



European
University
Institute

Robert Schuman Centre for Advanced Studies

FAMILY UNIFICATION OF RESIDENTS IN THE OCCUPIED PALESTINIAN TERRITORY

Asem Khalil

CARIM Analytic and Syntetic Notes 2009/19

Legal Module

**Cooperation project on the social integration of
immigrants, migration, and the movement of
persons**

Co-financed by the European University Institute
and the European Union (AENEAS Programme)



CARIM
Euro-Mediterranean Consortium
for Applied Research on International Migration

Analytic and Synthetic Notes – Legal Module
CARIM-AS 2009/19

Asem Khalil
Faculty of Law and Public Administration, Birzeit University

Family Unification of Residents in the Occupied Palestinian Territory

© 2009, European University Institute
Robert Schuman Centre for Advanced Studies

This text may be downloaded only for personal research purposes. Any additional reproduction for other purposes, whether in hard copies or electronically, requires the consent of the Robert Schuman Centre for Advanced Studies.

Requests should be addressed to forinfo@eui.eu

If cited or quoted, reference should be made as follows:

[Full name of the author(s)], [title], CARIM AS [series number], Robert Schuman Centre for Advanced Studies, San Domenico di Fiesole (FI): European University Institute, [year of publication].

THE VIEWS EXPRESSED IN THIS PUBLICATION CANNOT IN ANY CIRCUMSTANCES BE REGARDED AS THE
OFFICIAL POSITION OF THE EUROPEAN UNION

European University Institute
Badia Fiesolana
I – 50014 San Domenico di Fiesole (FI)
Italy

<http://www.eui.eu/RSCAS/Publications/>
<http://www.carim.org/Publications/>
<http://cadmus.eui.eu>

CARIM

The Euro-Mediterranean Consortium for Applied Research on International Migration (CARIM) was created in February 2004 and has been financed by the European Commission. Until January 2007, it referred to part C - “*cooperation related to the social integration of immigrants issue, migration and free circulation of persons*” of the MEDA programme, i.e. the main financial instrument of the European Union to establish the Euro-Mediterranean Partnership. Since February 2007, CARIM has been funded as part of the AENEAS programme for technical and financial assistance to third countries in the areas of migration and asylum. The latter programme establishes a link between the external objectives of the European Union’s migration policy and its development policy. AENEAS aims at providing third countries with the assistance necessary to achieve, at different levels, a better management of migrant flows.

Within this framework, CARIM aims, in an academic perspective, to observe, analyse, and predict migration in the North African and the Eastern Mediterranean Region (hereafter Region).

CARIM is composed of a coordinating unit established at the Robert Schuman Centre for Advanced Studies (RSCAS) of the European University Institute (EUI, Florence), and a network of scientific correspondents based in the 12 countries observed by CARIM: Algeria, Egypt, Israel, Jordan, Lebanon, Morocco, Palestine, Syria, Tunisia, Turkey and, since February 2007, also Libya and Mauritania. All are studied as origin, transit and immigration countries. External experts from the European Union and countries of the Region also contribute to CARIM activities.

The CARIM carries out the following activities:

- Mediterranean migration database;
- Research and publications;
- Meetings of academics;
- Meetings between experts and policy makers;
- Early warning system.

The activities of CARIM cover three aspects of international migration in the Region: economic and demographic, legal, and socio-political.

Results of the above activities are made available for public consultation through the website of the project: www.carim.org

For more information:

Euro-Mediterranean Consortium for Applied Research on International Migration
Robert Schuman Centre for Advanced Studies (EUI)

Convento

Via delle Fontanelle 19

50014 San Domenico di Fiesole

Italy

Tel: +39 055 46 85 878

Fax: + 39 055 46 85 762

Email: carim@eui.eu

Robert Schuman Centre for Advanced Studies

<http://www.eui.eu/RSCAS/>

Abstract

Family unification refers to the administrative procedure through which foreign nationals are granted, on the request of a relative, a legal status in the territory of the state where the applicant is legally staying. In the case of the occupied Palestinian territory (oPt), the regulation of family unification is anomalous, with regards to the concerned state and regulations, the applicant and the concerned relatives, and the consequences of such a procedure.

Israel, indeed, has enjoyed exclusive power over the Palestinian population registry and the issuing of IDs for Palestinians since 1967. It unilaterally decides on the granting of entry visas and visiting permits for non-ID holding Palestinians in the oPt and for foreign visitors. The Oslo Agreements did not end this regime.

Israeli policies to family unification for the Palestinians of the oPt constitute a violation of the right to marry and to found a family, as guaranteed in Israeli domestic law as much as in Human Rights and Humanitarian Law Conventions that Israel has ratified.

Résumé

Le regroupement familial est une procédure administrative aux termes de laquelle les étrangers se voient reconnaître, à la demande d'un de leurs parents, un titre de séjour sur le territoire de l'Etat dans lequel ce dernier réside légalement. A plusieurs égards, la procédure de regroupement familial en vigueur dans les Territoires palestiniens occupés est problématique, que ce soit au regard des normes en principe applicables, au regard des droits du regroupant ou de ses alliés ou encore eu égard à ses conséquences pratiques.

En effet, depuis 1967, Israël, exerce un pouvoir exclusif sur le registre de la population palestinienne ainsi que pour la délivrance de Cartes d'Identités (CI) aux Palestiniens. Les autorités israéliennes décident de manière unilatérale de l'attribution ou non de visas et permis de séjour à des fins de visite, aux Palestiniens qui ne sont pas porteurs des CI dans les Territoires occupés ainsi qu'aux étrangers. Les accords d'Oslo n'ayant pas mis fin à ce régime.

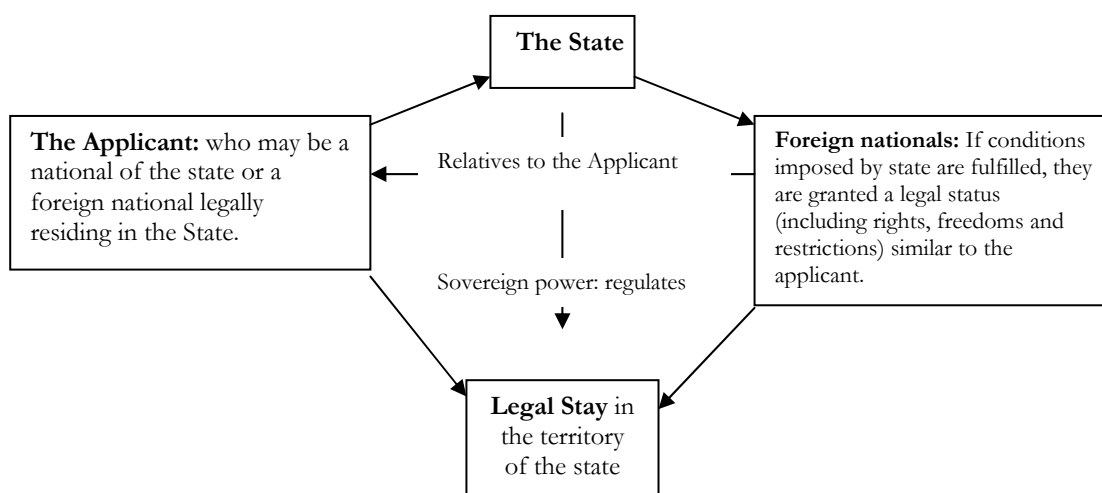
Les politiques menées par les autorités israéliennes dans le domaine du regroupement familial à l'égard des résidents des Territoires occupés violent le droit fondamental de se marier et de vivre en famille, tel qu'il est, par ailleurs, garanti par le droit israélien et par diverses conventions internationales relatives à la protection des droits fondamentaux et du droit international humanitaire auxquelles Israël est partie.

