

Jerusalem, July 1990

## THE USE OF FIREARMS

BY THE SECURITY FORCES IN THE OCCUPIED TERRITORIES

בצלם

B'TSELEM — the Israeli Information Center  
for Human Rights in the Occupied Territories



Jerusalem, July 1990

## THE USE OF FIREARMS

BY THE SECURITY FORCES IN THE OCCUPIED TERRITORIES

בצלם

B'TSELEM — the Israeli Information Center  
for Human Rights in the Occupied Territories

This report was written by Ronny Talmor.

Translation by: Ralph Mandel

English edition edited by: Jessica Bonn  
Na'ama Yashuvi

Thanks to the Board Members of B'Tselem, MK Dedi Zucker, Dr. Edy Kaufman, and Attorney Joshua Schoffman for their assistance and comments.

Special thanks to Board Member Attorney Avigdor Feldman, for his extensive assistance in writing this report.

ISSN 0792 - 4003

## בִּיָּזָם

מרכז המידע הישראלי לזכויות האדם בשטחים  
'בִּתְּסִילֵם' מרכז המידע האסרטיבי لحقوق  
الانسان في الأراضي المحتلة

BTSELEM - The Israeli Information Center for  
Human Rights in the Occupied Territories

רחוב קרן היסוד 18, ירושלים 92149.

טלפון 667274, 02-667271, פקס 02-667946

شارع كيرن هيسود ١٨ القدس ٩٢١٤٩

تلفون - ١ / ٦٦٧٢٧٤ - ٠٢

18 Keren Hayesod St., Jerusalem 92149,

Tel. 02-667271, 667274, Fax 02-667946



## CONTENTS

Introduction.....	4
The Legal Aspect.....	6
Rules of Engagement.....	9
Live Ammunition.....	9
Plastic Bullets.....	14
Rubber Bullets.....	15
Plastic Bullets: Use and Consequences.....	17
Use of Plastic Bullets as Punishment and Deterrence.....	18
Policy Changes in the Rules of Engagement During the Intifada.....	22
Petrol Bomb Throwers.....	22
Erectors of Road Barriers.....	22
Masked Individuals.....	23
Wanted Persons.....	25
Oral Orders.....	29
"Accelerated Firing Procedure".....	29
Uncertainty of Language.....	32
The Rules and the Soldiers.....	34
Rules for Opening Fire of the Israeli Police.....	37
Contrary to Orders.....	39
Reporting.....	40
Investigations and Trials.....	42
Application of the Orders in the Field.....	48
Summary and Conclusions.....	52
Notes.....	56
Appendices.....	58
A. Shooting Deaths by Security Forces During the Intifada	
1. By month	
2. By region	
B. Correspondence between B'Tselem and the IDF Spokesman	
C. Medical Opinion of the Effect of Plastic Bullets	
D. Medical Opinion of the Effect of Plastic Bullets	
E. Affidavit of a reserve soldier	
F. Affidavit of a reserve soldier	
G. Regulations for Opening Fire of the Israeli National Police	
H. Correspondence between MK Yair Tsaban and the Minister of Defence	
I. Letter of the IDF Spokesperson	

## INTRODUCTION

Between the start of the Intifada and the end of May 1990, 630 Palestinians, including 138 children under the age of 16, were shot to death by the Israeli security forces.\* As human life is a supreme value, from both a moral and judicial standpoint, the taking of life constitutes the severest possible infringement of human rights. Shootings account for the overwhelming majority of the casualties in the territories, and the absolute numbers involved are extremely worrisome.

This report sets out to examine the substance and the character of the Rules of Engagement (regulations for opening fire) that are in force in the territories; the changes that have been implemented in the policy regarding the opening of fire during the Intifada; and the essence, nature and legality of the application of the rules in the field. The report does not present an opinion as to the legality of the regulations. This issue is now pending before the High Court of Justice. It concerns itself only with the operative and normative aspects of the regulations.

The report is based on considerable information that was compiled from, among other sources: B'Tselem's data; the media; judgments handed down by the High Court of Justice and by military courts; the IDF Spokesperson; publications of the Israeli Foreign Ministry; reports issued by international human rights organizations such as Amnesty International, The Lawyers Committee for Human Rights, Human Rights Watch; and the human rights survey published by the U.S. State Department.

We requested the IDF Spokesperson's permission to meet with personnel of the Military Advocate General's Staff, so that their position could be included in the report. The IDF Spokesperson made such a meeting conditional on our not publishing the report, arguing that the subject was sub judice.\*\* B'Tselem could not accept this stance, and therefore we were compelled to forgo the response of the military justice authorities.\*\*\* The report was submitted to the IDF Spokesperson for a reaction, and the spokesperson again made his response conditional on our not publishing the report. His letter appears in Appendix I.

The Rules of Engagement have frequently generated controversy in the Cabinet, the Knesset, the IDF, the media and among the public. The debate has been waged between those who would mitigate the rules and

---

\*In addition, 34 Palestinians have been killed by the security forces by means other than shooting (beatings, burns, etc.), 31 have been killed in the territories by Israeli civilians, and 8 by collaborators. Appendix A contains a statistical breakdown of the shooting deaths by month, age, and region.

\*\*sub judice: In the Israeli legal system, it is forbidden to publish on subjects under litigation so as not to influence the judges' objectivity [L. under litigation]

\*\*\*The correspondence on the subject is reproduced in Appendix B.

those who want them toughened, while the orders themselves are classified and prohibited from being published. B'Tselem has gathered information from open and even official sources; the report contains a complete account of the rules for opening live fire, and attempts to reconstruct the orders regarding plastic bullets.

The IDF makes use of diverse types of ammunition: live bullets, plastic bullets and rubber bullets. According to the information in our possession, and as the report seeks to show, all these types of bullets can be lethal. The report differentiates between the various types of bullets only in those sections that present data. The chapters devoted to analysis draw no such distinction: B'Tselem regards all these types of ammunition as lethal in one way or another.

The report endeavors to trace the Rules of Engagement and their application starting with the written text, and proceeding to the unwritten rules, the attitudes of troops and the security authorities, implementation in the field, the report of the unit involved, and, finally, the investigations and their results. Overall, the impression that emerges is that there is an atmosphere of an "itchy trigger-finger", which helps account for the large number of casualties from gunfire. The report also presents the rules of the Israeli National Police for opening fire as an alternative to the IDF's Rules of Engagement in the territories.

The period from January 1989 to April 1990 saw a significant decline in the level of fatalities in the territories, although the number remains high. Explaining this decline, Brig. Gen. Shmuel Zucker, the military commander of the Gaza Strip, cited stricter compliance with the Rules of Engagement.<sup>1</sup> The fact that stringent adherence to these orders reduces the number of fatalities, constitutes empirical endorsement of most of the conclusions reached in this report.

During May of 1990, following the murder of Arab workers in Rishon LeZion and the ensuing mass demonstrations in the territories, the number of casualties soared again, totaling 21, in addition to hundreds of wounded. In the future, B'Tselem will reexamine whether scrupulous adherence to the Rules of Engagement has been reinstated, resulting in a decline in the number of casualties, or whether the grave situation described in this report persists.

---

<sup>1</sup>The structure of plastic and rubber bullets is described in the chapter "Rules of Engagement."

## THE LEGAL ASPECT

The Rules of Engagement are the license granted to IDF soldiers, under certain conditions, to make use of weapons capable of killing or causing serious injury.

The Rules of Engagement are not a separate judicial category. They derive from the general principles of the Penal Code which deal with the taking of life or the causing of grievous bodily harm, on the one hand, and with the legal defences entailed in the penal laws, on the other hand.

Since December 1987 the civilian population in the territories has been engaging in acts of violence, such as throwing stones and petrol bombs, and murdering persons suspected of collaborating with the Israeli authorities. Yet the territories are not a field of battle, and the casualties are civilians, in some cases women and children. The actions of IDF soldiers in the territories are perceived as operations to restore order and not as combat missions.

International law recognizes various levels of belligerent actions and different types of regions where combat takes place. International law adapts itself to these different levels according to the degree of violence prevailing, and in accordance with the need to uphold the rights of civilians who are not involved in the hostilities.

Judicially, the West Bank and Gaza Strip are classified as "territories held under belligerent occupation." This level of classification entails certain rules of behavior and limitations on the use of military force. In the territories, international law places special emphasis on the inhabitants' right to the protection of their safety and their lives. The level of activation of military force in the territories may not be, and indeed is not, equivalent to the situation on the battlefield.

The value of rules of engagement, when they reflect faithfully the relevant law, lies in their specificity, their clarity, and their precise delineation of the permissible and the prohibited. When rules of engagement are excessively broad and vague, and do not reflect the law, the danger arises that they constitute a "license to kill."

Every system of penal laws and general laws upholds the sanctity of life as a supreme value. Attesting to this are the harsh punishments meted out for taking life. The principle of the security of the state, which enjoys similar protection, in effect constitutes the collective protection of the lives of the state's inhabitants. Israeli Penal Law is the source that articulates and defines the limits on the use of lethal or injurious force. This system of prohibitions, defences, permits and justifications, which originate in the Israeli Penal Code, is equally binding in the territories. This does not necessarily imply that the Israeli Penal Code applies in the territories, but that the penal laws express universal principles in this regard; the formulators of the Rules of Engagement were guided by those principles, envisaged as defining the permissible and the prohibited in this realm.

/...



Substantively, the rules for opening fire may be divided into three main categories:

1. in reaction to an attack or a riot;
2. in conducting the procedure for apprehending a suspect; and
3. as punishment or deterrence.

The first group of rules-opening fire in reaction to an attack or a riot-is ancillary to the defence of necessity in Sec. 22 of the Penal Code. This states that the court may absolve a person of criminal responsibility "if he can show that [he acted] in order to avoid consequences which could not otherwise be avoided and which would have inflicted grievous harm or injury on his person... or on the person... of others whom he was bound to protect... and that the harm caused by him was not disproportionate to the harm avoided." From this derives the principle that the use of a lethal or injurious weapon is permissible only when soldiers, or those responsible for extending protection, are in concrete and immediate mortal danger, and the other means to avert that danger have proved ineffectual.

Likewise, the judicial source of the [see below, Rules of Engagement, Sec. C.] lies in the section of the Penal Code dealing with justifications and defences. According to Sec. 24 of the Penal Code (Sec. 125 of the Military Jurisdiction Law), a person is exempt from criminal responsibility for an act or blunder entailed in executing the law, i.e., if he acted in obedience to an order given by a competent authority. It would be difficult to infer from its wording that Sec. 24 is the source of the Apprehension of Suspects Procedure, were it not for the interpretation of the Supreme Court. In *Gould v. Attorney General, Justice Agranat* ruled that this justification permits the use of lethal force against a person where an arrest is required for a felony.<sup>2</sup>

More recently a substantial judicial modification was effected in the *Gould* ruling, in the form of a Supreme Court judgment that was handed down on February 8, 1990 (Criminal Appeal 486/88, *Ankonina v. Chief Military Prosecutor*; not yet published). The President of the Supreme Court, Justice Meir Shamgar, qualified the *Gould* ruling by stating that not in every case of apprehending a person suspected of committing a felony could the apprehender employ lethal force in order to prevent the suspect's escape. In the opinion of Justice Shamgar, the substance of the crime of which the detainee is suspected must be taken into consideration, and the use of lethal force will be justified only when a reasonable fear exists that non-use of the extreme means of lethal force will cause danger to life or limb on the part of the person who is being detained or whose escape is being prevented. The danger may arise from the essence of the crime of which the detainee is suspected, i.e., a serious felony, or from the circumstances of the arrest, which provide reasonable cause to believe that if the suspect should succeed in avoiding detention he will thereby endanger the lives of others or cause grievous bodily harm. The Supreme Court recommended that the Legislature enact primary legislation setting forth the circumstances in which the arrest of a fleeing suspect will justify the use of lethal force, and therefore did not itself lay down exhaustive definitions in this regard.

The modification of the Gould judgment consists of the fact that there is no place to draw a mechanical distinction between felonies and misdemeanors. Rather, the circumstances of the crime and the arrest must be examined in light of the concept that the use of lethal force is justified solely in order to avert and prevent danger to life and limb.

Regarding the third category, opening fire as punishment or deterrent, there is no doubt that such use of firearms is absolutely unacceptable. Nowhere in the IDF's written regulations is it permitted to open fire (for these reasons; under these circumstances).

There is no doubt that the IDF's obligation to protect the lives of the inhabitants of the territories is part of customary international law, in and of itself, and by virtue of its explicit inclusion in the Hague Regulations, which have been ruled by the courts to be part of customary law. Article 46 of the Hague Regulations obligates the occupying state to respect and protect the lives of the inhabitants of occupied territories.

Article 147 of the Fourth Geneva Convention Relative to the Protection of Civilian Persons in Time of War lists deliberate killing as a grave violation of the Convention, which makes the perpetrator, and the state because of whose organized behavior such acts are perpetrated, liable to investigation, trial and punishment, as stipulated by the Convention against those accused of grave violations.

Unjustified killing and summary execution are serious war crimes, as defined by the international tribunal at Nuremberg, which imputed the gravest criminal responsibility to both the perpetrators of such acts and those who gave the orders which enabled their perpetration, or failed to exercise their authority to prevent their continued perpetration.

Manifestly, then, the need for precision in defining rules of engagement derives from the fact that their careless formulation constitutes a license to kill, but equally from the fact that their very wording constitutes the defence of the soldier who acts in accordance with them, in carrying out a legal order. The soldier will be accorded this defence even if the orders are not legal, provided they are not "manifestly illegal," that is, as long as a black flag saying 'prohibited' does not fly over them, as in the striking image used by the court in the Kfar Kassem case.

On the other hand, manifestly illegal rules of engagement accord the soldier an illusory and misleading defence. Thus he is liable to find himself facing court martial, accused of committing serious crimes of murder or manslaughter even though he strictly followed the orders for opening fire which he was given.

## RULES OF ENGAGEMENT

### Live Ammunition

Every soldier serving in the territories receives a small booklet setting forth the rules of behavior he must follow, including the orders for opening fire (for live bullets). This manual is classified and therefore banned for publication. However, the orders in question have been published in both the media and in official state documents.

A paper published by the Israeli consulate in New York gives the rules of engagement as follows<sup>3</sup>:

#### Part A: Opening fire in situation of mortal danger

1. Attack on our forces by gunfire or explosives  
(Regulations no. 23, Articles 29-30).

In a situation where our forces or civilians are attacked by gunfire or explosives including petrol bombs - aimed fire is to be returned in the direction of the attackers only. Firing must cease immediately when no longer required (e.g. when the attacker has been hit or when he raises his hands in surrender).

2. Opening fire in situations of mortal danger during riots  
(Regulation no. 24, Articles 20-28).

Warning: this rule applies only when our forces or civilians are in mortal danger. In riots where no danger exists to life, the regulations of Part B "Firing in the Air to Disperse Rioters" applies.

#### A. The Situation

When our forces or civilians are bodily attacked or when stones are being thrown at them or other non-firearms are being used, the use of firearms is allowed only when there exists a real and immediate danger to their lives.

Emphasis: The question whether the use of non-firearms constitutes a real and immediate danger to life shall be examined according to the circumstances of each incident, including the numerical ratio between the attackers and our forces, the terrain and the age of the attackers.

#### B. Opening Fire Procedure

1. Opening of fire will be carried out as much as possible in the stage outlined below. Movement from stage to stage shall be carried out only if the earlier stage did not bring about the removal of the danger and if there still exist circumstances permitting the opening of fire.

2. These are the stages:

##### Stage A

Before the weapon is fired and, in as much as circumstances allow, call out a warning in Arabic: "Wak'f wala bit'hak" (Halt or I'll shoot).

##### Stage B

A warning shot at a 60 degree upward angle.

Stage C

Shoot to hit the legs only. Under all circumstances use of the weapon will be made only in semi-automatic (single-fire) mode, with the utmost caution, and only towards the legs of the attacker.

3. Only a specific attacker who has been identified as a danger to human life can be shot at. It is vital to safeguard against hitting others.
4. Opening of fire will be done, as far as circumstances allow, only by the commander.
5. As far as possible, avoid shooting at women and children.
6. Once the danger has elapsed (for example: when the cause of the danger has passed) do not continue fire, except as laid down in the procedure for apprehending a suspect according to Part C.

Part B: Firing in the Air to Disperse Rioters  
(Regulation no. 23, Articles 18-19).

General

1. To disperse rioters it is permissible to shoot only into the air, and this only when all of the following conditions have been fulfilled:  
Emphasis: In order to disperse rioters it is permitted to shoot only in the air; it is forbidden to shoot at the rioters.

Procedure for shooting into the Air

2. First call the rioters to disperse.
3. If the rioters have not dispersed make use of riot dispersal equipment at the unit's disposal, except for shooting into the air, such as: tear gas, rubber bullets, water hoses.
4. If the rioters have not dispersed and a senior officer is convinced that the riot is serious and there is no other way to disperse the rioters, the senior officer is empowered to give an order to open fire into the air. A "senior officer" - a regional commander, deputy-regional commander, battalion commander and commander of the Border Police.
5. Firing into the air will be done, as far as possible, only by the officer in command.
6. Shooting into the air will be at a 60 degree angle with the weapon on "semi-automatic" (single-fire) mode.
7. The soldier firing the weapon will take care that the gunfire will not hit any person, building or object.

Part C: Opening Fire as Part of the Apprehension of Suspects  
Procedure  
(Regulation No. 26, Articles 1-16)

General

1. These rules serve to define the opening of fire as part of the apprehension of suspects procedure, as carried out by IDF soldiers as part of their duty to maintain the security of the area.
2. It is forbidden to open fire in order to arrest a suspect except in accordance with these regulations.
3. These rules do not apply when our forces are attacked by fire or



by other operational means. (See Part A of this manual).

#### Definition

4. "Suspect" - Anyone against whom there exists a reasonable suspicion that he has committed, or abetted in the commission, or attempted to commit a terrorist activity or any other serious felony.

Note: The suspicion must be based on facts, information or reliable data, taking into account the place and the time. A mere suspicion, a feeling or a hunch are insufficient.

5. "Serious Felony" - Murder, attempted murder, illegal possession of a weapon, membership and activity in a hostile organization, stonethrowing at persons or vehicles where there exists a real danger and the arrest takes place immediately after the event, malicious damage to property for ideological purposes.

#### Stonethrowing - Note

- a. It is forbidden to open fire on stonethrowers, except as part of the apprehension of suspects procedure and only when the stonethrowing constitutes a real and immediate danger.
- b. A real danger is deemed to exist when stones are thrown at a moving vehicle with the intention of hitting it or in the case of stonethrowing in other circumstances endangering lives - taking into consideration the conditions of the terrain, the size of the stones, numerical ratio between the attacking force and our forces, etc...
- c. It is forbidden to open fire unless the arrest procedure is carried out immediately after the stonethrowing. If the suspect is not arrested immediately after the incident, no further use of weapons will be made for the arresting procedure.

#### Emphasis

6. Never open fire against a suspect for a "normal" crime, e.g. refusal to identify self, theft, smuggling, etc. Under no circumstances are you to shoot at a person who does not obey a command to stop and flees, unless he is a suspect according to the definition in article 4 above.
7. Fire will be used only as a last resort for apprehending a suspect and once all the other means have proven ineffective.
8. Avoid opening fire on a suspect in circumstances in which there exists a danger that other people are liable to be hit.
9. Avoid opening fire on children under 14 years of age and on women.
10. As far as possible, firing will be carried out only by the officer in command.
11. Even in circumstances where there is no other way to apprehend the suspect, the commander will still consider whether it is necessary to open fire under the circumstances of the event.
12. In all cases in which a person has been hit as a result of fire, you must ascertain that medical treatment is given.

#### Procedure for the Use of Firearms

13. At first, try to apprehend the suspect without the use of force. If the suspect resists arrest, it is permissible to use reasonable

force to overcome such resistance. "Reasonable force" is defined as the force a reasonable man would use in the circumstances in order to carry out the arrest in view of the suspect's resistance or attempts to escape.

14. If the suspect was not apprehended or if he escapes after being arrested, it is permitted to use gunfire according to the following stages. Movement from stage to stage will be carried out only if the previous stage has not resulted in the arrest of the suspect.
15. The stages for opening fire are those set out in Part A (opening fire in the situation of mortal danger in a riot situation, article 26).

Part D: Opening Fire as Part of the Procedure for Apprehending a Suspicious Vehicle  
(Regulation 26, Articles 17-36).

General

1. These rules define the opening of fire procedure as part of the apprehension of a suspicious vehicle at a checkpoint or not at a checkpoint by an IDF soldier, in the line of his duty [sic] to preserve the security of the area.

Opening Fire at Checkpoints on a Suspicious Vehicle  
(Regulation no. 26, Articles 17-28).

Note:

The procedure applies wherever there exists a reasonable suspicion that the reason for breaking through the checkpoint is connected with an offense which could endanger the security of the area by hostile elements.

