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OPERATIONAL GUIDANCE NOTE

Israel, Gaza and the West Bank

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1. Introduction

- 1.1** This document evaluates the general, political and human rights situation in Israel, Gaza and West Bank and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that area, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseowners must refer to the relevant Asylum Instructions for further details of the policy on these areas.

- 1.2** This guidance must also be read in conjunction with any COI Service [Israel, Palestinian National Authority] Country of Origin Information published on the Horizon intranet site. The material is also published externally on the Home Office internet site at: http://www.homeoffice.gov.uk/rds/country_reports.html
- 1.3** The terms 'Occupied Territories' or 'Occupied Palestinian Territories' refer to the areas occupied continuously by the Israeli authorities since the 1967 Arab/Israeli war to the present time: Gaza, West Bank (including East Jerusalem) and the Golan Heights (Syrian territory). This OGN refers to Israel, Gaza and the West Bank only. For reasons of clarity, it has sometimes been necessary to deal with Israel, Gaza and West Bank (including areas subject to the jurisdiction of the Palestine National Authority) separately. This should not be taken to imply any comment upon the legal or political status of these territories.
- 1.4** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, caseowners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.
- 1.5** A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

Overview

1917 – 1947¹ & ²

- 2.1.1** Palestine formerly comprised all the territory of what is now Israel, the West Bank and the Gaza strip. The area became an international issue towards the end of the 1st World War with the disintegration of the Turkish Ottoman Empire. Palestine was among the several former Ottoman Arab territories which were placed under the administration of Great Britain under the Mandates System adopted by the League of Nations.
- 2.1.2** The Balfour declaration issued by the British government in 1917 expressed support for 'the establishment in Palestine of a national home for the Jewish people'. During the years of the Mandate from 1922 to 1947, large-scale Jewish immigration mainly from Eastern Europe took place, the numbers swelling in the 1930s following Nazi persecution of Jewish populations. Palestinian demands for independence and resistance to Jewish immigration led to a rebellion in 1937, followed by continuing terrorism and violence from both sides during and immediately after World War II. Britain proved unable to help the Jews and Palestinians reach an amicable settlement and, in a rising tide of violence, referred the question of Palestine to the United Nations.
- 2.1.3** In November 1947, the UN General Assembly adopted Resolution 181, which proposed the partitioning of Palestine into an independent Arab state and an independent Jewish state. Due to its unique religious and cultural importance for Christians, Jews and Muslims, Jerusalem was to be a 'corpus separatum' under a special international regime to be administered by the UN but this was never set up. While the Jewish leadership accepted partitioning, the Palestinians did not. When Britain withdrew in 1948, the Jewish leadership proclaimed the establishment of the state of Israel which provoked an attack by neighbouring Arab countries.

¹ United Nations 'Question of Palestine': history, chapters 1 & 7

² FCO: Middle East Peace Process, historical background

2.1.4 By the time hostilities were brought to an end by the Armistice Agreements of 1949, Israel had extended its control beyond the boundaries (the Green Line) envisaged in Resolution 181. During the course of the 1948 war, Israel occupied 78% of the territory of Palestine including the greater part of Jerusalem. Much of this territory was beyond that allotted to Israel by the UN. The remaining parts of Palestine were occupied by Jordan (Jordan captured the West Bank and East Jerusalem) and Egypt (which took over 'administration' of Gaza). A Palestinian state did not and has not yet come into being. The hostilities led to the flight or expulsion of around 750,000 Palestinian refugees, over half the indigenous population. Most fled to the West Bank, Gaza Strip, Lebanon, Syria and Jordan.

The two wars: 1967 and 1973 ^{1 & 2}

- 2.2.1** Much of the history of the region since that time has been one of conflict between Israel on one side and, on the other, Palestinians, represented by the Palestine Liberation Organisation, and neighbouring Arab states. In the war of June 1967, Israel gained control of the West Bank, Gaza Strip, East Jerusalem, the Golan Heights (Syrian) and the Sinai Desert (Egyptian). UN Security Council Resolution 242 called for the withdrawal of Israeli forces from the 'territories occupied in the recent conflict' and for recognition of the right of every state in the area to live in peace within secure and recognised boundaries. The '6 day war' led to another displacement of around 500,000 Palestinians, nearly half of whom were refugees uprooted for a second time.
- 2.2.2** In October 1973, Egypt and Syria attacked Israeli forces in the Sinai and the Golan. UN Security Council Resolution 338 called for an end to the fighting and the implementation of Resolution 242. Disengagement agreements were reached between Israel and Egypt, and Israel and Syria during the course of 1974. In 1979, a treaty between Egypt and Israel brought peace between Egypt, and Israel and returned the Sinai to Egypt.
- 2.2.3** No progress was made on the Palestinian track of the peace process. In 1987 the Palestinians of the West Bank and Gaza launched an 'intifada' against Israeli occupation. In November 1988, the Palestinian National Council declared a Palestinian state (in exile); and in December, PLO Chairman Yasser Arafat accepted Resolutions 242 and 338, recognised Israel's right to exist and renounced terrorism.

1991 – to date

- 2.3.1** By 1991, global changes such as the end of the cold war, and the Gulf war and its aftermath, also affected the Middle East situation. The Madrid peace conference in October 1991 launched a peace process which consisted of bi-lateral negotiation tracks for Israel and neighbouring Arab States (Lebanon, Jordan and Syria) and the Palestinians who were included in a joint Jordanian-Palestinian delegation. Multilateral negotiation began in 1992 on regional aspects on a variety of issues. Pursuant to the September 1993 Declaration of Principles (also known as the Oslo Accords), the May 1994 Gaza-Jericho Agreement and the September 1995 Israeli/Palestinian Interim Agreement, Israel transferred most responsibilities for civil government in the Gaza Strip and parts of the West Bank to the newly created Palestinian Authority (PA). The 1995 Interim Agreement divided the territories into three types of areas denoting different levels of Palestinian National Authority and Israeli occupation control. Area A refers to areas in which the PA has complete authority for civilian security, Area B to areas under civil Palestinian control and Israeli security control, and Area C refers to areas under full Israeli control such as settlements and military bases.¹
- 2.3.2** However, the peace process appeared to stall in 2000 with the failure of the Camp David summit. The failure to resolve the key issues at Camp David (Jerusalem, Borders, Refugees, and Security arrangements) set the stage for the second Intifada (sometimes referred to as the al-Aqsa Intifada), Palestinian militant groups resorted to violence to achieve their objectives and Israeli forces began to undertake security operations in areas previously the sole responsibility of the PNA. Israel cites its reason for this as being the PA's failure to abide by its security responsibilities. Subsequent years were marked by a cycle of violence that included terror attacks by Palestinian militant groups on civilian targets in Israel and a robust Israeli security response that resulted in the deaths of both militants and

civilians, and included acts of collective punishment such as a closure regime of roadblocks, checkpoints and curfews.¹