1. Delimitation of the Topic and Research

1.1. What is Family Unification?

Family unification refers in this paper to the administrative procedure through which foreign nationals are granted, on the request of a relative, a legal status in the territory of the state where the applicant is legally staying. Accordingly, the family unification process as a legal institution requires at least three main concerned subjects: a state, a state national/citizen¹ or foreign national/s legally residing in that state (*hereafter* the applicant), and the relative/s (the spouse, children, parents, brothers and sisters) that do not have a legal right to stay in that country and/or is/are not national/s of that state (*hereafter* applied for).

The request for family unification is presented by the applicant and regulated by state law. The result, if successful, is the granting of legal status for the applied for that is similar to that of the applicant. This means that ‘family unification’ is a way to access nationality as much as to obtain a legal stay in the territory of the concerned state. If the result of family unification procedure depends on the satisfaction of conditions imposed by the state’s rules and regulations, it is the status of the applicant and his or her relationship with the applied for which create an obligation on the state to grant a legal status, not the discretion of the state. The objective is to have the family unified, through the grant of legal status which would enable such unity.



Family unification, then, as a legal institution depends largely on the initiative of the applicant; however, the right that this legal institution refers to goes beyond the applicant, i.e. the right to have the family united and integrated. This right is, at the same time, the right of the applicant and the right of the relative. This means that family unification does not reflect only a legal faculty for citizens or residents which can be regulated exclusively by state law, but is related to individuals’ rights regardless of their nationalities and legal status. In other words, state regulations with regards to family unification shall be within the framework of that ‘right’, often guaranteed through a constitutional text, which establishes the right to form a family. Some states are also party to international HR conventions, which oblige respect for family unity and integrity.

¹ In this chapter ‘national’ or ‘citizen’ is used interchangeably, unless specified differently. To distinguish between both, cf. KHALIL 2007.

1.2. Anomalies with Regards to Palestinian Family Unification

In the case of the occupied Palestinian territory (*hereafter* oPt), the regulation of family unification is anomalous, with regards to the concerned state and the regulations it applies, with regards to the applicant and the concerned relatives, and with regards to the consequences of such a measure.

The state:

There is no Palestinian state. Israel maintains control of population registry and borders. Since the establishment of the PA, requests may be made through the PA, but Israel has last word in issues of family unification. Several Israeli Military Orders (*hereafter* IMO) regulated this institution for the WB and the GS and were implemented through civil administrations.² The centralization of family unification requests through the PA made it possible for Israel to dissolve civil administration for the GS (after the withdrawal in 2005) without handing over the population registry of GS Palestinians to the PA. Israel, indeed, maintains the power to grant ID numbers, through family unification, to GS Palestinians and the requests are to be made through PA offices.

The applicant:

The applicant is an Israeli-issued-ID holder. He or she is not a citizen of the oPt or the PA because neither of these can be considered a state, nor is the applicant a citizen of the state of Israel. Under international law the applicant is stateless. However, the ID card is considered a permanent legal stay in the oPt and stands as an entitlement to enter and exit oPt borders without a visa.³ Israel distinguishes between WBGS and East Jerusalem Palestinians. The second group are treated as foreign nationals legally residing in Israel. Accordingly, the law applicable to them is, theoretically, the same as the one applicable to all foreign nationals legally residing in Israel. Besides, there is a distinction between WB Palestinians and GS Palestinians.

ID cards do not entitle their holders to move and reside freely between the two regions of the oPt (the WB and the GS). A special permit is needed. An Israeli citizen residing in the settlements constructed (illegally under international law) in the oPt are not covered by Israeli military orders regulating family unification. An Israeli citizen or a foreign national legally residing in Israel must refer to Israeli law with regards to family unification.

The relative of the applicant:

This subject does not hold an Israeli-issued ID card. In fact, a ‘foreigner’ in Israeli military orders refers to any person who has not (or has no longer) an ID number issued by the Israeli Civil Administrations. A foreigner, accordingly, is simply a non-ID holder, regardless of their nationality and regardless of the fact that he or she may be stateless, holding no other legal stay document for another state. Besides, the granting of an Israeli-issued ID card cannot co-exist with an ID card issued by the Israeli authorities (for example, for the GS, or for the Palestinians of East Jerusalem and Golan).

² The Civil Administration was established following a decision reached in October 1981 to reorganize the military administration and separate its security and civil activities. See Order Regarding the Establishment of the Civil Administration (Judea and Samaria) (No. 947), 5741 – 1981 (B’TSELEM 2006a, 7).

³ This means that holders of WBGS ID cards are treated as if they are ‘citizens’ on external borders of the oPt; however, their status under the occupation has nothing to do with citizenship in the sense of entitlement to civil, political, social and economical rights. Rather it refers to legal residence that entails the conditions necessary to keep their status and that is subject to Israeli restrictions. Those restrictions reflect Israeli policies in the oPt. This means that those Palestinian nationals, currently outside historical Palestine, without a WBGS ID card, are denied entry to the oPt without Israeli authorization. An authorization which is, in fact, often denied. In other words, WBGS residents are treated by the Israeli occupation as if they are, what might be called, ‘local foreigners.’ For more, cf. KHALIL, 2008, 5.

This means that a Palestinian having an ID number issued for the Palestinians of Jerusalem cannot maintain the ID card if that Palestinian acquires an ID card for WB Palestinians. In other words, it is not possible to have two different ID cards issued by the Israeli authorities. The grant, for example, of an Israeli-issued ID card issued for East Jerusalemites means the withdrawal of other ID cards (for Israelis, for WB Palestinians or for GS Palestinians). In this sense, one can hold an ID card for WB Palestinians and be at the same time a US citizen, but one cannot be an Israeli citizen and continue to hold an Israeli issued ID card for WB Palestinians, or for East Jerusalemites Palestinians. As we shall see, when considering family unification in the case of oPt Palestinians, there is a need to go beyond the dichotomy between a citizen and a foreign national to understand the impact of different legal statuses (in the capacity of applicant and/or relatives of the applicant): Israeli citizens, foreign nationals legally residing in Israel, holders of Israeli-issued ID card for WB Palestinians, for GS Palestinians, or for East Jerusalem Palestinians.

The Consequence:

The granting of an ID number or a (long or short) permit of stay is granted according to the discretion of the Israeli authorities and is based mainly on security and other Israeli concerns. Besides, the ID number or the stay permit does not entitle the holder to free movement and stay in all the oPt. In fact, restrictions on movement between the WBGS and East Jerusalem, and between the WB and the GS apply also to those who obtain ID cards following family unification procedures.

1.3. What will be covered in this Paper?

Family unification procedures are of relevance to oPt Palestinians for two reasons:

- They target Israeli-issued-ID holders for oPt Palestinians willing to obtain a legal residency status for their spouse, children or relatives who do not hold an ID card. In this sense, family unification is regulated by Israeli Military Orders and subject to IHL and IHRL.
- They target Israeli-citizens who happen to marry an oPt Palestinian and need to obtain family unification for the spouse, in order to obtain a legal residency status inside the current state of Israel. Such a legal institution is regulated by Israeli laws and governed by IHRL only. In the second case, a special analysis of the Nationality and Entry into Israel Law (Temporary Order), 5763 – 2003 needs to be carried out .