Definitions

2. "Suspicious Vehicle" - In this section, a vehicle which does not obey a command to stop at an IDF or security forces checkpoint or a vehicle which attempts to break through or circumvent such a checkpoint.
3. "Checkpoint" - A means used to block a road/route the purpose of which is to control and regulate the movement of vehicles.  
(The checkpoint may be either permanent or temporary as a result of an incident or an intelligence warning.)

Emphasis

4. It is forbidden to open fire on a suspicious vehicle except as a last resort to apprehend the said vehicle and only after all the other methods have failed.
5. Avoid shooting at a suspicious vehicle if there exists a danger of hitting people or property located nearby.
6. Do not open fire if it is evident that there are women and/or children in the suspicious vehicle.
7. It is forbidden to open fire on a vehicle which does not obey a command to stop unless the checkpoint is placed in a prominent position, lit at night, and before which are situated clear signs so that the driver is able to distinguish it from a distance enabling him to slow down and stop before the checkpoint.
8. Even in circumstances where there exists no other way to apprehend

the suspicious vehicle, the commander will still consider whether it is really necessary to open fire, in light of all the circumstances of the incident.

9. As far as possible, fire will be executed only by the commander.
10. In all circumstances in which a person has been hit as a result of fire you must ascertain that medical treatment will be given.

#### Procedures for the Use of Firearms

11. At first, attempts must be made to stop the vehicle by means of a hand signal for it to slow down and stop. When dark, the signal must be made with a flashlight.
12. If the vehicle does not stop, it is permissible to open fire on the wheels of the vehicle, according to the following stages. Movement from stage to stage will be carried out only if the preceding stage did not cause the vehicle to stop.

#### 13. These are the Stages:

Stage A: A loud shout in Arabic voicing the intention to open fire: "Wak'f wala bit'hak" (Halt or I'll shoot).

Stage B: A warning shot on the "semi-automatic" (single fire) mode at a 60 degree upward angle. (Care must be taken that the shot will not hit any person, building or object nearby the suspicious vehicle.)

Stage C: Aimed fire on "semi-automatic" (single fire) mode on the wheels of the vehicle until the vehicle stops. Cease firing immediately after the necessity for the firing has passed (e.g. when the suspicious vehicle stops).

If the passengers of the suspicious vehicle flee, they are to be stopped according to the procedure for apprehending suspects.

#### Opening Fire on a Suspicious Vehicle not at a Checkpoint (Regulation no. 26, Article 29-56).

#### General

14. These rules define the procedure for opening fire in situations where there exists a need to apprehend a suspicious vehicle not by means of a checkpoint for instance, during the pursuit by a security forces vehicle.

#### Definitions

15. Suspicious Vehicle - In this section a vehicle concerning the passenger/s of which there exists a reasonable basis to think that they were involved in a terrorist activity or in a serious felony or is/are on the way to carry out such an activity.  
Note: This procedure applies where there exists a suspicion based on facts, data or other reliable information, in view of the circumstances of the event. A mere suspicion, hunch or feeling will not suffice.

#### Emphasis

16. The points emphasized in the section dealing with opening fire at checkpoints apply here as well, while taking into account that when opening fire on a vehicle not at a checkpoint, greater care must be taken.

17. Because in this instance there is no orderly checkpoint, all possible methods should be used in order to signal in a clear manner to the driver that he must stop the suspicious vehicle.
18. The procedure for opening fire can be resorted to only after all the means have been exhausted and there exists a reasonable basis to believe that the driver of the vehicle intentionally ignored the command to stop.
19. It is forbidden to open fire on a suspicious vehicle (not at a checkpoint) unless the following conditions have been fulfilled:
  - a. The suspicious vehicle has been clearly identified.
  - b. All the necessary possible steps have been taken so that the driver of the suspicious vehicle will recognize the fact that the security forces are signaling for him to stop.
  - c. A pursuing vehicle will identify itself by means of a flashing light and a siren.
20. The procedure for the use of firearms is the same procedure that applies in cases of apprehending vehicles at checkpoints (see articles 11-13 of this chapter).

#### Plastic Bullets

In August 1988 the use of plastic bullets was introduced in the territories. These are 5.56mm bullets made of zinc, glass and about 10 percent plastic. They are considered lethal at a range of less than 70 meters, and capable of wounding from a distance exceeding 70 meters.

The orders for opening fire with plastic bullets are also classified and prohibited for publication. However, various parts of these orders have been published on many occasions in the media, as well as in an affidavit submitted to the High Court of Justice (HCJ) by the Deputy Chief of Staff, Major General Ehud Barak, in response to a petition filed by Attorney Felicia Langer.

We have collated all these open sources\* and have endeavored to reconstruct the rules of engagement pertinent to the use of plastic bullets.

1. Plastic bullets are intended for use in quelling a violent disturbance marked by stone throwing and the throwing of other "cold" objects, including situations in which the unit is not in mortal danger.
2. The use of plastic [bullets] is permitted, subject to the limitations on the use of this ammunition:
  - (a) In a situation of a violent riot marked by the throwing of stones and other "cold" objects.  
"Violent riot" means: a disturbance with the participation of three or more persons, including stone throwing, erection of a barrier or barricade, burning a tire.
  - (b) In a situation in which stones or other "cold" objects are thrown, by one or more persons, with the



intention of striking a person or a moving vehicle. If the participants in the "violent riot" are identified by soldiers and seen to be fleeing, the normal procedure for apprehending a suspect may be employed: warning before firing; if the suspect fails to stop - firing in the air; then firing at the suspect's legs.

3. Rule for the use of firearms:
  - (a) Fire in the air as a warning.
  - (b) If the rioters do not disperse, plastic bullets may be fired by those so authorized.
  - (c) The authority to order the firing of plastic [bullets] is vested exclusively with a commander, and the firing may be executed only at his command and under his supervision.
  - (d) Even where all the conditions enabling the use of plastic bullets exist, it is the commander's duty to consider whether it is appropriate to do so, taking into account all the circumstances of the incident.
  - (e) Firing may be carried out only by those who have undergone training in the use of plastic bullets.
4. Safety regulations:
  - (a) Do not fire at a range less than 70 meters or exceeding 110 meters.
  - (b) The soldier will aim his weapon with maximum caution and precision, aiming below the knee only. Where a weapon cannot be aimed below the knee, due to terrain conditions or other reasons, it is forbidden to open fire.
  - (c) Avoid aiming fire at children below the age of 16 and at women.
  - (d) Avoid opening fire as far as possible when a danger exists that others will be hit.
  - (e) It is forbidden to fire at a crowd, except below the knee of a specific individual [in the crowd].
  - (f) Only officers may open fire at night.

The orders also detail the special zeroing that a rifle must undergo before it can be used to fire plastic bullets.

#### Rubber Bullets

The IDF makes use of several types of bullets that are called "rubber bullets." One type consists of a hard rubber pellet with a diameter of 1 centimeter; another is a metal pellet with a diameter of 1 cm, coated with a 1 mm layer of rubber. Two other types of rubber bullets are pellets weighing 15 grams with a metal core surrounded by a layer of hard rubber. These bullets are fired in various ways, in some instances via a special attachment, in other cases directly from the rifle barrel.

./...

We do not possess sufficient information about the rules for opening fire with rubber bullets. It is known, however, that as these bullets are classified as non-penetrating and non-lethal, they may be fired from close range. Rubber bullets, like tear gas, are among the modes that must be employed before resorting to live fire, and even before shooting live bullets in the air.

B'Tselem has information on a large number of cases in which persons have been killed or wounded by rubber bullets, notably instances in which children have lost an eye. Recently MK Dedi Zucker stated that the IDF has in its possession a type of rubber bullet with a higher muzzle velocity than in the past, and that in the past three months these bullets have caused the deaths of at least six children aged 10-16.<sup>3</sup>

As already noted in the Introduction, B'Tselem considers all these types of bullets to be potentially lethal. Those who have been killed by IDF gunfire in the territories have been hit by the whole gamut of bullets in use by the security forces.

## PLASTIC BULLETS: USE AND CONSEQUENCES

When plastic bullets were introduced for use, the Minister of Defence, the Chief of Staff and other security personnel stated that the purpose of the new ammunition was to reduce the number of fatalities. Plastic bullets, it was said, were not lethal at a range of more than 70 meters, and therefore were barred for use at shorter distances. "The purpose of using plastic bullets is to prevent fatalities," the Chief of Staff was reported as telling the Knesset's Defence and Foreign Affairs Committee.<sup>6</sup> The Defence Minister went farther. Justifying the use of plastic bullets to disperse demonstrations in the territories, he said: "The rioters today have more casualties, and that is our aim."<sup>7</sup> Both the Chief of Staff and the Minister stressed that the use of plastic bullets was permitted only at a range exceeding 70 meters, and only at the legs, and that if these conditions were upheld, the bullets were not lethal.

However, the facts in the field present a different picture. Contrary to the declarations, plastic bullets have caused many fatalities and have resulted in many more wounds above the knees. In January 1989 the IDF Spokesperson stated that of 288 Palestinians killed in the territories, 47 had been killed with plastic bullets. The Spokesperson termed this a "miniscule number" in relation to the tens of thousands of persons who were involved in the demonstrations, and said that many of the deaths had occurred because the soldiers were not good marksmen.<sup>8</sup>

Since plastic bullets were introduced for use in the territories only in August 1988, the figure cited by the IDF Spokesperson should be compared with the number of fatalities since August and not from the start of the Intifada. Here we find that the number of fatalities from August 1988 to January 1989 was 96, and therefore the "miniscule number" mentioned by the Spokesperson, Brig. Gen. Ephraim Lapid, actually represented nearly 50 percent of the fatalities in this period.

In a paper entitled "Uprising Data," updated to March 2, 1990, the IDF Spokesperson states that as of that date 128 "local residents" had been killed by plastic bullets.<sup>9</sup> B'Tselem's data show that 375 Palestinians were killed by gunfire of the security forces from August 1988 until the end of February 1989. Therefore, 35 percent of the fatalities resulted from the use of plastic bullets.

Dr. Yitzhak Vinograd stated in a medical opinion,<sup>10</sup> inter alia, that:

I am of the opinion that the plastic bullets have an immediate lethal capability when fired at short range. At longer ranges of over 70 meters there is a potential for later fatal injury (some days after the shooting), as the result of the spread of local infection and creation of general infection that, in the absence of special treatment, ends with a higher mortality rate.

In another medical opinion, four doctors, Prof. Emanuel Theodor, Dr. Ralph Guggenheim, Dr. Ahmed Tibi and Dr. Eli Richter, who visited

al-Ittihad hospital in Nablus, where many of those wounded by plastic bullets have been hospitalized, write<sup>11</sup>:

The plastic bullet can penetrate all tissue. Even if the wound caused by the plastic [bullet] is less severe than that caused by conventional bullets, it is still a very severe wound. The [plastic] bullet is capable of striking internal organs, and as occurred in cases that were hospitalized in al-Ittihad hospital, the bullet struck the liver, intestines, spleen and blood vessels. It is superfluous to add that such a wound can be fatal.

The journalist Ron Ben-Yishai wrote in the daily Yediot Ahronot<sup>12</sup>:

The plastic bullet is ammunition in every respect. It cannot be fired in bursts, but at close range, from under 30-40 meters, it is definitely lethal. The fact that it splinters on impact makes it particularly dangerous if vital organs are hit, the head, for example. For this reason only officers who have undergone special training are permitted to use the plastic bullet, and the orders they receive are to aim only at the lower part of the body.

But events on the ground produce their own dynamics. Even the most disciplined officers are only human. The trigger is not pulled under laboratory conditions. Both the shooter and the stone thrower who constitutes his target are on the move, seeking shelter. They bend, run, trip over a rock, fall. In these conditions it is difficult to gauge distance, and to hit a person's lower extremities is sometimes an impossible task. For the person looking through the gunsight, the rifle loaded with plastic bullets, like the stone, is a valve for letting off frustration and rage, and often there is no intention to make the effort needed to aim. Psychologically, the [soldier's] attitude toward the plastic bullet differs from his attitude toward metal ammunition, and therefore he has virtually no inhibitions. You shoot without thinking too much about it. After all, it's not supposed to kill. But it does kill, and the deaths trigger more riots, and so on and so forth.

The high percentage of fatalities caused by plastic bullets, and the physicians' opinion, show clearly that these bullets are lethal in every respect. The combination of lethal bullets with orders meant for firing non-lethal ammunition, makes it that much easier to pull the trigger and increases the number of killed and wounded.

#### Use of Plastic Bullets as Punishment and Deterrence

Beyond the lethal consequences of the plastic bullets, they are also evidently used, contrary to their declared purpose, for punishment and deterrence. In October 1988 the retired Judge Eli Nathan, Chairman of the Executive of the Association for Civil Rights in Israel (ACRI), wrote to Attorney General Yosef Harish:



In the first place, the plastic bullets do not constitute a less lethal substitute for live fire. [...] Secondly, from the Defence Minister's remarks it can be inferred - even if this was not his intention - that the use of plastic bullets is intended, among other purposes, for punishment and deterrence. This is shown clearly by the words, "A number of incidents similar to the past have produced more casualties. This is precisely our purpose...." There can be no doubt that opening fire for deterrence is an illegal act.<sup>13</sup>

The reserve soldier Ami Dar, who served in the Nablus area in January 1989, wrote in the Jerusalem Post:<sup>14</sup>

The orders we were given in this regard [stone-throwing] were very explicit: every stone-throwing incident must end either in an arrest or in a stone-thrower with a plastic bullet in his leg. At the same time, we must do our best not to kill anyone...

[...] none of these 17 youths was shot in self-defence: they were all shot as a punishment for throwing stones. ...we intentionally wounded 17 people who never really endangered us.

On May 16, 1989, Staff Sgt. (res.) Yoav Evron, who had just completed a month's reserve duty in Beit Sahour and Tulkarm, submitted an affidavit to Attorney Avigdor Feldman.<sup>15</sup> Its purpose, Evron stated, was "to show that the use of plastic bullets today is not necessary, is often carried out contrary to the orders, and creates a situation of unclarity in IDF units." Evron added, inter alia:

The original purpose was to fire at instigators and organizers of demonstrations. In the field, shooting was directed at every stone-thrower in an organized demonstration, since it is impossible to single out instigators. [...] The conditions of the encounter are generally a built-up area and a range of less than 70 meters. As a result, plastic [bullets] are frequently fired contrary to the regulations.

On January 23, 1989, MK Amnon Rubinstein wrote to the Minister of Defence and the Attorney General following a meeting he had with a reserve officer who had served in the Gaza Strip.<sup>16</sup> MK Rubinstein quoted the officer as telling him that already in early October 1988 his unit had received an order from the commander of the southern sector of the Gaza Strip, an officer with the rank of colonel, to fire plastic bullets at instigators during demonstrations. According to these orders, the use of plastic bullets was not contingent on soldiers being in mortal danger. Likewise there was no requirement to implement, before opening fire, the Apprehension of Suspects Procedure [Part C of the Rules of Engagement], or to exhaust other available means, less grave than shooting plastic bullets, at the unit's disposal.

The officer testified that the "special training" [quotation marks in the original] for the use of plastic bullets lasted all of 30 to 40 seconds, during which he was required to fire three bullets. The officer explained that when firing plastic bullets with an M-16 rifle

./...

at a range of 70 meters, it is impossible to ensure that the lower part of the body will be hit, as the regulations stipulate, the more so because plastic bullets are lighter than conventional bullets and therefore less accurate. MK Rubinstein adds:

Finally, the officer told me that in many cases soldiers prefer to shoot plastic bullets rather than to arrest the suspect, in order to spare themselves the trouble of turning up to give evidence in the case, as this is frequently required following the completion of their reserve service. These descriptions evoke a very sad picture of a sweeping, rash and unthinking use of lethal ammunition, which has lately resulted in many cases of death and serious injury. Such usage absolutely conflicts with every judicial norm in an enlightened society.

In his reply, the Defence Minister stated that the Rules of Engagement regarding plastic bullets had passed every legal test and were vested with full judicial validity:

Without going into the content of the rules, it can be noted that the plastic bullets were intended first and foremost to bring about the dispersal of violent riots marked by stone throwing. It is hardly necessary to point out that these bullets can also be used when our soldiers are in mortal danger, but this is not a prior and necessary condition for the use of this means.

In response to this declaration by the Defence Minister, MK Rubinstein wrote to the Minister of Justice:

I find this to be a grave statement which is inconsistent with basic principles which must prevail in our society. It constitutes a license to use, against unarmed disturbers of the peace, including those who do not endanger the lives of IDF soldiers, a weapon which is demonstrably lethal and which has already claimed dozens of victims and caused a large number of serious injuries.

MK Rubinstein's request to the Minister of Justice to elucidate his stand on the subject went unanswered.

#### Conclusion

1. The many statements that plastic bullets are not lethal, induce soldiers to use them quite freely and not to regard them as live ammunition.
2. The rules for opening fire with plastic bullets are far more permissive than those for live ammunition. Soldiers need not be in mortal danger in order to direct aimed fire at demonstrators. Furthermore, plastic bullets are used for punishment and deterrence.
3. The oral instructions apparently do not always conform with the written orders, and plastic bullets are frequently fired without prior warning.

4. Contrary to official declarations, plastic bullets can be lethal at ranges exceeding 70 meters.

OR:

Soldiers fire plastic bullets, contrary to orders, from distances of less than 70 meters.

5. Contrary to orders, plastic bullets are not fired at the legs only.

OR:

The rules that permit plastic bullets to be fired from a distance of more than 70 meters and only at the legs, cannot be implemented in the field. Thus the security authorities have equipped soldiers with ammunition whose use entails breaking the law.

6. In view of the data on the fatalities caused by plastic bullets, they must be regarded as live ammunition in every respect, and their use permitted solely in cases of concrete and immediate mortal danger. Alternatively, they must be removed from use.

## POLICY CHANGES IN THE RULES OF ENGAGEMENT DURING THE INTIFADA

In a meeting held on March 4, 1990, between personnel of the Military Advocate General's Staff, Eric Goldstein of the Human Rights Watch, and Na'ama Yashuvi from B'Tselem, the Chief Military Prosecutor, Col. Finkelstein, stated that the same rules of engagement that had been in effect before the Intifada were still in effect. Likewise, Maj. Gen. Ehud Barak, in his affidavit to the HCJ (66/89), declared: "Since the start of the events in the territories, not a single one of the rules for opening fire has been revised." Indeed, the written rules appear to be unchanged. However, policy vis-a-vis the rules has certainly changed, the thrust being toward a relaxation of the existing regulations.

The following modifications have been effected in the policy of opening fire at persons engaged in Intifada-related actions:

### Petrol Bomb Throwers

Media reports in mid-January of 1988 noted that throwers of petrol bombs were no longer considered in the same category as throwers of grenades, this in order to reduce the incidence of the use of firearms.<sup>19</sup> Two months later it was reported that the rules for opening fire at throwers of petrol bombs had been revised, and that henceforth soldiers could shoot to kill persons clearly identified as having thrown petrol bombs.<sup>20</sup>

A paper issued by the Ministry of Justice in January 1990, which seeks to provide a standard reply to all questions put to the ministry about "the level of force employed by the Israel Defence Forces during riots in the administered areas,"<sup>21</sup> states:

During the early days of the Intifada orders were issued to not fire at rioters throwing petrol bombs. Thereafter, the rioters took advantage of this directive and made greater use of this weapon. Subsequently, casualties among Israeli civilians and IDF members escalated. In response, it was necessary to revert to pre-Intifada standards treating petrol-bomb-throwing as an armed attack.

### Erectors of Road Barriers

In January 1989 the Chief of Staff, Lt. Gen. Dan Shomron, stated: "Fire may be opened at whoever brings about a concrete danger, and one such danger, for example, is the erection of barriers."<sup>22</sup> A battalion commander in the Golani Brigade, an officer with the rank of lieutenant colonel, was one of the witnesses in a trial held in the Military Court of Northern Command, against a sergeant who was accused of having opened fire in September 1988 contrary to the Rules of Engagement, as a result of which a Nablus resident, Adnan Hanafa, was killed. The Golani officer stated that during his period of service in the territories, it was customary to shoot at the legs of persons who had erected barriers even when they were fleeing, if it was suspected that they were plotting a terrorist attack, such as throwing petrol bombs. He stressed, though, that shooting to kill was prohibited; shooting was permitted only to apprehend the suspect.<sup>23</sup>

Indeed, in the judgment, which acquitted the defendant, the judge Col. Nili Peled wrote:

Despite the regrettable death of a Nablus resident, the court reached the conclusion that Sgt. Yohananof opened fire in accordance with the article in the Rules of Engagement that defines a suspect as a person regarding whom there are reasonable grounds for thinking that he is on the way to perpetrating a terrorist attack. The purpose of the ambush was to capture throwers of petrol bombs, and therefore if the four locals had erected stone barriers, it could have been suspected that they would do so [i.e., throw petrol bombs].

Thousands of barriers have been erected in the territories with the sole purpose of disrupting the movement of military vehicles and preventing their entry into Palestinian locales. The assumption that persons who erect barriers intend to throw petrol bombs, or to endanger life in some other way, is groundless.

