

Grotius – Center for International Law and Human Rights



War Game Ruah Seara: Criminal Responsibility of Senior Israeli Officials for Use of Snipers in October 2000

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A. Introduction

1. October 2000 witnessed the largest unarmed demonstrations by Arab citizens in Israel since its creation in 1948. The police used live ammunition, snipers and rubber coated metal bullets to suppress the protests which resulted in the death of 13 Arab citizens and wounding of numerous others.¹ The government and the police conducted war game Ruah Seara (Stormy Wind) on 6 September 2000, the first in the police's history that predicted the protests and the police's response including the use of snipers as they occurred in October 2000.

2. Prime Minister Ehud Barak instructed to conduct this war game and was aware of its deliberations and conclusions. Minister of Internal Security Shlomo Ben Ami and the senior command of the police were active participants in the war game. On 1 October 2000 Barak ordered the police to use any necessary force to open Road 65 in Umm al-Fahm area the day after. On 8 November 2000 Minister of Internal Security Ben Ami and the senior command of the police praised in a special assessment meeting the use of snipers in October 2000 against unarmed protesters for deterrent purposes acknowledging that it was not used in self-defense or defense of others to confront imminent threat to life.

3. The objective of this report is to analyze the criminal responsibility of senior Israeli politicians and police commanders regarding the use of snipers in the Umm al-Fahm area on 2 October 2000 which resulted in the death of one person and injuring at least seven others: Prime Minister Ehud Barak, Minister of Internal Security Shlomo Ben Ami, Head of the General Security Service Avi Dichter, Chief of Police Yehuda Vilk, and Northern District Commander in the Police Alik Ron. It will also underscore the failures and errors in the reports of the State Commission of Inquiry (2003), the Police Investigation Division (Mahash - 2005), and the Attorney General Office (2008) in this regard.²

4. On 8 November 2000 the Israeli government decided to establish a State Commission of Inquiry pursuant to the Commissions of Inquiry Law – 1968.³ According to this Law, the Commission's members are appointed by the Supreme Court's President. Supreme Court Judge Theodor Or, former Ambassador to Egypt and Jordan Shimon Shamir, and District Court Judge Sahel Jarah, who was later replaced by District Court Judge Hashem Khatib for health reasons were appointed as members of the Commission of Inquiry that became to be known as the Or Commission of Inquiry.

5. On 1 September 2003 the Or Commission submitted its 800 pages report to the Israeli government that relied on 500 statements from various witnesses, 376 testimonies before the Commission during 92 sessions amounting to 15,942 protocol pages, and 4,275 exhibits gathered by or provided to the Commission.¹² The Or Commission report has been considered as the first official Israeli document that has acknowledged the persistence of institutional discrimination against the Arab minority. However, its prolonged investigative process failed to determine the identity of the police officers, commanders and politicians who perpetrated or were complicit to committing the killings, in part because of failed reporting by the police shortly after the events⁴ and lack of investigation by the Police Investigating Unit (Mahash). It recommended that Mahash further investigate the matter.⁵

6. The Or Commission did not declare any administrative recommendations regarding Prime Minister Ehud Barak despite its negative evaluation of his conduct during the investigated events. It recommended that Minister of Internal Security at the time Shlomo Ben Ami should be barred from holding this position in the future given his failed leadership of the police. It also recommended that senior police commanders should not continue serving in the police force or should not be promoted for a certain period of time because of their actions and omissions.⁶

7. On 18 September 2005 Mahash issued its report concluding that it is not possible to identify the police officers who carried out the killings or that there are no sufficient evidence to file indictments.⁷ On 27 January 2008 the Attorney General Office produced a report that reviewed Mahash's and concurred with its findings.⁸

B. Background to the October 2000 Protests

War Game Ruah Seara (Stormy Wind) of 6 September 2000

8. On 6 September 2000 the Israeli police conducted a war game at its headquarters in Shefaamr titled Ruah Seara (Stormy Wind), in which it predicted the October 2000 protests and the police response to it, including the use of snipers in the Umm al-Fahm area at Road 65. Prime Minister Ehud Barak instructed to conduct the war game. Minister of Internal Security Shlomo Ben Ami, the police senior command, senior officers in the Israeli military and National Security Council participated in this combative exercise.⁹ On 6 October 2000 veteran *Haaretz* security affairs correspondent Zeev Schiff reported about this war game:

“The events that took place during the recent riots in minority towns and mixed towns such as Jaffa had been precisely predicted in an exercise with many participants called Ruah Seara (Stormy Wind - MD) conducted on 6 September at the police academy.

The police reported that the idea to conduct a national exercise about possible riots by the Arab minority had arisen few months earlier. Upon Prime Minister Barak's recommendation that there is a need to examine the response of the Arab minority should the Palestinian Authority unilaterally declare a Palestinian state, a decision was made to carry out the exercise.

The exercise was based on the scenario that spontaneous protests among the Arab minority erupts as a result of a big incident in Jerusalem in which many Palestinians and Israeli Arabs are injured.”¹⁰

9. The representative of the police northern command at the war game discussed the option of using snipers at Road Wadi Ara – Road 65 in Umm al-Fahm area a month before their actual deployment:

“As a response to the scenario, first stage in Bartaa', first stage in Bartaa' concentration of protection measures and snipers, dealing with the event on the basis of public disorder control, develops to shooting, isolating road 65 by check points.”¹¹

10. Avi Tiler, the deputy commander of the police northern district underscored during the war game the need to execute aggressive measures against the Arab minority “in the first stage our ability to enforce aggressive measures against the Arab minority is very important.”¹²

11. Police documents circulated in preparation for this war game acknowledge the correlation between the police's violent suppression of protests in the West Bank and the intensity of demonstrations.²² They also point to Arafat-Mubarak coordination and their expected appeal to the United Nations for assistance similar to the Kosovo scenario as a protest against Israel's anticipated conduct in East Jerusalem.¹³

12. The war game opened with a reminder of Israel's 1948 war of independence:

"Welcome to War Game 'Ruah Seara' (Stormy Wind). We are hosted and hosting all of you today at the police academy in Shfaram, and 52 years ago this district, that we are at, was concurred by the Seventh Division and the Golani Division. The precise date: 14.7.48. And here we are, 52 years afterwards, dealing almost with the same issues, true not concurring the country, but preserving it."¹⁴

13. The concluding words at the war game were "if a conflagration will occur in Jerusalem, the entire Middle East will burn as well...as a first war game in the Israeli police, it was indeed on a high standard."¹⁵

14. When asked by Judge Theodor Or whether there had been any comprehensive governmental deliberations about the status of the Arab minority prior to October 2000, Prime Minister Ehud Barak's answer included the following:

"There is danger that has been developing of mutations overcoming antibiotics, this is a threat for the health system, because they are of course concentrated in hospitals...our hospitals are under pressure but that does not mean that it requires a comprehensive governmental deliberation."¹⁶

Ehud Barak's controversial approval of Ariel Sharon's visit to the Temple Mount / Haram al-Sharif in Jerusalem on 28 September 2000

15. In late September 2000, two months after the failure of political negotiations between Israel and the Palestinian side in Camp David, Israeli Prime Minister Ehud Barak, Palestinian and other officials received reports that leader of opposition at the time Ariel Sharon intended to visit the Haram al-Sharif/Temple Mount in Jerusalem. Palestinian and U.S. officials urged Ehud Barak to prohibit the visit but the Israeli Prime Minister declined.¹⁷

16. Ehud Barak approved Sharon's controversial and provocative visit to the holy place despite contemporaneous police and military documents that alarmed from the potential security risk inherent to Sharon's action.¹⁸ Barak's decision is also in violation of consistent Israeli Supreme Court rulings which denied the right of extreme right wing groups in Israel to visit the Temple Mount / Haram al-Sharif because of police reports indicating the security risk and provocation that such visits arouse.¹⁹

17. On 28 September 2000 Ariel Sharon visited Haram al-Sharif / Temple Mount accompanied by more than 1,000 policemen. The following day Palestinians held large demonstrations and threw stones at police in the vicinity of the Western Wall in East Jerusalem. Police used rubber-coated metal bullets and live ammunition to disperse the demonstrators, killing 4 persons and injuring about 200.²⁰ The security situation deteriorated and clashes spread to the West Bank and Gaza resulting in many civilian casualties throughout the Al-Aqsa Intifada.²¹

18. *The Guardian* reported about Sharon's provocative visit and the subsequent protest that it had incited:

"Dozens of people were injured in rioting on the West Bank and in Jerusalem yesterday as the hawkish Likud party leader, Ariel Sharon, staged a provocative visit to a Muslim shrine at the heart of the Israeli-Palestinian conflict.

Surrounded by hundreds of Israeli riot police, Mr Sharon and a handful of Likud politicians marched up to the Haram al-Sharif, the site of the gold Dome of the Rock that is the third holiest shrine in Islam. He came down 45 minutes later, leaving a trail of fury. Young Palestinians heaved chairs, stones, rubbish bins, and whatever missiles came to hand at the Israeli forces. Riot police retaliated with tear gas and rubber bullets, shooting one protester in the face.

The symbolism of the visit to the Haram by Mr Sharon - reviled for his role in the 1982 massacre of Palestinians in a refugee camp in Lebanon - and its timing was unmistakable...

Mr Sharon was unrepentant, claiming he had been on a mission of reconciliation.

'What provocation is there when Jews come to visit the place with a message of peace? I am sorry about the injured, but it is the right of Jews in Israel to visit the Temple Mount.'²²

19. United States Secretary of State Madeleine Albright criticized Sharon's visit in East Jerusalem together with other world leaders:

"'World leaders yesterday condemned Ariel Sharon, the Israeli hardliner whose visit to a holy site in Jerusalem has triggered five days of violence. The US secretary of state, Madeleine Albright, described his visit to the site – known to Jews as the Temple Mount and to Muslims as Haram al- Sharif - as 'definitely counter-productive'.²³

20. United Nations Security Council resolution 1322 of 7 October 2000 echoed the international criticism against Sharon's inflaming visit to the holy place:

"Expressing its support for the Middle East peace process and the efforts to reach a final settlement between the Israeli and Palestinian sides and *urging* the two sides to cooperate in these efforts,

Reaffirming the need for full respect by all of the Holy Places of the City of Jerusalem, and *condemning* any behavior to the contrary,

Deplores the provocation carried out at Al-Haram Al-Sharif in Jerusalem on 28 September 2000, and the subsequent violence there and at other Holy Places, as well as in other areas throughout the territories occupied by Israel since 1967, resulting in over 80 Palestinian deaths and many other casualties;

Condemns acts of violence, especially the excessive use of force against Palestinians, resulting in injury and loss of human life;..."³⁴

21. On 30 September 2000 the Arab community in Israel held simultaneous marches in different localities to express solidarity with the suppressed Palestinians in East Jerusalem, the West Bank, and Gaza. The following day during unarmed demonstrations in which some Arab youth threw stones at the police, three unarmed demonstrators in the Umm alFahm area and Jatt were shot and killed. On 2 October 2000 the Israeli police killed six demonstrators in Umm al-Fahm, Nazareth,

Arrabba, and Sakhnin. On 3 October 2000 two demonstrators were killed in Kafr Manda and Kafr Kanna. The protests then calmed and resumed in Nazareth on 8 October 2000, the last day of demonstrations during which the police killed two protesters.

