Yo'av," and one other. Occasionally, I was interrogated by a single person. Sometimes all six were there. At other times, there were two or three or four people. "Amir" told me he had an MA in psychology from the Hebrew University. He tried to make me change my mind, using psychological pressure, only talking.

The GSS used seven different methods of torture, which comprised *shabah*. 1. the sack 2. the use of tight shackles on hands and legs 3. sitting on the chair 4. the music and the shouting that you hear when the music stops 5. not being able to wipe your sweat or scratch yourself 6. sleep deprivation, and 7. the cold.

"Shawki" called for a policeman to come and take me into the corridor. I was aware that I passed through two doors. They sat me down on a chair, in the middle of the corridor, exactly like the one in the interrogation room. It was extremely cold, perhaps below freezing. I sat there six or seven hours. I felt that my body was falling apart. Unlike the interrogation room, there was no heating, and the floor was bare. I remained there through the night, when snow was falling outside in Jerusalem. Inside the sack your head is hot and you sweat, while your feet are frozen. This affects the blood circulation.

Loud music was played in the corridor, with a throbbing beat, so you couldn't sleep at all. It was a song with English words, something like "Nobody Can Help You," which they played over and over again. Occasionally there was a break, and you could hear people shouting as they were beaten "Ya Allah, oww, that hurts" and so on.

I sat for forty-eight hours on that chair. Every so often someone would come and say to me, "You're still alive! You don't want to get out of this situation?" Each time it was a different person. My hands swelled up, I lost all sensation in my legs, my body was stiff, and it was impossible to sleep because of the music, the shouting and the cold - everything.

Throughout the entire period of my arrest, I was only in a prison cell on two occasions. The rest of the time I was either in the interrogation room or in the corridor. Sometimes they made me stand up for an hour, my hands tied behind my back to a pipe, and then they put me back on the chair. Sometimes they put me in a very narrow "cupboard," next to a wall, closed with a curtain. I made use of this situation to get close to the wall and somehow managed to remove the sack.

I heard other people shouting, in Hebrew, that they wanted to go to the *sherutim* (toilet). That was when I learned the word *sherutim*, and like them, I called out. The guards said, "Shut up, the interrogators haven't given you permission." Sometimes two guard shifts passed and I was not allowed to go. It came to the stage that I would shout out, that I didn't care if they beat me. Other prisoners heard me and joined in my protest. The guards were nervous because communication between prisoners is forbidden, and they promised to let me go "in another five minutes." They did let me go to the toilet, but at the same time gave me food. They always have the two together - food and *sherutim*. I was forced to shout in this way every time I wanted to go to the toilet. Everything in the prison was planned. Even the curses - it was as if they had been taught the same curses.

There is one policeman - very old, perhaps 55 or 60. He was fine. He used to come as soon as I called for him, would give me water, take me to the toilet, and even

take care of the handcuffs. He wore a police uniform. The others had different uniforms.

They give you the food in the toilet. This is an "Arab" toilet - a hole in the floor. Everyone uses this toilet, it's dreadful. Filth, stench, quite unimaginable, there are worms crawling everywhere. For the first two or three days you are so sickened, you can't eat. The policeman shoves the tray at you, with his foot, inside the cell. There are two cells for eating - in one of them there are no chairs at all, and in the other there is a *shabah* chair, and here there is a shower. You can shower only if you are sitting on the chair, otherwise you would have to stand barefoot on the floor, and no one would do this. When I came into the cell and saw the chair, I said, "Great, I've come to a restaurant."

I think breakfast was between six and seven in the morning. They would bring an egg, four or five olives in a plastic bag, and four slices of bread. Prisoners who for one reason or another couldn't eat the food would hide it and other prisoners would eat it. There was water, no tea. You put the tray on your knees. No utensils, you use your hands.

The mid-day meal comes somewhere between 11:30 and 12:30. They give food first to those who yell out that they want to go to the *sherutim*. When you go in they say to you, "You've got five minutes for *sherutim*, food, and to put the sack back on your head. You heard me? You heard me?" For the mid-day meal they give you a tray with compartments. In one compartment is, for example, a tomato, in another three small pieces of sausage, the size of a ten-shekel coin. The sausage tasted terrible. In the third compartment, they would put pieces of lettuce in water. Only if you're starving can you eat such food. The evening meal was early, between 5:30 and 6:30. It was exactly the same as breakfast.

Once one of the interrogators asked me, "Satisfied with the food?" I replied, "If only you would give us just one thing properly cooked."

During the Ramadan fast, we had only two meals - at about 5:00 in the evening and again at night, perhaps around 1:30 or 2:00 in the morning. The quantities never varied. At night they gave us breakfast, in the evening we had the mid-day meal, and that was it. The water situation was bad. You receive one glass with a meal, and no more.

I didn't feel hunger. My senses were focused in other directions, on the pain and humiliation. The torture wasn't in the food but that they gave it to you in the *sherutim*, in such an inhuman, degrading, fashion. For example, the egg would have a terrible smell, but you hold your nose and swallow it because you have no alternative.

Twice I asked the older policeman for something sweet. He signaled me to keep quiet, and then secretly brought me a sandwich with a lot of jam. And once he brought me, without being asked, some jam in a glass. The other prisoners complained that they wanted a cigarette. All I wanted was to sleep.

During the first fifteen days I wasn't allowed to sleep at all. I was either being interrogated or in *shabah*, and sometimes in the eating place. If the policeman wasn't paying attention, it was possible to move the chair (which was attached by one leg to the floor) a little towards the wall, lean against it and sleep for five or ten minutes. Even this was difficult - there was the sack, there was the music, your body is stiff and tied up. If the policeman saw me, he would go crazy, "Son of a bitch, what do you think you're doing?" He would drag me back to the place. Except for the Russian policeman, nobody really beat me. I'm sure they had orders not to beat up the prisoners.