This license also contradicts the section in the Rules of Engagement that permits the Apprehension of Suspects Procedure to be implemented only against a person suspected of having committed a serious felony, and further contradicts the directive contained in that same procedure according to which the suspicion "must be based on facts, information or reliable data, taking into account the place and the time. A mere suspicion, a feeling or a hunch are insufficient." The assumption that erectors of barriers will also throw petrol bombs is no more than an unfounded guess, prejudice or prior judgment based on a hunch. Therefore it is difficult to reconcile the judgment written by Col. Nili Peled with the IDF's Rules of Engagement.

#### Masked Individuals

In July 1989 it was reported that henceforth IDF soldiers were authorized to open fire against masked individuals according to the Apprehension of Suspects Procedure. The new rule was first applied in the Gaza Strip and subsequently in the West Bank.

The reports led the lawyer Neta Ziv-Goldman, from ACRI, to write to the Military Advocate General, Brig. Gen. Amnon Strashnow, in order to express ACRI's objections to the new rule and to request clarification of the procedures for opening fire at masked individuals.<sup>24</sup> Brig. Gen. Strashnow replied as follows:<sup>25</sup>

The decision to enable the use of plastic bullets only in the Apprehension of Suspects Procedure vis-a-vis locals who appear in the territories wearing costumes or masks (which are not in routine use among the local residents) was made following a rigorous and thorough examination.

[...] Those in question are not ordinary masked individuals, but persons wearing costumes or masks who wander about the area in suspicious circumstances, and whose goals, as noted, are manifestly illegal.

What is involved is the implementation of the Apprehension of Suspects Procedure using plastic bullets only, and not live fire.



The order was apparently broadened in September 1989. On the 14th of that month it was reported that IDF forces in the Gaza Strip and in the Judea-Samaria Region were permitted to fire live ammunition at unarmed masked individuals, according to a new procedure for apprehending suspects. Thus Yediot Ahronot reported:

Until now live fire has been permitted only against armed masked individuals, where "armed" refers to knives and axes, and of course firearms. Previously, unarmed masked individuals who were fleeing could be fired at only with plastic bullets.<sup>26</sup>

In October 1989, of 30 persons shot to death by the security forces, 13 were masked individuals or were in the company of masked individuals. Of the 13 persons shot to death in November, 6 were masked, in December, 7 of 19, and in January 1990, 3 of 11.

No one disputes that Palestinians who commit crimes cover their faces in order to make their identification more difficult. At the same time, the shooter is under no obligation to identify the "masked individual" or to suspect clearly that he has committed a felony. This situation virtually invites confusion and mistakes between persons who are in fact about to commit a crime or have just done so, and persons whose faces are covered for reasons of custom and tradition.

The license to shoot at masked individuals contradicts the section in the Rules of Engagement that permits the Apprehension of Suspects Procedure to be implemented solely against a person suspected of having committed a serious felony, since in this case concrete suspicion, based on information, is nonexistent. Likewise, the letter from the Military Advocate General to ACRI does not explain how the distinction is to be drawn between an "ordinary masked individual" and "persons wearing costumes or masks," and how it is to be determined that "their purposes are manifestly illegal." If the suspicion is based on facts, information or reliable data, it is immaterial whether the suspect is masked.

The orders also require suspicion of a "grave felony." There is no doubt that a portion of the "masked individuals" take part in slogan writing and stone throwing under circumstances which, according to written orders, do not justify shooting. The license to use the Apprehension of Suspects Procedure in these cases contradicts the Rules of Engagement.

It is doubtful whether the policy of opening fire on masked individuals and erectors of stone barriers complies with the rules laid down by the Supreme Court in the Ankonina case already referred to, as no solid suspicion can exist that their escape will pose a concrete danger to life. A well-grounded suspicion, based on a hard factual foundation, is a necessary condition for making a judgment resulting in the opening of fire.

. / . . .

## Wanted Persons

From time to time, following an incident involving fatalities, the IDF Spokesperson or the media, report that the dead person had been "wanted." In some cases, significantly differing versions are put out by the IDF Spokesperson and eyewitnesses. Testimonies of the latter suggest that the shooting occurred after the dead man had been identified as a wanted person, and not necessarily in the course of an incident in which fire was opened justifiably according to the regulations.

The security forces have frequently denied outright that it is permissible to open fire on wanted persons. The following are cases in which those killed were defined as "wanted," and according to testimonies of local Palestinians, had been shot after first being singled out as such.

On October 9, 1988, two residents of Yatta village, Kamal al-Tabiah, aged 23, and Fadl al-Najr, aged 25, were shot and killed during an IDF operation in the village. Military sources said that at least one of the two had been on the wanted list. The families of the dead men related that their sons had approached the window of a military vehicle and had been shot at close range, after being identified as wanted.<sup>27</sup> Military sources said the soldiers had opened fire because their lives were endangered by a stone-throwing mob. Witnesses related that no stones had been thrown at the time, and that the soldiers, who were in a van with license plates from the territories, had shouted, "There you are, you bastards," before shooting the two men.<sup>28</sup>

On November 14, 1988, Ibrahim Taktuk was shot in Nablus. Taktuk had been wanted for a long time for killing the soldier Benny Meisner by dropping a concrete block on his head from the roof of a building. According to testimonies collected by Oren Cohen from the daily Hadashot, a boy who sold pitas and bread from a large cart related that a soldier had hidden inside the cart and ordered the boy to push the cart toward where he had spotted Taktuk. According to his testimony, which was corroborated by others, when they reached Taktuk the soldier shot Taktuk once in the head with his rifle. Taktuk was not killed, but lost an eye.

In April 1989 a resident of the Gaza Strip and a resident of the West Bank were shot to death after being identified as wanted, according to local Palestinians. Atwa Hirzallah, aged 28, from the village of Deir Ibziyeh, had been wanted for about a year. A complaint submitted by Attorney Felicia Langer stated that he had been shot at close range twice in the head and once in the chest.<sup>29</sup>

Khalil al-Asal, from Khan Yunis, had also been wanted for a long time, despite several attempts to capture him. On the day of his death, al-Asal arrived at his house at 4 a.m. Five soldiers had arrived shortly before, and encircled the house. Neighbors testified that they heard two shots, after which al-Asal's body was removed from the house.<sup>30</sup>

Note added in  
December 2013:  
There was an error  
in the description  
of the incident in  
which Ibrahim  
Taktuk was  
injured. Taktuk  
was not wanted by  
the authorities  
when he was  
injured. Only  
three months later,  
on 24 February  
1989, did he hurl a  
brick and kill  
Israeli soldier  
Binyamin  
Meisner.

On September 14, 1989, Muhammad al-Akra was shot in Deir al-Balah. Palestinian sources said he had been shot while in his house and that he had been wanted by the security forces.<sup>31</sup>

Mufid Hizbon, aged 20, from al-Fara refugee camp, was shot in Jenin on November 3, 1989, and died two days later. Military sources related that Hizbon, who was wanted, had been armed with a knife and had failed to halt after warning shots were fired in the air. Witnesses said Hizbon had been shot from an ambush at close range and without prior warning.<sup>32</sup>

On March 22, 1990, an IDF force entered the Nablus casbah and encountered a group of wanted persons. The force killed two and captured two others. The IDF Spokesperson reported that they had been shot after failing to obey a call to halt. Palestinian sources said that one of those killed, Nasser Kan'ir, had tried to escape but had been hit by eight bullets in the head, chest and stomach. According to testimonies, the second fatality, Omar Abu-Akdid, had been shot even though he had raised his hands.<sup>33</sup>

Yizhar Be'er, who covers the West Bank for Ha'aretz, published the story of the shooting and capture of Muhammad Alawna, a wanted person from the village of Jaba, near Nablus. Be'er based his facts on a visit he paid to the village not long after the events in question, and on affidavits submitted to ACRI:

In the early morning hours of December 22, 1989, soldiers surrounded Alawna's home and tried to enter through the door. There were 12 persons in the house at the time, mainly women and children. [The house consisted of one room, of 25 square meters, with one entrance and barred windows precluding escape.]

A woman who saw the soldiers approaching from her balcony, shouted "Yahud" and the occupants of the house hurried to lock the door and push the refrigerator up against it. Renan Singer, the unit's commanding officer, smashed the window of the door and tried to open the lock from inside, but the wanted man's sister, Shifa, aged 15, attacked him with a knife, wounding him in the hand. The officer shot and killed her. Other soldiers fired into the room through the windows. Another sister, Ismahan, aged 18, was wounded in the shooting, and her four-year-old brother, Idham, was wounded seriously when a bullet hit him in the chest as he ran to hide in a cupboard.

Muhammad, the wanted man, and his sister Ismahan shouted to the soldiers to hold their fire. The witnesses relate that they moved the refrigerator and went outside with hands raised. According to these testimonies, the commander of the force sprayed tear gas in the wanted man's face, knocked him to the ground and shot him in the legs five times.

On March 29, 1990, Ha'aretz reported that in the past month 11 wanted persons had turned themselves in to the security forces in the West Bank. One explanation offered by the security forces for this new phenomenon was that the wanted individuals feared that they were liable to be killed by the security forces, and preferred to surrender and stay alive.<sup>34</sup>

./...



The cases described above suggest that shooting at wanted persons is not necessarily related to an attempt to arrest them, and is not a last resort when all other means to apprehend the wanted person have failed. In these cases opening fire, inflicting serious wounds and killing seem to be ends in themselves. Moreover, there is no doubt that many times the conditions and circumstances in the field do not enable a positive identification, so that a reasonable chance exists that mistakes will be made and innocent persons shot.

Human rights groups everywhere, including Amnesty International, term summary executions, hit squads and the murder of wanted persons carried out by government authorities as the gravest violations of human rights. Manifestly, under the rules of war these are serious crimes, and responsibility is borne by the perpetrators, their commanders and governmental bodies.

Obedience to an order does not confer immunity against legal proceedings for the killing of wanted persons, and a government position, no matter how high, will not confer immunity on those who sanction or turn a blind eye to executions.

#### CONCLUSION

In the course of the Intifada, modifications have been made in the policy on opening fire, but not in the written orders. The written regulations permit shooting at whoever endangers the lives of soldiers or civilians. As a result of events in the field and judgments handed down by military courts, the definition of "mortal danger" has been extended to cases which in the past were not included in this category. Likewise, the definition of "suspect," i.e., a person who may be shot as part of the Apprehension of Suspects Procedure has also been considerably expanded. The written regulations require that the suspicion be based on reliable information. By permitting opening fire on masked individuals and erectors of barriers as part of the Apprehension of Suspects Procedure the security authorities have effectively eliminated this written requirement.

As regards the Apprehension of Suspects Procedure, the rules for opening fire which are in effect in the IDF lag behind the rules determined by the Supreme Court in the Ankonina judgment. The IDF rules do not stress that shooting, even for the purpose of arresting a suspect, must be justified according to the principle of preventing danger to life or limb liable to be posed by a suspect who evades arrest.

True, the written orders for opening fire during the Apprehension of Suspects Procedure stipulate that those fired on must be suspected of having committed a serious felony, but this is not confined to crimes that endanger life and limb. For example, the written orders include "membership and activity in a hostile organization," a sweeping definition for a highly diverse range of activities, only some of which constitute a danger to life and limb. This is all the more so for a policy that permits the procedure to be implemented against masked individuals and erectors of barriers.

In a petition currently pending before the Supreme Court (Yoav Hess v. Minister of Defence), the court is being asked to examine the legality of all the Rules of Engagement, including those included in the Apprehension of Suspects Procedure. In the meantime, the IDF would do well to make the Apprehension of Suspects Procedure conform to the rules predicated in the Ankonina case. Otherwise, the IDF is placing its soldiers in the position of carrying out illegal orders, and is exposing Palestinians to severe injury or death without legal justification.

## ORAL ORDERS

Besides the orders issued to soldiers in writing, oral briefings are also held in which the Rules of Engagement are explained. The Chief Military Prosecutor, Col. Finkelstein, told B'Tselem that in his opinion, "the important thing is the oral orders," adding that troops are briefed on a daily basis.<sup>33</sup>

Yuval began a tour of reserve duty in the Gaza Strip on September 5, 1989. The soldiers in his battalion were briefed by an officer from the Military Advocate General's Staff with the rank of captain. Yuval transcribed the briefing almost verbatim.<sup>34</sup> The principles guiding the unit's activity, as explained by the officer, were: use a minimum of force, terminate the operation as soon as the mission is accomplished, be doubly careful with respect to women and children.

As for the Rules of Engagement, the officer stated that the written rules were binding. He went on to explain and elucidate them with the aid of examples, but then added:

In the Military Advocate General's Staff, when investigative files are received from the Military Police Investigators, we are well aware of the difficult conditions under which you have to operate: pressure, tension, and so forth. We do not engage in hair-splitting, the scope for discretion is quite broad. What I really want is to warn people who want to vent sadistic pressures. So far no one has been tried for firing from 30 or 50 meters instead of 70 in the heat of an operation. The key word is discretion [...] There is no arithmetic here. It's all a matter of discretion. No one has been put on trial if his discretion was a centimeter too much, or even more than a centimeter.

Yuval's testimony suggests that at least some of the oral briefings, instead of explicitly clarifying the written orders and stressing the permissible and the prohibited, result in even greater vagueness. Instead of the soldiers being apprised that the Military Advocate General's Staff does engage in "hair-splitting," they are assured that they will not be tried if they deviate from the regulations.

## Accelerated Firing Procedure

A striking example of an oral command that conflicts with the written orders for opening fire is the so-called "accelerated firing procedure." The written orders stipulate that the procedure for apprehending a suspect be carried out in three stages: calling out, firing in the air, and firing at the suspect's legs. In the "accelerated firing procedure" the three stages are executed simultaneously by two or three soldiers.

Ami Dar, in the Jerusalem Post article already referred to, writes:

In addition, the politicians at the top should know that today there is a blatant contradiction between the oral order given in the field - to shoot or arrest every possible stone-

./...

thrower - and the written order to shoot in the air before you fire a plastic bullet.

[...] In order to hit these kids, you must stalk and ambush them, and the shot in the air, which may scare them away (as was intended by those who wrote the order), can become an irrelevant nuisance.

This contradiction is often resolved by having someone shoot in the air while someone else fires a plastic bullet; the main thing is to be legally "covered."<sup>37</sup>

On October 23, 1989, Avi Benayahu, the military correspondent of the daily Al Hamishmar, reported the testimony of a reserve officer who had been present at a briefing given by a brigade commander. According to the officer, the brigade commander had told the reservists: "In this sector there is no procedure for apprehending a suspect as you know it. We have an accelerated procedure for apprehending a suspect." Benayahu met with the brigade commander to get his reaction.

The brigade commander did not deny using the term "accelerated procedure for opening fire," but was quick to point out that he did not mean an "itchy trigger-finger." [...] In his briefing he had explained that in a case involving a clear terrorist attack (such as the throwing of a petrol bomb) it was not obligatory for the three stages of the procedure for apprehending a suspect to be carried out with the same weapon and with the same person opening fire.

Thus, according to the brigade commander, when soldiers spot a person who intends to throw a petrol bomb, one soldier can shout "halt," a second call out a warning and fire in the air, and a third soldier can open fire with his weapon at the legs of the person throwing the bomb. According to the brigade commander, this procedure is recognized in several of the brigades in the territories and also by the regional commander.

On November 20, 1989, the West Bank team of ACRI's Haifa branch conveyed to the O/C Central Command, Maj. Gen. Yitzhak Mordechai, the testimony of a reserve soldier who had served in the Jenin area in September 1989:

At the conclusion of a two-day training exercise, on August 30, 1989, we were briefed by the brigade commander of the Jenin region, who told us (and I quote): In my sector we conduct an accelerated procedure for apprehending a suspect. It is carried out by three soldiers simultaneously. One shouts "halt," the second fires in the air and the third fires at the legs [of the suspect.]

On January 1, 1990, the Minister of Defence replied to a parliamentary question from MK Meir Vilner, as to the accuracy of the information in his possession concerning a briefing given to reservists in the Jenin sector on August 29, 1989, describing an "accelerated procedure for apprehending a suspect." The Defence Minister stated:<sup>38</sup>

The information is incorrect, since the procedure for apprehending a suspect in the Jenin sector, as explained also in the briefing on August 29, 1989, is consistent with the orders for opening fire as laid down in Army Regulations.

./...

On December 28, 1989, Fadi Khalil al-Zabekli, aged 18, was shot in the head and killed by Border Policemen in the center of Bethlehem. Miliatry sources related that a group of masked persons had attacked a Border Police patrol with iron rods and axes, and that one of the youngsters, who was wearing a red mask, did not obey the calls to halt and was shot.<sup>30</sup>

As it happened, this incident was filmed by an ABC-TV crew. The film shows one of the Border Policemen firing in the air and a second simultaneously kneeling and firing at the youngsters. No warning call is heard. The youngsters are not holding iron rods or axes. They are fired on while fleeing, with their backs to those firing. As a result of the film and an internal re-investigation, the IDF Spokesperson changed his account of the incident and two Border Policemen were suspended from activity in the West Bank for submitting an inaccurate report.<sup>40</sup>

In this case even the "accelerated firing procedure" was not "consistent with procedures": no warning was shouted, and the Border Policemen opened fire simultaneously in the air, and aimed fire at those who were fleeing.

This specific case illustrates well the great difficulty involved in verifying soldiers' accounts as to whether they called out a warning, fired in the air, etc. Only the chance filming of the incident made it possible to refute the fabricated report of the Border Policemen and compelled the IDF Spokesperson to revise his account.

## CONCLUSION

In the briefings received by soldiers in the field, the orders for opening fire lose their clarity and become entangled in a web of interpretations, oral instructions and "behavior in the field." The upshot is that the scope for personal discretion and "grey areas," far from being defined and clarified, is broadened even further.

Overall, the impression is strengthened that although there are written orders, the operative level thinks that soldiers in the field cannot comply with them, and therefore give them advance backing to deviate from the orders. By doing so they promote the dangerous myth which holds that it is impossible to operate in the field in accordance with the written regulations, and therefore the only alternative is to mitigate them, or to mitigate punishments meted out to soldiers who violate the rules.

---

<sup>30</sup>The spokesperson of the Judea District Police, Chief Superintendent Mordechai Bareket, informed B'Tselem on April 18, 1990, that the investigation into the Bethlehem incident had not yet been completed.

<sup>40</sup>See also the chapter on soldiers' reporting, p.40.



## UNCLARITY OF LANGUAGE

The first requirement of rules of engagement is that they be couched in clear language which leaves no room for doubt or interpretation. The formulation must be unambiguous and must mirror accurately the permissible and the prohibited. The choice of words must be made with extreme caution and the sentences must be simple and devoid of qualifiers. The rules for opening fire, it should be borne in mind, are intended for soldiers with all levels of education and intelligence, and therefore they must be universally comprehensible.

An examination of the IDF's Rules of Engagement in the territories shows that these conditions are not met. The following are several examples of unclarity.

1. "Aimed fire" ("shooting to hit") is permitted only when IDF soldiers or civilians are attacked by gunfire or explosives including petrol bombs. The orders speak of "aimed fire" and not explicitly "aiming with intent to kill." The question then arises when "non-aimed fire" occurs; after all, aimed fire is called for even when there is no mortal danger, and in the Apprehension of Suspects Procedure, albeit with the intention to hit the legs only. It may be assumed that soldiers or civilians who are attacked by gunfire or explosives, will shoot to kill. Thus, a judgment handed down by a military court of Central Command, in which a soldier was convicted of causing death by negligence, cites the testimony of the company commander, which was accepted by the court:<sup>41</sup>

The general regulations for opening fire, as they are presented to the soldiers, were, according to the company commander, as follows: "The use of live fire is confined to three cases only:

Mortal danger - the definition of mortal danger is if you have come under aimed fire, if a petrol bomb or a fragmentation grenade has been thrown at you, and then you shoot to kill, not to hit and wound [...]"

Usage of the term "to hit" instead of the unambiguous "to kill" is liable to cause confusion. In other words, if "to hit" and "to kill" are interchangeable, they can also be exchanged in the opposite direction, and cases in which fire may be opened only to wound, are liable to be construed as cases in which soldiers may shoot to kill.

2. Part A, Sec. 2(a) of the Rules of Engagement: "The question whether the use of non-firearms constitutes a real and immediate danger to life shall be examined according to the circumstances of each incident, including the numerical ratio between the attackers and our forces, the terrain and the age of the attackers." This wording gives soldiers broad discretion, but provides no clear explanations or examples to enable them to exercise that discretion: What numerical ratio will be considered to pose a mortal danger? What terrain conditions? What is the age of the attackers that constitutes danger to life? Why is mortal danger contingent on the age of the attackers and not on the weapons they are using?

3. Part A, Sec. 2(b)(1): "Opening of fire will be carried out as much as possible in the stages outlined below."

This is a salient example of parenthetical qualifiers: Why is the order qualified with the words "as much as possible"? When is it possible and when impossible? How are the soldiers supposed to know the difference? Does Part A, Sec. 1 not cover those cases in which the staged procedure cannot be implemented and fire must be opened immediately?