22. The Israeli police used lethal rubber coated metal bullets throughout the suppression of these protests. On 2 October and 3 October 2000 it also used snipers in Umm al-Fahm and Nazareth. Snipers shot at protesters live ammunition from a distance. In Umm al-Fahm three snipers were ordered to shoot simultaneously at a single unarmed protester causing death and serious injuries.²⁴ On 8 November 2000 the senior command of the police convened and commended the effectiveness of using snipers against unarmed protests as a deterrent, not in a condition of imminent threat to life. Minister of Internal Security Ben Ami and Chief of Police Vilk participated in the meeting and shared its conclusions.²⁵

The extensive use of rubber coated metal bullets against unarmed protesters

23. The Or Commission found that the Israeli police used rubber coated metal bullets in a systemic manner to disperse demonstrations in October 2000 and at least two protesters were killed from this weapon both on 1 October 2000: Rami Gara in Jatt and Ahmad Jabareen in Umm al-Fahm.²⁶ The Commission recommended that this type of weapon should not be used by the police to disperse demonstrations in the future because of its lethal and inaccurate nature.²⁷

Physicians from Israel showed the lethal effects of rubber coated metal bullets used by the police against demonstrators in October 2000:

"Results

Of 152 patients with 201 proven rubber-bullet injuries, 35 were treated at the frontline clinic in Umm el Fahem, 101 were admitted to two regional hospitals in Nazareth, and 16 were referred to the Rambam Medical Center in Haifa. There were 151 males and one female, with an age range of 11-59 years (figure 1). 20 (13%) patients had more than one bullet injury, and in one (0.6%) individual, 13 bullet injuries were noted (figure 2)...



Figure 2: **Rubber-bullet injuries induced by MA/RA 88 bullet.** In this patient, 13 blunt bullet injuries were detected. The 201 rubber-bullet injuries were randomly distributed all over the body (figure 3). Injuries were mostly located in the limbs (n=73), but those to the head, neck, and face (61), chest (39), back (16), and abdomen (12) were also frequently noted. In accordance with ISS score, 92 (46%) injuries were mild, 71 (35%) were moderately severe, and 38 (19%) were severe. 116 (58%) of 201 sites of impact were detected above the umbilicus, whereas 85 (42%) were noted below this area. 123 (61%) injuries were blunt, whereas 78 (39%) were penetrating.

...

The need for authorities to control civil disturbances is well acknowledged. Techniques used by police forces to deter such activity must be effective and able to keep serious injuries to demonstrators to a minimum. We reported a substantial number of severe injuries and fatalities inflicted by use of rubber bullets when vulnerable upper-body regions such as the head, neck, and upper torso were struck. This type of ammunition should therefore not be considered a safe method of crowd control."²⁸

24. Dr. Stephen Males, UK expert on policing who visited the country shortly after the protests as part of an Amnesty International delegation found that the conduct of the Israeli police did not follow accepted rules, rather it was excessive and disproportionate:

"In most of the cases, these rules did not seem to have been followed, neither does there appear to be immediate danger to life or property in many cases, and neither does the response seem proportionate to the threat or even effectively targeted."⁴⁰

25. Amnesty International researched the police response to the protests a short while after their occurrence and found that:

"In some cases, especially in northern Israel, at Nazareth, Umm al-Fahm, Sakhnin and Arrabeh, the military policing methods of Gaza and the West Bank were used: ie meeting demonstrators in force, rapid escalation to firing of rubber-coated metal bullets and live ammunition without attempting to use non-lethal means of dispersal."²⁹

26. In a similar research conducted by Human Rights Watch, the organization concluded with respect to the two days of protest in Umm al-Fahm (1 and 2 October 2000) that:

"At no time on either day do the security forces appear to have faced imminent threats to their lives or serious injury. On both days wind conditions allowed security forces to use tear gas effectively to disperse the demonstrators when they wished to do so."³⁰

C. The Police's Use of Snipers in October 2000

The legal basis for using lethal force by the police - Israeli law

27. The Israeli Penal Code – 1977 includes three provisions that could be construed as providing authorization or justification for the police's use of lethal force. They share common themes: to confront serious and imminent threat to oneself or another person; the execution of force should be proportionate to the alleged threat and used as a last resort.

28. Article 34(10) of the Penal Code which defines self-defense provides that:

"A person shall not bear criminal responsibility for an act that was immediately required to repel an unlawful attack that posed imminent danger to his life, body, or property, his or another's; yet, a person shall not be considered acting in selfdefense if his improper conduct caused the attack while anticipating in advance the possibility of such development of events."

29. Article 34(11) of the Penal Code defines necessity:

"A person shall not bear criminal responsibility for an act that was immediately required to save his life, liberty, physical integrity, or property, or another's, from significant harm emanating from a given situation at the time of the act, and there was no other option but to do it."

30. Article 34(13) of the Penal Code proclaims justifications for unlawful acts in certain circumstances:

“A person shall not bear criminal responsibility for an act executed in one of the following circumstances:

He was obligated or authorized, under the law, to do it;

It was pursuant to an order of an authorized authority that he was under a legal obligation to obey, unless the order was manifestly unlawful.”

31. The Israeli Supreme Court deliberated the issue of using lethal force by the police in the context of capturing a fleeing suspected felon. It held that such lethal force could be legitimate if it was used as a last resort and was proportionate to any possible danger arising from the conduct of the suspected felon. Warning prior to utilizing lethal force and using non-lethal weapon first in the specific circumstances are required.⁴³ In the 1956 Kafr Qasim massacre case perpetrated by the border control police, the court ruled that there is an obligation to disobey a manifest illegal order.⁴⁴

International standards

32. The 1990 Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders declared certain principles regarding the use of force and firearms by law enforcement officials with the purpose to uphold the political rights to life and freedom of protest enshrined in the 1948 United Nations Universal Declaration of Human Rights and the 1966 United Nations Covenant on Civil and Political Rights.⁴⁵

33. The central theme of these principles is to limit the use of lethal force to a necessary minimum. According to principle 4:

“Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result.”

34. Principle 5 sets out general limitation on use of force by law enforcement officials:

“Whenever the lawful use of force and firearms is unavoidable, law enforcement officials shall:

Exercise restraint in such use and act in proportion to the seriousness of the offence and the legitimate objective to be achieved; Minimize damage and injury, and respect and preserve human life;”

35. Pursuant to principle 9 the use of fire arms by law enforcement officials is justified as a self-defense confronting imminent and serious danger to life:

“Law enforcement officials shall not use firearms against persons except in selfdefense or defense of others against the imminent threat of death or serious injury, to prevent the perpetration of a particularly serious crime involving grave threat to life, to arrest a person presenting such a danger and resisting their authority, or to prevent his or her escape, and only when less extreme means are insufficient to achieve these objectives. In any event, intentional lethal use of firearms may only be made when strictly unavoidable in order to protect life.”

36. It is the obligation of the law enforcement officials to identify themselves and warn prior to using fire arms. Principle 10 stipulates:

“In the circumstances provided for under principle 9, law enforcement officials shall identify themselves as such and give a clear warning of their intent to use firearms, with sufficient time for the warning to be observed, unless to do so would unduly place the law enforcement officials at risk or would create a risk of death or serious harm to other persons, or would be clearly inappropriate or pointless in the circumstances of the incident.”

37. Principles 12, 13 and 14 define the rules and limitations for using force and fire arms by law enforcement officials in the case of lawful and unlawful assemblies:

“As everyone is allowed to participate in lawful and peaceful assemblies, in accordance with the principles embodied in the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, Governments and law enforcement agencies and officials shall recognize that force and firearms may be used only in accordance with principles 13 and 14.

In the dispersal of assemblies that are unlawful but non-violent, law enforcement officials shall avoid the use of force or, where that is not practicable, shall restrict such force to the minimum extent necessary.

In the dispersal of violent assemblies, law enforcement officials may use firearms only when less dangerous means are not practicable and only to the minimum extent necessary. Law enforcement officials shall not use firearms in such cases, except under the conditions stipulated in principle 9.”

Findings of the Or Commission

38. The police used snipers against protesters on 2 October 2000 in Umm al-Fahm and Nazareth and again in Nazareth on 3 October 2000. The Or Commission found that the use of snipers by police in Umm al-Fahm and Nazareth was not legal and recommended that Mahash should consider initiating an investigation for alleged criminal conduct.³¹ The Commission also concluded that the use of the lethal weapon was the decision and initiative of the police northern district commander Alik Ron.³²

39. In Umm al-Fahm three snipers shot live ammunition at protesters from a distance killing one Mosleh Hussein Abu Jarad and causing serious injuries at least to seven others.³³ The Or Commission found that using snipers in Umm al-Fahm was not legal because it was for deterrence and punitive purposes against unarmed protesters.³⁴ It was not in self-defense to confront imminent danger to life nor was it justified under applicable legal justifications and police regulations.³⁵ Shooting by three snipers at the same target was also considered not legal.³⁶

40. The Or Commission reached similar conclusions regarding snipers shooting in Nazareth on 2 October 2000 which injured two persons Ali Bashatawi Subhi and Hilal Silawi.³⁷ On 3 October 2000 police snipers in Nazareth shot and wounded at least one person Rouqa Fahoum. The Or Commission found that also this shooting was not legal.³⁸

D. The Criminal Responsibility of Senior Political and Police Officials for use of Snipers in Umm al-Fahm area on 2 October 2000

The command structure in October 2000³⁹

41. Article 4 of Basic Law: The Government determines that a minister is responsible before the Prime Minister for the issues that are subject to his authority. Pursuant to article 8A of the Police Ordinance – 1971, the government appoints the Chief of Police upon the recommendation of the Minister of Internal Security. Article 10(2) of this ordinance subjects the termination of the Chief of Police's tenure to the Minister's consent. According to article 9A of the Police Ordinance the Chief of Police, having obtained the Minister's authorization, will issue internal regulation relating to the police's structure, administration, governance, discipline, and proper conduct.

42. Articles 2 and 7 of the ordinance empower the Minister of Internal Security to appoint regular and senior police officers. In line with article 21 of the ordinance, the Minister has a broad discretion to terminate the position of any police officer at a time of his choosing.

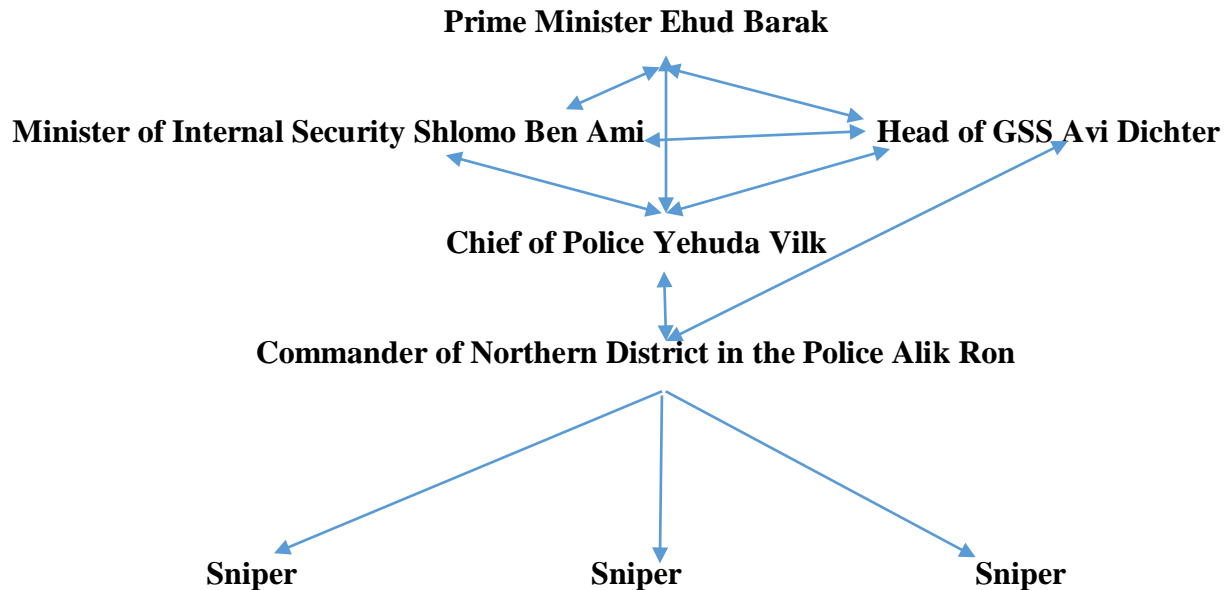
43. Article 9 of the ordinance proclaims the obligations of the Chief of Police "to supervise the Israeli police, its ordered management and function, and will be responsible for safeguarding all the cost that its operation entail, and overseeing the equipment in its possession." The duties of the police are defined in article 3:

"The police will engage in crime prevention and discovery, capturing criminals and bringing them to justice, safely securing prisoners, and maintaining public order, and securing personal safety and property."