This paper shall tackle exclusively the family unification measures and regulations applicable in the oPt, i.e. when it targets resident Palestinians wishing to obtain a permit of legal stay for their spouse and family members living abroad, including minors (less than 16 years old) in the oPt. Accordingly, for the purposes of this paper, family procedure means the application of a Palestinian resident of the oPt seeking permission from Israel to bring a non-resident spouse/child into the oPt, so as to cohabit permanently with applicant (Abu-Mukh 2007, 2). However, reference will be made to the above mentioned Nationality and Entry into Israel Law in as much as it applies to the Palestinians of East Jerusalem, formally part of the oPt, but annexed by Israel.

This report also tackles what might be called ‘internal family unification’ or what might even sarcastically be termed ‘family self-unification,’ i.e. when an ID holder from West Bank, for example, is willing to marry an ID holder from the GS and cannot get his/her spouse registered in the WB or GS.

1.4. Why Family Unification is Relevant

There are two inter-connected reasons why family unification matters in the case of oPt Palestinians:

First, Israel has applied restrictions on family unification since the second *Intifada*. For this reason, the number of concerned families is high. A survey carried out among Palestinian residents of the oPt in October 2005 “shows that, 17.2 percent of the respondents have at least one first-degree relative

(father, mother, brother, sister, wife, or child) who is not registered in the population registry and therefore is prevented from obtaining an identity card. Among the participants in the survey, 78.4 percent stated that the family unification request filed on behalf of these persons had not yet been processed. These figures show that more than 72,000 nuclear families in which at least one family member had a family unification request filed on his or her behalf are directly affected by Israel's freeze policy.” (B’Tselem 2006a, 20-21). Amnesty International (2007, 1) estimated that by 2006 at least 120,000 families were affected by Israeli restrictions on family life. Moreover, since 2006 the number of families affected by such restrictions, has increased.

Second, some Palestinian nationals are artificially converted into foreigners by the Israeli authorities who do not grant them an ID card for one of several reasons. Family unification is used as a way of granting these Palestinians the ‘right’ to remain legally where they are already or to enter and reside legally in the oPt where they were living earlier. For this reason, it is impossible to understand the weight and relevance of family unification in the case of oPt Palestinians without understanding the policies of the Israeli occupation of the WBGS and of East Jerusalem as a whole, which might be summed up as follows: as much land as possible, with as few Palestinians as possible. Israel has used the law to achieve its colonial policies. Presenting the legal instruments related to family unification, in this context, goes beyond the simple task of describing specific legal institutions or legislative texts. It becomes, in fact, a consideration of the legal system as a whole.

2. Israeli Policies towards oPt Palestinians

Israeli policies towards the ‘residents’ of the ‘area’ were clearly directed to minimize the number of Palestinians and to maximize annexed Palestinian lands; in other words, to the end of having more annexed lands and fewer resident Palestinians on those lands. These measures were achieved through law; Israel made good use of legal techniques; it issued hundreds of Israeli Military Orders (IMO) for its colonial objectives in the territories that it occupied in 1967. In fact, Israel started a systematic change of the pre-existing legal system(s) in force in the WBGS, while keeping the legal separation between the two entities that had followed on after 1948 when the WB fell under Jordanian rule and the GS under Egyptian rule. The Israeli Military Forces had maintained the separation between the two entities. Indeed, there were two different Israeli Military Governors (IMG) ruling WB and GS. In later stage, two Civil Administrations were set in place to rule the WB and the GS. Each issued hundreds of military orders, often with similar content in both areas.⁴

2.1. Regulating Residency in the ‘Area’

The first Israeli census for the population of the WBGS was carried out in September 1967. Only those who were counted were considered ‘residents’ of the ‘area’. Those who happened to be outside or who were inside but, for any reason, were not included in the census, were simply denied resident status. The Palestinians who were denied resident status can be divided into four categories (Shaml 1996, 12-13):

- Palestinians displaced, because of the war, between June 1967 and September 1967, when the first Israeli census was made in the area.
- Palestinians, whose habitual residence was in the WBGS, but who happened to be outside WBGS when the war started in June 1967 and who were not allowed to return.

⁴ For this reason, analysis will be limited to IMOs issued for the WB. Unless specified differently, all references to IMOs in this paper relate to the WB.

- Palestinians who had been denied re-entrance to oPt, despite having an ID card issued by Israeli authorities; as their (exit) permit or travel document (*Laissez Passer*) had expired.⁵
- Palestinians who were deported by Israeli for political and security reasons.

All these Palestinians are deemed foreigners by the IMG who, to be readmitted to the oPt, are in need of family unification: an act that would grant them the status of resident (and, thus, an ID number). Others who were present in the 'area', but who did not register, for one reason or another, or did not register their children in time have only family unification to set right this irregularity.

The first reference to 'resident' in an IMO was in Order 65, issued 18th August 1967 (Shaml 1996, 89).⁶ Following the 1967 census, the term 'resident' was used in many IMOs⁷ to indicate those who were 'legally' present in the 'area' and who had permanent residence there. While 'legally' referred to those who were covered by the census. Accordingly, many of those present in the 'area', who had not been included in the census, became illegal and needed, in order to stay, as well as to work, a permit issued by Israeli officials. If they did not comply then individuals were subjected to various sanctions, which included fines, imprisonment and deportation. In other words, those who remained in the 'area' could stay there 'legally' only if conditions imposed by the occupying forces were respected.

2.2. Population registry

The body in charge of administering the population registry in the oPt and issuing visitor permits is the Civil Administration (Abu-Mukh 2007, 2). In the command structure, the Civil Administration is subject to the directives of the OC (Office in Charge of) Central Command, and in organizational and professional matters, to the coordinator of government operations in the oPt. The Civil Administration's staff officer for interior affairs is responsible, among other things, for registering persons in the population registry, processing requests for family unification, and issuing visitor permits (B'Tselem 2006a, 7).

Residents' children need to be registered in the population registry: only those registered have the ID card which makes the holder a resident of the territories. The regulation of this issue varied over time.⁸ The registration of residents' children was subject to strict and continuously changing amendments by the IMG.⁹ The IMO No. 234 concerning ID Cards was issued as early as 17 March 1968, and was substituted less than a year later by IMO No. 297, issued on 8 January 1969. IMO No.

⁵ The occupation used another technique to reduce residents in the 'area': exit permits. In fact, residents of the 'area' were subject to strict regulations with regards to any stays abroad. In case of departure through Israeli Airports, a resident of the 'area' had to obtain a *Laissez Passer* issued for that purpose. If the travel document was not renewed within a year, his or her ID card and thus their resident status was automatically revoked. Those who traveled using a permit (across the Bridge) and remained outside the 'area' for more than six years also had their residency status revoked (Shaml 1996, 94). Having their permit renewed by family members each year after the third year of departure. If there was no renewal after the third year then the ID card would be revoked. Following the Oslo Agreements and the Israeli recognition of the PA TD, stays abroad were no longer limited in this way.

⁶ According to that order, residency did not entitle the resident to rights, but rather to privileges granted by the occupiers and was mentioned only in negative terms when imposing on non-residents the obligation to obtain a permit from the authorized Israeli official in order to be able to work in, open, or manage any commercial activity in the oPt.