4. Part A, Sec. 2(b)(5): "As far as possible, avoid shooting at women and children."

Here, too, the order is qualified: Why are the words "as far as possible" employed? Is firing at women and children to be avoided in every instance, or are there circumstances which justify such fire? This part of the Rules of Engagement deals with mortal danger, but why is mortal danger related to age or sex?

5. Part C, Sec. 4: "'Suspect' - Anyone against whom there exists a reasonable suspicion that he has committed, or abetted in the commission, or attempted to commit a terrorist activity or any other serious felony."

"Note: The suspicion must be based on facts, information or reliable data, taking into account the place and the time. A mere suspicion, a feeling or a hunch are insufficient."

This is an example of legalese which is better suited for a judge examining the evidence in a courtroom before passing judgment, and not for a soldier who has to act, sometimes quickly, in the field.

6. Part D, "Opening Fire at Checkpoints on a Suspicious Vehicle":

"Note: The procedure applies wherever there exists a reasonable suspicion that the reason for breaking through the checkpoint is connected with an offense which could endanger the security of the area by hostile elements." The next sentence gives the requirements for reasonable suspicion, and suspicious vehicle: "A vehicle which does not obey a command to stop at an IDF [...] checkpoint or a vehicle which attempts to break through or circumvent such a checkpoint."

These orders contradict one another. The first requires a reasonable suspicion that breaking through a roadblock is connected to a crime, etc., and the second states that any vehicle which does not obey an order to stop, automatically becomes a suspicious vehicle.

## Conclusion

The examples show that the requirement of clarity, unambiguity, precision and simplification is not met:

1. The Rules of Engagement are phrased in legalese which is not intended for a broad and diverse public.
2. Their choice of words is imprecise and at times downright vague.
3. Sentences are complex and marked by parenthetical qualifiers.
4. Soldiers retain broad discretion but do not receive clarifications and examples so that they can exercise that discretion.
5. Regulations sometimes contradict each other.

## THE RULES AND THE SOLDIERS

In an article entitled, "Can Someone Tell Me What Constitutes Mortal Danger," published in a local Jerusalem weekly, Batya Feldman reports on soldiers who demonstrated in front of the Defence Ministry as a protest against the distress of soldiers and the unclarity of the orders, this in the wake of the conviction of their comrade and commander, Sgt. Ilan Arev.<sup>42</sup> One of the demonstrators, Michel Hazan, told the reporter:

In two weeks I will be doing another round of reserve duty, and I want to know exactly what is permitted and what is prohibited. From the briefings we received before the first stint in the territories, I understood that if I encounter a dangerous situation, I am permitted to save my life without heed for the consequences. So I want someone to tell me exactly what mortal danger means, so I won't have to decide myself.

In July 1988 a group of reservists - officers and soldiers - met with President Herzog, in order to alert him to the deterioration of norms of behavior in the territories. One of the organizers of the meeting, Roi Barnea, told the daily *Ma'ariv*: "We told the President... about a situation that is turning all the procedures into absolute nonsense."<sup>43</sup>

On February 9, 1990, Zeev Schiff, the military analyst of *Ha'aretz*, published a piece entitled "I've Lost My Sense of Justice." The article told the story of Ilan Hauser, a company commander in the reserves, who had been dismissed in the wake of events that occurred on December 25, 1989, in the village of Janiya near Ramallah. The soldiers had opened fire, killing a villager. Hauser told Schiff that during the debriefing by the O/C Central Command, allegations about his actions had been raised which were the very opposite of those voiced by the brigade commander. Hauser, who had been suspended and then removed from his post by the O/C Central Command, said:

I went home very angry. In the first place, at the immediate command system. I felt they had abandoned me, that people were covering up. [...] How does it happen that every day things are done in violation of the law and the orders, and those same people act as though nothing had happened? [...] I don't want to diminish the gravity of what I did, but it's hard for me not to ask: Why me, of all people? They gave me various reasons, but every one was different from the others.

The soldiers in the field express a sense of confusion and a feeling that they are being abandoned. Such feelings might well be reinforced by the following cases, in which senior officers and even the Chief of Staff and the Minister of Defence are puzzled about how to interpret the orders.

On April 4, 1988, Abed Ziadat was killed in the village of Bani Na'im, near Hebron. Following an investigation, the Deputy Chief of

---

<sup>42</sup>The original conviction has since been quashed, and Sgt. Arev has been given a re-trial, which is currently in progress.



Staff, Maj. Gen. Ehud Barak, convicted the brigade commander, Col. Givati, of illegal use of a weapon, and Givati left the IDF. Military sources told the media that the conviction had been handed down even though there was no question of malicious intent. "It was an incorrect interpretation of [army] regulations which brought about the infraction," the sources explained.<sup>44</sup>

In contrast, Col. Givati himself, in an interview to the IDF weekly Bamahaneh following his conviction, stated: "The orders are clear and lucid. The soldiers understand them and they know that nothing will happen to whoever acts within the framework of the law. The orders were clear to me as well, and they are still clear."

On January 20, 1989, Defence Minister Rabin was quoted as saying that the orders permit plastic bullets to be fired at fleeing stone-throwers only after the Apprehension of Suspects Procedure is carried out.<sup>45</sup> Military sources were quick to correct the Minister:

A senior [IDF] source said: "The explicit directive is to fire at a fleeing person only during a disturbance, and only if it is clear that he is trying to hide and return to the site. It is absolutely prohibited to fire randomly at a fleeing person, even if he has been identified as a stone-thrower."<sup>46</sup>

Further clarifications were forthcoming on the following day:

Contrary to what Defence Minister Yitzhak Rabin said, it is not permitted to open fire on fleeing persons during their flight. The rule is that during a violent riot, fire may be opened on a person identified as a stone-thrower, even if he is trying to hide or escape, but only on condition that he has not left the site and is continuing to riot. Fire may be opened only while the riot continues and stones are thrown, and only on persons who are part of the riot - not on those who are trying to flee from the site. A senior military source said yesterday: "The Minister of Defence and the Chief of Staff said some confused things about this subject. The Chief of Staff, for example, linked it with the procedure for apprehending a suspect, but there is no connection between them."<sup>47</sup>

That these clarifications are marred by glaring contradictions is obvious. It is stated that "fire may be opened [...] even if he is trying to hide or escape," but a few lines later we find that fire may not be opened at "those who are trying to flee." Furthermore, the Rules of Engagement with regard to plastic bullets state: "If the participants in the 'violent riot' are identified by soldiers and seen fleeing, the normal procedure for apprehending a suspect may be employed," whereas the clarification maintains that no connection exists between fleeing persons and the Apprehension of Suspects Procedure.<sup>48</sup>

These are only a few examples of the controversy, which is also apparent in the media, over the interpretation of the Rules of Engagement. Clarifications by "senior sources" frequently conflict with the written orders or with previous clarifications. Such controversy serves only to heighten the unclarity of the orders themselves.

./...

Soldiers cannot be expected to understand the rules for opening fire if their superiors debate their meaning, and if "military sources" have to correct statements made by the Chief of Staff and the Minister of Defence concerning those rules.

## RULES FOR OPENING FIRE OF THE ISRAELI NATIONAL POLICE

In an endeavor to assess the nature of the Rules of Engagement in the territories, we examined the rules for opening fire of the Israeli Police. There is a valid basis for comparison, since IDF soldiers in the territories are also engaged in policing operations, "maintaining order," arrest of suspects, and so forth, among a civilian population. Furthermore, the rules of engagement of the Israeli Police are applied in practice in East Jerusalem, where responsibility for suppressing the Intifada rests with the police and not with the army. From the start of the uprising until the end of May 1990, 5 Palestinians were killed by policemen in the Jerusalem District. This is an unfortunate number, but one that pales by comparison with areas in which the IDF's Rules of Engagement are in force.

The standing orders of the Israeli Police contain a chapter entitled, "Use of Firearms." The introduction to the chapter, entitled "Purpose of the Order," states:

- (a) The directives contained in this order are not intended to describe all the circumstances and all the cases in which the need to use firearms may arise. Nor are these directives intended to supersede the law. Their purpose is to guide police personnel on how to behave when the need to use firearms arises, and which cases justify such use.
- (b) When using firearms, every policeman must bear in mind that the person fired upon is liable to be killed or permanently maimed. He must constantly remember and be aware of this fact, and when he is about to open fire he must weigh whether the incident is serious enough to provide moral and legal grounds to deprive someone of life or maim him. The policeman is obligated to behave with restraint to the farthest limit of human patience and common sense. Furthermore, even if the policeman thinks that the circumstances warranted the use of firearms, legal proceedings may ensue, and he must be ready to justify his action in court.

Probably the main difference between the Rules of Engagement of the Israeli Police and the IDF lies in the detailed introduction to the police orders, a text that is strikingly absent from the IDF document. The police rules emphasize the prohibited, while the IDF rules emphasize the permissible.

The police regulations direct the policeman's attention to the great responsibility devolving on him when he opens fire, since he is liable to take a human life or do permanent injury. "He must constantly remember and be aware of this fact," the orders state, "and when he is about to open fire he must weigh whether the incident is serious enough to provide moral and legal grounds to deprive someone of his life or maim him." Nor do the formulators of the police orders hesitate to instruct policemen to "behave with restraint to the farthest limit of human patience and common sense." In addition, the police rules refer explicitly to the legal responsibility devolving solely on anyone who opens fire: "...even if the policeman thinks that

---

<sup>1</sup>A breakdown of fatalities by regions appears in Appendix A.

<sup>2</sup>The full chapter appears in Appendix G.

the circumstances warranted the use of firearms, legal proceedings may ensue, and he must be ready to justify his action in court."

An identical or similar introduction should be incorporated into the IDF's Rules of Engagement: its absence is liable to be construed as disparagement of human life. It is inconceivable that IDF soldiers should not have their attention directed to the fact, if only in a few words, that they are dealing with civilians - men, women and children - who are liable to be hurt when troops open fire. It is inconceivable that, in contrast to the police rules, not a word is said about the moral aspect of taking a human life and about the heavy responsibility entailed in the decision to open fire. Nor do the IDF's Rules of Engagement address the question of individual legal responsibility.

This cardinal difference between the rules of engagement of the IDF and of the Israeli Police is apparent in every article of the regulations. As a principle, the police rules permit fire to be opened only in case of mortal danger to the policeman or to other persons, and then only if no other recourse is available to eliminate the danger, or if there is no other possibility of apprehending or preventing the escape of a person accused of committing a serious felony. Only in these cases may a policeman open fire. In striking contrast to the IDF rules, the police may not open fire at a vehicle that fails to obey police orders.

Another distinctive element in the police orders is that each article is elucidated with the help of examples, this in order to give the individual policeman as little personal discretion as possible. In contrast, the IDF Rules of Engagement afford the soldier broad discretion without giving him the tools (such as clear examples) to exercise that discretion.

The IDF trains soldiers for war, and it regards weapons as instruments of war. In the territories, the IDF was ordered to suppress the uprising, meaning to carry out police operations, while continuing to behave like an army. The IDF authorities devoted no thought, efforts or resources to training IDF soldiers for the police function they are charged with carrying out in the territories, and the Rules of Engagement are a salient example of the consequences of this duality.

/...

## CONTRARY TO ORDERS

During the Intifada there have been hundreds, perhaps thousands, of cases of fire being opened contrary to orders. Instances which did not result in casualties were not investigated at all. A number of investigations were conducted only because TV crews filmed a violation of orders. In this connection it is of some interest to compare the reactions to the following incidents, or, more precisely, to compare reactions with non-reactions.

In December 1987, at the start of the Intifada, an Israel TV crew filmed a security man running and firing into an orchard with an Uzi submachine gun in the direction toward which the erectors of a barrier were fleeing. In the wake of the broadcast, the security man was reprimanded and dismissed. "No circumstances existed that obligated the firing as it was carried out," security sources said.<sup>29</sup>

Two months later, in February 1988, the O/C Central Command, Maj. Gen. Amram Mitzna, reprimanded the commander of a Border Police company who was shown on TV firing solely for intimidation purposes in the village of Beita.<sup>30</sup>

Exactly two years later, in February 1990, Israel TV broadcast a report by its military correspondent, Moshe Shlonsky, about a reserve battalion serving in Khan Yunis. Among those who appeared in the report was the battalion commander, Lt. Col. Doron, a physics professor, who was quoted as urging "restraint and concessions here and there." Lt. Col. Doron is seen driving a jeep through the deserted alleys of Khan Yunis; sitting behind him are two soldiers, Max and Nahum. Someone throws a stone from the corner of the street, at a distance of about 50 meters. Max fires at him. The battalion commander reprimands him. "I aimed straight at his legs," Max says, "and he escaped." At that moment, at a distance of about 15 meters, a boy steps out from behind a corner fence and throws a stone. Again a rifle is raised and a shot heard, the boy flees, the bullet hits a spot about two meters from where he had been standing. "Enough, guys," the battalion commander says, "there's no justification. Again you, Max?" No, this time it was Nahum. The jeep pulls up next to a group of soldiers. "Was it you making that noise?" one of the soldiers asks Max. "Yes," Max replies, "we were sprayed with stones from all sides." If there will be an investigation, it is at this moment that the fabricated report is hatched. "The Rules of Engagement are strict," correspondent Shlonsky intones, "and battalion commander Doron is even stricter."<sup>31</sup>

More than two years have passed since the security man was reprimanded and dismissed in the wake of the TV report. Yet once more soldiers opened fire, contrary to the regulations, in the presence of a lieutenant colonel and of other soldiers who were in a second jeep, behind them. The incident was filmed and the facts are not in dispute. Yet no one was interrogated and no one was reprimanded.

There are very few photographs of soldiers opening fire during the Intifada. Contrary to the prevailing view, it would seem, the presence of cameras induces soldiers to abide by the rules and thus reduces the

./...



number of casualties. On the other hand, in almost every case in which a TV crew filmed firing, it turned out to have been contrary to regulations.

Thus, on January 27, 1989, Zvi Gilat published in Hadashot a photograph taken a week earlier in the Khan Yunis refugee camp. The photo, which was actually one frame from a TV report filmed by one of the American networks, showed clearly that the firing was aimed from the shoulder, was not directed at the legs, and took place at a distance of less than 70 meters. Gilat reported that an exchange of gunfire and stones took place at the spot for half an hour. Between 30 and 50 single-round shots were counted before the TV crew was ordered to leave. In the same week, Gilat noted, two similar incidents were filmed in Hebron and in Baka al-Sharkiya: firing of live ammunition from the shoulder at a range of less than 70 meters.

A letter sent by the West Bank team of ACRI's Haifa branch to the O/C Central Command, Maj. Gen. Yitzhak Mordechai, quoted the testimony of a reserve soldier:

The battalion commander was supposed to take Sabbath leave. On September 7, 1989, he went on patrol in the field with his replacement. They travelled in a jeep, escorted in a second jeep by the deputy company commander (Gadi) and the company's non-com, in the sector of Aqaba village. I heard about the incident that occurred from the non-com immediately after his return from the patrol. He came back from the patrol all excited and told me and a few other soldiers who were there: "We went through Aqaba village, a boy of about 14 threw one stone which hit the jeep, I fired one shot in the air, and then the battalion commander's replacement aimed his weapon at the boy and fired. The boy was hit."

On that day a 14-year-old boy, Kassem Abd al-Latif Kassem, was seriously wounded; he later died of his wounds. The following day the IDF announced that the commander of the sector in charge of the Jenin region, who was at the site, reported that he and his comrades had "acted properly and opened fire according to the procedure for apprehending a suspect, after singling out the stone throwers."<sup>2</sup> The IDF Spokesperson informed B'Tselem that the file had been closed because fire was opened according to the regulations.<sup>3</sup>

#### Reporting

When an incident occurs that involves opening fire, with or without casualties, the first stage is the report of the soldiers from the field. Yossi, a reserve soldier who served in the Gaza Strip as an operations sergeant, and received the reports from the field, told B'Tselem that the soldiers are well aware of the Rules of Engagement and that the reports always conform with those rules. "It is virtually impossible to verify the accuracy of a report," he says. "After all, it's not likely that a soldier will say: I fired from 30 meters without giving a warning and without my life being endangered. A soldier shoots and then fits the report to the rules for opening fire. During my whole period of service in the Gaza Strip, I did not receive a single report from the field that involved a deviation from the orders."

./...

In some cases, in incidents resulting in fatalities, the IDF Spokesperson issues a communique which is apparently consistent with the report received from the field, but which afterward, thanks to an exhaustive investigation, contradictory testimonies, or photographs by press or TV, turns out to be at variance with the truth.

This was the case with the ABC-TV film taken in Bethlehem, described above. The initial communique referred to masked individuals armed with knives and axes, whereas the TV pictures showed no axes but did reveal an "accelerated firing procedure." The shooters were disciplined for submitting a "mistaken report."

In August 1988 Nahum Barnea, the editor of the weekly Koteret Rasheet, published an IDF document summing up a meeting held on April 10, 1988, in the wake of an incident which had occurred six days earlier in the village of Bani Na'im, during which Hamad Zaidat, aged 18, had been killed.

Barnea reported that according to the minutes, no fewer than 19 IDF personnel, the majority of them officers, had been present at this discussion. They included the education officer, the religion officer, the head of the clinic, the work director, a tracker, but also the brigade commander, his deputy, and the operations officer. The report was accompanied by a photocopy of the "discussion summation" and passages from it:

"-On April 4, 1988, an incident took place involving a brigade commander, an intelligence officer and a communications officer who in the course of an overflight identified a demonstration of locals, one of whom was fleeing. In the course of the pursuit, the brigade commander took it upon himself to issue a command conflicting with the Rules of Engagement, as a result of which the fleeing person was hit and later died of his wounds.

"-Another equally grave incident took place in Beit Umar, when a battalion company commander [...] took it upon himself to order that two 'dozers be brought into that same village, which caused serious damage.

"In the wake of the grave deviation from the orders, it was decided that the action should be declared [emphasis in the original] a move meant to calm the village."

On April 5, 1988, security sources announced that the force had been compelled to open fire when it felt itself to be in danger, and that the firing had been carried out following the implementation of the Apprehension of Suspects Procedure.<sup>34</sup> As already noted, the brigade commander, Col. Givati, was ultimately tried and convicted by the Deputy Chief of Staff, and left the army.

On January 17, 1989, Prime Minister Yitzhak Shamir met with a reserve unit of paratroopers who were serving in the Nablus area. Ami, a soldier from Jerusalem, was quoted by all the media as saying to the Prime Minister: "You [plural] do not know the reality in the field. Not even the company commander knows what happens with a patrol that goes into the field. Things were done here that no one knows about."<sup>35</sup>

Indeed, the former IDF Spokesperson, Brig. Gen. Lapid, admitted that the IDF was sometimes "wrong" in its reports about Palestinian casualties because it relied on the reports from the soldiers in the field.<sup>36</sup>

Manifestly, then, it is next to impossible to verify such reports. On many occasions, when photographers or cameramen were present, or other evidence was available, the IDF Spokesperson's first communique turned out to be inaccurate, mainly because the report from the field was untrue. The soldiers fit their reports to the Rules of Engagement, and it appears that the phenomenon of the inaccurate or even fabricated report has become almost a norm during the Intifada. There are also attempts at obfuscation and cases of false testimony. In a meeting with military correspondents, the Chief Military Police Officer said that "there is a conspiracy of silence in the units about the territories."<sup>37</sup>

The subject of this report is neither the functioning of the IDF Spokesperson's Branch nor even the norms of reporting or investigation in the IDF. Nevertheless, in discussing the application of the Rules of Engagement in the territories, we can only rely on the results of investigations and on IDF Spokesperson communiqués, and these are based, among other sources, on the reports from the soldiers in the field. Furthermore, there is no doubt that the possibility of hiding behind fabricated reports contributes to the atmosphere of an "itchy trigger-finger" and increases the number of casualties.

#### Investigations and Trials

In response to an Amnesty International report which accused Israel of violating the law in cases of deaths in the territories,<sup>38</sup> the IDF Spokesperson issued a statement which included the following passage:<sup>39</sup>

Every Arab fatality in the territories, without exception, was investigated by the Military Police Investigations Unit. The investigations files were transferred to the Judge Advocate General's Office, which decides the appropriate steps to be taken in these matters. The findings of the investigations are not classified, and they are published either by the IDF or at the request of any interested party. Until now [...] at least 25 [soldiers] have been accused in incidents whose outcome was death, and only 10 have been acquitted.

If we subtract from the Spokesperson's data the number of soldiers who faced trial in the two Givati Brigade cases and in the Golani Brigade case, a total of 12 soldiers who were tried in connection with three different incidents which resulted in deaths from beatings, we find that as of the end of 1989, no more than 13 soldiers and officers had been court-martialled for opening fire that caused the deaths of Palestinians.

In fact, the figures in our possession show that as of the end of 1989, 12 indictments had been submitted against 13 soldiers (including 7 officers) in the wake of shooting that caused death. In ten of the cases the charge was causing death by negligence and in two, manslaughter.<sup>60</sup> In this period, 574 Palestinians were killed by security forces' gunfire (live fire, plastic bullets and "rubber" bullets). Thus, in fewer than 2 percent of the cases soldiers faced trial for killing inhabitants of the territories by gunfire. There is nothing to indicate that this ratio has changed since then.