44. At the time of the October 2000 protests there was no law that defined the structure and scope of responsibilities granted to the General Security Service (GSS). The accepted legal proposition has been that the GSS functions as part of the Prime Minister's office under the government's prerogative powers according to Basic Law: The Government.⁴⁰ Article 32 of Basic Law: The Government projects this power "The government is authorized to do in the name of the state, subject to any law, any act that the law has not empowered another authority to exercise it." Article 4 of General Security Service Law – 2002 articulated this broad power of the GSS.

45. According to the Or Commission Prime Minister Barak and Minister of Internal Security Ben Ami communicated throughout the protests with the police command and the GSS, but were not informed about the use of snipers.⁴¹ The Commission also determined that "Barak was directly engaged in commanding the events at their various locations."⁴²

Command Structure in October 2000: Government – Police – GSS



Prime Minister Ehud Barak instructed to conduct war game Ruah Seara (Stormy Wind) and ordered the police to use all necessary force to open Road 65 in Umm al-Fahm area

46. Notwithstanding existing evidence, the Or Commission has found that Prime Minister Ehud Barak did not instruct the police towards 2 October 2000 to use all necessary force to open roads, in particular road 65 in Umm al-Fahm area.⁴³ The Commission also concluded that the failure to document the meeting on 1 October 2000 at his home regarding the police's conduct the following day was not his responsibility, rather that of his aides.⁴⁴

47. Despite the Commission's finding about the absence of positive instruction by Barak to use lethal force against the law, it nevertheless found that he did not take measures to stop or limit the police from using lethal force on 1 October 2000 and 2 October 2000 against unarmed protestors.⁴⁵ The Or Commission did not recommend administrative recommendations in Barak's regard nor did it hold that he should be investigated for alleged criminal conduct.

48. It also underestimated evidence that the October 2000 events and the use of snipers occurred in a stark resemblance to governmental deliberations and war games conducted short time prior to October 2000, in particular government meeting of 21 September 2000⁴⁶ and war game 'Ruah Seara' (Stormy Wind) dated 6 September 2000.⁴⁷ Ehud Barak acknowledged in his concluding brief before the Or Commission that the events took place in an anticipated manner.⁴⁸

49. Based on the Or Commission's factual findings and evidence before it, the Commission should have concluded that Prime Minister Ehud Barak ought to have been investigated for ordering the use of all necessary force to quell unarmed demonstrations on 2 October 2000,⁴⁹ in particular in Umm al-Fahm area to open Road 65. On that day the police chose locations for the snipers on road 65 in the Umm al-Fahm area at around 7:00am prior to protests taking place.⁵⁰ The snipers used live ammunition against protestors which resulted in the death of one demonstrator and caused serious injuries at least to seven others.

50. The Or Commission should have recommended that Barak be investigated for his alleged role as a perpetrator in the meaning of article 29 of the Israeli Penal Code – 1977,⁵¹ who committed the offences of manslaughter and causing intentional serious injuries defined in articles 298 and 329 of the same code. Article 298 defines manslaughter:

“If a person caused the death of another by a prohibited act or omission, then he is guilty of manslaughter and is liable to twenty years imprisonment.”⁶⁷

51. Article 329(a)(2) includes the following definition of intentional infliction of serious injury:

“(a) He who commits one of the following with the intention to inflict disability upon or maim a person or to cause serious injury...his sentence – twenty years imprisonment:

...

(2) Unlawfully attempts to injure a person with a bullet, a knife or another dangerous weapon or more hurtful;”

52. On 2 October 2000, at 7:31am, Barak was interviewed on the radio “Morning Show” in which he related to a working meeting he held at his house the evening before that included the Minister of Internal Security Shlomo Ben Ami, Chief of Police Yehuda Vilks, and Head of the General Security Service (GSS) Avi Dichter.⁵² Although Barak and the other participants in this meeting were aware that one Arab citizen had been killed and others had incurred serious injuries on 1 October 2000 as a result of the police’s conduct,⁵³ the Prime Minister praised their action and described his aggressive instructions to them in the radio interview:

“At a meeting that lasted until after midnight at my home, I directed the police force and the Minister of Internal Security – incidentally, both deserve great praise for the self-control they exhibited yesterday during the demonstrations – but I told them that they have a green light to take any action necessary to maintain law and order and ensure that citizens of the state are free to move about everywhere in the state.”⁵⁴

On 2 October 2000, at 7:30am, the northern district command of the GSS held a meeting in which the head of the district reiterated Barak’s combative instruction to the police at his home the night before. Or Commission’s classified GSS exhibit no.2204 documents this meeting:

“The Prime Minister instructed yesterday: one – to execute any action to maintain open roads.”⁵⁵

53. The commander of the northern district in the police Major General Alik Ron and the commander of the northern district in the Border Police Control Chief Superintendent Bentsi Sao, both of whom operated the snipers in the Umm al-Fahm area on 2 October 2000 acknowledged in their testimonies before the Or Commission that they chose locations for the snipers and deployed them in the morning of 2 October 2000. Alik Ron:

“Judge Theodor Or: When did you take the decision to deploy the snipers, in advance?
Major General Alik Ron: In advance.”⁵⁶

54. Chief Superintendent Sao testified:

“Judge Theodor Or: On that morning when you arrived to the location, do you remember an expedition that the Major General (Ron) participated in, were you part of this expedition?

Chief Superintendent Bentsi Sao: yes.

Judge Theodor Or: As part of this expedition have you also sought to identify a location for snipers?

Chief Superintendent Bentsi Sao: Yes.

Judge Theodor Or: Do you remember the location chosen for this purpose?

Chief Superintendent Bentsi Sao: Yes.

Judge Theodor Or: Do you remember where was this location, parallel to the entrance, parallel to the gas station?

Chief Superintendent Bentsi Sao: Correct.”⁵⁷

55. Senior Israeli governmental officials and police commanders anticipated the unfolding events of October 2000, including the use of snipers in Umm al-Fahm area, during a war game conducted on 6 September 2000 titled Ruah Seara (Stormy Wind), as part of Kesem Ha-Mangina (Magical Tune) Ordinance. Prime Minister Barak instructed to conduct the war game. Minister of Internal Security Shlomo Ben Ami, the police senior command, senior officers in the Israeli military and National Security Council participated in this combative exercise.⁵⁸

The proposition of the war game was that a unilateral declaration of independent Palestinian state by the Palestinian Authority together with placing Jerusalem at the center of the political discourse could stir violence in the West Bank and Israel. The same day Prime Minister Barak received the transcript of the war game meeting.⁵⁹ War Game Ruah Seara (Stormy Wind) predicted the events in Umm al-Fahm area in an exact manner to their occurrence, except for shooting by protesters: “As a response to the scenario, first stage in Bartaa’, first stage in Bartaa’ concentration of protection measures and snipers, dealing with the event on the basis of public disorder control, develops to shooting, isolating road 65 by check points.”⁶⁰

56. The Or Commission failed to note this part of the war game, but it did mention, in a footnote, Prime Minister Ehud Barak’s acknowledgment that the October 2000 events took place in an anticipated manner:

“In fact, Prime Minister at the time Ehud Barak’s concluding brief did not dispute that the October events had been anticipated as part of the preparations for the scenarios of ‘Kessem Ha-Mangina’ (Magical Tune) order.”⁶¹

57. During war game Ruah Seara (Stormy Wind) the issue of closed roads was discussed, including road 65 (Wadi Ara road). A strict rule regarding opening such road was determined:

“Highways, as mentioned, the rule determined, highways will be open...should Wadi Ara road be closed, it would be wrong to think that it will remain closed until further notice.”⁶²

58. Veteran *Harretz* newspaper military affairs correspondent Zeev Schiff reported on 6 October 2000 that the idea to conduct a war game was a result of Prime Minister Ehud Barak’s request to

examine the possible response of the Arab minority to a unilateral Palestinian declaration of independence:

“The events that took place during the recent riots in minority towns and mixed towns such as Jaffa had been precisely predicted in an exercise with many participants called Ruah Seara (Stormy Wind) conducted on 6 September at the police academy.

The police reported that the idea to conduct a national exercise about possible riots by the Arab minority had arisen few months earlier. Upon Prime Minister Barak’s recommendation that there is a need to examine the response of the Arab minority should the Palestinian Authority unilaterally declare a Palestinian state, a decision was made to carry out the exercise.

The exercise was based on the scenario that spontaneous protest among the Arab minority erupts as a result of a big incident in Jerusalem in which many Palestinians and Israeli Arabs are injured.”⁶³

59. Barak supervised the conduct of the police in October 2000.⁶⁴ The Or Commission omitted this factual finding from its analysis about Barak’s combative instruction to the police and the latter’s conduct on 2 October 2000, including the use of snipers. Barak concurred that his previous positions as a security official have equipped him with firsthand knowledge of leading responses to killings and subsequent protests:

“Ehud Barak: I was IDF’s Deputy Chief of Staff and participated in government meetings when Popper murdered the workers near Rishon Lizion, and when the events at the (1990 –MD) Temple Mount took place resulting in 21 killed. And I was IDF’s Chief of Staff during the massacre at the Cave of Machpelah, and the subsequent harsh events. All of this I know. From personal and direct experience.”⁶⁵

60. The Or Commission accepted Barak’s allegation that he was not informed about the use of snipers in real time and that he did not know about it from media reports.⁸² Barak claimed before his counsel and the Commission the following:

“Counsel Klagsbald: Among the information before the Commission there is a transcript of a story that was broadcasted on the news. Chanel One, second October evening. In this story, the reporter says, that Alik Ron gave an instruction to use snipers in Umm al-Fahm. Again, the question is raised, how is it that you did not know, considering that it was reported in the news, the TV, how is it that you did not know?

Ehud Barak: That day I did not watch TV.”⁸³

61. The Or Commission did not scrutinize Barak’s version. The use of live ammunition and snipers against protesters was reported in the mainstream media on 2 October 2000,⁸⁴ 3 October 2000,⁸⁵ and 6 October 2000.⁶⁶ Chanel 1, 21:00 news “Mabat La-Hadashot”, the main news program on Israeli TV, reported on 2 October 2000 “Alik Ron ordered to use snipers in Umm al-Fahm.”⁶⁷ The Commission attributed to Chief of Police Vilk awareness of snipers’ use in real time also based on contemporaneous media reports,⁶⁸ but not to Prime Minister Ehud Barak.

62. The Or Commission’s conclusion that Barak’s instruction to the police “does not mean granting legitimacy to use live ammunition by snipers in advance” and that “discretion was granted to the

police in exercising this instruction”⁶⁹ is in contrast to the evidence before it. The police possessed an inherent right to execute its powers under the law in accordance with reasoned discretion. It did not require the Prime Minister’s authorization to use all necessary force in order to apply its discretion as part of enforcing the law.

63. Barak’s clear words, the conduct of the police in Umm al-Fahm area from the morning hours of 2 October 2000, and war game Ruah Seara (Stormy Wind) establish identical intent on the part of Barak and the police: to use lethal ammunition against unarmed protesters with the purpose to inflict serious harm and death. Barak’s former experience as a senior security official informs his intent in October 2000. The Or Commission should have recommended to subject the Prime Minister to criminal investigation for his role in using snipers in Umm al-Fahm area to open Road 65.

Minister of Internal Security Shlomo Ben Ami participated in war game Ruah Seara (Stormy Wind) and commended the use of snipers against unarmed protesters as a deterrent.

64. The Or Commission reached an identical conclusion regarding Minister of Internal Security Shlomo Ben Ami as it did in relation to Prime Minister Barak, concerning the instruction to the police on 1 October 2000 to use all necessary force in order to open roads, in particular road 65 in the Umm al-Fahm area. Barak’s instruction to use all necessary force to open Road 65 did not mean an authorization for the police to use snipers.⁷⁰ The Commission should have recommended to investigate Ben Ami as co-perpetrator in committing manslaughter and intentionally causing serious injuries pursuant to articles 29, 298 and 329 of the Israel Penal Code – 1977.