- 2.3.3** Since 1967, Israel has established 135 settlements in the West Bank (including East Jerusalem). Settlements established in the Gaza Strip were dismantled in 2005. In addition, dozens of outposts of varying size have been established.³ Settlements are perceived as an obstacle to peace and are illegal under international law. Israel has made little progress on removing outposts, and has continued to construct within and expand settlements. Settlement activity, including road building, threatens Palestinian territorial contiguity throughout the West Bank, making it more difficult to establish a viable and secure Palestinian state.⁴
- 2.3.4** In June 2002, Israel decided to erect a physical barrier to separate Israel and the West Bank. Its purpose was to prevent both the uncontrolled access of Palestinians into Israel while surrounding as many settlements as possible in order to facilitate their annexation into Israel.⁵ Since the Israeli cabinet's decision to build the Separation Barrier, Palestinians have filed dozens of complaints against the Barrier's route. The route initially proposed by the Sharon government was judged illegal by Israel's high court. This resulted in the cabinet agreeing a new route in February 2005. Once this is completed, 11.9% of the West Bank will be affected by its course. Construction of the barrier on occupied territory contravenes international law and sections which stray from the Green Line into the West Bank are, therefore, illegal. The Barrier runs through the West Bank, for the most part close to the Green Line (which marks the armistice line between Jordanian and Israeli forces prior to the 1967 war), but has serious implications for those Palestinians in its vicinity. Key problems are access to farm land (Palestinians are often denied the necessary permits to get through the agricultural gates). This in turn has serious implications for Palestinians along the barrier's route who depend on farming as their primary source of income. Palestinians living in 'closed areas' have to pass through gates (with unpredictable opening times) in the barrier to reach markets, schools, universities, medical care and maintaining contact with family and friends living in other parts of the West Bank. The barrier, added to the hundreds of checkpoints within the occupied territories, has seriously hindered freedom of movement within the occupied territories.⁶
- 2.3.5** In late 2001, the Quartet came into existence. The Quartet is an informal grouping of the US, EU, UN and Russia. Its initial aim was to assist the Israelis and Palestinians to bring an end to the violence and re-start the peace process. During the course of 2002, the Quartet produced the Roadmap; which was presented to the Israelis and Palestinians (who accepted it in April 2003, albeit with reservations in Israel's case). The Roadmap is based on reciprocal steps by the two parties leading to two states, Israel and a democratic Palestine. It is a performance-based and goal-driven roadmap with clear phases, timelines, target dates, and benchmarks aiming at progress through reciprocal steps by the two parties in the political, security, economic, humanitarian, and institution building fields, under the auspices of the Quartet.⁷
- 2.3.6** The Swiss-sponsored Geneva Initiative – or Geneva Accord – was signed in Jordan on 12 October 2003 by Yossi Beilin, Deputy Foreign Minister of Israel and Yasser Abed Rabbo, a minister in Yassir Arafat's PA. The initiative confirms the willingness amongst key elements in Palestinian Civil society and Israeli civil society to achieve a peaceful settlement based on two independent, viable and prosperous states. EU Foreign Ministers adopted a European Neighbourhood Policy Action Plan with Israel and the Palestinian Authority on 13 December 2004. The ENP offers closer co-operation between EU and Israel in areas of mutual interest, including trade, in return for political and economic reform.⁸

³ B'T Selem Land Expropriation & Settlements

⁴ FCO Human Rights report 2006

⁵ B'T Selem, 'The Separation Barrier'

⁶ FCO Human Rights Report 2006

⁷ FCO Middle East peace process: The Quartet Roadmap

⁸ FCO Middle East peace process: Q & A

- 2.3.7** The Israeli PM Sharon and Palestinian President Abbas met in the Egyptian resort of Sharm al-Sheikh on 8 February 2005. They reaffirmed their commitment to the Roadmap and gave specific undertakings. Israel agreed to: stop all military activity against Palestinians; transfer security responsibility to the Palestinian Authority of five West Bank towns; end demolitions and deportations; take measures to ease Palestinians' freedom of movement; and release 900 Palestinian prisoners. The PA agreed to: stop attacks on Israelis; take action to stop violent activities, especially the production and smuggling of illegal weapons; and supervise effectively Palestinian fugitives. Since then 900 Palestinian prisoners have been released and two towns, [Jericho and Tulkarem, have been handed over to PA control]⁹
- 2.3.8** Israel disengaged from Gaza and parts of the northern West Bank in 2005. This entailed the removal of 25 settlements and around 8,000 settlers from Gaza and northern West Bank, as well as the withdrawal of the IDF from Gaza, and the establishment of an EU Border and Assistance Mission to monitor the Rafah crossing. The evacuation phase was completed on 24 August 2005 and the last military structures, including checkpoints, were dismantled on 12 September 2005. This contributed to a 75 per cent reduction in the number of Palestinian fatalities and a 50 per cent reduction in Israeli fatalities in 2005 compared with 2004.¹⁰ However, the IDF continues to hold decisive control over important elements of Palestinian life in the Gaza strip: the airspace over Gaza and coastal waters; population registry by which Israel continues to determine who is a 'Palestinian resident' and who is a foreigner; control of entry to Gaza; movement between Gaza and the West Bank including all people and goods; imports and exports; and the tax system, giving Israel the potential to withhold payments and hence impair the PA's ability to carry out basic functions of government¹¹.
- 2.3.9** An Agreement on Movement and Access (AMA) was made by Israel and the Palestinian Authority in November 2005. Implementation would give Palestinian people more freedom to move and to trade. The agreement includes plans for: increased freedom of movement in the West Bank; construction of a seaport in Gaza; escorted bus and truck convoys between Gaza and the West Bank; and discussions on an airport in Gaza. Although progress has not been made on all the points in the agreement, there is now an international crossing point at Rafah to Egypt.¹² The importance of this crossing, is that it is the only gateway from Gaza to other countries not under direct Israeli control. It was agreed that the PA, in co-operation with Egypt, would operate the crossing with EU monitors posted at the crossing with supervisory powers. However, several restrictions are in place and Israel has retained the power to close down the crossing. Following implementation of the Disengagement Plan, the crossing remained closed for three months. It opened for the first time on 25 November 2005. From then until 25 June 2006 an average of 1318 persons crossed per day. However, following the kidnapping of Corporal Shalit in June 2006, the crossing was open only 24 of the 168 days on which it was scheduled to be open. Restrictions on movement are also imposed on personnel and goods entering and leaving the Gaza Strip through the Erez, Karni and Sufa crossings.¹³
- 2.3.10** Mahmoud Abbas became President of the PA on 15 January 2005, replacing Yasser Arafat who passed away on 11 November 2004. Palestinian Legislative Council elections were held on 25 January 2006 (the first parliamentary elections since 1996) Hamas won 74 out of the 132 seats. On 29 March 2006 the newly appointed Hamas Cabinet was sworn in.¹⁴ On 4 May 2006 a new Israeli government headed by Ehud Olmert PM was sworn in following Sharon's stroke in January.
- 2.3.11** Following Hamas's victory, Israel and key Western powers suspended financial and technical assistance through the PA and Israel withheld tax revenues. International donor funding (in the case of Western countries) accounted for approximately 75% of the PA's budget. However, the UK and other donors have continued to support the Palestinian

⁹ FCO Middle East peace process: Q & A

¹⁰ FCO Human Rights report 2006, P77

¹¹ B'TSelem The Scope of Israeli control in the Gaza Strip

¹² FCO Human Rights report 2006

¹³ B'TSelem The Gaza Strip: Rafah Crossing

¹⁴ FCO Country Profile: The Occupied Palestinian Territories, Politics

people through the Temporary International Mechanism (TIM), a funding mechanism to provide direct assistance to the Palestinian people following the suspension of donor budget support to the PA. Total EU aid to the Palestinians for 2006, at around €680 million, was higher in 2006 than in 2005. Both the US and EU continue to fund UN agencies and nongovernmental agencies working in the Occupied Palestinian Territories. The Quartet issued a statement on 9 May 2006 expressing its willingness to restart direct support to the Palestinians as soon as the new government has committed to the three principles set up by the Quartet on 20 January: commitment to non-violence; recognition of Israel; and acceptance of previous agreements, including the roadmap. This is asking the new government to follow the position of its predecessors.¹⁵ The Hamas-led government has so far failed to adopt these principles.¹⁶