A good many questions present themselves in the light of these data:

The Rules of Engagement permit "aimed fire" only when "our forces or civilians are attacked by gunfire or explosives." In all other instances, including "mortal danger during riots," fire may be opened, in several variations, solely at the legs.

1. Are we to understand from the figures relating to trials that in all the hundreds of other cases in which Palestinians were shot to death and no one was brought to trial, that "our forces were attacked by gunfire or explosives"?

OR:

2. In all the hundreds of other cases, did soldiers fire according to the regulations, aiming at the legs, but missed and hit other parts of the body?

OR:

3. Are the investigations conducted improperly, either due to an inability to get at the truth or a lack of desire to do so? Or, is it that the investigations are being performed properly, but the Judge Advocate General's Staff is going very lightly on the soldiers, and not bringing them to trial?

We shall endeavor to deal with each of these questions in turn.

There is no doubt that the first possibility, that in all other cases soldiers were attacked with gunfire or explosives, is unrealistic. Such cases have occurred during the Intifada, including the killing of a terrorist squad by IDF soldiers on Mount Hebron in May 1989; the incident in which the knifer of the soldier David Danieli, in Moshav Masua, in November 1989, was shot and killed by another soldier; the incident in which the murderer of Ya'akov Faraj, who opened fire at an IDF patrol, killing the soldier Arturo Herstig, was shot by another soldier, in December 1988 near Nablus; cases in which Palestinians were undoubtedly shot when they were about to throw petrol bombs or a concrete block; and other cases in which it was reported that Palestinians were shot when they attacked soldiers with knives. These are clearcut indicents in which no one questions the necessity to open fire to wound or even to kill.

Yet no more than twenty or thirty cases of this kind have been reported during the Intifada. The vast majority of the Palestinian fatalities died in what IDF Spokesperson communiques described as



"serious disturbances." A few, as already mentioned, were said to be "wanted," "masked individuals," "suspects" or "erectors of barriers." In none of these cases do the Rules of Engagement justify opening fire with intent to kill.

The second theory holds that soldiers, while firing according to the orders and aiming at the legs, missed. In other words, in more than 600 cases IDF soldiers missed their target and killed someone even though they had intended to wound him below the knee, or they hit someone other than the person they were aiming at. The IDF Spokesperson also puts forward a similar explanation (above, p. 17) to justify the numbers killed by plastic bullets. Cases have in fact occurred in which military sources reported, following death by gunfire, that bad aim was at fault. On September 7, 1989, for example, in a case already mentioned, 14-year-old Abd al-Latif Kassem was shot to death in Aqaba village. Official sources related that "as a mass riot broke out and the force found itself in danger, those who opened fire may have missed [their intended targets]."

In the judgment in which the military court of Southern Command, under Col. Dr. Emanuel Gross, acquitted Sec. Lt. Yuval Wilf of having negligently caused the death of a Rafah resident, Taraq Samanda, aged 25, on November 13, 1988, the court wrote:

Not every case in which a discrepancy is proved between the place at which the soldier had aimed and the place actually hit, necessarily demonstrates negligence which can persuade that this was the result of a deliberate act or a lack of proficiency. [...] The same deviation could have occurred due to the special circumstances in which the defendant operated, that is, the surprise which elicited a quick reaction by the defendant, and the fact that for the first time the defendant used his weapon against a living person, as distinct from a firing range. All these are factors whose influence could have increased the deviation, and every officer could arrive at the same unfortunate result.

In other words, the judges found that missing the target is not an infraction, and therefore acquitted the accused. But if we accept the postulate that the majority of shooting deaths are the result of misses, it is doubtful that this judgment absolves the defence establishment of its responsibility for permitting thousands of soldiers, who are such poor marksmen, to open fire at a civilian population.

In this connection the testimony of the reservist Ami Dar in the Jerusalem Post is relevant:

...during the 20 days we spent in the casbah in Nablus, we did exactly as we were told: we killed no one and we hit 17 young Arabs in the leg with plastic bullets [...] most of them [were shot] under the knee.

[...] Had only three or four people been hit by our unit, one could contend that our accuracy was a stroke of luck. Seventeen woundings, however, without even one serious injury, cannot be attributed to mere chance, and the army should check case by case, with lie detectors if necessary:

./...



why is it that so many people have been killed by plastic bullets? Is it because our troops don't know how to shoot - or is it that some of them can shoot all too well?

Clear and explicit orders, and trained soldiers who obey those orders, could avert the killing of persons who do not endanger soldiers' lives. This should not be construed as assent to orders that permit firing to be opened, even at the legs only, at persons who do not endanger the lives of soldiers or citizens. The point is to show that even given the parameters of the defence establishment, many killings could be avoided.

The third postulate, that investigations are not conducted properly either because of objective conditions or deliberately, has been adduced frequently in the past.

As early as June 1988, the military commentator Alex Fishman published a piece in Hadashot entitled, "The IDF Is Investigating His Death." "Like the entire IDF, the Military Police and its investigative unit were not prepared for the start of the Intifada," Fishman notes. "The Intifada added hundreds of new files to the caseload of the Military Police Investigators [MPI], including 110 cases of unnatural death [as of June 1988]." Fishman continued:

There are problems of language, mentality, bodies that have disappeared, which preclude autopsies. The frequent rotation of units prolongs the investigation [...] Some autopsy reports, of autopsies which were performed despite everything, are gathering dust in the Forensic Institute. No one wants them, not the army, not the families, and not the hospital where the deceased died. [...]

It has become problematic to locate soldiers, especially reservists, to complete testimonies. [...] Another phenomenon is coverup in the units. A soldier deviates from the procedures, behaves improperly, a complaint is submitted, MPI enters the picture, "the whole thing is finished off in the tent." A reserve officer in a paratroopers unit noted that the phenomenon of lacunae in soldiers' reports about actions they have carried out is a new and dangerous development. [...] The same list also includes cases of perjury for which soldiers have been tried.

In October 1988, Dan Sagir, the military correspondent of Ha'aretz, reported that decisions by the IDF as to whether to try soldiers for "deviations" in the territories, are influenced in part by extra-judicial considerations. Sagir maintained that, following an examination, it emerged that the decision-making apparatus in the Military Advocate General's Staff was being subjected to pressures, and that after the findings of MPI were received, discussions were held between ranking personnel in the Military Advocate General's Staff and various military levels about holding a trial. Among the considerations said to be affecting the decisions mentioned by Sagir were the effect on the unit's morale, a possible weakening of the soldiers' resolve to perform future missions in the territories, and previous achievements of the soldiers and officers involved.

Prof. David Kretzmer, from the Hebrew University's Faculty of Law, told the Jerusalem Post that "Soldiers being investigated are often advised on how to act so that the file will be closed."<sup>62</sup> Prof. Kretzmer related that he had been told by a soldier that MPI personnel who had been assigned to investigate an incident had advised the soldiers they were investigating on how to formulate their responses to ensure that the files would be closed. Prof. Kretzmer added that "investigations are usually restricted to the versions of the soldiers who were present at the scene, and they are of course interested in describing every shooting incident as a life-threatening one." Ha'aretz also reported that a commander had told his soldiers that two investigators from MPI had arrived "in order to close the case, not to investigate."<sup>63</sup>

B'Tselem knows of cases in which investigators took evidence from soldiers only, and made no effort to question local Palestinians and eye-witnesses. On many occasions an investigation has been opened only after testimonies were provided to the defence establishment by lawyers, in particular from ACRI, who carried out their own inquiries and took sworn statements from local inhabitants.

Knesset Member Yair Tsaban carried out a written correspondence with Defence Ministers Rabin and Shamir on the subject of investigation of fatalities in the territories.<sup>64</sup> In his last letter, MK Tsaban stated that in the four incidents to which he referred, which occurred over a year ago, the investigations were not completed, and he asked, "whether the lengthiness of investigation and the legal examination is due to the intensive and strenuous nature of the investigation, and due to an attempt to gather additional evidence, or possibly due to 'red-tape' and neglect." Tsaban wrote further that:

Not one of the legal opinions quoted in the letter [from the Ministry of Defence] mentioned Palestinian witnesses who had been interrogated. [...] The impression gleaned from reading the letter is that the legal opinions are in effect based only on soldiers' testimonies. [...] It seems that the absence of testimonies of additional eye-witnesses actually prevented the certain linking of soldiers suspected of firing in cases where people have been killed; therefore, those who cut short human life without justification were not brought to justice.

Under the heading, "Lenient Treatment of Soldiers who Deviated from the Orders and Caused Human Casualties," MK Tsaban writes:

The punishments meted out to soldiers in the incidents in question - rebukes, administrative reprimands, two months' actual imprisonment through service, and a demotion - are not appropriate to the severity of these offenses, and do not constitute a significant deterrent.

Furthermore, the offenses with which soldiers are charged in the cases before us are significantly less grave than the crimes actually committed.

---

\*The correspondence in its entirety can be found in Appendix H.

The above should not be construed as an attempt to point an accusing finger at all the investigations or at all the investigators, but it definitely should be seen as indicative of a widespread phenomenon. Even the Military Advocate General's Staff is evidently in no rush to place soldiers on trial. Of the few soldiers who have gone on trial in the wake of shooting that caused death, only a handful were charged with manslaughter. The majority of the indictments are submitted for deviation from orders or the illegal use of weapons.

The denial of these points will certainly not be able to account for the fact that more than 600 Palestinians have been shot to death in accordance with orders that permit fire to be opened at the legs only, and that very few charge sheets have been submitted to the courts against those who pulled the trigger.

## APPLICATION OF THE ORDERS IN THE FIELD

To examine how the existing orders are applied in the field, we shall take all the cases in which children were killed and for which the IDF Spokesperson issued a statement regarding the state of the investigation and its results.

The Rules of Engagement contain two sections relating to children. In the circumstances defined as "mortal danger during riots," the orders state: "As far as possible, avoid shooting at women and children." In the circumstances that permit opening fire as part of the Apprehension of Suspects Procedure, the section labelled "Emphasis" states: "Avoid opening fire on children under 14 years of age and on women." The orders regarding the use of plastic bullets state: "Avoid aimed fire at the legs of women and of children below the age of 16."

Prima facie, in the light of the rules for opening fire, in every case in which a child under the age of 14 is killed in the territories by live fire, and in every case in which a child under the age of 16 is killed by plastic bullets, fire was opened in violation of the orders.

B'Tselem conveyed to Al Hamishmar the list of children under the age of 14, and of youths aged 15-16, who had been killed by gunfire during the Intifada as of the end of August 1989. Uriel Ben-Ami, a reporter for the paper, relayed on the list to the IDF Spokesperson, and in October the Spokesperson forwarded his response regarding each case.<sup>64</sup>

At the end of March 1990, B'Tselem asked the IDF Spokesperson for an update regarding the state of the investigation of the cases appearing in the Al Hamishmar list. B'Tselem also added the names of 13 children aged 14 or under, and 7 aged 15-16, who were killed until

---

<sup>64</sup> One can only wonder why plastic bullets, which are supposed to be far less lethal, may be used only against youths above the age of 16, whereas live fire may be used against children aged 14-16. We have already remarked on the unclarity of the language in an earlier chapter, but the formulation of the restrictions regarding the opening of fire on children is especially interesting. The phrase "as much as possible" leaves an opening, narrow or broad, for deviating from the rule. The word "avoid [shooting]" seems to have been chosen deliberately from among more unequivocal options, such as "it is prohibited [to shoot]" or "do not [shoot]." Similarly, in the orders regarding the use of plastic bullets, the adjective "aimed" in "aimed fire" seems to have been a deliberate choice. In view of the fact that the formulators of these rules were able to come up with a clause stating explicitly, "The soldier will aim his weapon with maximum caution and precision, aiming below the knee only," adding that fire should be withheld if accurate fire was not possible, the wording, "Avoid aimed fire" is somewhat puzzling in reference to women and children. Are we to understand that unaimed fire is also possible? Would it not have sufficed to articulate an explicit order stating that unaimed fire is absolutely forbidden?

the end of March 1990. On June 5, the IDF Spokesperson issued a response for each of the cases.

An analysis of the army's data reveals the following findings:

- 66 children under the age of 14 have been killed by IDF gunfire, according to the IDF Spokesperson.
- In 7 cases no MPI investigation was conducted, including an instance involving the death from gunfire of a 4-year-old boy. The IDF Spokesperson does not explain why no investigation was conducted.
- In 4 cases the Spokesperson was unable to say what the state of the investigation was.
- 6 cases of children's deaths from gunfire are still in the process of being investigated by MPI.
- In 10 cases the investigation had been completed and the file forwarded to the Military Advocate General's Staff, including cases dating back to January 1989.
- Indictments were submitted in 6 cases, not one of them for manslaughter.  
Two indictments were for "causing death by negligence" and 4 for the "illegal use of a weapon." In two of these instances the IDF Spokesperson notes that soldiers were court-martialled even though "the death could not be attributed to the shooting that took place."
- 4 soldiers were placed on disciplinary trial for violating the orders for opening fire or the illegal use of a weapon. Two of them face disciplinary trial even though "the shooting could not be linked to the death of the local."
- In two cases, an officer and a soldier, one of whom shot and killed a 10-year-old boy, were given an administrative reprimand for opening fire "justifiably, but in violation of the Rules of Engagement."
- In 6 cases soldiers were reprimanded for the "illegal use of a weapon," 4 of them "even though it is not possible to link the shooting with the local's death."
- In 2 cases the file was closed because "it is not possible to link the shooting with the local's death."

---

\*The IDF Spokesperson removed from the B'Tselem list, conveyed by Al Hamishmar. 19 names said not to be children according to their age, and added the names of 4 children (and 5 youths). The analysis was carried out according to the Spokesperson's data, only regarding children who were killed by IDF gunfire.

---This is in contrast to other cases (which were not taken into account in this analysis) regarding which the Spokesperson said the shooting was done by the Border Police or the General Security Service or by civilians, and was investigated by the police.

---The Spokesperson noted that "no reply was received" regarding these cases.

----From October 1989, when the IDF Spokesperson replied to the request of Al Hamishmar, until June 1990, when the Spokesperson replied to the request of B'Tselem, no new indictments were submitted.

./...



- \* In 12 cases the file was closed because "the soldiers acted in accordance with the orders."  
In one of these cases a boy aged three-and-a-half was shot and killed. The Spokesperson said: "He found himself in a riot and was shot as a result of firing at main agitators."
- \* In another 7 cases the file was closed for the same reason: "The soldiers shot in accordance with the Rules of Engagement," but here the Spokesperson adds: "when their lives were endangered." Children aged 10 and 11 were among those killed in these circumstances.  
In one case in which the file was closed for this reason, the Spokesperson notes that an officer received an administrative reprimand "for deviating from the Rules of Engagement (irrespective of the local's death)."

The IDF Spokesperson also commented on the youths aged 15-16 who have been killed during the Intifada. In the Rules of Engagement regarding live fire, youths above the age of 14 are considered to be in the same category as adults, whereas plastic bullets may not be fired on youths under the age of 16. Since it is not specified whether death was caused by live ammunition or by plastic bullets, prima facie no deviations from the rules necessarily occurred.

At the same time, it is interesting to note that of the 52 cases of death by IDF gunfire in this list, no investigation at all was conducted in 10 of the cases. Of 31 cases in which an investigation was conducted and the proceedings were completed, soldiers were found to have deviated from the rules in 10 cases and were given either a disciplinary hearing, a reprimand or an administrative reprimand."

#### Summary

1. Shooting at children under the age of 14 with live fire is prohibited by the Rules of Engagement, and all the more so by the rules for the use of plastic bullets, which bar such fire at children under the age of 16.
2. At least 66 children under the age of 14 were killed by IDF gunfire (excluding General Security Service or Border Police gunfire) from the start of the Intifada until the end of March 1990.
3. In 7 cases, which account for more than 10 percent of the total, no MPI investigation was conducted.
4. Without getting into hairsplitting formulations - articles of indictment, military court, disciplinary hearing, reprimand, administrative reprimand, linked or unlinked to the death of "the

---

\*One of the cases is that of Col. Sadeh, who is currently on trial. Interestingly, in the IDF Spokesperson's list, Sadeh's case is listed as still under MPI investigation.

local," and so forth - of 39 cases in which an investigation has been conducted and the proceedings have been completed, 19, or almost exactly 50 percent, involved a deviation from the Rules of Engagement.

5. Of 118 cases of death caused by IDF gunfire, no investigation was conducted in 17 cases, representing 13 percent of the total.
6. Of the 70 cases for which an investigation was held and completed, 29 cases, or 41 percent, were found to have involved a deviation of some kind from the Rules of Engagement.

#### Conclusions

1. The fact that no MPI investigation at all was conducted in more than 10 percent of the cases, contradicts, to put it mildly, the IDF Spokesperson's statement, quoted earlier, that: "Every case of the death of an Arab from the territories, without exception, is investigated thoroughly by the Military Police Investigators." The IDF Spokesperson is duty-bound to explain this contradiction.
  2. Even if the examples cited in this report are not a representative sample, there is no doubt that IDF soldiers violate the Rules of Engagement in a considerable percentage of the cases in which they open fire.
  3. Whether due to the onerous burden or for other reasons, investigations proceed lethargically, in some cases taking almost a year, and after their conclusion the files are held up for long periods in the Military Advocate General's Staff.
  4. Where the rules in force stress that fire may be opened only at the legs, and that children may not be fired on, it is difficult to accept as an explanation for the closing of a file dealing with the shooting death of a 10-year-old boy, that the soldiers opened fire in accordance with the regulations because they were in mortal danger.
- Such explanations cast a shadow over the manner in which investigations are conducted, decisions of the Military Advocate General's Staff, and statements of the IDF Spokesperson.

## SUMMARY AND CONCLUSIONS

For the past two and a half years, the inhabitants of the West Bank and the Gaza Strip have been waging an uprising against Israeli rule. To this end they have resorted to various tactics, including demonstrations, writing slogans, raising flags, erecting barriers of stones, as well as more violent actions such as throwing stones, iron rods and petrol bombs, and in a few cases, using firearms or knives. In addition, Palestinians have killed more than 200 of their fellow Palestinians who were said to be suspected of collaborating with the Israeli authorities.

The Israeli government ordered the IDF to suppress the uprising, and this mission is being carried out in various forms, in the course of which soldiers find themselves in situations requiring them to open fire. The IDF provides its soldiers with rules for opening fire [the Rules of Engagement] in the territories, which are a violent environment, but also a civilian environment. These rules are valuable insofar as they define for the soldier a series of permissible reactions which are as clear and as uniform as possible, and reduce to a minimum the need for a soldier in the field to exercise discretion and make an immediate decision. The Rules of Engagement should also anticipate the situations in which the soldier may find himself, and be adapted to the events occurring in the field.

When the heads of the defence establishment say that the Rules of Engagement have not changed since the start of the Intifada, they wish to stress that the rules have been neither relaxed nor expanded. Indeed, the written rules have not been revised, but policy regarding the opening of fire has been greatly extended. At the same time, the defence establishment has not drawn conclusions from the events and from the high number of fatalities and has therefore not toughened the rules.

Thus, for example, according to IDF Spokesperson communiques, the overwhelming majority of Palestinians shot to death were taking part in "serious disturbances." This formulation is generally used to describe a group of persons who are throwing stones at IDF soldiers. Of the Israelis killed in the territories by Palestinians during the Intifada - 9 soldiers and 10 civilians - only one was killed in the course of a riot. Seven were shot to death, 3 were stabbed to death, 2 were killed by concrete blocks, and 6 by petrol bombs. In every case the death resulted from an attack by an individual or by a small group. These figures show that no direct correlation exists between the intensity of the danger to life and the circumstances in which soldiers may open fire.

The wording of the IDF's Rules of Engagement in the territories does not meet the requirement of clarity, unambiguity and simplicity. The rules contain qualifications and contradictions, and the formulation allows soldiers broad discretion without providing clarifications and examples to enable the proper exercise of that discretion.

Compounding the unclearness of the wording are oral briefings, statements by senior military personnel to the media, and judgments handed down by military courts: all these enmesh the rules in a tangle of interpretations. The result is that instead of the broad personal latitude and the "grey areas" being reduced, they are expanded even further. The orders become unspecific and do not properly identify the permissible and the prohibited, instead assuming a broad, permissive character.

In addition to the written rules, which have not changed during the Intifada, a policy of opening fire exists which has extended the rules. The notion of "mortal danger" has been expanded, as has the definition of a "suspect," whose arrest permits the opening of fire. Under the Apprehension of Suspects Procedure fire may be directed at erectors of barriers and at masked individuals, thus doing away with and indeed contradicting explicit stipulations in the written rules.

The data on opening fire at "wanted persons" show that shooting is not always necessarily related to a desire to effect an arrest. The data suggest that shooting, killing and inflicting serious injury are ends in themselves. As noted, the policy of opening fire partly contradicts the written regulations, rendering those regulations even more ambiguous and perhaps entrapping soldiers in the perpetration of illegal orders.