During those fifteen days, until I saw the lawyer, I wasn't able to shower, not even once. Afterwards I was allowed to shower every three days. That was a great relief. But I wasn't allowed to change my clothes, not at all. The clothes really stunk. In the *sherutim* there was no paper. The only way to clean yourself was with the water flowing in the hole. The smell of my clothes was dreadful. It was only just before I was released that they gave me the clean clothes that my wife had sent me.

After fifteen days, they extended my detention for the first time. The police took me into the building from the side, took me along the corridors from above, because (attorney) Jawad Boulos was waiting for me in the corridor below. However, my wife saw what was going on, she told him, and Jawad got there at the very moment that the prosecutor asked for two weeks. Twice my detention was extended by four days.

The first time that Jawad visited me was after fifteen days. Up till then there was an order.

I knew what time it was by looking at the watch on the interrogator's wrist, or at the screen of the telephone that was on the table. The telephone had a twenty-four-hour clock, for example 1300 and not one o'clock, so I could tell if it was day or night. If the interrogator made me get up and sit down, I would manage to glance at the clock, which also gave the date.

During the interrogations, I sat in the *shabah* chair, tied up, and the interrogator would come and take off the sack. Generally, there was more than one interrogator. They used all kinds of methods, all of them awful.

One interrogator would talk about my children and my wife. For example: "How many children have you got?" "Five," I would answer. And he would go on: "You

sex-maniac, do you fuck your wife every night?" Or he would ask me, "How long were you in Germany" "Fifteen or sixteen years." "How many German women did you fuck?" I didn't answer such questions, and he would get mad.

The worst of all was when "Abu Hatem" and "Shawki" would grab their genitals (they didn't undress), and come up to me and say, "Suck, you dog, suck". I tried to get away from them as best I could, but of course I couldn't move, as I was tied to the chair. They actually physically touched my mouth with their genitals. Afterwards they would say, "Enjoyed it? Enjoyed it? Now your wife has men doing the same thing to her." "Abu Hatem" used to do this to me every day. They could tell how it affected me. They did this to me maybe fifty times. "Yo'av" also did it.

"Martin" had his own thing. He used to make me lie down on the floor, put his foot on my throat, and say to me, "Look at you, like a dog, you, a University Professor. What would your students say if they could see you now?" Then he would make me crawl on my knees. He would call one of the policemen to tie my hands behind my back, and then put my head between his knees and say, "Dog, look at me, all the time." He would take a newspaper and read it, and every so often he would say, "Why aren't you looking at me, dog?" This would last maybe forty minutes each time. He did this several times. It wasn't particularly painful, but it was very humiliating.

They would look at the computer screen and ask me questions. "What did you do in Germany?" "What did I do?" I would reply, and they would say, "You were active and made propaganda against Israel." One of the interrogators once said to me, "You used to send fighters to Afghanistan, and give them equipment." I said "What, me, a Palestinian would help the Afghans?" "Yes," he replied.

They used the *qaramza* or *qambaz*. This involves kneeling on your toes. It used to kill my knees. You're not allowed to touch the floor or sit down. After forty minutes, you're screaming in agony. You feel you're going to explode. The interrogator would be reading a newspaper and now and then he'd speak: "Come on, say something, confess to something, anything, even a lie. Something that you did against Israel." He would say, "Just as we can put someone in administrative detention for five years, we can free him the same way. Go on, talk, don't be afraid."

When they saw that I was about to collapse, the interrogators would come in. One of them would hold me by the chest, another from behind, so that I wouldn't fall, either forwards or backwards. Another one pushed me downwards, on my head. You feel as though you're going to split in two. They used the *qambaz* from about the second day, every day, for almost every interrogation session.

On about the tenth day I began to suffer from hemorrhoids, and started to bleed. They took me to a Russian doctor. He didn't speak Arabic or English. There was a male nurse there who spoke Arabic, a big fat fellow. I told him what my problem was, and he said to me straightaway, "You're a liar. Get out of here." He told the policeman to take me away without the doctor knowing anything about my condition. The policeman took me away.

The doctors would change, that same nurse was always there. Every time I came there he would call me a liar. The next day I insisted that I see the doctor. I tried to speak to him in English. It was the same doctor, and I realized that twenty-four hours had passed since the previous visit. Apparently there were three doctors and each one did an eight-hour shift. I said to the doctor, "Please examine me." He replied "OK, OK" but he didn't understand anything. I showed him the blood on my pants. There were five of us in the room: the policeman, the doctor, the nurse, someone else, and myself. The doctor told me to undress and take off everything. I remained in my underpants, which were filthy and stinking. The doctor said to me, "Take that off as well." I refused, because of all the people that were there, but in the end I did undress. He said to me, "Lift your arms, lift your legs." My neck was completely stiff, I couldn't move my knees, and he could see all of this.

He told me to bend over so that he could examine my rectum. All this in the presence of three other people. I wouldn't do that even to a goat.

He inserted his hand. It hurt terribly, like an operation without an anaesthetic. I can't believe they would do this in a hospital. When he pulled out his hand there was blood on it, of course. He gave me suppositories, two a day, and that helped to ease the condition. Up to then I would scream with pain every time I went to the *sherutim*. He also gave me pills for the pain in my neck, and something for the allergy and skin irritation. On the day that the detention was extended, I concealed all these medicines in my clothes and showed them to the judge. I said, "Look, all these are because of what was done to me, and I can't bear it any longer."

The GSS wanted Dr. Jamal 'Amr to work for them, in Orient House, and become a GSS informer. Each time they would accuse me of something else: "You hid wanted suspects, you have concealed weapons, you're an activist..." They had nothing concrete to go on.

After the first court session, they brought in someone who spoke with a Tunisian accent. He said "I'm an educated person, I'm an engineer like you, I don't beat people like the others." He took me to another room, that I'd never been in before. Room number 26. How do we know the room numbers? They're written on the telephone and the computer.