⁷ Such as in IMO No. 234 concerning ID Cards (issued 17 March 1968), substituted by IMO No. 297 concerning Identity Cards and Population Registration (issued 8 January 1969).

⁸ For a comparative view of Israeli policies towards Palestinians of the oPt in terms of family unification, registration of residents' children, cf. (B'TSELEM 2006a, 15-16).

⁹ For earlier version of this section and others, cf. KHALIL.

297/1969 was amended 23 times up until 1995,¹⁰ the most important amendments are Order No. 1206/1987 and Order No. 1421/1995. The following table shows the development that occurred in the regulation of this issue.

	Content	Remarks
IMO 234/1968	<ul style="list-style-type: none"> - It allowed males, over 16 years old, legally residing in the 'territories' (covered by the 1967 census), to request an ID card before 1 August 1968. 	<ul style="list-style-type: none"> - The ID card was not a right but was in the gift of the IMG: it could be withdrawn if any of the conditions (imposed by the IMG) were not respected. - It was not obligatory to request an ID card nor, indeed, was it possible for all: it was available only for males over 16 years of age.
IMO No. 297/1969:	<ul style="list-style-type: none"> - All males over 16 years old need to request an ID card, that they should have with them at all times, and that they should show when a soldier or an authorized person asks. The card could be requested by a female of sixteen years or older but was not mandatory. - The order also demanded that any birth be reported to the authority within 10 days or within 30 days if the birth was outside the 'area'. 	<ul style="list-style-type: none"> - The ID card was mandatory for males over 16 years old, but not for females. - The ID card was to include, <i>inter alia</i>, religion, nationality, spouse name and children's names, date of birth, gender, and address.¹¹ - The period to report birth was very short. - The order imposed penalties for those who transgressed any of the provisions: namely, a fine of 1000 L. or one year in prison.
IMO No.1206/1987	<ul style="list-style-type: none"> - This order amended Article 11a Para.15 of IMO No. 297/1969, requiring that ID cards, besides the name, date of birth and sex of children, should include an ID number. - As for the registration of newly born children, the order extended the period for the registration of children for resident parents. - The order was revolutionary in that it linked the registration of children to their mothers and not to their fathers 	<ul style="list-style-type: none"> - The ID number is given to children at birth and not, as before, when an ID card was requested at 16.¹² - The period for registering children born in the 'area' was increased to 16 years (instead of 10 days) if born in the 'area', and five years (instead of 30 days) if born outside the 'area'. - If one of the two parents was not resident, only the children of resident woman could be registered and they had to be registered within five years of the date of birth.¹³

¹⁰ The Institute of Law - University of Birzeit in Al-Muqtafi has collected most available legislation, including IMOs, in the Al-Muqtafi database; according to that source, the last amendment was IMG Order No. 1421 concerning Identity Cards and Population Registration (Amendment No. 23), issued on 17 January 1995.

¹¹ IMO No.996/1982 added two elements to be included on the ID card: the date and place of entry; and the date that the holder became a resident.

¹² According to some researchers this obligation was imposed by IMO No.911/1981 (SHAML 2005, 95); however, I could not find a copy of the order and, accordingly, was unable to ascertain the validity of this information.

¹³ This new provision was explained by some observers (SHAML 1996, 99) as a way of reducing the Palestinians in the 'area': it was more common to have resident males married to non-resident women than *vice versa*. In many families, where the mother was not a resident, there were some children who were registered and others who were not, depending on the date of birth (if before or after the entry into force of IMO No. 1206 in August 1987). Cf. (B'TSELEM 2006a, 13-15).

IMO No.1421/1995:	<ul style="list-style-type: none"> - This order lengthened the registration period for children of residents to 18 years of age, regardless of the place of birth. - It enabled, as before August 1987, for the registration of a child whose parent was resident. - It added that this was only possible if the authority was convinced that permanent residence was in the 'area'. 	<ul style="list-style-type: none"> - The relevant age for registration was raised from sixteen to eighteen but, as confirmed by (B'Tselem 2006a, 13-15), this provision was not implemented, and requests to register minors aged 16-18 were usually denied. - The Interim Agreement adopted some 10 months later set the date for registering newly born children of residents at 16 years old. - This meant that the Israeli authority had discretion to decide, on a case by case basis. It should also be noted that the children, whose permanent residence was not in the 'area', might not be registered.
------------------------------------	---	---

Accordingly, children who were not registered in time through negligence or ignorance of IMO provisions lost their right to an ID card and thus their resident status. The same applies to children of non-resident women (from 1987-1995). These persons, although present in the 'area', become, through the IMO, illegally present, subject to sanctions unless they obtained a permit or authorization, for example, for family unification, a long and complicated procedure.

2.3. Borders Control and Visiting Permit

The family unification procedure is closely tied to another bureaucratic procedure: obtaining a visitor's permit. Only those who are physically present in the oPt may be registered in the population registry and obtain an identity card (ABU-MUKH 2007, 3). If family unification is approved, a visitor's permit shall be issued by the Israeli authorities as a pre-requisite. (B'TSELEM 2006a, 4).

In fact, crossing points in and out of the oPt, for persons, as much as for vehicles and goods, are still under complete Israeli control. This means that many Palestinians and foreign nationals simply may not be admitted to the oPt or allowed to exit from it. Israeli border regulations vary constantly and the documents needed for traveling change so that the public is not well informed about the regulation and often only learns what is needed when actually crossing the border.

Israel, on many occasions, has frozen the issuance of visit permits, thus indirectly forbidding registration in the population registry.¹⁴ Besides, family unification is a long procedure; in the meantime, the non-ID holder obtains a short visit permit. In the case that they do not have their short visit permit renewed, their status as residents through family unification may be denied (B'TSELEM 2006a, 4).

According to a recent report published by Amnesty International (2007, 3), "Until 2006, foreign spouses from countries such as the USA and most European states were usually able to be with their spouses in the OPT by leaving and re-entering the country on a visitor's visa. People from these countries, unlike those from Eastern Europe, did not require advance visas to enter Israel and the OPT. However, after Hamas won a majority of seats in the Palestinian elections in 2006, the Israeli authorities extended the restrictions on entry to the OPT to these foreign spouses. Relatives of OPT

¹⁴ At a meeting held on 20 December 2005, the coordinator of government operations in the Territories, Major-General Yusef Mishlav, informed HaMoked that "the freeze on issuing visitor's permits... *had been removed*, and a number of categories for granting visitor's permits were set, including persons invited by Abu Mazen, *humanitarian cases, entry of foreign spouses, and investors.*" This was not the reality, however. Apparently, the "compromise" does not cover more than a few hundred visitor's permits, among them permits intended to enable the registration of children who were born abroad where one of their parents is a resident of the Occupied Territories, and, in the case mentioned by Major-General Mishlav, of members of an orchestra that wanted to perform in the WB. (B'TSELEM 2006a, 24).

residents were also denied entry. It is not only families who are affected by this policy. The extended restrictions often prevent re-entry of foreign nationals who are working in education or economic development. Such people are helping to improve conditions in the OPT, where poverty is widespread and the Palestinian inhabitants have been exposed to a growing humanitarian crisis. Since January 2007, as a result of protests against the policy, the Israeli Civil Administration has allowed around 200 short extensions of visas to those who were previously refused. However, most of those who have been denied entry continue to be denied entry.”