The "oral law" that has sprung up around the rules gives the impression that the policy makers consider the written orders inapplicable in the field; hence the orders must be relaxed, and troops must be assured that violators of the written rules will not face the full rigor of the law. IDF commanders promote the dangerous myth that the orders cannot be implemented, and accord legitimacy to their non-implementation. The ambiguity and vagueness, combined with the myth, also place the soldiers in a more difficult position, stemming from the fact that they have not been trained to fulfill police functions among a civilian population.

The IDF considers plastic bullets to be non-lethal ammunition. The result is that the Rules of Engagement regarding these bullets are even more permissive than those for live ammunition. This permissiveness increases the number of wounded and fatalities caused by plastic bullets. Beyond this, plastic bullets are also employed for punishment and deterrence, even if this is not reflected in the written orders, an extremely grave and wholly improper usage.

Contrary to statements by the IDF Spokesperson, not every case of death from firing is investigated by Military Police Investigators (MPI). Investigations that are conducted are prolonged affairs, in some cases lasting more than a year, and nearly all are based solely on soldiers' testimony. The fault apparently does not lie entirely with MPI, since there is a pattern of fabricating reports from the field, obfuscating testimonies and mutual coverups.

The Military Advocate General's Staff also delays files for which the investigation has been completed, for more than a year in some cases. A negligible number of soldiers have faced trial for causing



death by firing. Instead, the charge sheets in such cases cite the "illegal use of a weapon" or a "violation of orders." Only in two cases have soldiers been tried for manslaughter. The Military Advocate General's Staff seems to be quite liberal in its treatment of soldiers who open fire, and the military courts prescribe lenient punishments.

As the report demonstrates, on the basis of an examination of the application of rules in the field which was carried out using data from the IDF Spokesperson, soldiers violate the Rules of Engagement in a high percentage of the cases in which they open fire. The examination showed that in 40 to 50 percent of the cases, the IDF found that deviations from the orders had occurred.

More than 600 Palestinians have been shot to death by IDF soldiers, based on orders which, with the exception of reaction to an armed attack, permit shooting only at the legs. Even if some of the deaths occurred in circumstances that justified shooting, there are still hundreds of cases in which death could have been averted. This fact in itself raises trenchant questions which the defense establishment must address.

Overall, the facts evoke an image of an "itchy trigger-finger," a lax observance of regulations, the absence of exhaustive investigations and a failure to mete out deterring and educational punishment, to the point where legitimacy is conferred on unjustified firing and violation of the law.

Thus a heavy pall is cast on the orders, their implementation, the operations of IDF soldiers in the territories, and the functioning of both MPI and the Military Advocate General's Staff. In large measure, all these bodies are responsible for the large number of killed and wounded, and the heightened violence, in a vicious cycle whose end is nowhere in sight.

To rectify this worrisome situation, to desist from the killing and to enable the soldiers to do their duty within the framework of the law, the IDF must reformulate the Rules of Engagement in the spirit of Israeli law, in the spirit of the rules for opening fire of the Israeli Police, and in accordance with the rules laid down by the High Court of Justice in the Ankonina case.

The Rules of Engagement must be clear and unequivocal, define precisely and without qualifications the permissible and the prohibited, and be worded in language comprehensible to all.

The orders must be identical for all types of lethal ammunition, including plastic bullets.

Both the oral orders and the policy regarding the opening of fire should be completely congruent with the written rules, to prevent the emergence of an "oral law" which flaunts the law of the land.

Implementation of the orders in the field must be strictly observed. Experience shows that strict compliance reduces the number of casualties.

/...



The defence establishment must find ways to train soldiers for the policing missions which they are assigned, and to ensure that only soldiers who are trained marksmen are permitted to open fire.

Investigations must be conducted quickly and in accordance with the accepted standards for investigating cases of death. Investigations must not be based solely on soldiers' testimonies; MPI must make every effort to locate eyewitnesses among the local inhabitants. The Military Police and the Military Advocate General's Staff must eradicate the phenomena of obfuscation, coverup, and lying.

The Military Advocate General's Staff must be more severe with soldiers who violate orders, particularly if they have caused a death. Otherwise, it is abetting infractions of the law and contributing to a permissiveness which causes additional casualties and heightens the cycle of violence.

# NOTES

1. Yizhar Be'er and Eitan Rabin, Ha'aretz, 7.5.90.
2. Petition 57/53, Piskey Din 17, 1126.
3. The Israeli Consulate General, New York, Israel's Measures in the Territories and Human Rights, January, 1990.
4. Central Command, "Guidelines for Certified Officers and Non-Commissioned Officers for Shooting Plastic Bullets," January, 1989. Avi Benayahu, Al Hamishmar, 24.1.89.  
Hadashot, 27.1.89.  
High Court of Justice 66/89.
5. Knesset Member Dedi Zucker, letter to the Minister of Defence, 5.6.90.
6. See, for example, Shlomo Ginosar, Davar, 5.10.88.
7. See, for example, Pinchas Anbari, et. al., Al Hamishmar, 28.9.88.
8. See, for example, Shmuel Tal, Hadashot, 24.1.89.
9. IDF Spokesperson, Information Office, 4.3.90.
10. See Appendix C.
11. See Appendix D.
12. Ron Ben-Yishai, Yediot Ahronot, 20.1.89.
13. The Association for Civil Rights in Israel, 79/גד (1023/ש), 28.9.88.
14. Ami Dar, Jerusalem Post, 21.2.89.
15. The affidavit appears in its entirety in Appendix E.
16. MK Amnon Rubinstein, 23.1.89.
17. Yitzhak Rabin, Minister of Defence, K/1722, 13.2.89.
18. MK Amnon Rubinstein, 19.3.89.
19. Avi Benayahu, Al Hamishmar, 19.1.88.
20. Ori Nir and Eitan Rabin, Ha'aretz, 21.3.88.
21. Ministry of Justice, 164.1 - 554, 546, 4.1.90.
22. Emanuel Rosen et. al., Ma'ariv, 23.1.89.
23. David Chayun, Hadashot, 19.11.89.
24. The Association for Civil Rights in Israel, 79/גד, (0404/ש) 6.7.89.
25. Military Advocate General, 0440 'ח(38)20, 19.7.89.
26. Dani Sadeh and Roni Shaked, Yediot Ahronot, 14.9.89.
27. Oren Cohen, Hadashot, 17.10.88.
28. See, for example, Dan Sagir, Ha'aretz, 25.10.88.
29. Ron Cohen, Hadashot, 12.9.89.
30. Ibid.
31. Palestinian Human Rights Information Center
32. Eitan Rabin and Yizhar Be'er, Ha'aretz, 6.11.89.
33. Yizhar Be'er, Ha'aretz, 23.3.90.
34. Eitan Rabin, Ha'aretz, 29.3.90.
35. In a meeting of 4.3.90, between the Judge Advocate General's Staff, Eric Goldstein from Human Rights Watch, and Na'ama Yashuvi from B'Tselem.
36. Yuval's testimony in its entirety appears in Appendix F.
37. See above, note 14.
38. Proceedings of the 12th Knesset, 11, 220.
39. See, for example, Dani Rubinstein and Dani Tzidkoni, Davar, 29.12.89.
40. See, for example, On Levi, Davar, 15.1.90.
41. 433/88/מר
42. Batya Feldman, Kol Ha'ir, 2.11.89.

43. Aryeh Bender, Ma'ariv, 4.7.88.
44. Avi Benayahu, Al Hamishmar, 26.8.88.
45. Ori Nir and Eitan Rabin, Ha'aretz, 20.1.89.
46. Emanuel Rosen, Ma'ariv, 22.1.89.
47. Emanuel Rosen, Ma'ariv, 23.1.89.
48. See chapter on "Rules of Engagement - Plastic Bullets," p.16-17.
49. See, for example, Reuven Pedhatzur, Ha'aretz, 20.12.87.
50. See, for example, Shmuel Tal, Hadashot, 3.2.88.
51. Moshe Shlonsky, Yoman Hashavua, The Israeli Television, 16.2.90.
52. Ori Nir and Eitan Rabin, Ha'aretz, 8.9.89.
53. Army Spokesperson, Information Office, 5.6.90.
54. See, for example, Avinoam Bar-Yosef, Ma'ariv, 5.4.88.
55. See, for example, Avi Benayahu, Al Hamishmar, 18.1.89.
56. Jerusalem Post, 30.3.89.
57. Hadashot, 5.9.88.
58. Amnesty International, Focus, January 1990.
59. Army Spokesperson, Information Office, Netez, (Ricochet), No. 10, 3.1.90.
60. See also "B'Tselem," Information sheet, November, 1989.
61. See, for example, Ori Nir and Eitan Rabin, Ha'aretz, 8.9.89.
62. Jerusalem Post, 30.3.89.
63. Ha'aretz, 5.2.89.
64. Uriel Ben-Ami, Al Hamishmar, 16.10.89.

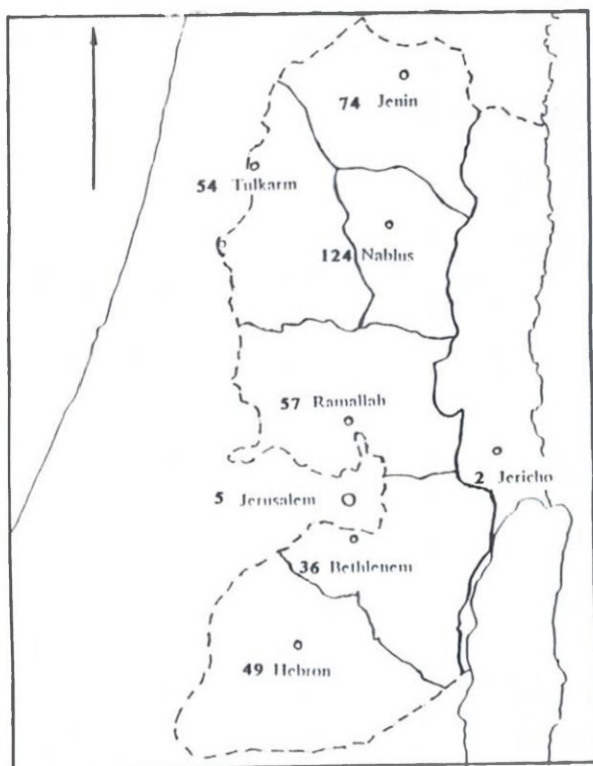
Appendix A

Shooting deaths by security forces during the Intifada from December 7, 1987 until May 31, 1990.

I. By month

Month	Number of Shooting Deaths	Of Those, Up to Age 16
December 1987	22	5
January 1988	17	1
February	28	7
March	38	2
April	42	5
May	16	5
June	11	2
July	21	4
August	19	4
September	16	2
October	23	4
November	9	3
December	30	6
January 1989	19	6
February	14	4
March	23	4
April	30	10
May	32	7
June	19	5
July	31	10
August	25	13
September	23	6
October	30	5
November	13	2
December	19	4
January 1990	11	2
February	9	2
March	10	1
April	9	3
May	21	4
Total	630	138

2. By region





Appendix B

B'Tselem asked the IDF Spokesperson for a meeting with representatives of the Military Advocate General's Staff in order to hear their stand and include it in the report. The IDF Spokesperson made such a meeting conditional on the report's non-publication, claiming the subject was sub iudice.

The following is the correspondence between B'Tselem and the IDF Spokesperson.

FORCES ISRAEL DEFENCE [sic]

צבא הגנה לישראל

STAFF GENERAL  
THE I.D.F. SPOKESMAN  
PUBLIC RELATIONS OFFICE

המטה הכללי  
דובר צה"ל  
ענף קשרי ציבור

-----  
ר' איתמר בן-אבי" 9, תל-אביב 64 736 ITAMAR BEN-AVI ST., TEL-AVIV  
טל: 205502 , 5692129 , 5696709 , 615896 (03) - TEL.:  
-----

Tel Aviv 0410/754 2 - ח"י May 16 1990

[B'Tselem Translation]

Zehava Galon  
"B'Tselem"  
18 Keren Hayesod St., Jerusalem 82148

Dear Madam,

Pursuant to our conversation of 15/5/90 the following is our stand.

IDF elements are ready to cooperate and to provide the IDF's judicial and factual position with respect to the Rules of Engagement. Since the matter is pending before the HCJ [High Court of Justice], we will be ready to cooperate, as noted above, if you undertake not to publish the report in a manner violating the rules of sub iudice. i.e., if you undertake to issue it only after publication of the HCJ judgment.

We feel that publication of the report at this stage, whether this is done after our response is received or without our response being received, will constitute a violation of sub iudice.

Sincerely,

( - )  
Nathan Rotenberg, Captain  
Chief, Lectures Dept.

./...



מרכז המידע הישראלי לזכויות האדם בשטחים

'بیتسيلم' مركز المعلومات الاسرائيلي لحقوق الانسان في الأراضي المحتلة

B'TSELEM - The Israeli Information Center for Human Rights in the Occupied Territories

## FAX COVER PAGE

To: Captain Nathan Rotenberg/Chief Lectures  
Dent/IDF Spokesman

No: 03/264258/9

From: Zehava Gal'on ; B'Tselem

Date: June 6, 1990

No. of pages, including this page: 2

Our fax No. is 972-2-667946

Confirmation No. 972-2-667271/4

Message:

Dear Captain Rotenberg:

We cannot accept your stand that publication of the report will constitute a violation of sub iudice.

It is inherent in the subjects with which B'Tselem deals that they often involve legal proceedings of one kind or another - petitions to the HCJ, charge sheets, civil proceedings, and so forth.

We cannot commit ourselves to abstain from publishing a report solely because of a pending legal proceeding that raises questions of human rights violations which the report addresses.

At the same time, B'Tselem naturally has no intention whatsoever to influence pending legal proceedings, and we are doing all in our power to abstain from such influence or even from suspicion of influencing the court.

It is our view that the influence on legal proceedings is minor or virtually non-existent when, as in the present case, a proceeding is pending that raises legal questions only within the framework of a petition to the HCJ.

We believe that legal interpretations are not subject to sub iudice, a view which to the best of our knowledge is also accepted by the attorney general and by the Supreme Court.

We do not exclude the possibility of instances in which a B'Tselem report will raise a genuine question of influencing legal proceedings, for example, if it deals with a factual investigation that constitutes an effective foundation for an indictment. In such a case B'Tselem will not make a judgment outside the courtroom.

./...

We have re-examined the (non-final) draft of the report which we wish to convey for your perusal, and have not found in it, even according to the strictest criteria, a semblance (intent, as noted, is certainly absent) of influence on the court.

The report offers a brief legal analysis of the Rules of Engagement and deals mainly with the application of the rules, or in fact with the operation of lethal weapons in the territories. As stated, according to every legal school, nothing in this is material to sub iudice considerations.

We regard the use of lethal weapons in the territories as a subject of cardinal importance, and from our standpoint we cannot refrain from dealing with this issue only because it is pending in the HCJ.

As you know, petitions to the HCJ conclude after a lengthy period which can take a year or more, the more so as we have been apprised that an affidavit of response to the order issued [by the court] has not yet been submitted.

Therefore we request that you reconsider your stand.

It will be extremely unfortunate if a report of this kind does not contain your stand and if we do not get your response to the facts set forth in the report.

As mentioned, following an examination of the issue you raised, it is our intention to publish the report in any event. At the same time, we will definitely be ready to hear and discuss any reasoned argument concerning influence on [legal] proceedings that will be based on any of the report's chapters.

Sincerely,

( - )  
Zehava Gal'on  
Director, B'Tselem

sm/608

Appendix C

Opinion of Dr. Yitzhak Vinograd on the effect of plastic bullets.

re: Medical Opinion as to Injury Capacity of a Plastic Bullet

In principle, a plastic bullet is identical in all characteristics to an ordinary bullet, apart from the actual missile being made of hard plastic material. Plastic bullets can be shot from virtually any rifle. Their length is 12 cm., and their muzzle velocity is 256 kilometers per hour, and caliber is 5.56 mm. The penetrative capacity of the projectile is low in relation to a metal bullet because the material is not as hard. However, the shorter the range, the greater the penetrative capacity. 70 meters is considered "the safe range" At this range the projectile is incapable of penetrating bone tissue. (Shooting at the legs at this range is considered less deadly).

Injury by the various plastic bullets currently in use is based on the principle of the penetration of a foreign body with its own energy into the body of the injured party. As a result of such an injury, the following are caused: (a) Immediate damage to the tissue where the bullet penetrates or passes through; (b) bleeding and loss of blood as a result of damage to the blood vessels; (c) Formation of a local infection that can spread to a general infection of the body (sepsis). A fatal wound resulting in the death of the injured party can be caused as a result of one or more of these factors. In a wound caused by a plastic bullet fired at short range, all the factors mentioned exist, but even an injury at a longer range can be most dangerous.

Plastic bullets have been used by the English Army since the seventies. They have caused with certainty the death of many victims among the Irish population. According to an official British Police report, [they caused] 13 deaths, although the true number is much higher. The European Parliament has twice voted against the use of this measure for dispersal of demonstrations, determining that the bullet is lethal ammunition.

In view of this, I am of the opinion that plastic bullets have an immediate lethal capacity when fired at short range. At longer ranges of over 70 meters there is a potential for later fatal injury (some days after the shooting), as the result of the spread of local infection and creation of general infection that, in the absence of treatment, ends with a higher mortality rate.

Dr. Yitzhak Vinograd  
General Surgical Specialist  
( - )  
I.D. 91895

#### Appendix D

Opinion of the physicians Prof. Theodore Emanuel, Dr. Ralph Guggenheim, Dr. Ahmad Tibi and Dr. Eli Richter, on the effect of plastic bullets.

#### Opinion

The following opinion is based on testimonies and a conversation we held with senior staff of Al-Ittihad Hospital in Nablus. Persons wounded by plastic bullets were hospitalized there. The staff included the hospital director, Dr. al-Masri, who is also head of the Surgical Department, Dr. Barabra Afif, an anaesthetist, and Dr. Osama Bishtawi, a senior surgeon.

During our talk we viewed x-rays of chest and forelimb wounds that were caused by plastic bullets. A direct photograph of a bullet, taken at our request, for comparison with a conventional bullet, revealed that the plastic bullet is also impervious to x-rays.

We also saw 14 plastic bullets that had been removed from bodies of patients during surgery. Some of the bullets remained whole, while others were disfigured upon impact.

The testimonies we took suggest the following facts:

1. Recent weeks have seen an increasing number of cases of persons with an entry wound only, without an exit wound. In some of these cases the wound was caused by a plastic bullet.
2. Persons wounded by a plastic bullet require fewer blood rations than those wounded by a conventional bullet.
3. The plastic bullet causes less shattering of bones and fewer cases of paralysis than a conventional bullet. The damage from the former is local and is less than that caused by a bullet that penetrates with a high muzzle velocity and rends the tissues stretching from the point of entry. In general, the wound caused by a plastic bullet is less serious.
4. However, notwithstanding Sec. 3, above, it must be noted that the plastic bullet can penetrate all tissue. Even if the wound caused by the plastic bullet is less severe than that caused by conventional bullets, it is still a very severe wound. The [plastic] bullet is capable of striking internal organs, and as occurred in cases that were hospitalized in al-Ittihad Hospital, the bullet struck the liver, intestines, spleen and blood vessels. It is superfluous to add that such a wound can be fatal.
5. Al-Ittihad transferred to al-Maqased Hospital, in East Jerusalem, 4 cases of brain wounds that were apparently caused by plastic bullets.
6. We are unable to estimate the number of persons wounded in the northern area of the West Bank-the area served by the hospital-due to fear of keeping a public record, and because some of the wounded do not go to the hospital. There are no reliable data enabling us to know the total number of persons wounded by plastic bullets.

./...



7. Of the total casualties, 75 percent were wounded in the lower extremities, 20 percent in the stomach area, and 5 percent in the chest area (including head wounds).
8. We believe that the precise composition of materials in plastic bullets should be made public.

Prof. Theodore Emanuel  
Dr. Ralph Guggenheim  
Dr. Ahmad Tibi  
Dr. Eli Richter

Appendix E

Affidavit of reservist Master Sergeant Yoav Evron, submitted to Attorney Avigdor Feldman.

16.5.89

The purpose of this affidavit is to show that the use of plastic bullets today is not essential, is often carried out in violation of orders, and creates a situation of unclarity in the units.

The superfluosness of plastic bullets becomes even more obvious following the introduction of the "rubber rifle," described below.

The main rules for the use of plastic bullets are: firing from a range of more than 70 meters at the legs, by an officer or non-commissioned officer trained for the purpose.

The purposes of the use of plastic bullets vary from unit to unit and are determined by the commander and the spirit of the unit. In our unit the original purpose was to shoot at instigators and organizers of demonstrations. In the field, shooting was directed at every stone-thrower in an organized demonstration, since it is impossible to single out instigators.

In regard to the shooting, 3 main points should be noted:

1. With time an erosion took place regarding the tendency to pull the trigger. This erosion stems from the shooter's desire to score a hit, like the desire to score well on the shooting range. There is also a hunting instinct which receives legitimacy here.