2.3.12 Tensions between Fatah and Hamas increased during 2006. The internal security situation deteriorated drastically, with the two parties' supporters and security forces clashing in the streets, killing and wounding civilians. Armed Palestinian groups continued to fire unguided homemade Qassam rockets from Gaza into civilian areas in Israel in 2006, causing several serious civilian injuries and two deaths. The Palestinian Authority made little or no effort to rein in these attacks. The number of Palestinian suicide bombings targeting civilians inside Israel in 2006 was lower than at any time since the beginning of the current intifada in 2000, but such attacks continued.¹⁷

2.3.13 The situation deteriorated further following the kidnapping by Palestinian armed groups of an Israeli soldier, Gilad Shalit on 25 June 2006. The IDF undertook operation 'Summer Rains' in Gaza From 28 June until 21 August 2006 in an attempt to recover the captured soldier. 'Summer Rains' involved numerous Israeli air and ground attacks and incursions throughout Gaza. The attacks killed over 200 Palestinians, including civilians; four IDF soldiers were also killed. Subsequently, operation 'Autumn Clouds' between 1 and 7 November, according to PA medical sources, killed at least 56 Palestinians and injured approximately 220. On 26 November, a ceasefire was agreed in Gaza whereby militant factions halted firing rockets towards Israel and the IDF withdrew from northern Gaza. The ceasefire was not extended to the West Bank by the end of 2006.¹⁸ The Israeli army arrested 64 Hamas officials in the West Bank in June following the kidnap.¹⁹

2.3.14 On 12 July 2006, the Lebanese Shia militant group Hizbollah launched a rocket attack on Israeli positions, abducted two Israeli soldiers and killed a number of others. In response the Israeli's bombed Hezbollah positions and blockaded Lebanon's sea ports, whilst IDF ground troops entered Lebanese territory for the first time since May 2000. Hezbollah countered by firing hundreds of rockets from Lebanese territory into Israel, which reached as far as the towns of Haifa and Tiberias. Hezbollah fighters also put up fierce resistance to the Israeli ground forces that had entered Lebanon. On 11 August 2006, after 4 weeks of conflict, the UN Security Council passed Resolution 1701, which called for a full cessation of hostilities, the deployment of the UN's Interim Force in Lebanon (UNIFIL) and Lebanese armed forces in southern Lebanon; the withdrawal of Israeli Defence Forces from Lebanese territory; and the enlargement of UNIFIL to a maximum strength of 15,000 troops.²⁰

2.3.15 In an attempt to end factional warfare Hamas and Fatah signed the Mecca Agreement on 8 February 2007. A new National Unity Government was sworn in on 17 March 2007. Ismail Haniya remained Prime Minister and was charged by President Abbas with forming a new cabinet. The Quartet (EU, UN, US and Russia) stated that they are willing to engage with any Palestinian government that adheres to the Quartet principles of : recognition of Israel, non-violence and commit to previous agreements between the Palestinian Authority and Israel. As part of the Mecca Agreement it was reported that Hamas had agreed to only one

¹⁵ FCO Middle East Peace Process Q & A

¹⁶ FCO Country Profile: The Occupied Palestinian Territories: UK Development Assistance

¹⁷ HRW Country Report 2007: Palestinian Authority

¹⁸ USSD Israel & the occupied territories country report 2006: Annex, Section 1(g)

¹⁹ Guardian Unlimited 'Hamas says Israel is out to destroy its administration.'

²⁰ COIS Lebanon bulletin date?

of the principles, to respect past Palestinian agreements that recognise Israel.²¹ Following talks with the US Secretary of State Condoleezza Rice, President Abbas and Israeli Prime Minister Ehud Olmert agreed to hold biweekly meetings²².

Internal travel (Gaza and the West Bank)

- 2.4.1** In 1967 Israel proclaimed the West Bank and Gaza Strip to be closed military areas. In 1972, general exit orders were issued allowing residents of the Occupied Territories to leave freely, enter Israel and East Jerusalem and pass between Gaza and the West Bank. In 1989, Israel restricted these general exit permits. In Gaza, Israel imposed a magnetic-card system whereby only those with a card were allowed to leave the Strip. In 1991 Israel changed the policy: the general exit permits of 1972 were revoked, and a new policy implemented. Under the new policy, each resident of the Occupied Territories who wished to enter Israel was required to have a personal exit permit. Gradually, the permit policy became more and more strict. The new policy created a situation in which the Occupied Territories were divided into three areas, with passage between them requiring a permit from the Israeli authorities: the Gaza Strip, the West Bank, and East Jerusalem. Movement within the West Bank was also limited. Revocation of the general exit permit in 1991 marked the beginning of the permanent closure policy.²³
- 2.4.2** Palestinians who wish to travel between East Jerusalem and the West Bank are subject to restrictions on their freedom of movement. One of the ways entry to East Jerusalem is restricted is through an ID card system. Palestinians with a blue Israeli ID card have the right to live in Israel. However, Palestinians who choose to live in Israel will be denied a vote in the Israeli national elections and cannot hold an Israeli passport. Blue ID cardholders also have the right to request Israeli citizenship; a right few take up for a variety of reasons. The renewal of these blue ID cards is a lengthy, cumbersome and, at times, humiliating process. Other Palestinians have green West Bank ID cards or orange Gaza ID cards. The former can apply for permits to enter East Jerusalem. All entry permits – even those held by West Bankers who are regularly employed in East Jerusalem – must be renewed every three months. Israel has announced plans to introduce biometric, machine-readable ID cards so it can check whether blue ID cardholders really do live and work in Jerusalem.²⁴

External Travel (Gaza and the West Bank)

- 2.4.3** The US State Department Country Report on Human Rights Practices stated that the PA issued passports for Palestinians in the West Bank and Gaza. Because there are no commercial flights from the territories, travellers must depart by land into Jordan or Egypt. Transit passes for travellers using Ben Gurion airport were not available, except for a few humanitarian cases. Palestinians with Jerusalem identification cards issued by the Israeli government needed special documents to travel abroad. Israeli Arabs required a special permit to enter area A (the area, according to the Interim Agreement, in which the PA exercised security responsibility). However, they could travel abroad using their Israeli passports without restrictions. Upon request the Jordanian government issued passports to Palestinians in the West Bank and East Jerusalem. Palestinians in East Jerusalem who wish to travel to Jordan must leave their Israeli identification documents with Israeli authorities at the Allenby (or King Hussein) Bridge. Travellers could obtain applications for bridge-crossing permits to Jordan at East Jerusalem post offices. Israel officials conducted screening at Allenby (or King Hussein) Bridge.
- 2.4.4** In the early 1970s and again in the early 1990s, Israel offered Palestinian residents citizenship following its 1967 occupation of East Jerusalem. Most chose not to accept

²¹ BBC News: Palestinian unity deal under way

²² BBC News: US holds rare Middle East summit

²³ B'Tselem: Closure

²⁴ FCO Human Rights Report 2006, P79

Israeli citizenship but instead sought a residence permit, known as a Jerusalem identification card. Under the law such residents risk loss of status if their ties with Jerusalem lapse, although human rights groups reported that such revocations were infrequent and selectively enforced.²⁵

- 2.4.5** Residency restrictions affected family reunification. Israeli authorities did not permit Palestinians who were abroad during the 1967 War, or who subsequently lost residence permits, to reside permanently with their families in the occupied territories. It was difficult for foreign-born spouses and children of Palestinian residents to obtain residency. Palestinian spouses of Jerusalem residents must obtain a residency permit and reported delays of several years before being granted residency. According to B'Tselem there were 120,000 outstanding family reunification requests to permit Palestinians to live with foreign spouses in the occupied territories; some have been outstanding for years. The Israeli government occasionally issued limited-duration permits, but renewing their permits could take up to eight months, which resulted in many Palestinians falling out of status. Palestinians in East Jerusalem also reported extensive delays in registering newborn children with Israeli authorities.²⁶

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in Israel, Gaza and West Bank. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below.
- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instructions on Assessing the Claim).
- 3.3** If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.
- 3.4** This guidance is **not** designed to cover issues of credibility. Caseowners will need to consider credibility issues based on all the information available to them. (For guidance on credibility see para 11 of the Asylum Instructions on Assessing the Claim)
- 3.5** All Asylum Instructions can be accessed via the on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at <http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions/>

²⁵ USSD 2006 Israel and the occupied territories, Annex, Section 2d

²⁶ USSD 2006 Israel and the occupied territories, Annex, Section 2d

3.6 General Country Situation

3.6.1 Many claimants make an asylum or human rights claim based on ill-treatment amounting to persecution due to the violent and volatile general situation in the West Bank and Gaza.