2.4. What Is New Since Oslo?

As we have already suggested Israel has enjoyed exclusive power over the population registry and the issuing of IDs for Palestinians since it occupied the oPt in 1967. It unilaterally administers entry visas and work permits for the tens of thousands of non-ID holding Palestinians in the oPt and for foreign visitors (Loewenstein 2006). The Oslo agreements did not end this regime. The only change on the ground was the redeployment of Israeli forces outside populated areas (with the right to return whenever needed) and the establishment of the PA. It can thus be asserted that the PA co-exists with the IMG and its Civil Administration.

Until the signing of the Interim Agreement between Israel and the PLO, in September 1995, Israel administered the population registry on its own. Following the Agreement, with responsibility for accepting requests and paying the relevant fees having been transferred from the Civil Administration to the Palestinian Authority, contact between Palestinian residents and the Civil Administration decreased. The Palestinian District Coordination Office (*hereafter* DCO) was established, and its tasks included transferring the registration requests to the corresponding Israeli DCOs. After receiving approval from the Israeli DCOs, the Palestinian DCOs issued approvals that the Palestinian residents took to obtain identity cards or visitor's permits to the Palestinian Interior Ministry (*B'Tselem* 2006a, 7-8). Despite these administrative tasks being transferred to the PA, Israel kept absolute control of borders and the movement of Palestinians between the WB and the GS and within WB cities.

Following Israeli unilateral withdrawal from the GS in 2005, Israel dissolved civil administration and the “military governance in the GS ended”, to quote an Israeli military commander (AL-MUKH 2006, 1, 16). However, as stated by John Dugard (2007), in his report on human rights in the Palestinian territories occupied since 1967, “Israel remains an occupying Power in respect of Gaza” since “Israel retains effective control over Gaza by means of its control over Gaza's external borders, airspace, territorial waters, population registry, tax revenues and governmental functions”.

Responsibility for issuing identity cards passed to the PA, while Israel continued to give ID numbers, since it maintained control over the Palestinian population registry. Israel also issued PA travel documents, which could be issued too by the PA Ministry of the Interior, but needed to include ID numbers in order to be valid for oPt borders. Accordingly, it is Israel that determines the rights and status of all Palestinians living in the oPt (LOEWENSTEIN 2006).

The services provided by the PA Ministry of the Interior (registration of births and deaths, demands for permanent residency and family unification, not to mention visiting permits) continued to depend on Israel (SHAML 1996, 108), as strictly regulated by article 28 of the Protocol Concerning Civil Affairs of the Interim Agreement of 28 September 1995. In other words, “the PA served as a broker between the Palestinians and the Israeli authorities. However, the PA was authorized to set priorities on requests forwarded to Israel for approval, and to reject requests outright” (B'TSELEM 2006a, 12).

The protocol gave the PA the authority to register children until the age of 16 if any of their parents were resident. And this provision was a step forward if compared to IMO 1206/1987 in two ways: (i) the birth of children born outside the ‘area’ could be registered within 16 years as opposed to within 5; and (ii) registration could be made if either of the parents was resident, not only when the mother was

resident. However, this agreement was a step backwards when compared to IMO No. 1421/1995, adopted 10 months earlier, which set 18 years as opposed to 16 as the limit.

According to the Interim Agreement the PA did not need to obtain Israel's prior approval, but only had to inform Israel afterwards. In practice, Israel imposed a condition: the child had to be physically present in the oPt. Besides, Israel stopped recognizing the registration of children from five to sixteen who were born abroad to residents of the Occupied Territories. In November 2003, Israel announced that it would recognize the registration of children in this age group who were born abroad, provided that they were physically present in the Occupied Territories at the time of registration. However, the entry of children over five years of age, for whatever purpose, including registration in the population registry, and also when accompanied by a resident parent, depended on obtaining a visitor's permit issued by Israel. The freeze on issuing visitor's permits made this impossible, so children were unable to exercise their entitlement to be registered in the population registry (B'TSELEM 2006a, 29-30).

3. Family Unification

Persons who are not registered in the population registry can acquire residency in the oPt only through the family unification procedure.¹⁵ This procedure is meant to include those who were not counted in the census; first-degree relatives of residents who became refugees following the 1967 war; Palestinians whose residency was revoked following a prolonged stay abroad; and children born abroad, or children whose mother was not a resident, and were, therefore, registered by Israel. However, the largest group in need of family unification are those families wanting to live together in the oPt where one of the spouses is not a resident (B'TSELEM 2006, 7; ABU-MUKH 2007, 2).

3.1. Family Unification Deemed by Israel as a Benevolent Act

For Israel, family unification is both a security and a political issue;¹⁶ accordingly, Israeli policy was clear in agreeing to unification only in exceptional cases where humanitarian arguments were overwhelming or where a positive decision was in Israel's interests.¹⁷ The low number of approvals for family unification is significant¹⁸ and the justification often provided by Israeli officials is the "*fear of the demographic growth of the population in the territories*" (B'TSELEM 1991, 9).

¹⁵ For earlier version, cf. (KHALIL 2008, 10-12).

¹⁶ As recognized by ISC decision 90/1979 (SHAML 1996, 102).

¹⁷ As recognized by ISC decision 106/1986 (SHAML 1996, 103).

¹⁸ As admitted by Rabin, then Minister of Defense, in a letter to a Knesset Member on 16/11/1989 (SHAML 1996, 103): in 1967-1987, only 15% of 85,163 demands were accepted, while from 1987 to 1989, only 20% of 3,266 were accepted. According to data from the Ministry of Defense collected by B'TSELEM (1991, 9), during 1989, 24% of the requests for unification of WB families and 63% of the requests of families from the GS were approved. In the first seven months of 1990, 41% of the requests from the WB and 71% of the requests from the GS were approved. According to the data for 1989, obtained from the Office of the Coordinator of Activities in the Territories, of the 1053 requests for family unification submitted on the WB, 250 were approved, and of the 305 submitted in the GS, 192 were approved. In 1990, through to the end of July, 139 of the 334 requests submitted in the WB were approved, and of the 261 requests from the GS, 187 were approved. According to data published by the Red Cross, between 1967-1987, 140,000 requests for family unification were submitted; of these only some 19,000 were approved.

According to a recent B'TSELEM report (2006), Israel started in 1993 to set a quota of 2000 for family unification which did not meet the real needs of the population. In 1995, the PA demanded that Israel cancel the annual quota, or at least increase it substantially. Israel refused. In protest, in early 1996, the PA refused to forward family unification requests to Israel for approval. It was not until early 1998 that the PA again forwarded requests to Israel, which were based on the quota that had been set in 1993. According to press reports, in mid-1998, Israel and the PA had more than 17,500 requests for family unification waiting to be processed. In October 1998, in the framework of the Wye Agreement between Israel and the PA, Israel raised the quota to 3,000 a year. In early 2000, in the framework of peace negotiations between the parties, Israel raised the quota, to 4,000 a year. This policy remained in effect until the outbreak of the

Israeli policy also demonstrates that the issue of family unification is not treated as a question of human rights. Rather, it is a privilege, that can be granted for some and denied for (many) others (SHAML 1996, 107). For Israel, family unification in the oPt is not a vested right, but a “*special benevolent act of the Israeli authorities*”, to quote the State Attorney’s office in response to 18 November 1992, Section 7, in the Israeli Supreme Court (*hereafter* ISC) Case 4494/91 (B’TSELEM 2006a, 8).