65. As in the case of Prime Minister Ehud Barak, the Or Commission concluded that also Minister of Internal Security Ben Ami was not aware of the use of snipers in real time and that the senior police commanders, Chief of Police Vilks and Commander of the Northern District Ron withheld this information from the Minister.⁷¹ The Or Commission chose not to attribute awareness to Ben Ami about use of snipers in October 2000 based on reports in the mainstream media, as it did regarding Chief of Police Vilks.⁷²

66. In his testimony before the Commission Ben Ami alleged that he became aware of the use of snipers pursuant to the Commission’s deliberations, although it was reported in several main stream TV news and newspapers on 2 and 3 October 2000. On 2 October 2000, 21:00, Israel Channel 1 main TV news reported that “Alik Ron ordered to use snipers in Umm alFahm.”⁷³ Ben Ami testified before the Or Commission that:

“Judge Theodor Or: I want to move to the issue of using snipers and shooting live ammunition. I understand that you became aware of the snipers matter as a result of the Commission’s work?

MK Prof. Ben Ami: Indeed.

...

Mk Prof. Ben Ami: During the events I was not aware of the snipers’ use. I did not receive a direct or indirect report about it. I had no information about the use of snipers, even if this fact was broadcasted on the main TV news program.”⁷⁴

67. However, Ben Ami supported and was part of a police commander’s assessment meeting that took place on 8 November 2000, the day that the Israeli government decided to establish the Or

Commission of Inquiry and prior to the Commission's discussion of snipers' use during October 2000. The meeting concluded that the use of snipers against unarmed protesters was effective and deterrent.⁷⁵ It made them reconsider protesting. In other words, the police did not use snipers in life threatening circumstances. Ben Ami alleged before the Or Commission that he was not aware of reference to snipers during this meeting, rather to Police Special Forces. He understood their deployment to be against violent criminal elements, although no such deployment was carried out by the police:

"Judge Theodor Or: Please describe, try to remember, when you heard Special Forces as a deterrent factor, how did you understand the substance of the Special Forces deterrence, what is the difference between its deterrence and that of the regular police, in that people are aware that they are Special Forces?

MK Prof. Ben Ami: Yes, because they have special training. They are more fit. One must distinct between this force and the regular blue police force."⁷⁶

68. Ben Ami's allegation defies reason, as its acceptance by the Or Commission.⁷⁷ A leading participant in the 8 November 2000 police commanders' assessment meeting, he must have been aware that the police was referring to the use of snipers against unarmed protesters in contravention to the law. Like the police commanders, he also commended the use of snipers. This is also what the Or Commission concluded few pages before in its report "[at the 8 November 2000 meeting]...information was provided about the events and lessons learned from them."⁷⁸

69. The Commission failed to attribute this misconduct to Ben Ami which is another indication of his intent, identical to the police's, to use lethal weapons with the purpose to inflict harm and death among unarmed protesters. Minister Ben Ami's senior aide David Tsur head of the ministry's operational headquarters articulated the Minister's position during the 8 November 2000 assessment meeting as follows:

"Throughout the events and today no one from the ministerial level considered not to automatically support the operational level."⁷⁹

70. Ben Ami participated in the 1 October 2000 meeting at Barak's house in the evening hours when the combative instruction to open roads the following day was conveyed to the police.

71. He acknowledged in his testimony before the Or Commission that Barak's instructions from that meeting reached the police, although there was no written conclusion to this specific meeting:

"Judge Theodor Or: There was an evaluative meeting at the Prime Minister's house, it was sharp, everything is understood, maybe this was the reason for not having a stenograph, I don't know, in any case, how was this supposed to reach the police, did the presence of police members guarantee that the instruction will get to the police?

MK Prof. Ben Ami: This is a central element, the presence of a police senior officer, the Chief of Police, or the head of the police headquarters, but certainly the Chief of Police, this is a major guarantee that the instruction is afterward passed down through the chain of command.

...

Judge Theodor Or: Yes, but here we don't have a written conclusion by the Prime Minister, when there is no such thing, and the 1 October meeting has ended.

MK Prof. Ben Ami: But there is an oral conclusion, the oral conclusion, people are sitting there, they hear the oral conclusion, given this oral conclusion we are in contact one with another in order to assure that the instructions have reached the lower officers of the command structure and is implemented. But true, in this specific meeting there was no conclusion in writing.”⁸⁰

72. The Minister of Internal Security Ben Ami was a leading supporter and participant of the 6 September 2000 war game ‘Ruah Seara’ (Stormy Wind) which anticipated the October 2000 protests, including the use of snipers by police at road 65 in the Umm al-Fahm, as they occurred. Judge Theodor Or did not ask Ben Ami about the use of snipers mentioned during the war game a month before their actual deployment. Rather, he focused on the issue of police equipment. According to Judge Theodor Or:

“Judge Theodor Or: One thing I want to draw your attention to in detail Mr. Ben Ami. War game Ruah Seara (Stormy Wind). When we read the working assumptions and what are the weak points of the northern district and we are in 6 September. I notice what is being said about what the Arabs in Israel could do. Tens of thousands protesters in Sakhnin area, near Leshem base, who intend to break into Tardion industrial area. A talk about 5000 people in Umm al-Fahm, who will lead them and closing roads. Then the working assumption is willingness among the Arab community for confrontation and main roads blocked. The northern district will have to operate in different locations at the same time. And the weaknesses are known. They are mentioned on 6 September. Shortage in skilled police force, not enough means of dispersal, could lead to escalating response by the police. As if what had been anticipated, foreseen, indeed took place. The order of events, their location, and the weaknesses...you were among those who thought that the police should conduct a war game.”⁸¹

73. War game Ruah Seara (Stormy Wind) predicted the events in Umm al-Fahm area in an exact manner to their occurrence, except for shooting by protesters:

“As a response to the scenario, first stage in Bartaa’, first stage in Bartaa’ concentration of protection measures and snipers, dealing with the event on the basis of public disorder control, develops to shooting, isolating road 65 by check points.”¹⁰²

74. Ben Ami said during the war game that it is important to show that there are things that also dedicated peace lovers will not accept:

“We are talking about a scenario that includes a potential of significant violence, and we can only hope that it will end well, if not, at least we will project to the people of Israel that we have done the best effort, and that there are things that even the most dedicated peace lovers will not accept and it is important that the people know and there should be an appropriate force to support this.”⁸²

75. Given Judge Or’s detailed awareness of war game Ruah Seara (Stormy Wind), he should have asked Ben Ami about the correlation between anticipating the use of snipers in the Umm al-Fahm area during the war game on 6 September 2000 and resorting to this lethal weapon in the same place on 2 October 2000. His failure to do so undermines the judge’s and the Commission’s credibility and competence.

76. Ben Ami was aware of the planning to use snipers in Umm al-Fahm area on 2 October 2000 during war game Ruah Seara (Stormy Wind) of 6 September 2000 and participated in the crucial meeting at Prime Minister Barak's home on 1 October 2000 when the prime Minister ordered the police to use all necessary force to open Road 65. Ben Ami commended with police commanders the use of snipers as a deterrent against unarmed protestors during the police assessment meeting of 8 November 2000. He shared the intention to inflict death and serious harm to unarmed protestors with Prime Minister Barak, and the leadership of the Police and GSS. The Or Commission should have recommended to investigate Ben Ami for his role in this criminal conduct.

Head of General Security Service Avi Dichter supported the use of aggressive measures against unarmed protestors at Road 65 in line with war game Ruah Seara (Stormy Wind)

77. The General Security Service (GSS) operated in October 2000 within the Office of the Prime Minister based on the Government's prerogative powers under Basic Law: The Government. General Security Service Law – 2002, article 4, defines the GSS's powers under the authority of the Prime Minister. Avi Dichter headed the organization prior to and during the October 2000 protests. He participated in war game Ruah Seara (Stormy Wind) on 6 September 2000 which predicted the protests a month later and in the 1 October 2000 meeting at Ehud Barak's home during which the police was instructed to use aggressive measures to open Road 65 in Umm al-Fahm area.

78. The testimony of Avi Dichter before the Or Commission on 6 February 2002 was held in closed session. On 4 February 2002 the Israeli Supreme Court rejected a petition against the Or Commission's decision to conduct Dichter's testimony in camera.¹⁰⁴ The evidence that the GSS provided to the Or Commission is also classified.¹⁰⁵

79. The GSS has had a negative controlling impact against the Arab minority since Israel was established in 1948⁸³ and a notorious human rights record in the 1967 Occupied Territories.⁸⁴ Its untruthful performance before Israeli authorities is well documented.⁸⁵ It has also maintained close working relations with officials from the Palestinian Authority such as Tawfiq Tirawi and Jibril Rajoub.⁸⁶

80. The rare information scattered in the Or Commission report shows that the GSS favored using extreme measures against unarmed protestors, including the use of snipers. On 2 October 2000, at 7:30am, the northern command of the GSS held a meeting in which the head of the command reiterated Barak's combative instruction to the police at his home the night before. Or Commission's classified GSS exhibit no.2204 documents this meeting: "The Prime Minister instructed yesterday: one – to execute any action to maintain open roads."⁸⁷

81. On 1 October 2000 the GSS command, including Dichter, conducted an assessment meeting towards the meeting at Ehud Barak's house. Dichter was aware that one person had been killed and many others suffered from serious injuries. The conclusion of the assessment meeting was that the protests have unfolded in the anticipated manner and predicted serious demonstrations in Umm al-Fahm area the day after.¹¹¹ The GSS northern command reiterated this conclusion about the anticipated character of the protests and their continuation in its 07:30am meeting on 2 October 2000.⁸⁸

82. During the day on 3 October 2000 the GSS conducted a discussion about the events that took place in Umm al-Fahm area, including blocking Road 65, and what measures should be carried out to quell protesters. The GSS concluded that “it should not be conveyed that violence is rewarded.”⁸⁹ At 19:30, 3 October 2000 Dichter said while meeting with Prime Minister Barak for briefing and evaluation, that the events of Umm al-Fahm and Road 65 clarified for the Arab minority that “there are red lines, and what that means.”¹¹⁴

83. Head of GSS Dichter was complicit to Prime Minister Barak’s instruction on 1 October 2000 to use aggressive force against unarmed protesters at Road 65, in the Umm al-Fahm area the day after. He shared the intent to cause death and inflict serious injuries to protesters. His positive assessment of the police conduct on 3 October 2000 reflects this intention. Dichter was also a major participant in the 6 September 2000 war game Ruah Seara (Stormy Wind) in which the Israeli government anticipated and intended the events as they developed a month later, including the unjustified use of snipers in the Umm alFahm area.

84. The Or Commission has not criticized the conduct of the GSS in October 2000, nor has it declassified the testimonies of GSS commanders before it and the organization’s evidence. Despite these choices made by the Or Commission, the little information it did disclose should have led it to recommend a serious criminal investigation against the GSS for its role in the use of snipers and causing death and serious injuries in the Umm al-Fahm area on 2 October 2000.

Chief of Police Yehuda Vilk intended to cause death and serious injuries among unarmed protesters through snipers

85. The Or Commission found that the 1 October 2000 instruction to the police to use all necessary force to open Road 65 in Umm al-Fahm area on 2 October 2000 was from Prime Minister Ehud Barak, not from the Chief of Police Vilk, and therefore decided not to determine any form of responsibility in relation to the Chief of Police regarding this instruction.⁹⁰ In addition, the Commission concluded that Vilk withheld information about the use of snipers from the Prime Minister and Minister of Internal Security violating his fiduciary obligation towards them, and that he commended the use of snipers during the police commanders’ assessment meeting of 8 November 2000.⁹¹ The Commission recommended to bar Vilk from holding official positions relating to internal security in the future.¹¹⁷

86. Based on its findings and other evidence before it, the Or Commission should have recommended to investigate Vilk for his criminal responsibility as an accomplice to manslaughter and intentionally inflicting serious injuries through use of snipers on 2 October 2000 in Umm al-Fahm area pursuant to articles 29, 289, and 329 of the Israeli Penal Code – 1977.