3.6.2 *Treatment*

3.6.2 Progress on improving the human rights situation in Israel and the Occupied Territories has been limited. Positive developments include the implementation of Israel's disengagement plan from the Gaza Strip; and the establishment of the EU Border and Assistance Mission to monitor the Rafah crossing on the Gaza Strip-Egypt border. These developments have improved freedom of movement for Palestinians within Gaza. Disengagement also reduced the opportunity for clashes between the Israelis and Palestinians and contributed to a 75 per cent reduction in the number of Palestinian fatalities and a 50 per cent reduction in Israeli fatalities in 2005, compared with 2004.²⁷

3.6.3 However, concerns remained about Israel's failure to respect the human rights of Palestinians in Gaza and the West Bank. Particular concerns are: the failure to implement the 15 November 2005 Agreement on Movement and Access (see 2.3.8); the targeted killings of Palestinians by the IDF; the firing of artillery shells near populated areas of the Gaza strip causing deaths of civilians; the continued construction of settlements in the West Bank; the impact of the barrier; crossing point closure; settler violence; and intimidation and harassment of Palestinian citizens.²⁸

3.6.4 Following Hamas's victory, Israel and key Western powers suspended financial and technical assistance through the PA and Israel withheld tax revenues. International donor funding (in the case of Western countries) accounted for approximately 75% of the PA's budget. However, the UK and other donors have continued to support the Palestinian people through the Temporary International Mechanism (TIM), a funding mechanism to provide direct assistance to the Palestinian people following the suspension of donor budget support to the PA. Total EU aid to the Palestinians for 2006, at around €680 million, was higher in 2006 than in 2005. [FCO Country Profiles]. Both the US and EU continue to fund UN agencies and nongovernmental agencies working in the Occupied Palestinian Territories.²⁹ The Quartet issued a statement on 9 May 2006 expressing its willingness to restart direct support to any Palestinian government that adheres to the three Quartet principles : non-violence; recognition of Israel; and acceptance of previous agreements, including the roadmap. This is asking the new government to follow the position of its predecessors.³⁰ The Hamas-led government has so far failed to adopt these principles.³¹

3.6.5 Israeli withholding of tax revenues continues to cause severe political and financial crisis in Gaza and West Bank. Poverty and dependence on outside food aid climbed sharply. Because Israel retained effective day-to-day control over most key aspects of life in Gaza, including ingress and egress and thus the economy, it retained the responsibility of an occupying power under the 4th Geneva Convention to ensure that the occupied population has access to food and medicine, and that basic health, security, and education needs are met.³²

3.6.6 Tensions between Fatah and Hamas increased during 2006. The internal security situation deteriorated drastically, with the two parties' supporters and security forces clashing in the streets, killing and wounding bystanders. Armed Palestinian groups continued to fire unguided homemade Qassam rockets from Gaza into civilian areas in Israel in 2006,

²⁷ FCO Human Rights report 2006: Israel and the Occupied Territories: 2.12

²⁸ FCO Human Rights report 2006: Israel and the Occupied Territories: 2.12

²⁹ HRW report 2007: Israel/Occupied Palestinian Territories: 'The Electoral Victory of Hamas' & 'Key International Actors'

³⁰ FCO Middle East Peace Process Q & A

³¹ FCO Country Profile: The Occupied Palestinian Territories: UK Development Assistance

³² HRW report 2007: Israel/Occupied Palestinian Territories: 'The Electoral Victory of Hamas' & 'Key International Actors'

causing several serious civilian injuries and two deaths. The Palestinian Authority made little or no effort to rein in these attacks. The number of Palestinian suicide bombings targeting civilians inside Israel in 2006 was lower than at any time since the beginning of the current intifada in 2000, but such attacks continued.³³ Public executions of 'collaborators' were still being carried out in 2006. Many women suffered domestic violence and abuse in areas administered by the Palestinian Authority. Amnesty International reports that the high level of conflict-related violence has contributed to an increase in family and societal violence.³⁴

- 3.6.7** The situation deteriorated further following the kidnapping by Palestinian armed groups of an Israeli soldier, Gilad Shalit on 25 June 2006. The IDF undertook operation 'Summer Rains' in Gaza from 28 June until 21 August 2006 to recover the captured soldier. 'Summer Rains' involved numerous Israeli air and ground attacks and incursions throughout Gaza. The attacks killed over 200 Palestinians, including civilians; four IDF soldiers were also killed. Subsequently, operation 'Autumn Clouds' between 1 and 7 November, according to PA medical sources, killed at least 56 Palestinians and injured approximately 220. On 26 November, an Israeli-Gaza ceasefire was agreed whereby militant factions halted firing rockets towards Israel and the IDF withdrew from northern Gaza.³⁵
- 3.6.8** During 2006, according to the PA Health Ministry, the Palestine Red Crescent Society (PRCS), and Palestinian and Israeli human rights groups, at least 660 Palestinians were killed during Israeli military and police operations. On 28 December, the Israeli non-governmental organisation B'Tselem claimed that of the 660 Palestinians killed, at least 322 were not engaged in hostilities when killed and 141 were minors. A total of 23 Israelis including six IDF soldiers, and six foreigners were killed by Palestinians in terrorist attacks in both Israel and the occupied territories.³⁶
- 3.6.9** Violence against and harassment of Palestinians was carried out by a minority of Israeli settlers, generally from more extremist settlements in the West Bank. Levels of violence were significant in 2005 but rarely resulted in Palestinian fatalities. Settler harassment of Palestinians has included assault, destruction of property and livelihood (uprooting trees and poisoning wells and animals) and occupation of land and property. Between January and November 2005, 299 files were opened against Israelis for allegedly attacking Palestinians or damaging property; 178 of these incidents occurred in Hebron.³⁷
- 3.6.10** The Israeli government confiscated Palestinian property for construction of the separation barrier or military installations; it offered some compensation to landowners, however, Palestinians largely declined to accept compensation out of concerns that this would legitimize the Israeli land confiscations. Specific cases document the exceptional difficulty Palestinians have in attempting to prove their land ownership to the standards demanded by the Israeli courts. In an October 2006 study, the Israeli NGO Peace Now concluded that 38.7 percent of the land occupied by Israeli settlements, outposts, and settler industrial zones in the West Bank, comprising 15,271 acres, is privately owned Palestinian property. The study, reportedly based on official government data, contended that West Bank settlements violated Israeli law and judicial decisions. The Israeli Yesha settlement council condemned the report on technical and substantive grounds.³⁸
- 3.6.11** Israeli authorities limited Palestinian home construction, notably in East Jerusalem. They generally restricted Palestinian home building elsewhere in the West Bank and near Israeli settlements. According to the Israeli Committee Against House Demolitions, approx 12,000 structures in East Jerusalem were defined by the Israeli government as illegal.