All the furniture in the room was black. A large black table. The other interrogation rooms had ordinary wooden tables. Here there was an instrument, something like a computer, with many electric wires coming out of it. He said, "You've heard of a lie detector?" I said I had but that I had never seen one. He said, "This is a lie detector" and went on to explain how all the wires were connected, all the technical details. He said there were sensors that measured body heat and moisture and so on. He told me that he would not have been able to join the Mossad and reach such a high rank without going through the lie detector tests. Meanwhile, four other persons had come into the room. I was sitting down, on a comfortable armchair, not bound. He said, "This machine can send you home a free man, or put you in prison for life." He went on, "I'm speaking now about the law. You don't have to undergo the lie detector test. I'm a 'major,' I'm superior to all the interrogators. If you will speak without the lie detector, then everything will be over and done with. But if the lie detector proves that you are lying, you're in deep trouble. You've got quarter of an hour to think it over, and decide whether or not you want to be tested by the lie detector." The time was about four or five o'clock in the evening, on the day that I came back from the courtroom.

They left the room and closed the door. I knew this was a form of psychological pressure. There was a peephole in the door. I could see a shadow pass across the peephole now and again, and I knew I was being observed. Maybe they thought I would try the lie detector by myself. The surprise came when the door opened and in came "Shawki". He said, "You want to confess or to be tested by the lie detector?" I said, "I want to be tested, because I am completely innocent. I'm clean as white flour." He said, "You think this is a toy? This machine can destroy you. Here's a pen and paper. Write down these questions." I can remember some of the questions that he asked me: "Do you possess any weapons? Did you own any weapon while you were in Germany? Did you ever tell a lie in the past in order to save yourself? Have you been involved in activity hostile to the State of Israel?"

When I had finished writing, he called the policeman and said to him, "Take him to the cell." This was the first time that I went to a cell. "Shawki" said, "Go, have a rest, and think about the questions during the night. I'll see you again in the morning."

The policeman took me, I climbed three stairs, and we went along the corridor until we came to the cell. I was alone in the cell the whole night.

I put aside the paper on which I had written the questions and dozed off. It was worth a million dinars. I slept as though I was in a five-star hotel.

The next morning, a policeman came and took me back to the same room. There were several interrogators there, and the Tunisian. The Tunisian said, "I'm sure you've thought about the questions." I said I had, even though I hadn't looked at the paper at all. The Tunisian asked if I wanted to speak, or to be tested by the lie detector. I said I wanted to be tested.

They sat me down on a high armchair, hands in front of me, opposite a point which you had to look at all the time. They attached all kinds of sensors to my body.

He told me to tell a lie first. He asked me, "Is your name Muhammad?" and I had to say "Yes". After I said that my name was Muhammad they took the printout and showed me how it had registered. He said, "You're a good man. One can easily tell that you lied."

He said, "We'll ask you all kinds of questions, and among them will be the five questions." He asked me things like, "Is your name Jamal? Are you in the Russian Compound" and so on, and slipped in the five questions. He asked each question twice.

At the end he took the printout, looked at it and said "Pity. I hoped that we'd find you innocent." I said, "What happened?" He said "Everything is fine, but it turns out that you have a weapon."

From that morning the interrogation procedure changed drastically. They began to use the hazing method - the shaking. They take off the handcuffs, stand you up, grab your clothes by the chest and shake you with great force. When they pull you forward your head is thrown backwards, when they push you back, your head is thrown forwards. It lasts a very short time, no more than a minute, perhaps half a minute. If they had done more my eyes would have jumped out of their sockets. It's very painful for the spine. Each vertebra is shaken. The effect lasts for the whole day. "Abu Hatem" and "Martin" shook me, every day, for six or seven days, until two days before my release.

I was shaken during each session, in other words three times a day. Of course, this was in addition to the *qambaz* and the psychological pressures. They used to shout curses about Faisal Husseini, tell stories about Abu 'Ammar [Yasser Arafat], about his trembling lips, and about Suha Tawil, Arafat's wife.

Every *qambaz* was noted down. They carried on with these methods until I was completely finished, wiped out. *Qambaz* came first, then the shaking, because after the shaking there was no way you could do the *qambaz*.

I never received any real blows or beatings. Sometimes they would grab my ear and twist it. Once during a session they tied me to a regular chair from behind, and

during the interrogation "Abu Hatem" got mad, grabbed my head and rubbed my face against his genitals. Later on he was furious again, grabbed and lifted me, with the chair tied to me, and threw me violently to the floor. I fell backwards with the chair, and as a result the handcuffs cut into the flesh.

Between the sessions there was the *shabah*, even for the fifteen minutes when the interrogator went to drink something. On these occasions, they would put me in *shabah* in the interrogation room. I stayed there too for five or six nights: with the sack on, tied up, seated on the little chair, but without hearing the music, because the door was always locked. At night, when I heard the policeman walking away, I managed to get a bit of rest. I used to tip the chair on its back legs and balance it so that I could put my feet on the interrogators' table. But it was very important not to let the policeman see me.

They gave me another lie-detector test.

Between the torture sessions they would bring an interrogator to me, a small man, I don't remember his name, and he would say to me, "Why are you doing this? You're a professor, a respectable man, why don't you make things easy for yourself? You can save yourself." He said, "You don't know the GSS." I replied, "You're right. I was never arrested before." He said, "You should tell the interrogators you want to cooperate with them. Not like a 'collaborator' telling them who threw stones. We in the Mossad (sometimes he used the term Mossad, sometimes Shabak [GSS]) look after our people better than they can look after themselves. Tell them that you can assess the influence of the political movements in Palestinian society. If they tell you that's not enough, tell them that you can give them names of activists." I said to him, "What's the difference between this and a collaborator?" He said, "This way, you're working for peace. You can always say that you are working for peace." I said, "I do work for peace, I meet with Israelis. I sit with them in working groups." He said, "That's not serious. Peace begins and ends with the Shabak, the GSS."

Each day he came to me, suggesting that I work with the GSS, for instance within Orient House. He didn't hit me, he just spoke.