87. Chief of Police Vilk participated in war game Ruah Seara (Stormy Wind) on 6 September 2000. He said during the war game that considering involvement from surrounding area, the conflict with the Arabs in Israel is going to be much bigger. When the Or Commission asked Vilk about his statement, he avoided responding and the Or Commission did not insist that he provide and answer:

“Judge Theodor Or: Please listen to what you are saying [during the war game –

MD]. ‘Considering the current tension we are used to locations of conflict. Add to this developments from the neighboring area, and the intensity of the conflict is going to be much much stronger.’”⁹²

88. The Or Commission did not confront Vilks with the words of the police northern district representative at the 6 September 2000 war game, who anticipated the use of snipers in the Umm al-Fahm area, and road 65 in particular:

“As a response to the scenario, first stage in Bartaa’, first stage in Bartaa’ concentration of protection measures and snipers, dealing with the event on the basis of public disorder control, develops to shooting, isolating road 65 by check points.”⁹³

89. The concluding words at the war game were “if a conflagration will occur in Jerusalem, the entire Middle East will burn as well...as a first war game in the Israeli police, it was indeed on a high standard.”⁹⁴

90. In his testimony before the Or Commission Vilks could not recall the undocumented content of Prime Minister Barak’s instruction to the police on 1 October 2000 “It’s very difficult for me, again, because I have not had the opportunity to refresh my memory by the protocols.”⁹⁵ On 2 October 2000, at 08:35, Vilks gave a radio interview in which he predicted that opening Road 65 in Umm al-Fahm area will entail civilian casualties.⁹⁶ He also retracted from his denial of awareness about deployment of snipers in the early morning of 2 October 2000:

“Judge Theodor Or: Did you know about the intent to deploy snipers that morning?

Yehuda Vilks: Where?

Judge Theodor Or: In Umm al-Fahm.

Yehuda Vilks: No, I did not know.

Judge Theodor Or: Not the deployment of the special forces.

Yehuda Vilks: We deployed, in order to position them in those places, positioning the snipers in Umm al-Fahm, in that place, and considering the incident in Nazareth. This deployment is required and logical because there was a clear possibility for shooting.”⁹⁷

91. The Or Commission rejected Vilks’s version that he became aware of the police’s use of snipers to open Road 65 in Umm al-Fahm area on 19 October 2000. It found that Vilks knew about the use of snipers “a day or two the latest” after 2 October 2000, establishing this finding also on media reports which included the main TV news reporting from that day at 21:00.⁹⁸ The Or Commission has overlooked a statement of Vilks’s senior assistant the head of the police operation headquarters Ezra Aharon who stated to the Commission that the deployment of snipers was approved by the Police Chief Vilks:

“I am not aware of any use of the special forces during October 2000 that is not the use of snipers...I confirmed the use of snipers. I was not alone, also the Operational Section and the Police Chief were aware of the deployment.”⁹⁹

92. According to the Or Commission, Vilk did not report about the police's use of snipers to Prime Minister Barak and Minister of Internal Security Ben Ami once he became aware of it.¹⁰⁰ "An affair of its own standing" the Or Commission observed about Vilk's lack of reporting to his superiors in the government about the use of snipers.¹⁰¹ The Or Commission did not apply the same logic of snipers use awareness based on media reports regarding Barak and Ben Ami as it did with Chief of Police Vilk.

93. The Or Commission noted that once Vilk became aware of using snipers, he did not instruct the police about the appropriate method to use them, nor did he order his subordinates to restrain or refrain from using the snipers:

"It is significantly important that once Vilk became aware of snipers shooting, unambiguous message should have been conveyed to all police forces about the strict limitations regarding the use of this exceptional and dangerous weapon. This was not done.

94. The Chief of Police also did not take measures to limit the use of this weapon. He did not find it appropriate to instruct directly the commander of the police special forces about the circumstances in which the use of this weapon is justified. He did not find it appropriate to instruct the commander of the northern district, who initiated the use of snipers and operated them, regarding the exceptionality and severity of this weapon."¹⁰²

95. Vilk was a leading participant in the 8 November 2000 police commanders' assessment meeting in relation to the October 2000 events. The police commanders concluded that the use of snipers was effective and deterred protesters. It was not used as a self-defense against imminent threat to life:

"The calculated combination of special professional forces (snipers, undercover personnel, and more) during the serious public disorder events, was a turning point in handling the events."¹⁰³

96. The Or Commission determined that Vilk "commended the use of snipers and accepted their use as a deterring weapon, without any reservation from the manner in which the snipers were used and its consequences."¹⁰⁴

97. Chief of Police Yehuda Vilk was a central figure in the 6 September 2000 war game Ruah Seara (Stormy Wind) in which the October 2000 protests and the use of snipers as a response had been predicted. He was also with Prime Minister Ehud Barak when the latter instructed the police on 1 October 2000 to use aggressive measures in order to open Road 65 in Umm al-Fahm area.

98. Vilk was part of the police snipers deployment to Umm al-Fahm area in the early morning of 2 October 2000. His version before the Or Commission regarding the use of snipers was not credible, he withheld information from the government about this use, and commended it as a deterring factor during police commanders' assessment meeting on 8 November 2000.

99. The Chief of Police shared the intent to inflict death and serious wounds to protesters in Umm al-Fahm area on 2 October 2000, together with Prime Minister Ehud Barak, Minister of Internal Security Shlomo Ben Ami, Head of the GSS Avi Dichter, and Commander of the Northern District in the Police Alik Ron. The Or Commission should have recommended to investigate Vilk for his

role in this collective criminal conduct which resulted in death an intentionally causing serious injuries.

Police's Northern District Commander Alik Ron operated the snipers in Umm al-Fahm area in accordance with war game Rouah Seara (Stormy Wind)

100. The Or Commission found that the decision to use snipers and live ammunition in order to open Road 65 in the Umm al-Fahm area on 2 October 2000 was Alik Ron's the commander of the northern district in the police.¹⁰⁵ Ron operated the snipers in person to deter protesters without the existence of a life threatening condition.¹⁰⁶ He ordered the simultaneous shooting by three snipers at a single protester,¹⁰⁷ with the intention to "punish or teach a lesson".¹⁰⁸ Ron also did not warn protesters prior to ordering snipers to shoot at them.¹⁰⁹ Having considered his failures during the October 2000 protests the Or Commission recommended to bar Ron from holding official internal security positions in the future.¹³⁶

101. Ron alleged before the Or Commission that he decided to use snipers against those who used David Sling distanced 100m – 150m from the police.¹¹⁰ He also testified on the manner and duration of using the snipers:

"Judge Theodor Or: Regarding the manner in which the snipers had been operated, you have substantial experience with the special forces and are aware of how they function, I repeat things that have been said here, that there were several who shot at one target, and this was one of the things mentioned here not in closed session, this is why I am mentioning it, my question did you know that this was how the snipers operated?

Alik Ron: Yes.

Judge Theodor Or: That several shot at one target?

Alik Ron: Yes.

Judge Theodor Or: And what is the idea?

Alik Ron: To increase the injury chances.

...

Judge Theodor Or: The entire duration of shooting, if you can remember, Mr. Ron, from the moment you gave the first instruction around 13:00, lasted for how long, if you can remember?

Alik Ron: I think about one hour."¹¹¹

102. The findings of the Or Commission and other evidence before it should have led the commission to conclude that the decision to use snipers to open Road 65 in the Umm al-Fahm area was not Ron's alone rather that of his superiors as well: Chief of Police Yehuda Vilks, Minister of Internal Security Shlomo Ben Ami, Head of the GSS Avi Dichter, and Prime Minister Ehud Barak.

103. Alik Ron was aware of the 6 September 2000 war game Ruah Seara (Stormy Wind) in which the police northern district representative said the following regarding use of snipers at Road 65:

“As a response to the scenario, first stage in Barta’a, first stage in Barta’a concentration of protection measures and snipers, dealing with the incident on the basis of public disorder control, develops to shooting, isolating Road 65 by check points.”¹¹²

104. Ron’s deputy Avi Tiller underscored during the war game the need to execute aggressive measures against the Arab minority “in the first stage our ability to enforce aggressive measures against the Arab minority is very important.”¹¹³

105. Ron used snipers to open Road 65 on 2 October 2000, although the *situation* did not develop to shooting from protesters. The Or Commission did not ask the northern district commander about the anticipation to use snipers to open Road 65:

“Judge Theodor Or: Regarding Ruah Seara (Stormy Wind)...is it not that all what had happened is exactly all the things that had been dealt with during the war game and other plans?

Alik Ron: There is, there is, a significant resemblance (dimyon rav - MD).”¹⁴¹

106. On 2 October 2000, at 06:00-07:00am, Alik Ron toured Umm al-Fahm surroundings together with commander of the northern district of the border police and the snipers team to find an appropriate location for them considering that their use is expected.¹¹⁴ Chief of Police Vilk participated in the 1 October 2000 evening meeting at Prime Minister Barak’s house, together with Minister of Internal Security Ben Ami, during which Barak instructed to use all necessary force to open Road 65. That meeting lasted from 22:00pm to 02:00am.¹¹⁵ Ron confirmed that Chief of Police Vilk had ordered him to open Road 65:

“Alik Ron: ...I was ordered to open Road 65, an order, to open the road. I was asked if I can, I answered I can.

Judge Theodor Or: Let us stop here for a moment. The idea to open this street, this road, was it your suggestion that the Chief of Police accepted?

Alik Ron: Negative.

Judge Theodor Or: Excuse me? I am asking, only you know, or was it the Chief of Police suggestion and you followed it.

Alik Ron: The Chief of Police’s instruction.

Judge Theodor Or: Ok, we have an address. Did you join this recommendation?

Alik Ron: Yes...when I took this force (snipers – MD) to this operation which was not unknown, it is an initiated operation by us, the potential for conflict, I certainly knew about it, which was the reason for deploying the force (snipers –MD) there.”¹¹⁶

107. The police commended the use of snipers during its commanders’ assessment meeting of 8 November 2000 in which Chief of Police Vilk and Minister of Internal Security participated.¹¹⁷ The Or Commission should have concluded that the use of lethal snipers against unarmed

protesters in the Umm al-Fahm area was intended by the government and the police to inflict death and serious injuries among them. It was not Ron's decision alone.

E. Failures of the Israeli Investigative Process

Judge Theodor Or's problematic critique of Mahash.

108. The Or Commission recommended that the Police Investigating Unit (Mahash) should further investigate the police's illegal use of snipers during October 2000, including in Umm al-Fahm to open Road 65, which resulted in death and serious injuries to numerous individuals.¹¹⁸ Mahash's investigation has suffered from substantial flaws,¹¹⁹ as did the subsequent examining report of the Attorney General Office.¹²⁰ This report will focus on the failures to investigate the use of lethal force by snipers in Umm al-Fahm area on 2 October 2000.

109. Judge Theodor Or has condemned the conduct of Mahash regarding the police killings in October 2000 in a lecture he delivered at Tel-Aviv University on 1 September 2004, one year after the publication of the Commission's report:

In general, Mahash did not collect evidence relating to the events surrounding the killings of the citizens, did not gather evidence at the scene, and did not attempt to locate any of the police officers who were involved in the incidents shortly after the incidents occurred... The Commission of Inquiry recommended that Mahash conduct an investigation into a number of incidents in which 13 people died. The intention was that, following the investigation, a decision would be reached over whether indictments should be filed and if so against whom. It is becoming clear that, to date, no conclusion has been reached over whether indictments are to be filed in relation to any of the events that Mahash was charged with investigating. The explanation given is that Mahash lacks sufficient personnel, and that only when additional manpower was provided did the pace of the investigation accelerate. In light of the grave results of the events that Mahash is charged with investigating, in light of the fact that the testimonies obtained by investigators on behalf of the Commission and by the Commission itself were always available to everyone, including Mahash investigators, as long ago as when the Commission was performing its work; and in light of the fact that over a year has passed since the Commission made its recommendations, it is regrettable that the Mahash investigation has not accomplished more.¹²¹

110. Judge Or's critique against Mahash for its conduct in the aftermath of the October 2000 demonstrations did not appear in the report of which he was its principal author, and ignored the fact that two of the Commission's investigative team members were Mahash personnel (Alex Or and Avidan Shtal). Further, Mahash's investigators are police officers who are loaned to the Police Investigation Division and are expected to return and operate in their former capacity.