According to (B’TSELEM 2006a, 8), it is on the basis of this conception, that “Israel implemented a rigid and unreasonable policy regarding family unification and visitor’s permits...” The delay in approving requests of family unification for long years or the denial of a family’s right to live together in the ‘area’ are the two consequences of such a policy which did not change with time, though its application may have varied.¹⁹

Following a famous case in which hundreds of Palestinians were deported for ‘illegally residing’ in the ‘area’, mostly wives and their children, a petition was submitted to the ISC in 1990. The ISC rejected the petition following an announcement by the State Attorney’s Office of a change in policy (B’Tselem 1991, 10). The new policy granted ‘permanent visitor’ status to wives married to residents and their children renewable every six months, without having necessarily to leave the country (Shaml 1996, 106). Israeli policy in terms of approving family unification or granting permanent visitor status varied according to the political climate: in fact, it was often employed to temper internal and international hostility to its policies.²⁰

In 1993, the state of Israel indicated that, “in light of the peace talks then taking place, a quota of 2,000 requests for family unification would be approved yearly.” (B’TSELEM 2006a, 11). In family unification matters, the PA was authorized to set priorities on requests forwarded to Israel for approval, and to reject requests outright. In 1995, the PA demanded that Israel cancel the annual quota, or at least increase it substantially, but Israel refused. In October 1998, in the framework of the Wye Agreement between Israel and the PA, Israel raised the quota to 3,000 a year. In early 2000, in the framework of peace negotiations between the parties, Israel again raised the quota, to 4,000 a year (B’TSELEM 2006a, 12-13).

Shortly after the outbreak of the second *intifada* in September 2000, Israel decided to freeze the family unification process and not to issue visitor’s permits to these non-residents (B’TSELEM 2006a, 2-3). The reasons for such a policy were not declared but seemed to be for ‘security reasons.’ However, that policy was not related to specific cases but applied to all requests, which can be rightly considered a collective punishment of the civil population. Foreign spouses could not move within and outside the oPt (for work, medical treatment or family visits) for fear of deportation or for fear of not being able to return (B’TSELEM 2006a, 17-18). The situation becomes worse for those Palestinians holding expired temporary travel documents issued by neighboring Arab states. They have no other place to go.

(Contd.) _____

second *sntifada*, in September of that year. Following the outbreak of the second *intifada* in September 2000, the process of family unification was frozen.

In 2007, Israel started to receive requests for family unification once more and many thousands have received approval since then. The PA claims that there are some 54,000 Palestinians who have entered the oPt since early 1990 and who are considered by Israel to be illegal. The number may now be double that if natural reproduction is taken into account. See: <http://afp.google.com/article/ALeqM5iELL0iiiiCoG2eVFkFjCAi6fAYHw>

¹⁹ For more details about the way Israel has used family unification discretionally throughout decades of occupation, since 1967, cf. (B’TSELEM 2006a, 8-13). In this paper, a reference is made mainly to family unification following the establishment of the PA.

²⁰ For more details about Israeli policies on family unification (B’TSELEM 2006, 15-16).

3.2. Requirements for Family Unification Requests

In 2005 the number of requests for family unification was almost 120,000 (B'TSELEM 2006a, 20). On 11 August 2008, B'Tselem noted that since October 2007 Israel has approved 31,830 requests for family unification in the WBGS. It was the first exception in Israeli policy on this issue since the outbreak of the second *intifada*, in September 2000. The approvals, which were given in the framework of Israeli-Palestinian political negotiations, were described as a gesture, and not a change in policy (B'TSELEM 2008). According to the General Authority of Civil Affairs, an understanding had been reached between the PA and Israel according to which Israel would grant an ID number for those who entered the Palestinian territories with a visitor permit.²¹

The General Authority of Civil Affairs is the body responsible on the Palestinian side for the issue of family unification. Requests are to be presented to that authority. According to the official website of the Authority,²² requests for family unification or permanent residency are distinguished as follows: 'external family unification' and 'internal family unification'. In both cases, requests must be made by residents. However, the requirements vary according to the distinction between:

- External family unification the first degree relative/relatives for whom permanent residence is requested are, at the time of the request, outside the Palestinian territories. Family unification requests shall include a photocopy of the following: ID card of the applicant, the Passport and the birth certificate of the applied for, and their marriage certificate.
- Internal family unification refers to late registration of children who were born in the Palestinian territories but who were not registered in time on their parents' ID. Family unification requests shall include a photocopy of the following: the ID card of the applicant (father or mother), birth certificate, certificate from village council, school certificate and any other document that proves presence in the territories.
- Family unification for those who remain in the PA territories beyond the time frame of their visiting permit. Family unification requests shall include a photocopy of the following: the ID card of the applicant, the Passport and the birth certificate of the applied for, the visit permit of visa.

As for non-residents wishing to enter the oPt, they need to obtain a visitor's permit or a visa; this includes those for whom family unification was accepted, and including residents' children born abroad who need to be registered. The General Authority of Civil Affairs²³ specifies that:

- Residents' children born abroad can enter the territories without visitors' permit if they are younger than 5 years. The original birth certificate is enough.
- Residents' children born abroad, who are between 5 and 16 years need a visitor's permit. A visitor permit requires a photocopy of the following: ID card of the father and/or the mother, passport of the children, birth certificate of the children, marriage certificate if requests are made by the mother. It shall be noted that the fourth name of the applicant and the applied for should match and that the documents should be clearly readable.
- For all the other visitor permits, the only documents needed are the photocopies of applicant ID card and the passport of the applied for.

The General Authority of Civil Affairs²⁴ specifies that 'citizens' who left the Palestinian territories after 1/1/1984 and lost their 'citizenship' can present a request for getting back the original ID card.

²¹ http://www.rtarabic.com/news_all_news/11921.

²² <http://www.mca.gov.ps/comprising.asp>.

²³ http://www.mca.gov.ps/visit_pass.asp.

²⁴ <http://www.mca.gov.ps/reid.asp>.

The documents needed are photocopies of the exit permit or document, birth certificate, marriage certificate, ID cards of family members and proof of a reason for return (health, education, work).

3.3. East Jerusalem

WBGS is usually taken in Palestinian and (largely also) in international literature to include East Jerusalem. East Jerusalem was annexed by Israel, but without its people; in fact, the Palestinians of East Jerusalem, unlike those Arabs who remained within the territory forming the state of Israel in 1948, were not granted Israeli citizenship. They were treated simply as ‘permanent residents’ in the state of Israel (ABU-MUKH 2006, 2). This position was even confirmed by ISC decision No.282/88 in which it was stated that the permanent residence granted for the East Jerusalem population is the same as a residence permit granted to foreign nationals (SHAML 1996, 123).

The Palestinians of Jerusalem (*hereafter* Jerusalemites) enjoy certain rights related to their status, such as the right to work and the right of movement in Israel, not to mention the right to enjoy Israeli social security and medical services, which other Palestinians (from the WBGS) do not have. They are also treated differently when it comes to leaving the country and using the exit borders of Israel and the oPt. On the other hand, Jerusalemites suffer under restrictive Israeli measures, especially in terms of permits for construction and in their right to choose the place of residence without having their ID withdrawn.

Israeli policies towards Jerusalemites have developed in parallel to those applied to WBGS Palestinians. So a census was carried out in East Jerusalem immediately after the war; and those who were outside the city (abroad or even in the ‘area’) were not registered and thus lost their status as ‘residents’ in Israel. Those included in the census, obtained an ID card that was different from the one granted for residents of the ‘area’.²⁵

Many Jerusalemites, subject to different regulations adopted by the Israeli Ministry of the Interior, have lost their ID card. This has happened either because they remained abroad without having their permit or *Laissez Passer* renewed, so as to obtain citizenship in a third country, or because they resided outside East Jerusalem. Similar complications also arose with regards to family unification, where children of resident women (in Israel), married to non-residents, were often denied registration and had to apply for family unification which was rarely approved (SHAML 1996, 121-131).