2. The conditions of the encounter are generally a built-up area and a range of less than 70 meters. As a result, plastic [bullets] are frequently fired contrary to regulations. At this range it is also difficult to aim at the legs accurately without a telescopic lens. This is evidently the reason for the large number of persons killed and seriously wounded by plastic bullets.

3. Debriefings at the unit level are not carried out following the firing of plastic bullets. There is no scrutiny of the number of plastic bullets in the unit, and no sense of responsibility attends the shooting, such as when live ammunition is used. The only fear is of external scrutiny, i.e., a legal suit, but not of operational control over the action. Even the fear of external scrutiny is minimal.

During my tour of duty a new means called a "rubber rifle" was introduced. This is a thin cylinder that screws on to the barrel and fires, by means of a blank cartridge, 4 rubber-covered metal discs (or fewer, depending on choice). A minimum range of 40 meters and high accuracy are two of the important features, besides the fact that the discs do not penetrate but deliver a powerful blow. It seems to me that this ammunition could replace plastic bullets, since it is just as effective, or even more, for the following reasons:

./...

1. Its effective range is close to the range of confrontation with stone throwers.
2. It is capable of neutralizing stone throwers and enables them to be caught.
3. It generally does not produce a wound, if it is not fired at the head.
4. It does not forfeit the benefits of plastic bullets and enables clear procedures for its use to be formulated, unlike the situation with plastic bullets.

Yoav Evron

Submitted to Attorney Avigdor Feldman.

## Appendix F

Yuval began a tour of reserve duty in the Gaza Strip September 5, 1989. When his battalion was briefed by a representative of the Military Advocate General's Staff, Yuval transcribed his remarks almost verbatim.

The principles are:

1. When using force, use the minimal means in order to achieve the objective. Utilize minimum force.
2. If you are required to use means [of force], the moment the objective is achieved you must stop. (If using force to make an arrest, the moment he stops resisting - desist.) Example: an Arab that blocked a door to Givati [Brigade] soldiers. They overcame his resistance but continued beating [him] for 20 minutes.
3. Be extra careful toward children and women because this is a cause of ferment and the IDF's interest is as much quiet as possible, as few casualties as possible.

## Rules of Engagement

There is a white form. Study it. Its wording is binding. There is a problem of a large civilian population, women and children, as a result of this there are restrictions within which we have to act.

There are four situations that lead to firing:

1. Immediate and concrete danger to life.
2. Dispersal of demonstrations.
3. The procedure for apprehending a suspect.
4. The procedure for stopping a suspect vehicle.

Of course, there are also intermediate situations.

You have to use your discretion. Even after my remarks, it's clear that grey areas will remain.

In the Military Advocate General's Staff, when investigative files are received from the Military Police Investigators, we are well aware of the difficult conditions under which you have to operate: pressure, tension, and so forth. We do not engage in hair-splitting, the scope for discretion is quite broad. What I really want is to warn people who want to vent sadistic pressures. So far no one has been tried for firing from 30 or 50 meters instead of 70 in the heat of an operation. The key word is discretion.

Explanation for the four situations in which shooting occurs:

1. This is the classic rule for opening fire. If you are fired on, you react like a soldier. There is a problem regarding situations that are less clear. Thus, for example, an inhabitant is holding a concrete block. But a 12-year-old boy who throws a stone from 200, 100 or 50 meters cannot be considered to be endangering life.
2. This is the opposite of 1. No one dies from curses or screams. It is prohibited to open fire in a situation of women screaming or cursing. The battalion commander, the company commander or the Border Police, etc., can decide to disperse a demonstration and

./...

they have the means (calling through loudspeakers, rubber bullets, tear gas grenades). The commander is empowered to order those so authorized to fire in the air and only in the air. If danger arises - that is a different situation.

3. A suspect is any person whom we have reason to surmise is perpetrating or about to perpetrate a serious felony, any action involving risk to human life, army property, throwing stones, petrol bombs, wounding. You may not act as policemen. Also a person whom Intelligence, the Shin Bet, and so forth, have given you information about or whom you saw doing this. Not everyone with a mustache or a keffiyeh is suspect.

Procedure for opening fire:

- a. Call out
- b. When it is clear that he is not stopping and is attempting to escape - one shot in the air
- c. Shooting at the knee and below only

A person who throws a petrol bomb and tries to escape - is no longer dangerous and it is prohibited to kill him. It is your duty to apprehend him. If, let's say, he is found in the alleys, a stage or two can be skipped, but it's clear that a person who isn't endangering my life can't be killed.

Recently we have several innovations. The IDF has introduced a few new authorizations: Plastic [bullets] -during the day non-commissioned officers so authorized, and at night officers only. Only rifles that have been zeroed so that a suspect can be identified clearly, only without endangering other people, only between 70-120 meters. With a masked person, it is possible to open plastic fire [sic] according to the same limitations.

4. There is a normal suspect vehicle and a suspect vehicle at a checkpoint. Whoever is travelling in a vehicle has to know that there is a checkpoint. (All the indicators have to be in place.) Whoever tries to disrupt the examination (by not stopping, etc.) is a suspect. There has to be a warning and it has to be clear that he is expected to stop. Two stages:
  - a. Calling out
  - b. Shooting at the wheelsUnder no circumstances are you to try to kill those inside. Obviously, if he tries to run you over then that is a mortal danger and you have to act accordingly.

A normal suspect vehicle:

When the suspicion arises that a vehicle is suspect [sic], you have to shout so that it's clear to him that you want him to stop. If not, shoot at the wheels only. There is no authorization to attempt to kill.

Very few reservists deviate from the rules. These are older people, more judicious, who want to carry out the orders and get home safely.

There is no arithmetic here. It's all a matter of discretion. No one has been put on trial if his discretion was a centimeter too much, or even more than a centimeter. For example: Border Police who entered a

./...



flat because they thought a suspect was there. They found a family eating. They grabbed the husband, threw him out of the third floor and crippled him for life. Most of the public criticism relates to the gray area, there is a problem of subjectivity here.

APPENDIX G

Regulations for opening fire of the Israeli National Police

Standing Regulations

06.02.14

Use of Firearms 06.02.14

Purpose of the Order

- (a) The directives contained in this order are not intended to describe all the circumstances and all the cases in which the need to use firearms may arise. Nor are these directives intended to supersede the law. Their purpose is to guide police personnel on how to behave when the need to use firearms arises, and on which cases justify such use.
- (b) When using firearms, every policeman must bear in mind that the person fired upon is liable to be killed or permanently maimed. He must constantly remember and be aware of this fact, and when he is about to open fire he must weigh whether the incident is serious enough to provide moral and legal grounds to deprive someone of life or maim him. The policeman is obligated to behave with restraint to the farthest limit of human patience and common sense. Furthermore, even if the policeman thinks that the circumstances warranted the use of firearms, legal proceedings may ensue, and he must be ready to justify his action in court.

Justification

- (c) This is the rule: A policeman shall not use firearms to carry out his duty even if the circumstances warrant the use of force. The use of firearms will not be justified unless it is clear that he no other means of force was available to ensure implementation of the mission and that the nature of that mission justified the use of this extreme means.
- (d) The use of firearms may be justified in the following specific and special cases: -
  - 1. If a policeman is attacked by an armed person or persons so that his life is endangered and the only way to save himself is by using a weapon against the assailant or assailants.
  - 2. If an armed person (or armed persons) attack people whom it is the policeman's duty to protect, and there is no other way to overcome the assailants and prevent them from perpetrating the deed.
  - 3. If the need arises to disperse a rioting mob that is committing, or is attempting to commit, felonies against persons or property.

4. In order to arrest or prevent the escape of a person accused of a felony, when there is no other way to arrest him or prevent his escape.
5. To prevent the escape of a prisoner who has been convicted of a felony, if there is no other way to arrest him [sic] or to prevent his escape.
6. (i) The failure of the driver of a fleeing car to obey the orders of policemen who are pursuing him or are stationed at a roadblock does not in itself constitute justification for opening fire in every case.  
  
(ii) Bear in mind that the use of a vehicle without permission, or failure to obey a policeman's orders, do not constitute a felony and therefore do not justify the use of firearms.  
  
(iii) Opening fire on a fleeing car will be warranted prima facie if it is manifestly clear that the grave circumstances of the action constitute a felony.

#### Clarifications of the Concept of Justification

- (e) The following are clarifications and examples relating to the types of cases specified in Sec. (d) above: -
1. Regarding Sec. (d)(i): - The policeman must be able to prove that he was liable to be seriously injured, to the point of being in mortal danger. It will be difficult to justify opening fire if the assailant was alone and unarmed; however if there were many assailants, and especially if they were armed with lethal weapons (firearms, knives, swords, heavy clubs, axes, and so forth) and tried to use them against [the policeman], no difficulty will arise in justifying the policeman's having shot them. He can also establish justification if he was attacked by one person armed with a firearm; but if the assailant had only a club or a knife, he will have to prove that he could not have overcome him by striking him with the butt of his gun or with a policeman's truncheon, or that he could not have disarmed him by other means.
  2. Regarding Sec. (d)(ii): - If a policeman sees a person trying to attack or inflict serious injury on another person, or if a policeman is stationed as a guard or escort for someone, and an attempt is made on the life of that person, and the policeman has no other way to foil these attempts, he may resort to his weapon to do so.
  3. Regarding Sec. (d)(iii): - When a rioting mob is committing, or attempting to commit, one of the following crimes: -
    - (i) murder;
    - (ii) aggravated assault;
    - (iii) arson;

- (iv) breaking in to houses or shops, or storming them;
- (v) any serious unrest that is liable to result in an assault on people or the destruction of property;

and there is no one of authority from whom the policeman can receive orders, and there is no other way to halt the rioting mob, he may open fire on the mob. If he is the only policeman on the scene, before opening fire; or if he is in charge of a group of policemen, before giving the order to fire-he must weigh the circumstances and decide whether it is necessary to employ firearms, or whether the presence of an armed force on the scene is sufficient to halt the rioting mob. The rioting mob having been warned that it must disperse, every policeman may take any action he deems necessary against any person or persons in the rioting mob who refuse to disperse. If some of the rioters evince strong resistance to the police and there is no other way to overcome their resistance, it is permissible to open fire at them.

- 4. Regarding Sec. (d)(iv): - Opening fire in this case can be justified only under the following conditions:
  - (i) The arrest was legal (i.e., an arrest warrant was issued or the legal circumstances existed for arresting the person without a warrant, in accordance with the Criminal Code Ordinance (Arrest and Search) [New Version], 1969.
  - (ii) The felony was of a serious nature, that is, a felony for which the punishment is the death penalty or imprisonment exceeding three years, such as: murder, attempted murder, manslaughter, aggravated assault, rape, coercive sodomy, violent robbery, breaking into a building, arson.
  - (iii) If it was feared that in the event of the person's escape he could not be rearrested due to the impossibility of determining his identity or the possibility that he might flee the country.

The policeman must bear in mind that only if the above three conditions exist in conjunction, he may shoot at a person. If a person resists arrest and he can be overcome by other means, the policeman shall not open fire. Only in cases in which the above three conditions exist in conjunction, and the arrest cannot be carried out by normal coercive means, may firearms be used.

- 5. Regarding Sec. (d)(v): A policeman may fire at a fleeing prisoner if there is no other way to prevent his escape. In this case, too, the condition is that a felony be involved, i.e., a crime for which the punishment is imprisonment exceeding three years. If the crime is not of this type, the policeman is duty-bound to prevent the prisoner's escape utilizing any means at his disposal other than the use of firearms.

#### Opening Fire

- f) 1. A policeman who is about to open fire shall first announce his intention to do so by one of the following methods:

- (i) calling out in a loud voice;
  - (ii) firing a warning shot;
  - (iii) any other warning means that is appropriate in the circumstances.
2. The advance warning may be forgone if it is liable to foil the attainment of the operation's goal. The following, for example, are circumstances that are liable to foil the attainment of the said goal:
- (i) if the issuing of a warning is liable to cause immediate danger to the life of the policeman himself, or to the life of another person working with him, or to a person for whose protection he is responsible;
  - (ii) if the issuing of a warning is liable to afford the person warned the opportunity to perpetrate the damage which the policeman wished to obviate by means of the shot [sic];
  - (iii) if the issuing of a warning is liable to enable the person whom justification exists for firing at, to escape.
3. (i) During an operation being carried out by a group of policemen, the group shall not open fire unless it has received an order from the commander or whoever is in charge of the group;
- (ii) the order to open fire shall be issued to a specific person, or to specific persons, in the group, or to the entire group, as need dictates.
- (iii) The order shall include:
- (a) The direction of the fire.
  - (b) The number of bullets to be fired. If automatic weapons are being used, single shots only shall be fired unless an explicit order has been given to use automatic fire.
- (iv) The order to cease fire shall be given immediately when the need therefore has terminated.
4. A policeman who is part of a group as described in Sec. 3 above, who during an operation encounters the circumstances described in Sec. (d)(i) or (d)(ii) above, shall be justified in acting at his own initiative, without having received an explicit order.



Appendix H

Correspondence between MK Yair Tsaban and defence ministers Rabin and Shamir, concerning the investigation of cases of death in the territories.

The Knesset

Knesset Member  
Yair Tsaban

May 29, 1989

Minister of Defence  
MK Yitzhak Rabin  
Hakirya, Tel Aviv

Mr. Minister:

The following is a list of Palestinian residents who were killed in circumstances which were not fully clarified. In all these cases the press reported that the IDF had launched an investigation.

1. Anjad Hashem Nasser, aged 4, from Beit Kad, shot in the back (according to the press, the shooter was apparently a policeman) on March 27, 1989.
2. Muhammad Ismail, aged 20, from al-Amari refugee camp. According to the press he arrived dead at the hospital on April 3, 1989.
3. Rufaida Khalil Abu Laban, aged 14, from Deheishe refugee camp, shot in the head on April 17, 1989.
4. Fares S'aid Falcha, aged 50, from Jabalya, wounded on March 27, 1989, according to Palestinian sources by blows from truncheons, died in al-Maqased Hospital on April 17, 1989.
5. Walid Najajra, aged 23, from Nahalin, wounded in the head on April 13, 1989, during the funeral of those killed in the Nahalin incident, died on April 21, 1989, in al-Maqased Hospital.
6. Khaled Musa Armilat, aged 22, from Rafah, killed in Khan Yunis on April 25, 1989.
7. Izam Omar Hasan, aged 8, from Tulkarm refugee camp, shot on April 26, 1989.
8. Samar Muhammad Mar'i, aged 9, from Tulkarm refugee camp, wounded on April 26, 1989 by a plastic bullet that penetrated his eye, died on May 1, 1989.
9. Milad Anton Shahin, aged 12, from Bethlehem, shot in the heart on May 5, 1989.

10. Muhammad Sami al-Liftawi, aged 17, from Kadura refugee camp, shot in the head on May 10, 1989.

11. Muhammad al-Adra, aged 24, from Sheikh Radwan, shot in the chest and head on May 13, 1989.

12. Muhammad Jibrin, aged 45, from Jenin, according to Palestinian sources was beaten by soldiers and died in Ramallah hospital about two weeks after the incident, on May 14, 1989.

13. Muhammad As'ad Fokhah, aged 50, from Shuweikat, detainee in Megiddo Prison, died following a hunger strike, on May 16, 1989.

14. Omar Yusuf Bayer, aged 42, from Jalakmus village, shot in Jenin (according to the press the possibility is being examined that he was shot by a civilian) on May 17, 1989.

15. Haitham Ali Arikat, aged 16, from Abu Dis, killed on May 21, 1989.

I would be grateful if you will respond to the following questions:

1. In which cases has the investigation concluded?
2. Was testimony taken from the families and from Palestinian eye-witnesses?
3. In which cases has a charge sheet been submitted? Against whom? On what charge?
4. In which cases were accused brought to trial?

Respectfully,

( - )

MK Yair Tsaban

Ministry of Defence

Hakirya, 20th Av 5749  
August 21, 1989

K/ 9472

Personal

Knesset Member  
Yair Tsaban  
15 Boaz St.  
Ramat Gan 52491

Dear Mr. Tsaban:

In reply to your letter of May 29, 1989, regarding the circumstances of death of residents of JSR [Judea and Samaria Region] whose names were mentioned in your letter:

What follows is our response regarding the events you mentioned, in which an IDF force was involved, and they are under investigation by Military Police Investigators. It should be noted that some of the events are not under investigation by MPI, and we have ordered an examination as to whether soldiers were involved in these incidents, since in that event an MPI investigation should be conducted.

In the following cases no MPI investigation was launched:

1. Circumstances of the death of Khaled Musa Armilat (Sec. 6 in your letter).
2. Circumstances of the death of Muhammad al-Adra (Sec. 11).
3. Circumstances of the death of Muhammad Jibrin (Sec. 12).  
As mentioned, should it emerge that there is in fact a connection between the events that preceded the death, and IDF forces, the MAG [Military Advocate General] will order an investigation by MPI.

In the following cases no MPI investigation was launched, because it was proved that there was no connection between the death and the activity of IDF forces:

1. The death of Aniad Hashem Nasser (Sec. 2 of your letter) was caused, evidently, while a force of the Israel Police was in the area, and was therefore investigated by the police.
2. The death of Omar Yusuf Bayer (Sec. 14 of your letter) was similarly not caused by IDF forces and without their presence in the area during the incident, and is therefore not being investigated by MPI.
3. The death of Walid Naiaira (Sec. 5 of your letter) was caused, as we were informed, by Border Policemen, and is therefore not being investigated by MPI.

.../

The circumstances of the death of Muhammad Ismail (Sec. 2 of your letter) were investigated by Military Police Investigators, and the investigative file was transferred to a military advocate to obtain a legal opinion.

The investigative file regarding the circumstances of the death of Izam Omar Hasan (Sec. 7) was completed and forwarded to a military advocate in Northern Command, who instructed MPI to complete it in a number of aspects.

The circumstances of the deaths of Rufaida Khalil Abu Laban, Fares Sa'id Falcha, Samar Muhammad Mar'i, Milad Anton Shahin, Muhammad Sami al-Liftawi, Asad Muhammad Fokhah, and Haitham Ali Arikat, are now under investigation by the Military Police Investigators. The investigative files have not yet been forwarded to the Military Advocate General's Staff for a legal opinion.

The reply was prepared for me by the Chief Military Prosecutor.

Sincerely,

Yitzhak Rabin  
Minister of Defence

The Knesset

Knesset Member  
Yair Tsaban

December 4, 1989

Minister of Defence  
MK Yitzhak Rabin  
Ministry of Defence/Hakirya, Tel Aviv

Dear Sir,

In your letter of August 21, 1989, regarding the state of the investigations into cases of death of inhabitants of the territories, you noted that in 3 instances no MPI investigation had been launched and that you had ordered an examination as to whether soldiers had been involved in these incidents.

The incidents, to remind you, were these:

1. Khaled Musa Armilat, aged 22, from Rafah, killed in Khan Yunis on April 25, 1989.
2. Muhammad al-Adra, aged 24, from Sheikh Radwan, shot in the chest and head on May 13, 1989.
3. Muhammad Jibrin, aged 45, from Jenin, died on May 14, 1989.

I would be grateful if you could update me as to whether it was decided to launch an MPI investigation into these cases, and if not, why?

You also noted in your letter that in the 7 cases listed below, an MPI investigation was underway but had not yet been completed.

Rufaida Khalil Abu Laban  
Fares Sa'id Falcha  
Samar Muhammad Mar'i  
Milad Anton Shahin  
Muhammad Sami al-Liftawi  
As'ad Muhammad Fokhah  
Haitham Ali Arikat

I should like to know whether any of the investigations have in the meantime been completed. If so, which, and with what results?

In the event that some of the investigations have not ended, I should like to draw your attention to the fact, Mr. Minister, that these are incidents which occurred more than six months ago, and it is fitting that these investigations be speeded up.

Sincerely

( - )

MK Yair Tsaban

./...



Ministry of Defence

Minister of Defence

Hakirya, 18 Adar 5750  
March 15, 1990

K/ 3000

Knesset Member  
Yair Tsaban  
The Knesset  
J e r u s a l e m

Dear Mr. Tsaban:

In reply to your letter of December 4, 1989, and pursuant to my letter of August 2, 1989, the following is the completion of my reply as I received it from the Chief Military Prosecutor.

In this response we will not discuss the circumstances of the deaths of Anjad Hashem Nasser, Omar Yusuf Bayar and Walid Najajra, regarding whom it was noted that no connection existed between their death and activity of IDF forces.

In the following cases we stated that no MPI investigation had been launched and that the matter was under examination. The results of that examination will be detailed below:

1. Muhammad Jibrin: Our check with Military Police Investigators indicates that the death of the local in question is not being investigated since the person was beaten during a march in the city against the background of cooperation or rivalry between branches of the PLO without any involvement whatsoever of the IDF.
2. Khaled Musa Armilat: (Sec. 6 of your letter) - The deceased's brother was interrogated and stated that Khaled's death was caused by a Border Police force - and only four months later he imputed his death to the IDF. The matter is being rechecked, and in any event is being investigated by the Israel Police.
3. Muhammad al-Adra: (Sec. 11 of your letter) is apparently Muhammad Awad al-Aqra, and an MPI investigation was conducted into the circumstances of his death. Upon its completion, its findings were transmitted to the regional command's military advocate, who has yet to issue a legal opinion.