111. Since the creation of Mahash in 1992 and for the subsequent twelve years there have been repeated discussions about employing trained investigators independent from the police. The latest was the State Comptroller 2005 report which observed that the deliberations and committees that considered the status of Mahash's investigators have been futile:

"From the above description it appears that the issue of civilizing Mahash's staff has accompanied its activity for the last 12 years and remains unsettled. Decisions regarding the required steps for civilizing have not been carried out, and no other clear decisions have

been taken. The above mentioned bodies seized to deal with this matter, and it has been totally neglected in recent years.”¹²²

112. The Or Commission did not use its power under article 9 of the Commissions of Inquiry Law – 1968 to invite Mahash representatives for questioning regarding their investigative conduct pursuant to the October 2000 protests and the police’s use of lethal force. Article 9(a)(1) provides that the “Chairman of the Commission of Inquiry, in consultation with its other members, is authorized to invite a person more than once before the Commission to testify, or to present documents, or other exhibits in his possession.”

113. In addition, the Or Commission blamed Arab citizens for their hesitant cooperation with the Israeli authorities as a reason for not advancing the investigation.¹²³ It mentioned the fact that some of the victims’ families have declined to conduct an autopsy for their loved ones after they had been buried.

114. The Or Commission failed to note that: a. Mahash had instructed hospitals to release victims’ bodies after the killings by the police in October 2000; b. four autopsy reports of the victims were in Mahash’s possession, including that of Muslih Abu Jarad, who was killed in Umm al-Fahm on 2 October 2000 as a result of police sniping; c. Investigating Reason of Death Law – 1958 empowers Mahash to request a court to conduct an autopsy after a deceased person had been buried; d. Article 9 of the Commissions of Inquiry Law – 1968 empowers it to examine Mahash’s conduct and instruct it regarding its powers and responsibilities under the law.

115. On 18 October 2000, the author of this report requested that the Attorney General Mr. Elyakim Rubinstein order an investigation into the killing of thirteen citizens by Israeli police officers. The letter set forth the findings of two international human rights organizations, Amnesty International and Human Rights Watch, on police handling of the demonstrations.¹²⁴

116. On 5 November 2000, another letter was sent to the Head of Mahash at the time, Mr. Eran Shendar (forms part of the Attorney General Office but his investigating staff are ‘loaned police officers’ who will return to serve in the police), requesting to order an investigation into the circumstances of police killings:

“As you know, according to Section 49I of the Police Ordinance [New version], 5731 – 1971, Mahash is empowered to investigate an offense in which a police officer is a suspect, as specified in the First Annex of the ordinance. This authority is in addition, of course, to the authority of the Attorney General to order an investigation in cases in which it is suspected that an offense has been committed...In our opinion, there is suspicion, at least, that an offense has been committed by police officers who fired their weapons and by the officials who dispatched them and gave them the order to fire. In this case, the authority to initiate an investigation against the police officers becomes an obligation. This was the holding of the Supreme Court in HC 297/82, *Berger, et. al. v. Minister of the Interior*, PD 37 (3) 29, 45-47, where the Court states:

... establishing primary regulations in statute, which grant the official holding a certain position the power to exercise authority in given circumstances, not only grants power and authority, but generates fundamental consequences, which also have the nature of an *imposition of duty*. Entailed in the grant of authority is, *inter alia*, the duty to consider the need to exercise it and the proper measure to take in that context... The holder of the

authority is liable to be considered to fail in his duty if he relates to the authority given him as he would relate to an immovable stone, in the sense that he fails to consider it as good or bad, positively or negatively, and does not weigh if and when to exercise it...”¹²⁵

117. The critique of Mahash had been required throughout the proceedings of the Or Commission. Its absence from the Or Commission report and Judge Or’s late pronouncement of this critique are, at best, puzzling. Judge Theodor Or was authorized to examine and instruct Mahash about its obligations under the law during the Commission’s proceedings. He failed to do so and did not express any reservation about its conduct in the Commission’s report. Judge Or should have explained in public this discrepancy in his judicial conduct as well as what drove him to express the late sharp observations about Mahash’s failures.

Mahash investigation of the police’s use of snipers in Umm al-Fahm area was malicious.

118. Mahash published its report about its investigation of the October 2000 killings attributed to the police on 18 September 2005. It found no sufficient evidence to file indictments in all the killing incidents it investigated.

119. Pursuant to the Or Commission’s conclusion, Mahash has centered its investigation on Alik Ron in relation to the use of snipers and lethal force in the Umm alFahm area on 2 October 2000 to open Road 65. It did not investigate the following:

6 September 2000 war game Ruah Seara (Stormy Wind) in which the use of snipers to open Road 65 had been anticipated.

Prime Minister Ehud Barak and the instruction he gave to police on 1 October 2000 to open Road 65 with all necessary force.

Minister of Internal Security Shlomo Ben Ami who participated in war game Ruah Seara (Stormy Wind) and condoned the use of snipers as a deterrent against unarmed protesters during an assessment meeting held by police commanders on 8 November 2000.

GSS support for using aggressive measures against unarmed protesters in Umm al-Fahm area.

120. Chief of Police Vilks, Ron’s direct superior, and the leader of the police commanders’ assessment meeting on 8 November 2000 which supported the use of snipers to deter unarmed protesters in Umm al-Fahm area on 2 October 2000.

121. The 8 November 2000 police commanders’ assessment meeting where the use of snipers against unarmed protesters was commended as effective in deterring unarmed protesters. It was not used in imminent threat to life condition.

122. Mahash found that the use of snipers was legitimate to open road 65 in Umm alFahm area, considering that there was imminent danger to police officers trying to disperse protesters, although they were more than 150m distant from the police. The snipers shot only at demonstrators using David Sling which had a potential of causing serious and imminent injury. Their conduct was proportionate, including the simultaneous shooting of three snipers at one target – protester. According to Mahash, The fact that the police did not use less lethal measures than snipers, and

did not warn the protesters prior to the snipers' shooting is immaterial in this case.¹²⁶ Mahash concluded:

"From the investigation material it appears, that the Chief of Police instructed during a meeting the evening before to open the road and for this purpose snipers were deployed. We are of the opinion, that the police's obligation to maintain the right of Arabs and Jews to drive on main roads free of disturbances should not be judged through the criminal justice process...therefore, we have decided, that considering the severe public disorder, the extreme violence and the feeling of uncertainty that captured the police on 2 October in Umm al-Fahm, as in other places in the country, it is not possible to determine under the required conditions of a criminal procedure that Alik Ron's decision to use snipers, against stone throwers, with Sling David, was not legal. Thus we decided to shelve the file against Ron for lack of evidence."¹²⁷

123. Mahash should have examined whether there had been evidence that constituted a prima facie case against Alik Ron, not if he would be convicted beyond reasonable doubt pursuant to an indictment and criminal procedure. Such evidence was ample before the Or Commission and Mahash. Mahash's findings and conclusions contradicted those of the Or Commission. Its analysis was fictitious.

124. Mahash's investigation of Alik Ron on 10 April 2005 was short spanning a bit more than one page. During this investigation Ron's version regarding seeing the protesters whom he ordered the snipers to shoot at because of their alleged imminent danger to life was different than the one he provided to the Or Commission. Mahash investigators did not confront him with this significant contradiction, or change in his versions. Ron at Mahash investigation:

"Question: When you authorized the snipers to shoot, did you see the danger, or did you rely on reports you received?

Answer: I was near them. I operated the snipers after having been there, saw the danger and instructed them to shoot."¹²⁸

125. Ron's version before the Or Commission:

"Judge Theodor Or: We can say then that you have not identified the targets, rather instructed them what are the appropriate targets, that the shooting should be at Sling David users and below the knee.

Alik Ron: Some of the targets I observed and instructed based on clothing etc, others the reporting satisfied me."¹²⁹

126. Ron claimed before the Or Commission that he was the one who deployed and operated the snipers in Umm al-Fahm area "from A to Z".¹³⁰ This included ordering their collective shooting of three snipers at the same target.¹⁵⁹ At Mahash investigation, Ron alleged that the decision to order three snipers to target one protester was their commanders', not his. Mahash failed to document this version of Ron in writing, but it is heard through the tape which recorded Mahash's investigation of Ron.¹⁶⁰

127. Mahash of course has not enquired with Ron about this change of version, nor did it consider Ron's contradictions as another strong indication for his criminal responsibility in deploying and

operating the snipers. It also failed to ask Ron about withholding the fact of deploying and operating snipers in Umm al-Fahm area from the government, which the Or Commission found as another factor for his failed conduct.¹³¹ Mahash overlooked the 8 November 2000 police commanders' positive assessment, including Ron's, of using snipers as deterrent against unarmed protesters,¹³² and not in an imminent threat to life condition, another strong indication of the police's northern district commander to cause death and serious injuries.

128. Mahash's investigation of the snipers' use in Umm al-Fahm was malicious. It reinforced the understanding that it is not an independent entity from the police, considering that its investigators are on loan police officers who expect to return and work with their former colleagues and superiors.

The Attorney General examination of Mahash's report regarding the use of snipes in Umm al-Fahm area was flawed

129. Following the publication of Mahash report on 18 September 2005, the Attorney General announced that he will examine Mahash's report although no person or organization had requested to conduct such an examination.¹³³ On 27 January 2008 the Attorney General published its report confirming Mahash's conclusions, including regarding the use of snipers in Umm al-Fahm area on 2 October 2000.

130. The Attorney General Office explained at length the legal basis for Ron's purported legitimate conduct in using snipers to open Road 65 in Umm al-Fahm on 2 October 2000.¹³⁴ Yet, the Attorney General did not order additional investigation of Ron, nor did he note the change in his versions before the Or Commission on the one hand, and to Mahash on the other.

131. Similar to Mahash, the Attorney General Office omitted the Or Commission's finding about Ron having concealed the use of snipers from the government when considering his criminal conduct. It also failed to link the police commanders 8 November 2000 positive assessment of using snipers against unarmed protesters for deterrence purposes to Ron's intent to inflict death and serious injuries among them. The Attorney General's final recommendation regarding former northern district commander in the police was identical to Mahash's: no sufficient evidence to prosecute Ron.

F. Conclusion

132. October 2000 marked the most important development in the relations of the Arab minority with the Israeli state since 1948. The protests were unprecedented and broke barriers of fear imposed for generations by Israeli policies. The government intended to use lethal weapon against unarmed protesters including through snipers to cause death and serious injuries. It expected this a month before the protests during war game Ruah Seara (Stormy Wind) on 6 September 2000 and commended it after the protests on 8 November 2000. Prime Minister Ehud Barak ordered the police on 1 October 2000 to use all necessary force against unarmed protesters. The senior governmental and police command are responsible for deploying and using snipers in Umm al-Fahm area on 2 October 2000 and for the death and injuries they had caused.

133. The official Israeli investigative process into the killings and the entire events included three significant state institutions who failed to portray the actual reasons for the protests, to identify those responsible for the killings, and prosecute them in accordance with fair trial principles. The

Or Commission lengthy procedure produced important findings, but its 800 pages report did not reach a reasonable conclusion regarding the responsibility of using lethal force and snipers in October 2000. Mahash subsequent investigation was not independent and lacked adherence to basic professional standards.

134. The report of the Attorney General Office concurred with Mahash's findings without providing reasons for its manifest errors and stamped itself with the same failings.

134. The Or Commission kept Israel's 'Situation' – regime in the dark although two of its members, Judge Theodor Or and former Ambassador to Egypt and Jordan Shimon Shamir, had been aware of its pressing existence in the Israeli Jewish society and its relation to Israel's domestic and foreign policies for decades. Arik Einstein's performance of "Drive Slowly" and "Your Honor the Judge" captures Israel's 'Situation' – regime: corrupt, self-intimidating, and weak. The conduct of the Or Commission is no different than Richard Posner's analysis of Aharon Barak's jurisprudence:

"He purports to derive his judicial approach from the abstractions I mentioned, but they cannot be the real source of the approach. For they are empty verbiage, as when Barak says that 'other branches [of government] seek to attain efficiency; the courts seek to attain legality.'"¹³⁵

¹ The names of the deceased and time and place of their death are: 1 October 2000 - Ahmad Mohammad Jabareen was killed in Umm al-Fahm and Ahmad Ibrahim Jabareen was injured there and died the following day; Rami Gara was killed in Jatt. 2 October 2000 – Mosleh Hussein Abu Jarad was killed in Umm al-Fahm; Iyad Lawabneh was killed in Nazareth; Walid Abdel Munem Abu Saleh and Emad Faraj Ganayem were killed in Sakhnin; Asil Hassan Asleh and Alaa Khaled Nassar were killed in Arraba. 3 October 2000 - Ramez Bushnaq was killed in Kafr Manda; Mohammad Galeb Khamaysi was hit in Kafr Kanna and died the day after. 8 October 2000 - Omar Mohammad Akkawi was killed in Nazareth and Wisam Hamdan Yazbek was hit and died the day after.