Since 2002, the government of Israel froze the handling of requests by Israeli residents for family unification with Palestinians from the occupied territories. On 31 July 2003, the government’s decision was reflected in the Nationality and Entry into Israel (Temporary Order) Law, 5762 of 2003 (B’TSELEM 2006b). On 27 July 2005, the Knesset amended the Nationality Law. The restrictions included in the law apply to Israeli citizens married to Palestinians of the oPt, but also to Palestinians of East Jerusalem having a permanent residence in Israel (B’TSELEM 2005).

As pointed out by the Palestinian Human Right Organization, Al-Haq (2006), the law refers to residency ‘in Israel’ and yet applies not only to Israeli nationals and Palestinian Citizens of Israel living within Israel’s legally recognized boundaries, but also to East Jerusalem and its Palestinian residents. This fact reflects Israel’s longstanding refusal to recognize the status of East Jerusalem as occupied territory under international law.

Finally in may 2006, the Israeli High Court rejected several petitions opposing the Law thus accepting the “state’s official explanation that the sole purpose of the Law was security related, despite the public statements of state representatives and cabinet ministers that the real objective of the Law was primarily demographic.” (B’TSELEM 2006b). However, as pointed out by B’Tselem, the Law

²⁵ Those living on the WB had orange cards, those in the GS had maroon ones and East Jerusalemites carried blue cards. Later on, when the PA was established, green cards were issued for the WB and the GS by the [[Israeli?]]Ministry of the Interior, containing the ID number granted by Israeli authorities who were, it should be remembered, in complete control of the Palestinian population registry.

“violates the best interest of the child and the right to family life, which are enshrined in [Israeli] Basic Law: Human Dignity and Liberty and in international law. The Law also discriminates between the children of Palestinian residents and citizens of Israel and the children of residents and citizens who are not Palestinians.” (B’TSELEM 2006b). The law had resulted in further separation of Palestinian families. The law stops Palestinians who do not have Israeli residency or citizenship from uniting with their spouses who have East Jerusalemite or Israeli citizenship (DIAKONIA 2007).

3.4. West-Bank and Gaza Strip Palestinians

WBGS are deemed one unit. They form collectively the territorial claim for Palestinian statehood. The Palestinian consciousness and international recognition coupled by historical and legal ties legitimize such a claim. The Oslo Agreements included a provision that recognizes that WBGS are treated as one unit.²⁶ This unity is, however, challenged by the separation which started in 1948 when WB and GS fell under two different administrations, respectively Egyptian and Jordanian. After the Israeli occupation of WBGS in 1967, the two territories were united again under the occupation! The two territories were initially declared closed military areas.

In 1972 ‘a general exit permit’ was issued for the two areas. This marked a change in policy permitting movement between WBGS and change of residency in the population registry. In January 1991 (during the Gulf War), Israel cancelled the general exit permit from 1972, and any resident of the Occupied Territories who wanted to enter Israel needed to obtain an individual exit permit. The cancellation of the general exit permit marked the beginning of the closure policy. In March 1993 Israel imposed a ‘general closure’ on the Occupied Territories, which still remains in place. The closure also made it more difficult for Palestinians to change their residence from one area to the other. Changing an address listed on an ID card became a long and complicated procedure, and many requests for address changes were rejected (B’Tselem and HaMoked 2005, 5-6).

This situation worsened after the second *intifada*. Palestinians of Gaza who failed to update their place of residence in the WB were expelled to the GS because they were considered as staying illegally in the WB; some other Palestinians were expelled to the GS as an administrative punishment against some residents of the WB, and others were forbidden from returning to the WB after a visit to the GS (B’Tselem and HaMoked 2005, 16-19).

Following the disengagement plan carried out unilaterally by Israel in 2005, the IMG was dissolved. In 2007, following Hamas’ taking control of PA institutions, Israel declared Gaza an ‘enemy entity’. The movement between the WB and the GS through Israel became almost impossible. It also became more complicated to obtain change of residence from GS to WB. For this reason, families composed of Palestinians holding WB ID cards and GS ID cards face hard challenges to live together, as do Palestinians from East Jerusalem.²⁷

²⁶ According to Article IV of the Declaration of Principles of 1993: “Jurisdiction of the Council will cover WB and GS territory, except for issues that will be negotiated in the permanent status negotiations. The two sides view the WB and the GS as a single territorial unit, whose integrity will be preserved during the interim period.”

²⁷ It would be interesting to study the social impact of such a harsh policy of separation which may discourage “mixed marriages” between WB and GS Palestinians and between them and East Jerusalem Palestinians.

4. Conclusion

In time of armed conflicts and occupation, International Humanitarian Law (hereafter IHL) starts to apply.²⁸ Israel signed the four Geneva Conventions in 8 December 1949 and ratified them on 6 July 1951. It did not sign the additional two protocols.²⁹ According to international law, territories that fell under Israeli control in 1967 are occupied territories. Accordingly, IHL applies to the oPt. The application of IHL, however, does not exempt the state from its obligations under International Human Rights Law (hereafter IHRL). IHRL is largely codified in those treaties that Israel has ratified.³⁰ Accordingly, it can be said that IHRL, as much as IHL, is applicable to the oPt (Al-Haq 2005, 35ff.); hence the ICJ Advisory Opinion on the “Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory” in 2004.³¹

Accordingly, Israel can be held responsible for violations of human rights, based on its obligations under IHL and IHRL. This includes violations of an individual’s rights to life, dignity and health. It also includes the right to movement within the oPt and movement in and out of the oPt. No discrimination based on ethnicity or origin can be justified. The Israeli government and Court cannot exempt itself from applying its regulations based on domestic law. Basic human rights cannot be randomly selected or applied in a discriminatory way.

The Universal Declaration of Human Rights of 1948 recognizes that “1. Men and women of full age, without any limitation due to race, nationality or religion, have the right to marry and to found a family... 3. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State.” (Article 16). **The International Covenant on Civil and Political Rights** provides that “1. The family is the natural and fundamental group unit of society and is entitled to protection by society and the State. 2. The right of men and women of marriageable age to marry and to found a family shall be recognized.” (Article 23). **The International Covenant on Economic, Social and Cultural Rights**, of 1966 requires, in Article 10.1, that states protect and assist the family, while being responsible for the care and education of dependent children. The obligation to enable family unification is also derived from the **Convention on the Rights of the Child**, which states, in Article 10: “1... applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by State Parties in a positive, humane and expeditious manner. 2. A child whose parents reside in different states shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents...”

The Hague Regulations of 1907 require, in Article 46: “Family honor and rights, the lives of persons, and private property, as well as religious convictions and practice, must be respected.” In the **Fourth Geneva Convention**, we read: “Each Party to the conflict shall facilitate enquiries made by members of families dispersed owing to the war, with the object of renewing contact with one another and of meeting, if possible.” (Article 26). “Protected persons are entitled, in all circumstances, to respect for their persons, their honour, their family rights, their religious convictions and practices, and their manners and customs. They shall at all times be humanely treated, and shall be protected

²⁸ For an earlier version of this section, cf. KHALIL 2008, 18-20.