³³ HRW report 2007: Israel/Occupied Palestinian Territories: 'The Electoral Victory of Hamas' & 'Key International Actors'

³⁴ FCO Human Rights Report 2006 Israel & the Occupied Territories

³⁵ USSD 2006 Israel & the occupied territories country report 2006: Annex, Introduction & Section 1(g)

³⁶ USSD 2006 Israel & the occupied territories country report 2006: Annex, Introduction & Section 1(g)

³⁷ FCO Human Rights Report 2006: Settler violence

³⁸ USSD 2006 Israel & the Occupied Territories country report: Annex, Section 1(e)

Consequently, during the year Jericho municipal authority and the Interior Ministry systematically demolished such structures including 81 buildings (63 residential) in East Jerusalem.³⁹

3.6.12 Restrictions on the movement of people and goods remained the primary cause of high unemployment and poverty in Gaza and the West Bank. The restrictions hindered the access of Palestinians to hospitals, schools and jobs and disrupted internal and external trade.⁴⁰ In December 2006, UNICEF reported that there was a 31 per cent unemployment rate in the Palestinian territories. In December UNRWA reported that 87 per cent of Gaza and 56 per cent of WB residents lived below the official poverty line and were unable to support themselves and their families without international assistance.⁴¹ As of 1 August 2006, the UN office for the Coordination of Humanitarian Affairs (OCHA) reported 540 physical closure obstacles, up from 376 at the same time in 2005. The closure of Gaza was more complete than at any time since the outbreak of the intifada in 2000, with the Rafah international crossing, Erez crossing and other crossings into Israel designed for the transport of goods closed entirely or opened only irregularly, with disastrous effects on Gazan exports and imports. As of 25 June, 2006, Israel prohibited Palestinian fishermen from fishing off the coast, affecting the livelihoods of 35,000 people dependent on the fishing sector.⁴² There are reports that around 46% of Gaza and West Bank households are 'food insecure' or in danger of becoming so,⁴³ and of water shortages.⁴⁴

3.6.13 Sufficiency of Protection: Because claimants in this category fear mistreatment on the basis of the general country situation and not a fear of mistreatment by particular state or non state agents, the availability and necessity of state protection for such claimants is not a relevant consideration.

3.6.14 Internal relocation: As the whole of Gaza and the West Bank is affected by the armed struggle between Palestinians and the Israeli authorities, consideration of the internal flight option is not relevant.

3.6.15 Caselaw

MA (Palestinian Arabs – Occupied Territories – Risk) Palestinian Territories CG [2007] UKIAT 00017 promulgated 20 February 2007

The IAT find:-

Para 129 'The difficulties faced by Palestinians in the Occupied Territories (economic situation, food insecurity, travel restrictions etc) taken cumulatively are not such that the minimum level of severity for persecution or serious harm is reached, nor is the minimum threshold for a breach of a returnees' rights under Article 3 reached. This applies even in the case of a Palestinian male within the 16 to 35 age group who is from the northern part of the West Bank who would have to endure greater restrictions on his ability to move in the Occupied Territories.'

Para 128 'There is no evidence to suggest that individuals who are forcibly returned and/or who have lived abroad for some time would be treated any differently from other Palestinians, whether at the time of seeking re-entry into the West Bank via the King Hussein Bridge, or thereafter.'

Para 122 '.....However, if a Palestinian Arab who comes from the West Bank is refused re-entry by the Israeli security forces, this would not, of itself, amount to persecution or serious harm or Article 3 ill-treatment. Palestinian Arabs from the West Bank are stateless and have no right of re-entry into the Occupied Territories unlike a citizen. If a Palestinian Arab returnee is refused re-entry into the West Bank at the Israeli checkpoint on the King Hussein Bridge, then he would simply have to turn back to Jordan. The guidance in **NA (Palestinians – Not at general risk) Jordan CG [2005]**

³⁹ USSD 2006 Israel & the Occupied Territories country report: Annex, Section 1 (f)

⁴⁰ Amnesty International country report 2006: Israel & the Occupied Territories, Restrictions on movement

⁴¹ USSD country report Israel & the Occupied Territories 2006: Section 2 (d)

⁴² HRW 2007 Israel/Occupied Territories: The Electoral Victory of Hamas'

⁴³ The Independent 15 April 2007

⁴⁴ B'Tselem: The Water Crisis.

UKIAT 00094 that ethnic Palestinians, whether or not recognised as citizens of Jordan, are not persecuted or treated in breach of their protected human rights by reason of their ethnicity although they may be subject there to discrimination holds good. Appeals on asylum grounds and humanitarian protection grounds must be determined on the hypothetical assumption that a returnee will be successful in re-gaining entry into the West Bank.'

3.6.16 Conclusion A state of general insecurity does not of itself give rise to a well founded fear of persecution within the terms of the 1951 Refugee Convention unless the claimant is at serious risk of adverse treatment over and above others. The reports of tension and security breaches do not indicate that there would be a consistent pattern of gross and systematic violation of rights under Article 3 of the ECHR. Whilst it is acknowledged that the general economic and humanitarian situation in the West Bank and Gaza is poor, it is considered that the cumulative difficulties faced by residents do not reach the minimum level of severity for persecution or serious harm, nor is the threshold for a breach of Article 3 likely to be reached. The grant of Humanitarian Protection on account of generalised violence will only be appropriate where the circumstances of the individual are such that their return will breach Article 3. Caseowners should refer to the Asylum Instructions on Humanitarian Protection for further information.

3.7 Members of militant groups

3.7.1 Some claimants make an asylum or human rights claim based on ill-treatment amounting to persecution at the hands of the Israeli authorities due to their involvement in a militant group.

3.7.2 Treatment [See **Annex** for description of main Palestinian groups, including designated terrorist groups]

Palestinian terrorist groups conducted a significant number of attacks in Israel, the West Bank, and the Gaza Strip, even after a 'period of calm' was agreed in February 2005 to allow Israel to withdraw from Gaza and four settlements in the northern West Bank. All of these groups used a variety of terrorist tactics, including suicide bombs, rocket attacks, pipe bombs, mortar attacks, roadside bombings and ambushes, and shooting at Israeli homes and military and civilian vehicles. The number of victims killed in Israel in terrorist attacks was less than 50, down from the approximately 100 individuals killed in 2004. The Palestinian Islamic Jihad (PIJ), the Fatah-linked al-Aqsa Martyrs Brigade (AAMB), HAMAS, and the Popular Resistance Committees (PRC) were responsible for most of these attacks. Within Gaza, Palestinian militants engaged in occasional bloody skirmishes with PA police and security service officials, and periodically shot at polling stations, electoral offices, and PA security complexes. HAMAS activity dropped significantly in 2005, in part because of its adherence to the ceasefire, but also because much of its leadership in the West Bank was arrested or killed.⁴⁵

3.7.3 The PA failed to take resolute action against terrorist groups based in the West Bank and Gaza to end the use of Palestinian territory for attacks on Israel civilians. In the West Bank the PASF was hindered by restrictions on movement imposed by the IDF. Efforts to arrest and prosecute terrorists were impeded by a disorganised legal system, the Palestinian public's opposition to action, lack of political will, a weak security apparatus, and inadequate prison infrastructure. Deficiencies in training, equipment, and leadership of the PASF in Gaza were a significant obstacle to PASF actions there. PA courts were inefficient and failed to ensure fair and expeditious trials. The PA did, however, take steps to end incitement in the Palestinian media and also made progress in its commitment to deter financial transactions used to fund terrorist activity.⁴⁶