² The author worked before the Or Commission as a leading lawyer with Adalah – The Legal Center for Arab Minority Rights in Israel which filed evidence to the Commission and represented three Arab public figures before it. This is the first report about the Or Commission in English which provides an argument about the criminal responsibility of senior Israeli officials for use of snipers.

³ At first, the Israeli government appointed an Examination Committee headed by District Court Judge (ret.) Shalom Brenner to investigate the protests and the police's subsequent response. This committee did not have serious investigative powers under the law and the Arab community did not consider it an adequate truth seeking mechanism. Judge Brenner recommended to the Israeli government to terminate the committee he headed and to establish a State Commission of Inquiry pursuant to the 1968 Commissions of Inquiry Law. Haaretz editorial was assertive "Only a state commission", *Haaretz*, 8 November 2000. The newspaper and the politicians did not attempt to create confusion "What is the hidden logic behind the new announcements? If the Examining Committee has been granted all the powers of State Commission of Inquiry, why Beilin (Minister of Justice – MD) and Rubenstein (Attorney General – MD) insist to oppose this kind of Commission?" ¹² Or Commission Report, Vol.1, p.16.

⁴ Or Commission Report, Vol.2, pp.501-509.

⁵ Or Commission Report, Vol.2, p.766.

⁶ Or Commission Report, Vol.2, pp.563-757. In addition, the Or Commission considered that three Arab Public figures, Parliamentarians Abdel Malik Dahamshi and Azmi Bishara and former Mayor of the town Umm al-Fahm Sheikh Raed Salah were responsible for stirring incitement among the Arab population but did not recommend any recommendations in their regard because of the elected status of the first two, and the fact that Raed Salah is no longer the Mayor. See Or Commission Report, Vol.2, pp.643-646. See also Marwan Dalal, **Law and Politics before the Or Commission** (Shefaamr: Adalah-the Legal Center for Arab Minority Rights in Israel, 2003)(Hebrew – the brief filed before the Or Commission in the name of the three Arab public figures); Marwan Dalal, **Law and Politics before the Or Commission of Inquiry** (Shefaamr: Adalah-the Legal Center for Arab Minority Rights in Israel, 2003)(English).

- ⁷ Mahash, **Conclusion regarding Clashes between Security Forces and Israeli Citizens in October 2000** (Jerusalem: Ministry of Justice, 2005).
- ⁸ Attorney General Office, **Decision regarding Mahash's Report** (Jerusalem: Ministry of Justice, 2008).
- ⁹ Or Commission Report, Vol.1, p.124.
- ¹⁰ Zeev Schiff, "The police exercised confronting riots in September", *Haaretz*, 6 October 2000.
- ¹¹ Representative of the Police Northern District at the war game, exhibit no.2438 before the Or Commission, protocol p.120 (transcript of war game Ruah Seara 'Stormy Wind').
- ¹² Exhibit no. 2438 before the Or Commission, p.155 (transcript of war game Ruah Seara 'Stormy Wind'). ²² Exhibit no. 1531 before the Or Commission, p.6.
- ¹³ Exhibit no.1533 before the Or Commission.
- ¹⁴ Exhibit no.2438 before the Or Commission, p.1 (transcript of war game Ruah Seara 'Stormy Wind').
- ¹⁵ Exhibit no.2438 before the Or Commission, p.238 (transcript of war game Ruah Seara 'Stormy Wind').
- ¹⁶ Testimony of Ehud Barak before the Or Commission, 21 August 2002, protocol p.15800.
- ¹⁷ Sharm El-Sheikh Fact-Finding Committee Report ("the Mitchell Report"), 30 April 2001, p.6.
- ¹⁸ Exhibit no.2502 before the Or Commission (military intelligence document dated 27 September 2000); exhibit no.2724 before the Or Commission (police document dated 27 September 2000).
- ¹⁹ See H CJ 2725/93 *Solomon v. Police Commander of Jerusalem District*, 49(5) PD, 366 (1996); H CJ 411/89 *Nemanev Har ha-Bayet et al v. Police Commander of Jerusalem District*, 43(2) PD, 17 (1989).
- ²⁰ U.S. Department of State, Bureau of Democracy, Human Rights, and Labor, Country Reports on Human Rights Practices, Occupied territories, 23 February 2001.
- ²¹ See Amnesty International, "Israel and the Occupied Territories: Civilians' lives must be respected", 2 October 2000; Amnesty International, "Israel/Occupied Territories: Amnesty International expresses concern for civilians' safety", 11 October 2000; Amnesty International, "Israel and the Occupied Territories: Excessive use of lethal force", 18 October 2000; Amnesty International, "Israel/OT/Palestinian Authority: Amnesty International Condemns attacks against civilians", 3 November 2000; Amnesty International, "Israel and the Occupied Territories: Mass Arrests and Police Brutality", 10 November 2000; Amnesty International, "Israel and the Occupied Territories: State Assassinations and other Unlawful Killings", 21 February 2001; Human Rights Watch, "Israel/Palestinian Authority: Restraint Urged – Police and Troops must Protect Civilian Lives", 3 October 2000; Human Rights Watch, "Investigation into Unlawful use of Force in the West Bank, Gaza Strip, and Northern Israel, October 4 through October 11", 17 October 2000; Human Rights Watch, "Center of the Storm: A Case Study of Human Rights Abuses in Hebron District", 11 April 2001; Human Rights Watch, "Palestinian Suicide Attack Condemned", 8 August 2001; United Nations, Economic and Social Council, Commission on Human Rights, Report of the human rights inquiry commission established pursuant to Commission resolution S-5/1 of 19 October 2000, 16 March 2001.
- ²² Suzanne Goldenberg, "Rioting as Sharon Visits Islam Holy Site", *The Guardian*, 29 September 2000.
- ²³ Brian Whitaker, "World blames Sharon", *The Guardian*, 3 October 2000. ³⁴ UNSC resolution 1322 of 7 October 2000.
- ²⁴ Mabat la-Hadashot, 2 October 2000, ("Alik Ron gave the order to use snipers in Umm al-Fahm"); Sharon Gal, David Ratner, *Haaretz*, 2 October 2000 (reports about using live ammunition the day before); Sharon Gal, Ori Nir, and David Ratner, *Haaretz*, 3 October 2000 (reports about use of snipers in Umm al-Fahm area a day earlier). See exhibit no.4099 before the Or Commission.
- ²⁵ See Testimony of Yehuda Vilks before the Or Commission, 25 October 2001, protocol pp.7678 – 7689; Or Commission Report, Vol.2, p.499; and exhibits no.747 and 747A before the Or Commission.
- ²⁶ Or Commission Report, Vol.2, p.433.
- ²⁷ Or Commission Report, Vol.2, p.462.
- ²⁸ A Mahajna et al, "Blunt and penetrating injuries caused by rubber bullets during the Israeli-Arab conflict in October, 2000: a retrospective study." *The Lancet*, 25 May 2002. ⁴⁰ See exhibit no.4092 before the Or Commission.
- ²⁹ Amnesty International, "Israel and the Occupied Territories: Excessive Use of Lethal Force", 18 October 2000, p.12.
- ³⁰ Human Rights Watch, "Investigation into Unlawful use of Force in the West Bank, Gaza Strip, and Northern Israel, October 4 through October 11", 17 October 2000.
- ³¹ Or Commission Report, Vol.2, p.500.
- ³² Or Commission Report, Vol.2, p.722. The Or Commission also found that the police's senior command did not inform the political leadership, Prime Minister Barak and Minister of Internal Security Ben Ami, about the use of snipers in real time, therefore they did not know about it. See Or Commission Report, Vol.2, p.497. The Commission's analysis in this regard is inconsistent.
- ³³ Or Commission Report, Vol.2, pp.480-482.

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- ³⁴ Or Commission Report, Vol.2, pp.473-474.
- ³⁵ Or Commission Report, Vol.2, pp.467-469.
- ³⁶ Or Commission Report, Vol.2, pp.480-481.
- ³⁷ Or Commission Report, Vol.2, p.485.
- ³⁸ Or Commission Report, Vol.2, pp.487-488, 492-493.
- ³⁹ The Or Commission did not explain the command structure of Government – Police and the inherent legal connection between these two central elements of the executive branch.
- ⁴⁰ See Itzhak Zamir, **Administrative Power – Vol.1**, (Jerusalem: Nevo, 1996), pp.334-344.
- ⁴¹ Or Commission Report, Vol.2, pp.497-498.
- ⁴² Or Commission Report, Vol.2, p.603. The page disparity between this finding of the Or Commission and its conclusion that Prime Minister Barak was not informed in real time about the use of snipers and did not know about it (p.603 - p.498=105), could be an explanation for the Commission's peculiar analysis.
- ⁴³ Or Commission Report, p.600.
- ⁴⁴ Or Commission Report, p.614.
- ⁴⁵ Or Commission Report, p.613.
- ⁴⁶ Exhibit no.1600 before the Or Commission.
- ⁴⁷ Exhibit no.2438 before the Or Commission.
- ⁴⁸ The Or Commission Report, Vol.1, p.124, para.197, fn.225.
- ⁴⁹ Exhibit no.4283 before the Or Commission - transcript of radio interview with Prime Minister Ehud Barak, "This Morning Show" 06:00-08:00am, Reshet Bet, 2 October 2000; exhibit no.2204 - meeting of the General Security Service on 2 October 2000 at 7:30am reiterating Prime Minister Barak's aggressive instruction about the use of force against protestors given the night before at his home.
- ⁵⁰ Or Commission Report, vol.2, p.464; Testimony of Alik Ron before the Or Commission, 4 September 2001, protocol pp.6208-6209; testimony of Bentsi Sao before the Or Commission, 12 March 2001, protocol p.342. The Or Commission failed to link this deployment to Barak's instruction to the Police from 1 October 2000.
- ⁵¹ Article 29(a) of the Israeli Criminal Code – 1977 defines the crime's perpetrator as including "perpetrator together with others or through another." Article 29(b) of the same code defines participants in the commission of the offence "Participants in the commission of an offense, who perform acts for its commission, are joint perpetrators, and it is immaterial whether all acts were performed jointly, or some were performed by one person and some by another."
- ⁶⁷ Article 18 of the Israel Penal Code – 1977 defines the act of the offence as including omission. The latter is defined as "abstention from doing anything, which is obligatory under any enactment or contract." Regarding the *mens rea* Article 20(b) proclaims that "For purposes of the intent, the ability to foresee that a certain consequence is an almost certainly possible occurrence is equivalent to the intent to cause that occurrence." Article 4 of Basic Law: Human Dignity and Freedom proclaims the rights to life, physical integrity, and dignity as basic rights.
- ⁵² Or Commission Report, Vol.2, p.580.
- ⁵³ Or Commission Report, Vol.2, p.580.
- ⁵⁴ Exhibit no.4283 - transcript of radio interview with Prime Minister Ehud Barak, "This Morning Show" 06:00-08:00am, Reshet Bet, 2 October 2000. The meeting lasted from 22:00pm to 02:00am. See Or Commission Report, Vol.1, p.209.
- ⁵⁵ The content of the classified exhibit was read to Prime Minister Barak by his attorney during the Or Commission hearing of 20 August 2002, protocol p.15631. Barak denied the exhibit's content.
- ⁵⁶ 72 Testimony of Alik Ron before the Or Commission, 4 September 2001, protocol p.6179; Or Commission Report, Vol.2, p.464.
- ⁵⁷ Testimony of Bentsi Sao before the Or Commission, 12 March 2001, protocol pp.342-343.
- ⁵⁸ Or Commission Report, Vol.1, p.124.
- ⁵⁹ Or Commission Report, Vol.1, p.125.
- ⁶⁰ Representative of the Police Northern District at the war game, exhibit no.2438 before the Or Commission, p.120 (transcript of war game Ruah Seara 'Stormy Wind').
- ⁶¹ Or Commission Report, Vol.1, p.124, fn.225. See also Vol.2, pp.565-566.
- ⁶² Exhibit no.2438 before the Or Commission, pp.25, 166-165.
- ⁶³ Zeev Schiff, "The police exercised confronting riots in September", *Haaretz*, 6 October 2000.
- ⁶⁴ Or Commission Report, Vol.2, pp.603. 610.
- ⁶⁵ Ehud Barak's testimony before the Or Commission, 20 August 2002, protocol p.15543. ⁸² Or Commission Report, Vol.2, pp.497-498. ⁸³ Ehud Barak's testimony before the Or Commission, 20 August 2002, protocol p.15698. ⁸⁴ Sharon Gal et al, *Haaretz*, 2 October 2000, p.A3. ⁸⁵ Sharon Gal et al, *Haaretz*, 3 October 2000, p.A3.
- ⁶⁶ Ori Nir, *Haaretz*, 6 October 2000, p.B3.