²⁹ For more details about Israel’s signature and ratification of international conventions we point readers to the Human Rights Library of the University of Minnesota: <http://www1.umn.edu/humanrts/research/ratification-israel.html>.

³⁰ Such as the International Convention on the Elimination of All Forms of Racial Discrimination (1966), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), the Convention on the Elimination of All Forms of Discrimination against Women (1980), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1986), and the Convention on the Rights of the Child (1990). The first treaty was ratified in 1979 and five others in 1991.

³¹ Available at the ICJ official website: <http://www.icj-cij.org/docket/index.php?p1=3&p2=4&k=5a&case=131&code=mwp&p3=4>.

especially against all acts of violence or threats thereof and against insults and public curiosity”. (Article 27)

Israel's Supreme Court, too, has recognized the inherent connection between the right to family life and the right to family unification inside Israel: “The State of Israel recognizes the right of a citizen to choose a spouse, according to the citizen's free will, and to found a family together in Israel. Israel is committed to protecting the family unit pursuant to international conventions... and where these conventions do not require one policy or another regarding family unification, Israel recognized, it recognized and recognizes, its obligation to protect the family unit also by granting permits for family unification.”³²

Several local and international human rights organizations concluded that Israeli policies, in terms of family unification, amount to an important violation of human rights in flagrant violation of Israel's obligations under international law. The consequences of harsh Israeli policies with regards to family unification of oPt Palestinians are various, such as (B'TSELEM 2006a, 33-34; Amnesty International 2007, 1-2; Amnesty 2008)

- The forced break-up of the family unit, not being able to live together and lived in single-parent families. It augmented household costs with the need for periodic travel and for communication *via* telephone. Divided families had an emotional impact particularly on children. Other families were destroyed, ending in divorce, or the husband took a second wife to help with those children who remained with him.
- Many spouses and children of residents became ‘persons staying illegally’ in their homes. The lack of a legal status means that they also have great difficulty crossing checkpoints or going abroad, accessing medical-treatment centers and educational institutions, with undesirable effects on the social, economic, and health life of individuals, to the serious and, at times, irreversible impairment of the mental health of children and parents.

Israeli law applicable on East Jerusalem Palestinians is discriminatory against the Palestinian population. However, it is, at least, regulated by clear (temporary) law. Israeli policies towards WBGS Palestinians with regards to family unification suffer, on the other hand, from being arbitrarily applied: they are not based on any law. Besides, they are discriminatory in that the restrictions included therein do not apply to Jewish settlers in the oPt (Amnesty International 2007, 1-2).

Israel presented these measures as being security related. Other explanations may be found in Israeli official and unofficial discourses: these include the Palestinian demographic threat or the idea that these measures are a bargaining tool in negotiations with the PA. Given that the measures touch the lives of so many Palestinians and exclusively affect the spouses of Palestinians, many consider those measures discriminatory and collective punishment for the civilian population (Amnesty International 2007, 3); and collective punishment, it must be remembered, is expressly forbidden under international law (B'Tselem 2006a, 55-58).

³² HCI 3648/97, *Stemkeh et al. v. Minister of the Interior, Piskei Din* 53 (2) 728, 789, cited in: B'TSELEM 2006a, 49..

Bibliography

- AL-HAQ, 2005. Waiting for Justice. Al-Haq: 25 Years Defending Human Rights (1979-2004). Available at: <http://asp.alhaq.org/zalhaq/site/books/files/Annual%20Report%20Combo.pdf>
- AL-HAQ, 2006. Condemning the Upholding of the Ban on Family Unification. AL-HAQ PRESS RELEASE (16 May). <http://www.alhaq.org/etemplate.php?id=10>
- Amnesty International, 2007. Israel/Occupied Palestinian Territories, Right to Family Life Denied, Foreign Spouses of Palestinians Barred. MDE 15/018/2007. <http://www.amnesty.org/fr/library/asset/MDE15/018/2007/fr/dom-MDE150182007en.pdf> (November 21, 2008).
- ABU-MUKH, L., 2007. *Family Unification of Palestinians in the Occupied Territories: Laws, Regulations and Facts*. Research Report, CARIM-RR, 2007/05. http://www.eui.eu/RSCAS/e-texts/CARIM-RR_2007_05.pdf
- ABU-MUKH, L., 2006. *Movement to and from the Palestinian Territories under Israeli Occupation after Oslo (1993-2006)*. Research Report, CARIM-RR, 2006/02. http://www.eui.eu/RSCAS/e-texts/CARIM-RR06_02_Abu-Mukh.pdf
- B'TSELEM, (The Israeli Information Center for Human Rights in the Occupied Territories) 1991. *Renewal of Deportation of Women and Children from the West Bank on Account of "Illegal Residency"*. Information Sheet, October 1991. Available at: http://www.btselem.org/Download/199110_Renewal_of_Deportation_Eng.doc
- B'TSELEM and HAMOKED: Center for the Defence of the Individual, 2005. *One Big Prison: Freedom of Movement to and from the Gaza Strip on the Eve of the Disengagement Plan*, March 2005, Chapter Three. http://www.btselem.org/Download/200503_Gaza_Prison_English.doc
- B'TSELEM, 2005. Knesset Enacts Racist Law. http://www.btselem.org/English/Special/2005804_Racism_Law.asp
- B'TSELEM, 2006a. *Perpetual Limbo. Israel's Freeze on Unification of Palestinian Families in the Occupied Territories*, July. Available at: http://www.btselem.org/Download/200607_Perpetual_Limbo_Eng.doc
- B'TSELEM 2006b. (28 Nov.). Interior Ministry denies status to children of East Jerusalem residents. http://www.btselem.org/english/family_separation/20061128_child_registration.asp
- B'TSELEM 2007. (29 Oct.): Israel to approve some 3,400 requests for family unification in one-time action. http://www.btselem.org/english/family_separation/20071029_family_runification_gesture.asp
- B'TSELEM, 2008. Israel approves some 32,000 requests for family unification 90,000 Palestinians still waiting. B'Tselem, 11 August. http://www.btselem.org/English/Family_Separation/20080807_Family_Runification_Gesture.asp
- DIAKONIA 2007. IHL analysis of primary Israeli policies in East Jerusalem. <http://www.diakonia.se/sa/node.asp?node=959>
- DUGARD, J., 2007. Report of the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967. UN document No. A/62/275 (17 August 2007), available at: <http://domino.un.org/UNISPAL.NSF/5ba47a5c6cef541b802563e000493b8c/07fc0614021668418525736b005c8a82!OpenDocument>

- KHALIL, A., 2008. *Irregular Migration into and through the Occupied Palestinian Territory*, paper presented during Thematic Session on Irregular Migration. European Institute University, Florence, European University Institute, Italy, 7-8 July 2008.
- KHALIL, A., 2007. Palestinian Citizenship and Nationality: Legal challenges and Future Perspectives. Research Paper, RSCAS, 2006.
- LOEWENSTEIN, J., 2006. Identity and Movement Control in the oPt. *Forced Migration Review*, No. 26, August 2006. Available on-line at: <http://www.fmreview.org/text/FMR/26/11.doc>.
- SHAML, 1996. *Al-Nazehoun Al-Falesteneyyoun wal Mufawadat Al-Salam [Displaced Palestinians and Peace Negotiations]*. Ramallah, Palestine.
- TAKKENBERG, L., 1998. *The Status of Palestinian Refugees in International Law*. Clarendon Press – Oxford.