When they failed to persuade me, at the end of a torture session, the interrogators themselves would suggest all kinds of deals. For instance, they would say, "Your house is very poor. Why not have a house like the top people have? Why not move up out of the poverty class?" Or, "What if we send you back to Germany, we'll pay you, and you'll cooperate with us. You'll live there like a king, you can go back to your friends there, and your college." (I used to teach Arabic to children, and was paid by the German government.) Or, "Perhaps you think Faisal (Husseini) is close

to us? You could be even more important than Faisal, Sari (Nusseibeh) or even Abu 'Ammar (Arafat)." Or, "Do you want to remain in misery? You could be killed in a road accident, a truck might crash into your car, or you'll be passing by a demonstration, and you'll be hit by a stray bullet. Or perhaps you'd prefer that we find out that you're hiding weapons in your garden. We can bring someone who'll declare that you have weapons in your possession. We'll bring the police and the prosecutor. If we don't find them in your house, we'll come across them in your car. The police and prosecutor will be on our side, don't you worry."

I said, "I don't want to be miserable. My life and your lives, the lives of my children and of your children all depend on peace. I want to offer you a deal." "Shawki" said "What? What kind of deal?" I said, "I'll bring my wife and my children, and go to the house of each one of you that's been torturing me for the past twenty days. And my children will play with your children, and my wife will make friends with your wives. It's shameful that a man who puts out his hand in peace does it when his hand is bleeding." And I put out my hand, which was still bleeding from the handcuffs.

I told them that I have held meetings with Israeli engineers. That I met, for instance, with Architect Ze'ev Baran, against the ruling of the Palestinian Engineers Association, and by doing so put myself in danger. A Jordanian engineer joined us at this meeting, also at great risk to himself, and we are working on a plan for peace.

I said that I wasn't afraid to meet with an interrogator and his family, because everyone knows me. I work for Faisal. But I added, "I am afraid of being a spy for you in Germany."

This took place on about the twenty-fourth day. Jawad wasn't present at the last extension of my remand in custody. I said that I didn't agree to a hearing without my lawyer present to represent me. The judge told me that Jawad sent a fax that he would accept another four days of detention. I said, "I don't believe it, I want to see my lawyer." I heard the clerk call out on the loudspeaker for Jawad Boulos. We waited for a long time but he didn't come. Meanwhile, they took me outside and began to discuss another case. I saw my wife waiting outside and told her quickly to get in touch with Jawad. Immediately the policeman said, "Shut up, you're not allowed to talk," but she had heard me. She made a phone call and someone came in Jawad's place - a young lawyer called Johnny. In the presence of the prosecutor and police, he tried to persuade me to accept the extension. I said, "Only if they stop torturing me." He said that they had promised this would cease. My detention was extended for four more days. I remember that the judge said that this was the last extension, until February 2nd, at 2 o'clock. Everyone was laughing. Later I

learned that they had promised him that there wouldn't be any more torture, only questions and talking. One of the days was the Sabbath, so it was understood that this would be a day of complete rest for me.

During the last four days, they tried to utilize the time that was left as best they could. From the courtroom they took me directly to *shabah* to make it quite clear who was boss. They continued to use *shabah*, they continued to use *qambaz*, they continued with the shaking. They kept on pressing to make "deals." And all this went on throughout the Sabbath. This last Saturday was the worst of all, because I was expecting some respite. They said to me, "This may be the last extension of your remand in custody, but we'll have you put in administrative detention for six months, then for another six months, and another six months. We can keep you like this for five years. Or we can hold you in a prison cell for seventy-five days, because you're from East Jerusalem. We can keep West Bank people for ninety days."

One thing I forgot to mention. The week before, when I told them that I was working on a plan for peace at Orient House, they asked me, "So you oppose the enemies of peace?" I said, "Yes." They said, "So you're prepared to put in writing that you're against the actions of the suicide bombers?" Again I said, "Yes". I wrote a two-page statement for them. This was on 22 January 1998. "Abu Hatem" came again and asked me to write down my name, the date, and the place - the lock-up in the Russian Compound. I wrote that it was wrong to kill innocent people, women and children, and that peace is the true solution. He brought in several other interrogators and said, "Read this aloud." I read what I had written. He said, "So you're ready for peace, you're ready to argue and criticize the Islamic Jihad and Hamas?" "Absolutely," I replied. "If all the Arab armies couldn't move Israel, and the peace agreements succeeded, nobody in their right mind can believe that those organizations would be able to budge Israel even one meter." "Abu Hatem" said, "So they're crazy?" "They're crazy," I said. He said, "You're ready to say this to Palestinians?" "I'm prepared to do so," I said. He asked, "You believe in God?" "Yes," I said.

The interrogators brought in a prisoner from the corridor. They asked him what his name was. He said, "Tarek." Abu Hatem said to me, "Tell this man your ideas, just like you wrote down on this piece of paper. Tell him your opinion of Hamas terrorists. Tell him they're crazy, that suicide is a sin and killing innocent people is evil." I told all this to the man they had brought in, and then again to four other prisoners, one after the other. Each one that came in was told my name, Jamal 'Amr. Afterwards, the interrogators said to me, "Now you've finished yourself off. These men are all members of the 'Izz a-Din al-Qassam Brigade (the military wing

of Hamas). Tomorrow we'll have you put in administrative detention, and there they'll have you sentenced to death. They know how to get information to the outside world, and they'll get your house destroyed." I was very upset when I heard this. I said, "I want to tell you something very important. You and the State of Israel that is behind you are responsible for anything that might happen to me or my family or my house carried out by Hamas or anyone else. I want to see my lawyer, now, and I'll tell him all this." And indeed I did tell Jawad, the moment I saw him.

The second time I was taken to the cell was that same night or perhaps the next day. I met one of the same prisoners whom they had brought in to me. He said, "Hello Dr. 'Amr, I remember you, you're the one who cursed us, aren't you?" I said, "I wasn't saying things about you, only about your plan of action. In Israel they argue with each other, but they don't destroy a man's house, so I don't like the way you do things." He said, "I realize that you're being tortured. I promise that I won't do anything against you. But I can't speak for the others." That same night, at midnight, they took me again to the interrogation room.