3.7.4 Since the formation of the Hamas government in March 2006, the Preventive Security Organization (PSO), Civil Police, and Civil Defense came under the authority of the

⁴⁵ US State Country reports on Terrorism: Middle East and North Africa overview

⁴⁶

Minsister of Interior. The National Security Forces (NSF) and General Intelligence Services (GI or Mukhabarat) remained under the authority of President Abbas. President Abbas and his subordinates maintained control of security forces in the West Bank and over some forces in Gaza. The Hamas-controlled Interior Ministry created a new security branch, the 'Executive Force' in Gaza, over which President Abbas had no authority. The Executive Force killed or injured several Palestinians affiliated with security forces loyal to President Abbas or the Fatah movement. Neither the president nor the Interior Ministry maintained effective control over security forces under their respective authorities, and there were reports that members of security forces committed numerous, serious abuses. Palestinian police were normally responsible for security and law enforcement for Palestinians and other non-Israelis in PA-controlled areas of the West Bank and Gaza.⁴⁷

- 3.7.5** The PA court system is based on PA legal codes as well as Israel military orders and Jordanian and Ottoman Law that predate the 1967 occupation. A High Judicial Council maintained authority over most court operations. Military courts, established in 1995, have jurisdiction over police and security force personnel as well as crimes by civilians against security forces. PA courts were inefficient, lacked staff and resources, and often did not ensure fair and expeditious trials. A severe shortage of funds and judges, and an absence of lawyers and witnesses, due to check points and other travel restrictions, has led to an estimated 70,000 misdemeanour and felony case backlog in Gaza and the West Bank. Continued violence adversely affected PA administration of justice.⁴⁸
- 3.7.6** Pursuant to the law, the PA can impose the death penalty on a person convicted of any of 42 offences. Military courts and state security courts have imposed most death sentences attributed to the PA. There is no judicial procedure to appeal these sentences, and only the PA president has the authority to ratify or alter the sentence. In June 2005 the PA executed four men, but none since.⁴⁹
- 3.7.7** Israeli security forces in the West Bank and Gaza consisted of the Israeli Defence Force (IDF), the Israel Security Agency (Shin Bet), the Israeli National Police (INP) and the Border Police, an operational arm of the INP that is under IDF command when operating in the occupied territories. Israeli military courts tried Palestinians accused of security offences. The Israeli government maintained effective control of its security forces; however, there were reports that Israeli security forces used excessive force, abused, and tortured Palestinian detainees.⁵⁰
- 3.7.8** Israeli security personnel may arrest without warrant or hold for questioning a person suspected of having committed or being likely to commit a security-related offence. Israeli Military Order 1507 permits Israeli security forces to detain persons for 10 days, during which they cannot see a lawyer or appear before court. Administrative security detention orders could be issued for up to six-month periods and renewed indefinitely by judges. No detainee has ever successfully appealed a detention order under this process. Israeli Military Order 1369 provides for a seven year prison term for anyone not responding to a summons in security cases.⁵¹
- 3.7.9** Palestinians claimed that security detainees held under Israeli security detention military orders were in fact political prisoners. At the end of 2006, the Mandela Institute estimated Israel held 10,633 Palestinian security prisoners. B'T Selem's end of year reports said there were 9,075 Palestinians in custody as of November 2006, 738 of whom were in administrative detention. During the year, Israel conducted some mass arrests in the West Bank; however, most arrests targeted specific persons. In response to the kidnapping of soldier Gilad Shalit on 25 June, the next day the IDF arrested approximately 90 Hamas

⁴⁷ USSD 2006 Israel and the Occupied Territories: Annex, Introduction

⁴⁸ USSD 2006 Israel and the occupied territories: Annex, Section 1(e)

⁴⁹ USSD 2006 Israel and the occupied territories: Annex, Section 1(e)

⁵⁰ USSD 2006 Israel and the occupied territories: Annex, Section 1(e)

⁵¹ USSD 2006 Israel and the occupied territories: Annex, Section 1(d)

members in the West Bank, including eight PA cabinet ministers and more than 29 PLC members. At the end of 2006, four ministers and 32 PLC Hamas members remained in jail in Israel.⁵²

- 3.7.10** Israeli law provides for an independent judiciary, and the government generally respected this in practice. The IDF usually tried Palestinians accused of security offences in the occupied territories in military courts in the West Bank. The law comprehensively defined security offences. Military prosecutors brought charges. Israeli military courts rarely acquitted Palestinians charged with security offences; sentences occasionally were reduced on appeal. Trials of Palestinians before Israeli military tribunals follow the same evidentiary rules as in regular criminal cases. The accused is entitled to counsel. Charges are made in Hebrew but the court may order an Arabic translation. The court may hear evidence in security cases denied to the defendant or his attorney; however, a conviction may not be based solely on such evidence. Convictions may not be based solely on the defendant's confession, although in practice some security prisoners were convicted on the basis of allegedly coerced confessions by themselves and others. Defendants can appeal in certain instances.⁵³
- 3.7.11** During 2006 according to B'Tselem, 22 Palestinians directly died in targeted killings by Israeli authorities. According to Palestinian security and media reports, IDF forces killed at least 60 bystanders in these operations. Some were civilians; others were affiliated with terrorist organizations.⁵⁴ According to B'Tselem's statistics, Israel's targeted killing attacks in the past six years have killed 339 Palestinians, 210 of them the target of the attack and 129 of them civilian bystanders.⁵⁵
- 3.7.12** On 13 December 2006, the High Court of Justice gave its decision on the petition filed in January 2002 by the Public Committee Against Torture in Israel and LAW against Israel's policy of targeted killings, which the state has carried out officially since the beginning of the second intifada, in September 2000. Section 64 states that 'the law of targeted killing is established under customary international law, and the legality of each said individual act must be determined in light of it'. The High Court ruled that members of armed Palestinian organizations engaged in hostilities against the State do not fall within the category of combatants; they are necessarily civilians and should be treated in accordance with the provisions of law relating to civilians who take part in hostilities. It held that the principle of proportionality requires Israel to use arrest, interrogation and trial where possible rather than lethal force. The High Court also discussed the question of who is a legitimate target of a targeted killing and held that international humanitarian law permits the killing of civilians who take part illegally in hostilities, if there is no reasonable possibility to arrest them, only if their participation is 'direct'. It does not include those who play an 'indirect' part.⁵⁶
- 3.7.13** The High Court held that a civilian who has joined a terrorist organisation and carried out a chain of hostilities with short periods of inactivity in between, loses his immunity from attack for the entire time of his activity. However, a person who takes part in hostilities for a certain period of time, but later ceases to take part is deemed not to be a legitimate object of a targeted killing. The High Court also held that after an attack on a civilian suspected of taking part in hostilities, a thorough independent investigation should be performed. An attack against a legitimate target is forbidden when the harm liable to be caused to innocent civilians is excessive in comparison with the military advantage anticipated from the attack. B'Tselem believe that the court's ruling 'will possibly reduce the number of persons unjustifiably killed as a result of Israel's targeted-killing policy.....but that the real test lies in its implementation.'⁵⁷

⁵² USSD 2006 Israel and the occupied territories: Annex, Section 1(e)

⁵³ USSD 2006 Israel and the occupied territories: Annex, Section 1(e)

⁵⁴ USSD 2006 Israel and the occupied territories: Annex, Section 1(a)