The following are the main points of the military advocate's legal opinion concerning the circumstances of the death of Muhammad Ismail: On April 3, [19]89 IDF forces and a Border Police force entered al-Amari refugee camp, with the aim of putting an end to violent riots and removing stone barriers that had been erected there. The IDF forces were attacked with stones, various objects and burning tires. In reaction, the soldiers used means for dispersing demonstrations. These means were unavailing and therefore live bullets were fired in the air and plastic bullets were fired. The evidence suggests that among the soldiers who fired plastic bullets with the aim of hitting violent rioters, two of them in fact hit locals, and a leg wound was discerned. When the battalion doctor went to the hospital in Ramallah to examine

./...

Apparently the local, Muhammad Ismail Abd-al Hamid Baba, was wounded and died as a result of being hit by one of the two plastic bullets that were fired. In the light of the material evidence in the file, the Central Command military advocate did not find that the soldiers had deviated from the orders, and directed that the investigative file be closed, without legal measures being taken against anyone.

The military advocate's legal opinion regarding the death of Izam Omar Hasan indicates that on April 26, [19]89, while an IDF force was operating in Tulkarm r.c. [refugee camp], an officer fired 5 plastic bullets from his personal weapon at the instigators and hit one of them. In view of the non-performance of an autopsy on the deceased, due to the snatching of the body, it was impossible to ascertain a definite connection between the shooting and the death of Izam Hasan who was at the scene. The officer was reprimanded for not implementing in full the operational orders regarding the use of plastic bullets.

The legal opinion regarding the circumstances of the death of Rufaida Abu Laban noted the following: On April 17, [19]89 curfew was declared in Deheishe. During an IDF patrol a riot was spotted and the soldiers acted to disperse it. At a certain stage the rubber ammunition ran out and the soldiers' lives were endangered as a result of the throwing of stones and bottles. One of the commanders fired two plastic bullets, but in doing so deviated from the relevant operational orders. Evidently, one of these bullets hit the deceased and caused her death. Since more than three months had passed since the sergeant's demobilization, he could not be given a disciplinary hearing, and taking into account that the circumstances of the shooting are in his favor (the feeling that his life and the lives of his soldiers were in danger); and the fact that at this stage the rubber ammunition in his possession had run out, the military advocate of Central Command ordered the battalion commander to give him a severe dressing down for deviating from the orders. It should be stressed that the advocate did so despite the mortal danger faced by the force.

In the case of the death of Fares Sa'id Salha, the investigation was concluded, and the file was transmitted to the regional command advocate, who returned it for completion following the order of the Chief Military Prosecutor.

In the case of the death of Muhammad Mar'i, the file was returned to Military Police Investigators for completion.

Milad Anton Shahin: The legal opinion of the military advocate regarding the circumstances of his death indicate the following details: On May 5, [19]89, reservists who were manning an observation post in Bethlehem were attacked by the throwing of stones and various objects. The commander of the post, a senior non-commissioned officer, fired two plastic bullets in deviation of the operational rules for the use of plastic bullets. It should be noted that in the investigative file no evidence was found that this shooting was what caused Shahin's death. In the light of the above, the Northern Command military advocate instructed the military prosecutor to submit an indictment against the senior non-commissioned officer for the offense of the illegal use of a weapon, according to Sec. 85 of the Military Jurisdiction Law of 1955. The senior NCO was tried, convicted and

./...

sentenced to 5 months' imprisonment, two of them consisting of actual imprisonment [to be served] by doing public service, and a demotion.

The following findings emerge from the legal opinion of the military advocate regarding the death of Ahmad Jibril: On May 17, [19]89 a routine patrol arrived at the old Askar [refugee] camp. Stones were thrown at the patrol, and dozens of local youths, some wearing "ninja" uniforms, and others masked, gathered around. One soldier, who felt his life to be in immediate danger due to the large number of people, the fact that they were charging the soldiers and the short distance between them, fired a bullet at the rioting mob.

Taking into account the circumstances in which the sergeant acted and the concrete danger to his life, the military advocate of Central Command ordered the sergeant to face a disciplinary hearing before a senior jurisdiction officer with the rank of lieutenant colonel at least, for the offense of the illegal use of a weapon, since in the act of shooting he deviated from the Rules of Engagement - although the opening of fire itself was legal.

The following details emerge from the legal opinion of the military advocate of Northern Command regarding the circumstances of the death of As'ad Muhammad Fokhah:

Muhammad Fokhah was a security detainee in a military detention facility. On May 16, [19]89 he died of heart failure. The investigative material in the file indicates that the security prisoners in the deceased's company, and he himself among them, began a hunger strike that lasted three days during which they drank salt water only and refused to accept medical treatment of any kind. The doctors who tried to revive the deceased believe that the cause of death was heart failure as a result of dehydration. The resuscitation attempts that were made in the company clinic were unavailing and the doctor pronounced him dead. The military advocate's legal opinion indicates also that during the events the prison staff acted as required and in accordance with orders. In view of the above conclusions, the regional command military advocate ordered the investigative file closed without legal measures being taken.

For your information.

Sincerely,

( - )

Yitzhak Rabin  
Minister of Defence

./...

SMPM-Letter-1067

5750

Jerusalem, 11 Nissan

June 1, 1990

Minister of Defence  
MK Yitzhak Shamir  
Ministry of Defence  
Hakirya/Tel Aviv

Mr. Minister,

Re: Investigation of Cases of Death of Residents of the Territories  
Yours: K/3000 of March 15, 1990

Pursuant to my correspondence with your predecessor in office, Mr. Yitzhak Rabin, I wish to refer to the reply I received in this matter.

1. Speed of investigation - The handling of four cases to which I referred (Khaled Musa Armilat, Muhammad al-Adra, Fares Sa'id Falcha and Samar Muhammad Mar'i), which occurred more than a year ago, has not yet been completed. This is a lengthy period, and the question arises whether the lengthiness of the investigation and the legal examination is due to the intensive and strenuous nature of the investigation, and due to an attempt to gather additional evidence, or possibly due to "red-tape" and neglect.

2. Reliance on testimonies of soldiers only - Not one of the legal opinions quoted in the letter mentioned Palestinian witnesses who had been interrogated. I would be grateful if you could detail for me, regarding each of the files that has been completed, which of them involved efforts to locate eye-witnesses besides the soldiers involved, in which of them, indeed, testimonies were taken [from persons] besides those involved, and in which of them Palestinian inhabitants were among the witnesses?

The impression gleaned from reading the letter is that the legal opinions are in effect based on the testimonies of soldiers only. Without detracting from the value and importance of soldiers' testimonies, it seems that the absence of testimonies of additional eye-witnesses actually prevented the certain linking of soldiers suspected of firing in cases where people have been killed; therefore those who cut short human life without full justification were not brought to justice.

I would like to know also what guidelines are given to MPI investigators regarding the taking of testimonies from eye-witnesses, and what measures MPI investigators take in order to locate Palestinian eye-witnesses.

/...



3. Lenient Treatment of Soldiers who Deviated from the Orders and Caused Human Casualties

Punishment meted out to a soldier who deviated from the rules (all the more so if by doing so he caused death) is intended not only to punish that soldier but also to deter other soldiers and thereby to clarify publicly the IDF's stand toward such deviations.

The punishments meted out to the soldiers in the incidents in question - rebukes, administrative reprimands, two months' actual imprisonment through service, and a demotion - are not appropriate to the severity of the offenses, and do not constitute a significant deterrent.

Furthermore, the offenses with which the soldiers were charged in the cases before us - as in many other cases - are significantly less grave than the crimes actually committed. In particular, Mr. Minister, I ask for an explanation of the considerations that led to the trial of a senior non-commissioned officer in the Israel Defence Forces who shot and killed a 12-year-old boy, for the offense of "illegal use of a weapon" only?

4. Drawing conclusions regarding plastic bullets

In at least five of the cases in the letter (Muhammad Ismail, Izam Omar Hasan, Rufaida Abu Laban, Samar Muhammad Mar'i, Milad Anton Shahin) the deceased were struck by plastic bullets, which according to the affidavit of Maj. Gen. Ehud Barak to the HCJ are supposed to be, when used properly, non-lethal ammunition.

In at least three of the cases it was found that soldiers deviated from the Rules of Engagement. Thus one of two possibilities exists: either the rules of engagement are inappropriate to the situations in which the soldiers are operating, or the plastic bullets are not non-lethal as they are supposed to be.

In either case, action must be taken to draw the conclusions from these cases, which are no more than a sample. The high number of fatalities caused by plastic bullets incontrovertibly demonstrates their lethal nature and clarifies the need to desist immediately from the use of this ammunition.

5. In conclusion, I request your response to several specific questions relating to the incidents in question:

Muhammad Ismail al-Hamid Baba - According to the letter: "The evidence suggests that among the soldiers who fired plastic bullets with the aim of hitting violent rioters, two of them in fact hit locals." Was Muhammad Ismail identified as one of the violent rioters?

Izam Omar Hasan - Since according to the military advocate's opinion the body of the deceased was not in the possession of the IDF and an autopsy could not be performed, MPI should have relied on testimonies of eye-witnesses and the officer who opened fire. How many eye-witnesses were questioned? Were Palestinians who were eye-witnesses to the incident interrogated? What attempts were made to find the body and request a court order for an autopsy? Who tried the officer and who

./...



reprimanded him? Why was the officer not court-martialled?

The senior non-commissioned officer who was linked to the death of Milad Antoin Shahin was charged with the illegal use of a weapon even though in the investigative file, according to the military advocate's opinion, "no evidence was found that this shooting was what caused Shahin's death." Likewise in the case of the killing of Izam Omar Hasan, we are apprised that there was a deviation from the rules for the use of plastic bullets, the very same deviation that apparently led to Shahin's death. Why in one case was it decided to make do with a reprimand and in the other to hold a court martial?

Rufaida Abu Laban - According to eye-witnesses who saw the body, and according to a medical certificate in my possession, the girl was killed by a bullet that entered her head from behind and caused a hole with a diameter of 6 centimeters. This information indicates that she was shot at close range. How do these findings reconcile with the claim that the soldier deviated from the rules and with the claim that the soldiers' lives were in danger? I would be grateful to you, Mr. Minister, if you could inform me, according to the investigative file, the distance at which Rufaida Abu Laban was shot.

The legal opinion shows that the slow pace with which the file was handled precluded a disciplinary hearing for the soldier who deviated from the rules. What caused the investigation to drag on, and why was it not speeded up when it became clear that its duration was liable to prevent justice being done? Why was the soldier not court-martialled if, indeed, too much time had passed for him to face a disciplinary hearing?

The IDF's initial announcement stated that the IDF had nothing to do with her death (for example, Davar, April 19, 1989). Now it turns out that her death was in fact caused by IDF soldiers. Were steps taken against whoever was responsible for the mistaken announcement? Were any conclusions drawn with the aim of preventing the publication of mistaken announcements of this kind in the future, which affect the credibility of the IDF Spokesperson no less than they offend the feelings of the victim's family?

I would be most grateful if you could reply as soon as possible to the questions in this letter.

Sincerely

( - )

MK Yair Tsaban

enclosed: Medical documents,  
Rufaida Khalil Abu Laban.

Appendix I

IDF Spokesperson  
Information Branch  
8 Tammuz 5750  
1 July 1990

"B'Tselem" - Zehava Gal'on

Re: Report on the Rules of Engagement

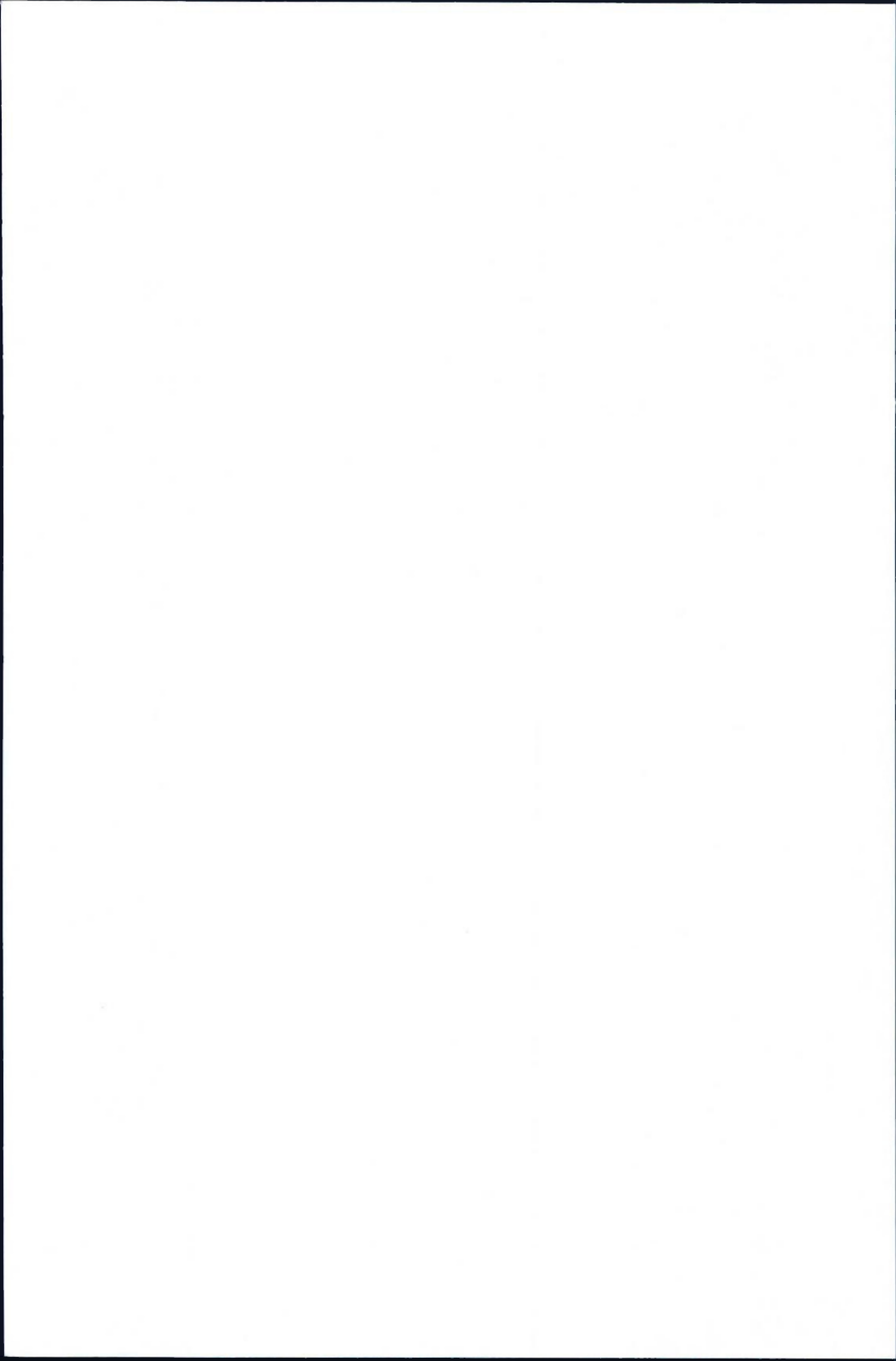
Dear Ms. Gal'on:

1. The report in question, which you conveyed for our perusal, is riddled with many inaccuracies. We reject strongly the charges raised against the IDF in general and the IDF Spokesperson in particular, and we take a serious view of its supercilious, incriminating and one-sided style.
2. The IDF Spokesperson replies substantively and extensively to every complaint and subject raised by you or other bodies. The replies are made following a thorough examination with the military sources.
3. Regarding the issues raised in this report, we also have substantive and extensive replies. However, as you were informed orally, we will not respond to the report because the legal status of the subject of the Rules of Engagement is sub iudice (as it is pending before the HCJ).
4. The IDF Spokesperson will be pleased to reply, and at length, to the organization B'Tselem, if you undertake not to violate the principle of sub iudice. That is, if you take it upon yourselves to issue the report only after the High Court of Justice hands down its judgment.

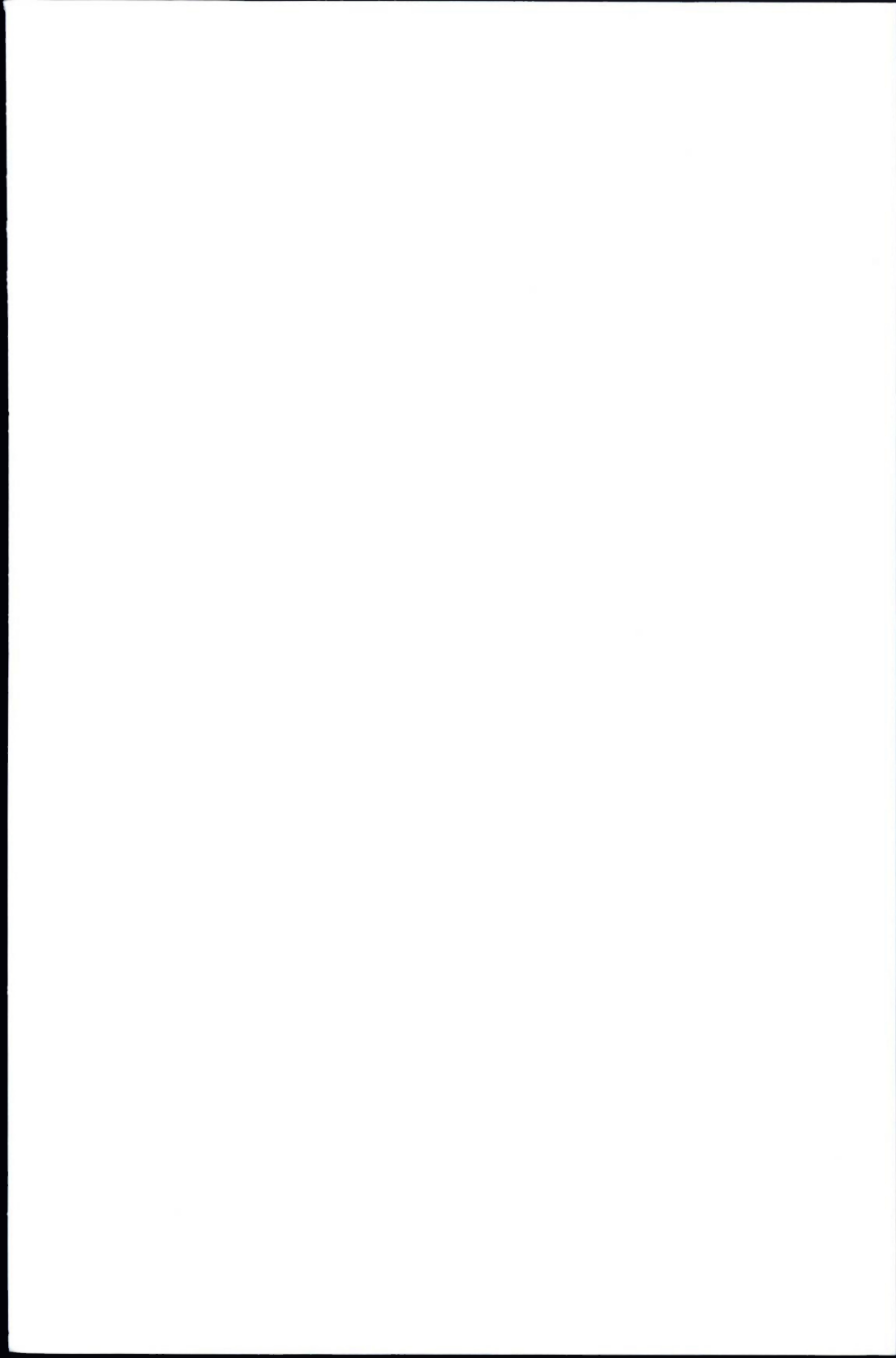
Sincerely,

( - )

Arik Gordin, Lt. Col.  
Chief, Information Branch









**B'TSELEM, the Israeli Information Center for Human Rights in the Occupied Territories, was established in February 1989 by a large group of lawyers, doctors, scholars, journalists, public figures, and Knesset members.**

**B'TSELEM has taken upon itself the goal of documenting and bringing human rights violations in the occupied territories to the attention of the general public and policy and opinion makers and of fighting the repression and denial which have spread through Israeli society.**

**B'TSELEM gathers information — reliable, detailed and up to date — on human rights issues in the occupied territories, follows changes in policy, and encourages and assists intervention whenever possible. The center is assisted in its work by a lobby of ten Knesset members from various parties. B'TSELEM makes its information available to any interested individual or organization.**

**B'TSELEM was created through commitment to and concern for the security and humanistic character of the State of Israel. This commitment and concern underlie all of the center's activities and form the core and cause for its existence.**