On February 2, I saw that it was already two o'clock in the afternoon, and I still hadn't been taken to the courtroom. I was sure I would be given administrative detention. "Dvir" came in. I hadn't seen him since the arrest. He told the policeman to take me to have a shower and bring the clothes that my wife had brought me. I reminded him there was a court hearing. He said, "That's all right. I'm a lawyer myself, I'll defend you." After the shower he had me cut my toenails which had grown a centimeter. He took me to a room I'd never been in before. There were two trays there with fish, tea, and proper food.

He said, "I know that you were tortured a great deal, and that you are a peace activist." I said, "That's correct." He said, "And you said that you are ready to visit us, that our children will play together." I said, "That's correct." He said, "That's all that we want. We don't want any courtroom. Every so often I'll be in touch with you and ask you how you are. Just now you're in bad shape. How much weight have you lost?" I told him fourteen kilos (I had weighed myself at the clinic). He said, "The state has given you a weight-loss diet. I trust you, but the authorities don't. Now you're not allowed to go abroad." Later on he said, "I'm going now." I got to my feet and waited for them to put the sack on me as usual, but he said "Forget it." He went out, and simply locked the door. He was gone for an hour. It was past the time set for the court hearing. I knew that all my family had come to see me. I was very anxious. When he returned, he said "Jamal, the situation has changed a bit. I'm a lawyer, and I've been helping you, but the head of the Jerusalem region GSS wants to talk to you."

They took me to another room, and there was the man in charge - "Abu" something or other, together with all the interrogators who had questioned me.

The one in charge said, "You haven't proved conclusively that you are a supporter of peace. The proof will come in the next few days. We won't leave you alone. We'll be observing you. When people contact you, you must talk to them." I said, "What does all this mean?" He asked me, "'Dvir' beat you?" I said, "No." "Did 'Dvir' speak roughly to you?" "No," I responded. He said, "It's important that you become part of our plan." I said to him, "I've got only one plan when I get out of here. When I came here I was a fifty-percent believer in peace. Now I believe in it one hundred percent. I see now that nothing will be achieved with all this violence and torture, and only peace will get us away from all this."

He said he had to talk to the head of the GSS. They took me back to the room where I had been given food, and once again I was left alone, for an hour, hour and a half.

They said again that it was agreed that we would meet another two or three times. The man in charge said, "We'll phone you and you'll come, depending on the situation and our requirements." "Dvir" said that he would arrange everything. All the interrogators who had tortured me wished me luck and hoped I would help the peace process.

Once again they covered my head with the sack and took me back to the room where I had been photographed on the very first day. They said they were waiting for someone, an officer called "Haim," who apparently wasn't there. In the meantime, they put me in the room where I used to meet with my lawyer. I waited there two hours. It seemed like an eternity.

"Dvir" came back, gave me fifty shekels, which he said I should give back to him when we next met, even though I refused. Five minutes later "Haim," the officer, appeared and I was released.

Outside my wife was waiting for me, with the car.

It is impossible to describe the happiness that I felt. But there was also the memory of the torture inflicted on me, the suffering, and the shouts of other prisoners that I had heard.

Appendix 2: "How a Bomb Ticks"

Ronny Talmor*

From the air, Lebanon appears quiet and green. N leaves the security zone and his jet rapidly approaches the outskirts of Beirut. He knows what the power station he is about to bomb looks like. Aerial photographs were hung that morning in the squadron's briefing room, showing the large, square structure and its protruding stacks. N begins to descend, and then, suddenly, his earphones transmit, a serene and monotonous sound, "Fuel, Fuel, Fuel, Fuel."

He glances at the fuel gauge. The numbers are falling rapidly toward zero. Was his fuel tank struck by gunfire, or was he losing fuel due to technical failure, he asks himself, gritting his teeth. With a firm voice, N radios the flight leader, "I have a fuel leak, the engine is dying out, I am going to bail out, am heading toward the sea." N steers sharply left, in a westerly direction, but another glance at the fuel gauge makes it clear to him that he has no choice but to bail out in enemy territory.

"I am bailing out, I am bailing out," he announces over the transmitter. T responds, "Roger!"

N spreads his legs forward, tightens the cinches and the strap of his helmet. N thanks Inbal, his simulator instructor, for not foregoing this training and for badgering him over and over: "Arms firmly against the body and crouch." He presses his arms firmly against his body and crouched.

N pulls the ejection cord between his legs. The hatch of the cockpit soars into the blue sky above his head. The G-force is almost unbearable. The parachute of the ejection seat opens, and then the seat is released, his parachute spreads open above him, and he glides toward the strange, threatening ground below.



At seven o'clock that same morning, N sat on his chair in the squadron's briefing room. Fifteen minutes earlier, just before leaving his home in the family-housing area, he went into the bedroom for a moment. Noa, his wife, his love, mother of his daughter, her curly hair covering much of the flowered pillow, breathed gently

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in her peaceful sleep. N wondered whether to kiss her, and decided to let her sleep the remaining few minutes before the baby's cries would waken her.

The briefing room is filling up. Y and M are laughing about last night's "Spitting Image" television show, A and R are planning a trip together to Tuscany. T grabs the chair next to him. They are old friends. They finished flight school together seven years ago.

"Something's up," T says to him.

"Yeah," N responds, "two people were killed in Kiryat Shmoneh. This time they will send us to level them."

"Let's get out already. We have no reason to be there," T says for the thousandth time.

N envies Noa, who is surely already hugging their baby, Mai.

The squadron commander enters. "This time it's serious," he says. "We are going to bomb infrastructure." He points to the large map with his laser pointer, writes some words and numbers on the green blackboard, and when the briefing is over, everyone knows:

First sortie at 8:00. Power station outside of Beirut.

Second sortie at 09:15. Two bridges on the 'Awali.

Third sortie at 10:30. The oil pipeline.