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- ⁶⁷ See exhibit no.3981 before the Or Commission.
- ⁶⁸ Or Commission Report, Vol.2, p.495.
- ⁶⁹ Or Commission Report, Vol.2, pp.597-598, 599-600.
- ⁷⁰ Or Commission Report, Vol.2, p.640.
- ⁷¹ 91 See exhibit no.3981 before the Or Commission; Sharon Gal et al, *Haaretz*, 2 October 2000, p.A3; Sharon Gal et al, *Haaretz*, 3 October 2000, p.A3; Ori Nir, *Haaretz*, 6 October 2000, p.B3.
- ⁷² Or Commission Report, Vol.2, p.495.
- ⁷³ See exhibit no.3981 before the Or Commission.
- ⁷⁴ Testimonies of Shlomo Ben Ami before the Or Commission, 19 November 2001, protocol p.8026; 15 August 2002, protocol pp.15356-15357.
- ⁷⁵ Exhibits 747 and 747A before the Or Commission.
- ⁷⁶ Testimony of Shlomo Ben Ami before the Or Commission, 19 November 2001, protocol p.7997.
- ⁷⁷ Or Commission Report, Vol.2, p.500.
- ⁷⁸ Or Commission Report, Vol.2, p.497.
- ⁷⁹ Exhibit no.1237 before the Or Commission (Tsur's documentation of the 8 November 2000 police commanders' assessment meeting).
- ⁸⁰ Testimony of Shlomo Ben Ami before the Or Commission, 20 November 2001, protocol pp.8111-8113.
- ⁸¹ Testimony of Shlomo Ben Ami before the Or Commission, 19 November 2001, protocol pp.7913, 7982. Representative of the Police Northern District at the war game, exhibit no.2438 before the Or Commission, p.120 (transcript of War Game Ruah Seara 'Stormy Wind').
- ⁸² Exhibit no.2438 before the Or Commission, p.252 (transcript of war game Ruah Seara ;Stormy Wind').
- ⁸³ HCJ 8193/04 *National Union of Arab Parents Committees before the Israeli Education Ministry v. The Ministry of Education*, 29 June 2005 (GSS intervention in the appointment of principals and teachers in the Arab schools); Ian Lustick, **Arabs in the Jewish State – Israel's Control of a National Minority** (Texas: University of Texas Press, 1980); Nadim Rouhana, **Palestinian Citizens in an Ethnic Jewish State – Identities in Conflict** (New Haven: Yale University Press, 1997).
- ⁸⁴ HCJ 5100/94 *Public Committee Against Torture v. The Government of Israel*, 53(4) PD 817. Chief Justice Barak's judgment prohibited certain GSS investigative methods against Palestinian detainees. The ruling also granted the GSS a broad exception to apply the prohibited torture methods. Further, considering the nature of Israel's regime, which subjects the Supreme Court to 'higher instructions' stemming from the GSS, Barak's judgment is null.
- ⁸⁵ HCJ 6163/92 *Eisenberg v. Minister of Construction and Housing*, 37(2) PD, 229 (the Izzat Nafso Affair and the GSS performance before the Landau Commission).
- ⁸⁶ See Gilad Sharon, **Sharon – The Life of a Leader** (Tel Aviv: Matar, 2011), 325 (Rajoub's services to the IDF in terms of inciting to violence, despite his security role); Raviv Drucker & Ofer Shelah, **Boomerang – The Leadership's Failure in the Second Intifada** (Jerusalem: Keter, 2004), pp. 54-55 (Israel, Rajoub, Egypt connection), 406 (Rajoub and Tirawi are satisfied from Marwan Barghouti's imprisonment).
- ⁸⁷ 110 The content of the classified exhibit had been read to Prime Minister Barak by his attorney during the Or Commission hearing of 20 August 2002, protocol p.15631. Barak denied the exhibit's content. ¹¹¹ Or Commission Report, Vol.1, pp.206-207.
- ⁸⁸ Or Commission Report, Vol.1, p.216.
- ⁸⁹ Or Commission Report, Vol.1, p.255. ¹¹⁴ Or Commission Report, Vol.1, p.257.
- ⁹⁰ Or Commission Report, Vol.2, p.674.
- ⁹¹ Or Commission Report, Vol.2, pp.686-688. ¹¹⁷ Or Commission Report, Vol.2, p.688.
- ⁹² Testimony of Yehuda Vilks before the Or Commission, 24 October 2001, protocol p.7417.
- ⁹³ Representative of the Police Northern District at the war game, exhibit no.2438, p.120 (transcript of war game Ruah Seara 'Stormy Wind'). On 2 October 2000 this exact scenario took place, except for shooting at the police.
- ⁹⁴ Exhibit no.2438 before the Or Commission, p.238.
- ⁹⁵ Testimony of Yehuda Vilks before the Or Commission, 24 October 2001, protocol p.7508.
- ⁹⁶ 122 Exhibit no.3970 before the Or Commission. Testimony of Yehuda Vilks before the Or Commission, 24 October 2001, protocol p.7517.
- ⁹⁷ Testimony of Yehuda Vilks before the Or Commission, 25 October 2001, protocol pp.7677-7678.
- ⁹⁸ Or Commission Report, Vol.2, pp.494-497.
- ⁹⁹ Exhibit no.745 before the Or Commission (statement of Ezra Aharon to the Commission dated 25 June 2001).
- ¹⁰⁰ Or Commission Report, Vol.2, pp.497-499.
- ¹⁰¹ Or Commission Report, Vol.2, p.497.
- ¹⁰² Or Commission Report, Vol.2, p.499.

¹⁰³ Exhibit no.747A before the Or Commission (the conclusion of the 8 November 2000 police commanders assessment meeting). See also exhibit no.747 before the Or Commission (the same conclusion with minor amendments made by Vilks: Special Forces instead of snipers); testimony of Yehuda Vilks before the Or Commission, 25 October 2001, protocol p.7685 (regarding exhibit 747 “to write snipers is also correct”).

¹⁰⁴ Or Commission Report, Vol.2, p.500.

¹⁰⁵ 131 Or Commission Report, Vol.2, pp.465-466. Testimony of Alik Ron before the Or Commission, 4 September 2001, protocol p.6219.

¹⁰⁶ Or Commission Report, Vol.2, p.473.

¹⁰⁷ Or Commission Report, Vol.2, p.480.

¹⁰⁸ Or Commission Report, Vol.2, p.474.

¹⁰⁹ Or Commission Report, Vol.2, pp.477-478. ¹³⁶ Or Commission Report, Vol.2, p.731.

¹¹⁰ Testimony of Alik Ron before the Or Commission, 4 September 2001, protocol p.6210. Sniper A’ testified that the distances between the snipers and the targeted protesters were 140m-170m. See sniper A’ testimony before the Or Commission, 22 February 2001, protocol p.11.

¹¹¹ 138 Testimony of police northern district commander Alik Ron before the Or Commission, 4 September 2001, protocol pp.6226, 6233.

¹¹² 139 Representative of the Police Northern District at the war game, exhibit no.2438, p.120 (transcript of War Game Ruah Seara ‘Stormy Wind’).

¹¹³ Exhibit no. 2438 before the Or Commission, p.155 (transcript of war game Ruah Seara ‘Stormy Wind’). ¹⁴¹ Testimony of Alik Ron before the Or Commission, 4 September 2001, protocol p.6007.

¹¹⁴ Testimony of Alik Ron before the Or Commission, 4 September 2001, protocol p.6179. Testimony of sniper A’ before the Or Commission, 22 February 2001, protocol p.2.

¹¹⁵ Or Commission Report, Vol.1, p.209.

¹¹⁶ Testimony Alik Ron before the Or Commission, 3 September 2001, protocol pp.6087-6088. See also pp.6092-6094.

¹¹⁷ Or Commission Report, Vol.2, pp.499-500; exhibits no.747 and 747A before the Or Commission.

¹¹⁸ Or Commission Report, Vol.2, p.500.

¹¹⁹ Mahash, **Conclusions regarding the Clashes between Security Forces and Israeli Citizens in October 2000** (Jerusalem: Ministry of Justice, 2005). For a critical analysis of Mahash’s investigation regarding all the October 2000 killings by the police see Marwan Dalal, **The Accused** (Shefaamr: Adalah the Legal Center for Arab Minority Rights in Israel, 2006).

¹²⁰ The Attorney General, **Decision regarding Mahash’s Report** (Jerusalem: Ministry of Justice, 2008).

¹²¹ See Theodor Or, **One Year to the Report of the State Commission of Inquiry regarding the October 2000 Events**, (Tel Aviv: Tel Aviv University Press, 2004); Yair Ettinger, “Or critiques Mahash: not one investigation has been completed in relation to October 2000”, *Haaretz*, 2 September 2004.

¹²² “The Institutional Handling of Complaints about Police Brutality and Inappropriate Conduct of Police Officers”, (Jerusalem: State Comptroller Report 56A, 2005), p.376.

¹²³ Or Commission Report, Vol.1, pp.14-16.

¹²⁴ Marwan Dalal, Letter to Attorney General Elyakim Rubinstein, 18 October 2000.

¹²⁵ Marwan Dalal, Letter to Attorney General Elyakim Rubinstein and Head of Mahash Eran Shendar, 5 November 2000.

¹²⁶ Mahash, **Conclusions regarding the Clashes between Security Forces and Israeli Citizens in October 2000** (Jerusalem: Ministry of Justice, 2005), pp.62-72.

¹²⁷ Mahash, **Conclusions regarding the Clashes between Security Forces and Israeli Citizens in October 2000** (Jerusalem: Ministry of Justice, 2005), p.72.

¹²⁸ Alik Ron statement to Mahash, 10 April 2005.

¹²⁹ Testimony of Alik Ron before the Or Commission, 4 September 2001, protocol pp.6230-6231.

¹³⁰ Testimony of Alik Ron before the Or Commission, 4 September 2001, protocol p.6219. ¹⁵⁹ Testimony of Alik Ron before the Or Commission, 4 September 2001, protocol p.6226. ¹⁶⁰ Mahash Tape of Alik Ron’s statement, 10 April 2005.

¹³¹ Testimony of Alik Ron before the Or Commission, 4 September 2001, protocol p.6219-6220; Or Commission Report, Vol.2, pp.494, 498.

¹³² See Or Commission Report, Vol.2, pp.499-500.

¹³³ Attorney General Menachem Mazuz, Introductory Letter to the Office’s Report, 27 January 2008.

¹³⁴ Attorney General Office, **Decision regarding Mahash’s Report** (Jerusalem: Ministry of Justice, 2008), pp.345-379.

¹³⁵ Richard Posner, **How Judges Think** (Cambridge: Harvard University Press, 2010), p.367.