⁵⁵ B'Tselem 'Use of Firearms: 19 Dec. 06: High Court of Justice/targeted-killing policy, 1st paragraph

⁵⁶ B'Tselem: Use of Firearms: 19 Dec. 06: High Court of Justice imposes limitations on Israel's targeted-killing policy

⁵⁷ B'Tselem: Use of Firearms: 19 Dec. 06: High Court of Justice imposes limitations on Israel's targeted-killing policy

3.7.14 In an attempt to end factional warfare Hamas and Fatah signed the Mecca Agreement on 8 February 2007. A new National Unity Government was sworn in on 17 March 2007. Ismail Haniya remained Prime Minister and was charged by President Abbas with forming a new cabinet. The Quartet (EU, UN, US and Russia) stated that they are willing to engage with any Palestinian government that adheres to the Quartet principles of : recognition of Israel, non-violence and commit to previous agreements between the Palestinian Authority and Israel. As part of the Mecca Agreement it was reported that Hamas had agreed to only one of the principles, to respect past Palestinian agreements that recognise Israel.⁵⁸ Following talks with the US Secretary of State Condoleezza Rice, President Abbas and Israeli Prime Minister Ehud Olmert agreed to hold biweekly meetings⁵⁹.

3.7.15 Sufficiency of protection As this category of claimants' fear is of ill treatment/persecution by the Israeli authorities, they cannot apply to these authorities for protection. It is considered that the Palestinian Authority is likely to be unwilling or unable to provide protection for those involved in security offences.

3.7.16 Internal Flight Claimants are not able to relocate to a different area to escape the threat of persecution where the alleged source of persecution is state-sponsored. If it is accepted that the claimant is likely to be suspected by or known to the Israeli authorities as an anti-Israeli activist, internal flight will not be a viable option.

3.7.17 Conclusion In February 2007 Hamas and Fatah agreed to end factional warfare and to form a power-sharing coalition. Claimants who are ordinary supporters of either faction are unlikely to be of interest to the Israeli authorities. However, if it is accepted that the circumstances of an individual case indicate it is reasonably likely the claimant would be suspected by the Israeli security forces of being directly involved in terrorist activities against Israel or Israeli settlements, a claim to persecution or breach of Article 3 is likely to be sustainable. However, consideration should be given to whether there is an applicable Geneva Convention reason and also whether exclusion of the claimant under Article 1F of the Convention or paragraph 339C of the Immigration Rules should be considered. Caseowners should refer to Senior Caseworkers in the first instance.

3.8 Forced recruitment by armed groups

3.8.1 Some claimants will make an asylum or human rights claim based on ill treatment amounting to persecution at the hands of Hamas or another militant group due to enforced recruitment.

3.8.2 Treatment.[see Annex for details of groups]

3.8.3 Hamas maintains an active social service network as well as operating a terrorist wing which carries out suicide bombings and attacks using mortars and short-range rockets. The group has launched attacks both in the West Bank and Gaza, and Israel. In addition to its military wing, the Izz al-Din al-Qassam Brigade, Hamas devotes much of its estimated \$70 million dollar budget to its extensive social services provision. It funds schools, orphanages, mosques, healthcare clinics, soup kitchens, and sports leagues. Hamas' efforts in this area, as well as a reputation for honesty, help to explain the broad popularity it summoned to defeat Fatah in the PA's recent elections. Its military wing is believed to have more than 1,000 active members and thousands of supporters and sympathizers. On March 22, 2004, more than 200,000 Palestinians are estimated to have marched in Yassin's funeral.⁶⁰

⁵⁸ BBC News: Palestinian unity deal under way

⁵⁹ BBC News: US holds rare Middle East summit

⁶⁰ Council on Foreign Relations: Backgrounder: Hamas

- 3.8.4** Suicide bomb attacks against Israeli targets have become the most dramatic weapon in the armoury of the Palestinian militant groups. There appears to be no shortage of recruits. Most of the bombers are affiliated to the Palestinian militant groups Hamas or Islamic Jihad. They are likely to be motivated by religious fervour. According to Islamic tradition, he who gives his life for an Islamic cause will have his sins forgiven and a place reserved in paradise. For many years, suicide attacks on Israelis have been seen by some Palestinians as just such acts of martyrdom. Recruits are reassured by their organisation that their families will be looked after materially until they die, and there are charitable organisations that exist for this purpose.⁶¹
- 3.8.5** Hamas recruits its suicide bombers by targeting deeply religious young men, although some bombers have been older. The recruits do not fit the usual psychological profile of suicidal people. They often hold paying jobs. What they have in common, say studies, is an intense hatred of Israel. After a bombing, Hamas gives the family of the suicide bomber between \$3,000 and \$5,000 and assures them their son died a martyr in a holy jihad.⁶² This question was touched upon in a Paper published by The Foundation for the Defense of Democracies; The Globalisation of Hamas Terrorism, 2003, which cited a Canadian case in which it was decided that forced recruitment and consequent fear of reprisal was not an issue.⁶³
- 3.8.6** **Sufficiency of protection.** Palestinian police are responsible for security and law enforcement for Palestinians and other non-Israelis in PA-controlled areas of the West Bank and Gaza. There is no evidence to indicate that they would be unwilling or unable to provide effective protection for claimants in the circumstances described.
- 3.8.7** **Internal relocation.** Notwithstanding the restrictions (see section 2.4.1) on movement of all Palestinians imposed by the Israeli authorities, individuals who are not known to the Israeli authorities for anti-Israeli activities are able to relocate to a different area within Gaza or the West Bank to escape a localised threat from non-State agents.
- 3.8.8** **Conclusion.** There are a number of armed Palestinian groups operating in Gaza and West Bank that support and carry out politically-motivated violent acts. Ideologies are based on nationalist, religious or left wing beliefs, or a combination thereof. There is no evidence of individuals being coerced into membership of any group. The grant of asylum or Humanitarian Protection in such cases is, therefore, unlikely to be appropriate. Furthermore, caseowners should also consider whether exclusion of the claimant under Article 1F of the Convention or paragraph 339C of the Immigration Rules should be considered.
- 3.9 Israeli collaborator**
- 3.9.1** Some claimants will apply for asylum or make a human rights claim based on ill treatment amounting to persecution at the hands of the Palestinian authorities and militant groups due to being suspected of being Israeli informants.
- 3.9.2** **Treatment.**
- 3.9.3** Although the Israeli government does not officially sanction the practice of forcing Palestinian civilians to assist in its military activities, Palestinians have been known to be placed in situations where it was very difficult to avoid assisting. Some may collaborate for financial gain, because they are being blackmailed after being arrested, or because of their opposition to certain militant group members. B'TSelem maintains that some members of the security forces ask Palestinians to collaborate with them in exchange for permits allowing them to work or access medical treatment inside Israel.⁶⁴

⁶¹ BBC News 'Who are the suicide bombers'