N climbs into his plane. He was assigned to the first sortie. N loves the plane. He knows why, in English, in which nouns are neuter, plane is considered feminine. His fighter plane is beautiful. Sculptured. Flexible. She embraces him. N loves the feeling of total freedom in crossing the sky, the omnipotence in the absence of gravity, the absolute mastery of his fate when he bonds with the complex machine and takes control of it. The view of the earth at his feet from horizon to horizon.

He says what one says to the control tower and takes off.

When he crosses the northern border, he discerns the firebrands still smoking where the Katyushas [missiles] had struck. Lebanon seems peaceful and green.



While descending in his parachute, N saw the jeep approaching along the dirt road, and when he hit ground, before he could gather together the parachute, the military vehicle stopped alongside him and soldiers jumped out. They kicked and cursed him as they took him, shackled, eyes blindfolded with a rag, to the jeep. He

spent the half hour ride along a bumpy road regretting the Arabic classes he had neglected in school. Then the vehicle screeches to a halt. N hears emotional cries and shouts in the unfamiliar language. Someone grabs him forcefully by the arm, pulls off the blindfold, takes him into a stone building and then into a well-furnished room with colorful carpets, velvet chairs, and a heavy wooden desk.

The man behind the desk looks like a kind fellow. Ironed uniform, shiny emblems of rank on his shoulders, medals on his chest, horn-rimmed glasses, gray hair combed straight back. A large picture on a book case behind him, in which he is hugging his smiling wife, his hands resting on his two pretty daughters' shoulders. "My name is General 'Ali 'Issa," he says in English with an Arabic-French accent. "I am head of Lebanon's security services. Like your Ami Ayalon," he laughs. "Have a seat, please," and points to a high-backed chair.

N sits down.

General 'Issa says something in Arabic. The soldier removes the handcuffs and leaves the room.

General 'Issa smiles. In the corner of his eye N sees a stack of papers on the desk, and yesterday's *Ha'aretz*. "Exchange of Fire on the Northern Border," is the lead headline.

The soldier returns. He has a small tray with two glasses of tea. He puts the tray on the low copper table and leaves.

"Excuse me," the general says, "I read Hebrew well, but do not speak it well. Is it OK if I speak English?"

His English is fluent. N shakes his head yes and says, "Yes, of course."

The general gets up and gives him one of the cups of tea and then sits down again. "What's your name?"

N gives him his full name, his military identification number, and rank: captain.

The general nods and leafs through his papers.

N knows that the relaxing atmosphere and the courteous gentleman is nothing but the deceptive first act of a play whose plot will become increasingly complicated. He knows that he will soon find himself in a totally different setting, with other, much less friendly people.

"Look," General 'Issa says while stretched out in his chair, "How about your giving us no problems, and we won't cause you any?" He glances at his papers, "Let's cut it short. You make things easy for us and we'll make things easy for you." It seems

to N as if he is reading from a written text. "If not, we'll make things very hard for you. We consider you a very dangerous person."

N does not respond. He takes advantage of his last moments in an easy chair, with his hands free and feeling no pain. He breathes deeply and tries to rest, to gather strength for what is to come.

"The words I have spoken now, I did not make them up. I am reading them from the testimony of Dr. 'Amr, a Palestinian architect who was interrogated by you, the Israelis. That is what they told him before they tortured him. Then they released him without prosecuting him for anything." The General leans toward him, "I do not want to torture you," he says softly. "I want you to know, N, that I was in France for many years. I am a graduate of the Sorbonne. I have a Masters in political science."

N thinks about the trip he took to Paris with Noa. It was cold. October. Noa fell in love with the hot crepes sold on the street. Two weeks ago he straightened out a drawer and found the photos he took at the time. "Each time I took your picture - you were devouring a crepe." Noa laughs.

The general's voice brings N back to the Middle East. "I read all the Hebrew newspapers, watch television, Channel One, Channel Two," the general chuckles, "pretty gal, Miki Heimovich."

N thinks about the special sound of that Eastern European name - Heimovich - in the general's French-Arabic accented English.

"Yes, pretty, and smart, too," he hears himself saying all of a sudden.

"Yes. Yes." 'Ali 'Issa's eyes are veiled and he clicks his tongue tsst, tsst. "Tell me, please, are you ready to give me the time and target of the next bombing?"

N is silent and then says, "I am willing to tell you my name, rank, personal number, as required by the Geneva Convention. Other than that, I am not willing to tell you anything."

"Geneva Convention, hmmm," 'Ali 'Issa nods his head, his lips tightly closed. "I learned it at the university, an international law course. International Conventions. Interesting course." He stops for a second, leafs through some more papers. "Permit me to ask you something. Do you know what a 'ticking bomb' is?"

"Of course I know. I also read newspapers." There is no fear in N's voice. The degree of defiance in his response surprises him.

The general speaks softly and moderately: "Look, I don't now how many ticking bombs your GSS uncovered, I don't know how many people you tortured citing ticking bombs, but I do know that you know about a ticking bomb. You know when your air force will attack again. You know when and you know where." Each time he says 'you' he stresses the word, stretches it, "yooooou," "yooooou." "You are the biggest ticking bomb possible. No buts or maybes. And you are not willing to tell me what you know. just like that, with us sitting here having a cup of tea. Then what am I supposed to do?"

N did not answer. He is not sure he has an answer.

"Many important and clever people in your country say, 'If there is a ticking bomb, torture is permitted.'" The general continues immediately, as if he anticipated N's silence. "Look," the general waves the *Ma'ariv* newspaper as he talks, "here, an editorial, 'No Alternative to Physical Pressure,' 'Senior GSS official says there are cases in which physical force is the only way to obtain information from a person under interrogation.'" The general reads the quotes slowly, in the Hebrew of an ulpan student. "Your attorney general says, 'Not only persons under interrogation, but the public and the victims are also entitled to be treated humanely,' and the deputy defense minister, General Sneh, and Members of Knesset, and journalists. Here, look, Amnon Dankner, a very intelligent person: 'This is war, and people have to pay a price. The victims and their families are also innocent. Not just those who undergo interrogation.' Here, in *Ha'aretz*, Dan Margalit, an important journalist, I like him, he had an interesting program on television, I always used to watch it, look at what he asks: 'What is the task of an interrogator facing a hardened Hamas murderer, who refuses to divulge the location of the next bomb to be exploded in Israel and does not enable the attack to be prevented. What is the interrogator to do?'"

The general stops for a second, glances sharply at N and says, "Now I ask you, like Dan Margalit: The bombs are ticking, you know where and when, what should I do to you?"

N thinks, what's this bullshit? Quoting Dan Margalit to me.

And 'Issa, as if he had read his thoughts, continues, "Forget Dan Margalit. You surely know that your Knesset passed a law: if there is a clear and immediate danger, interrogators are allowed to use what you call 'special methods.' In English, it is called torture, and in your country it is allowed by statute."

A heavy silence follows. N hears the clicks of the second hand of the clock on the wall.

The general sighs. He presses the intercom and says something in Arabic. Two soldiers open the door and approach N.

"I am asking you for the last time, will you tell me when and where the next bombs will be dropped?"

N shakes his head "no."

"I am very sorry," the general says, and N is surprised to note true sadness in his words.

The soldiers handcuff N, lift him from his chair, and walk toward the door, N between them. N turns suddenly toward the general, "Excuse me, I want to tell you something," he says.

"Yes, please." The general is surprised. He gets up and moves from behind his desk toward N.

"All these people whom you quoted to me - the attorney general; Ephraim Sneh; the *Ma'ariv* editor; Dan Margalit - and the Knesset statute, it's all nonsense. You're making excuses. It doesn't impress me a bit. You would torture me in any case."

"You are right," the general responds, "you are absolutely right. I'll be honest with you. We would torture you in any case. But now we do it with their approval. You are a ticking bomb, and your country permits us to torture you."

N thinks, screw all these bigmouths with their ticking bombs.

N thinks about Noa and Mai.

The door to the room of General 'Ali 'Issa, head of Lebanon's security services, closes behind his back.

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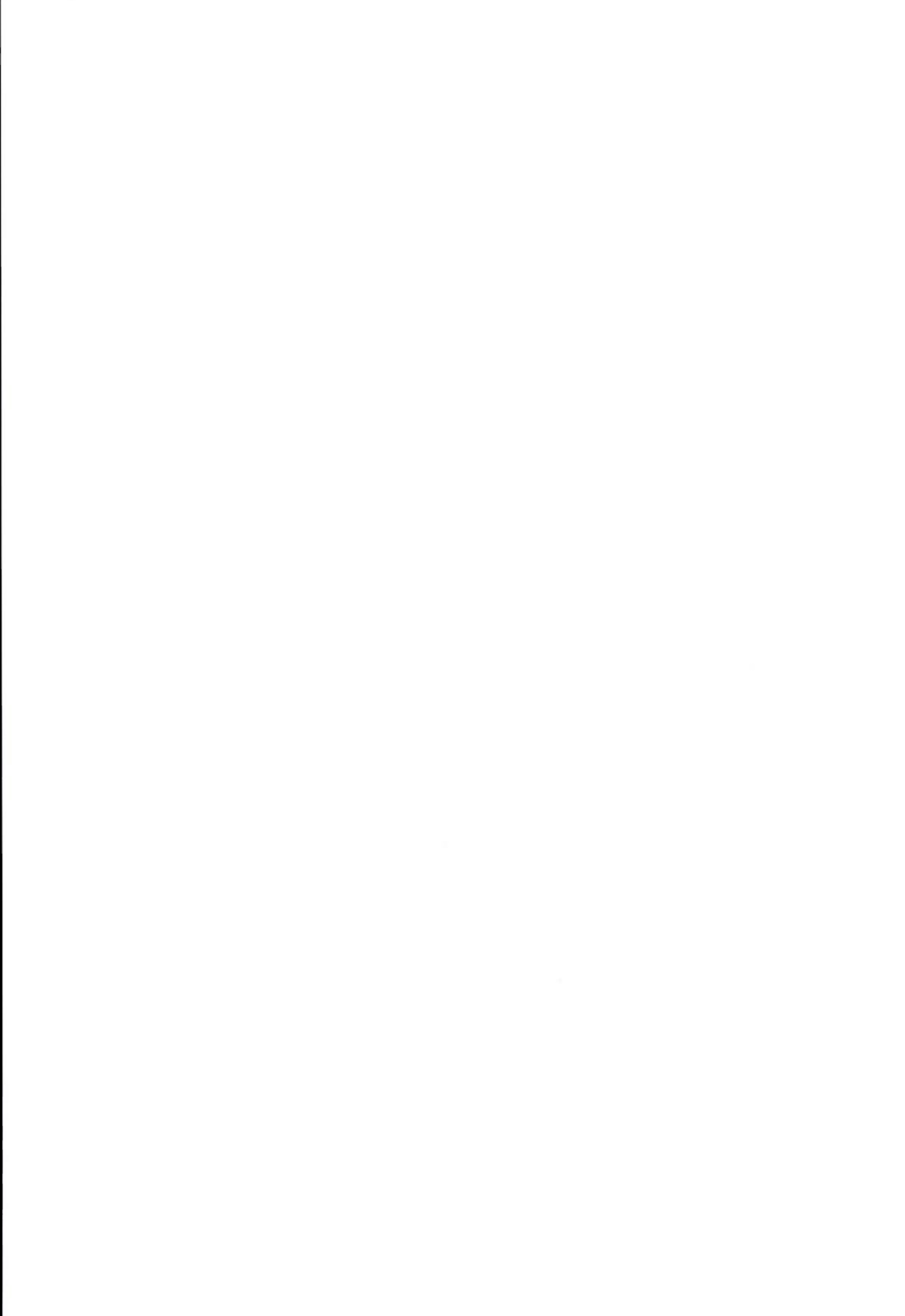
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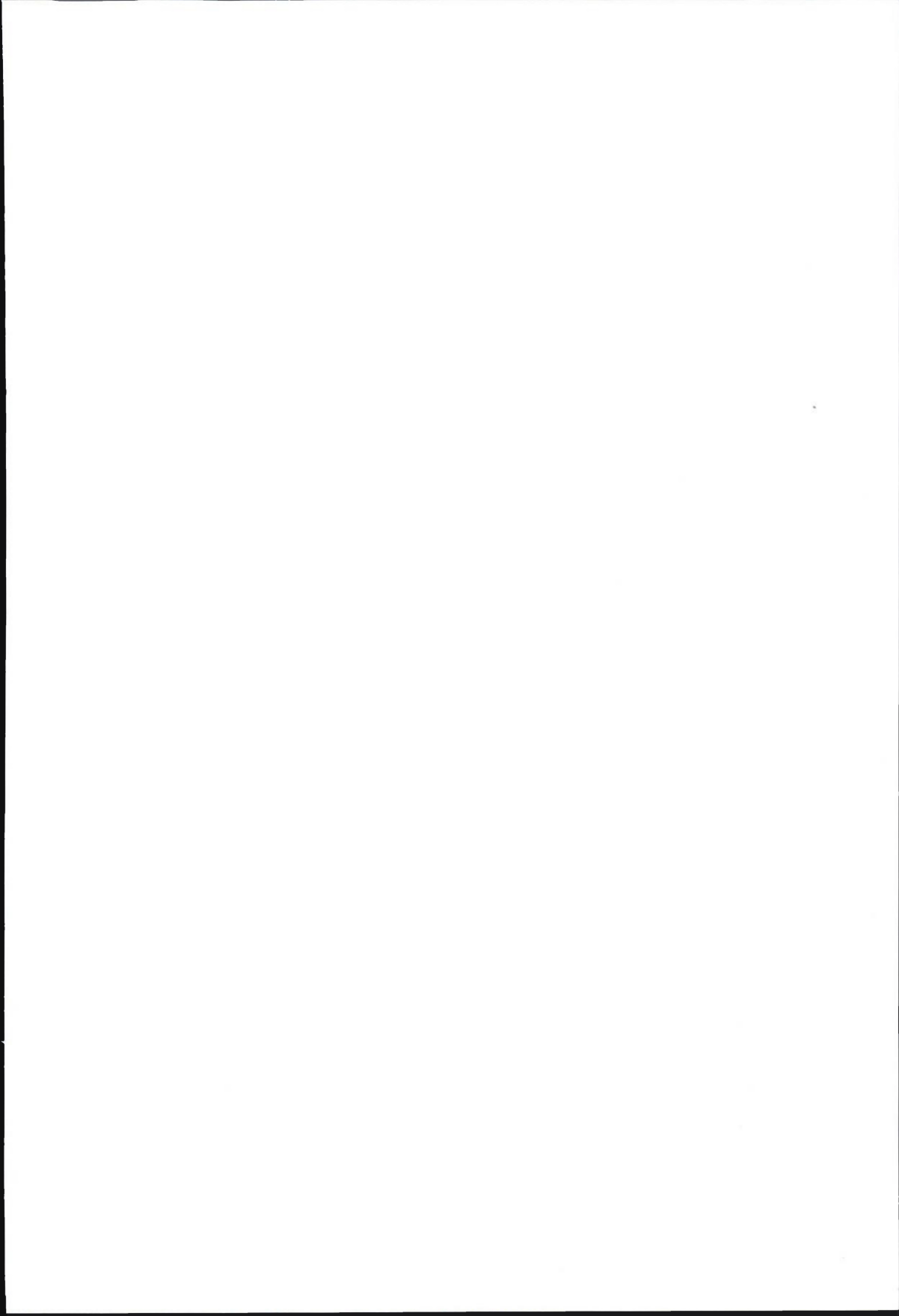
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April 1997	The Quiet Deportation: Revocation of Residency of East Jerusalem Palestinians (joint report issued with HaMoked: Center for the Defence of the Individual)
January 1997	Legitimizing Torture: The Israeli High Court of Justice Rulings in the Bilbeisi, Hamdan and Mubarak Cases
December 1996	Human Rights in the Occupied Territories since the Oslo Accords: Status Report (joint report issued with The Palestinian Human Rights Monitoring Group)

**B'Tselem's work is made possible by the support
of the following bodies and foundations:**

Christian Aid (UK), DanChurchAid (Denmark),
Department of Foreign Affairs & Trade & AusAid (Australia),
EZE (Germany), Ford Foundation (USA), ICCO (Netherlands)
International Commission of Jurists (Sweden),
Joyce Mertz-Gilmore Foundation (USA), New Israel Fund (Israel),
Norwegian Foreign Ministry,
Federal Department of Foreign Affairs (Switzerland)



ב'צ'לם

B'TSELEM

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B'TSELEM- The Israeli Center for Human Rights in the Occupied Territories was established in 1989 by a diverse group of academics, attorneys, journalists, and public figures. It endeavors to educate the general public and policymakers about human rights violations in the Occupied Territories, and to press for policy changes in human rights issues.

B'Tselem thoroughly scrutinizes all information it publishes. Fieldwork data and findings are cross-checked with relevant documents, official government sources, most notably the IDF Spokesperson, and information from other sources, among them Israeli and Palestinian human rights organizations.

As an Israeli human rights organization, B'Tselem acts primarily to change Israeli policy in the Occupied Territories and ensure that Israel complies with its obligations to respect human rights and international humanitarian law. B'Tselem's mandate is limited to monitoring and documenting human rights violations in the Occupied Territories. However, B'Tselem also strongly opposes human rights abuses committed by any party, whether committed in the Occupied Territories or elsewhere.

Despite the potential of ending military administration of the Occupied Territories offered by the signing of the Declaration of Principles in 1993, the necessity of safeguarding human rights in the Occupied Territories remains. As the peace process proceeds, B'Tselem shall continue its efforts to ensure respect for human rights.