⁶² Council on Foreign Relations: Hamas

⁶³ FDD: Globalization of Hamas, P3

⁶⁴ Immigration & Refugee Board of Canada: RIRs :AL42588.E, 26.04.04

- 3.9.4** According to Human Rights Watch, as of 2003 there were three significant kinds of 'collaborators' in West Bank and Gaza Strip; 'informants' who gave Israeli security forces information about the activities of Palestinian militants; 'infiltrators' who penetrated Palestinian organisations, and 'land dealers' who assisted Israelis in purchasing Palestinian-owned land. Other types of informants were more active before 1994 but may still have been active in 2003. For example, 'intermediaries' who helped Palestinians with paperwork and security checks; 'armed collaborators' who helped the Israeli Special Forces locate the houses of Palestinian militants; 'economic collaborators' who represented Israeli companies and promoted Israeli products; and 'political collaborators' who represented Israel interests, occasionally assuming a public role. According to Human Rights Watch, a Palestinian suspected of belonging to any of the above-mentioned categories carries the risk of being assassinated or arrested.⁶⁵
- 3.9.5** Since the beginning of the Al-Aqsa Intifada in 2000, dozens of Palestinians suspected of collaborating with Israel have been executed, sometimes publicly, with the aim of deterring future collaborators. According to B'Tselem, a total of 86 Palestinians have been killed by other Palestinians for alleged collaboration with Israel since 2000. Killings included assassinations by militant organisations, lynching by crowds of people, and also at the hands of the PA security forces by executions, during torture or when attempting to escape.⁶⁶ Statistics provided by B'Tselem indicate that between 29.09.00 and 28.02.07, 118 Palestinians were killed by Palestinians for suspected collaboration with Israel.⁶⁶
- 3.9.6** On 15 March 2004, the PA announced that it had arrested at least 140 Palestinians suspected of collaboration since the beginning of the intifada in 2000, and would resume its practice of executions of collaborators. Human Rights Watch reported in 2001 that the PA had been involved in 'serious abuses' against suspected collaborators and reported in 2004 that collaborators suffered poorer than average treatment in PA prisons.⁶⁷ In 2006 PA security forces detained persons without informing judicial authorities and often ignored laws protecting detainee rights and court decisions calling for release of alleged security criminals. At the end of 2006, Palestinian sources estimated the PA imprisoned approximately 263 suspected of collaboration with Israel. Alleged collaborators often were held without evidence and denied access to lawyers, their families, or doctors.⁶⁸
- 3.9.7** Certain human rights groups have suggested that, as at 2002, around 15,000 Palestinians were collaborating with Israel in the West Bank and Gaza. A former Shin Bet (Israel's internal security service) agent who was involved in recruiting Palestinian informants said that Israel promised protection in the Jewish state to collaborators who are discovered. Protected collaborators are typically high-ranking informants; Shin Bet either assigns them a new identity and places them in neighbourhoods developed by Shin Bet where former Israeli informants live.⁶⁹
- 3.9.8** In 1997, the Jewish Telegraphic Agency (JTA) reported that a programme was being implemented to assist Palestinian collaborators; the programme took care of about 1,000 collaborators' families living in Israel, but that number did not include some 3,000 collaborators families who did not have legal residence permits. The families who resettled legally received financial assistance – sometimes as much as hundreds of thousands of American dollars from the Israeli government. During 2004 the consul from the Embassy of Israel in Ottawa said that Palestinians who work with the Israeli government for Israeli security purposes generally are entitled to financial assistance, accommodation, a job and tuition for their children. In some cases, these people may obtain Israel citizenship. For example, if a person were discovered in the Gaza Strip, he or she would be sent to Israel

⁶⁵ Immigration & Refugee Board of Canada: RIRs :AL42588.E, 26.04.04

⁶⁶ B'Tselem Harm to Palestinians suspected of collaborating with Israel: Fatalities statistics

⁶⁷ Immigration & Refugee Board of Canada: RIRs :AL42588.E, 26.04.04

⁶⁸ USSD 2006: Israel and the occupied territories: Annex, Section 1(d)

⁶⁹ Immigration and Refugee Board of Canada:RIRs ISR43052.FE, 4.01.05

because Palestinian authorities are not sympathetic to the cause of an alleged collaborator and would not give police protection.⁷⁰

- 3.9.9 Sufficiency of protection.** Claimants who fear reprisals from local residents due to the discovery of their actions in collaborating with the Israeli authorities are provided with protection and support from the Israeli authorities.
- 3.9.10 Internal relocation.** Collaborators who seek the assistance of the Israeli authorities are able to relocate to Israel.
- 3.9.11 Conclusion.** The evidence indicates that there are around 15,000 Palestinians collaborating with Israel in Gaza and the West Bank and that, if discovered, Israeli authorities have undertaken to provide protection, financial assistance and accommodation in Israel for collaborators and their families. It is unlikely, therefore, that such claims would engage the UK's obligations under the 1951 Refugee Convention and a grant of asylum or Humanitarian Protection is unlikely to be appropriate.

UNRWA

- 3.10** Some applicants may make an asylum claim having previously received support from the United Nations Relief and Works Agency for Palestinian Refugees (UNWRA) before 28 July 1951.
- 3.10.1 Treatment:** Following the 1948 conflict, UNRWA, the United Nations Relief and Works Agency for Palestine Refugees in the Near East, was established by the United Nations to carry out direct relief and works programmes for Palestine refugees. The Agency began operations on 1 May 1950. In the absence of a solution to the Palestine refugee problem, the General Assembly has repeatedly renewed UNRWA's mandate, most recently extending it to 30 June 2008. Since its establishment, it has delivered services in times of relative calm and in times of hostilities. It has fed, housed and clothed tens of thousands of fleeing refugees and at the same time educated and given health care to hundreds of thousands of young refugees. Originally envisaged as a temporary organisation, it has gradually adjusted its programmes to meet the changing needs of the refugees. Today, UNWRA is the main provider of basic services – education, health, relief and social services – to over 4.3 million registered Palestine refugees. Its five fields of operation are Jordan, Lebanon, Syria, West Bank and Jordan. Some 1.2 million refugees live in 59 recognised camps. UNWRA does not own, administer or police the camps as this is the responsibility of the host authorities. In the case of Gaza and West Bank this is the Palestinian Authority.⁷¹
- 3.10.2** For the purposes of considering an asylum claim from this category of claimant, caseowners should apply the Article 1D exclusion clause of the 1951 Refugee Convention. This clause states that the Refugee Convention does not apply to persons who “are at present receiving from organs or agencies of the United Nations other than the UNHCR protection or assistance” and that “when such protection or assistance has ceased for any reason without the position of such persons being definitively settled in accordance with the relevant resolutions adopted by the General Assembly of the United Nations, these persons shall ipso facto be entitled to the benefits of the Convention”.
- 3.10.3 Caselaw:** The meaning of ‘at present’ was considered by the Court of Appeal in the case of **El-Ali and Daraz [2002] EWCA Civ 1103**. The Court held that the term ‘at present’ related to the date on which the Refugee Convention was signed – 28 July 1951. This means that Article 1D is relevant only to a person who was receiving protection or assistance from UNRWA on or before 28 July 1951. It is not relevant to anyone else, not even to the descendants of people who were receiving such protection or assistance on that date. The effect of this judgement is that very few Palestinian asylum claimants will be affected by Article 1D.

⁷⁰ Immigration and Refugee Board of Canada:RIRs ISR43052.FE, 4.01.05

⁷¹ UNWRA official website

3.10.4 Conclusion: Where a claimant's circumstances fall within the ambit of clause Article 1D, i.e applicants who were in receipt of support from UNWRA at the time the Refugee Convention was signed on 28 July 1951 they should be excluded from the scope of the Convention for as long as UNWRA continues to operate. Accordingly, an asylum claim from such a claimant would fall to be refused on the grounds that a person is not a Convention refugee. This would be so even where a claimant could show a well-founded fear of persecution on one of the five Convention grounds. However, consideration should be given in the normal way as to whether the claimant qualifies for Humanitarian Protection or Discretionary Leave. Where this is considered appropriate, the period of Humanitarian Protection or Discretionary Leave should be in accordance with normal practice. A claimant who has a well-founded fear of persecution but is excluded from being a refugee by virtue of Article 1D would normally qualify for leave on the basis of Humanitarian Protection. Caseowners should refer to the Asylum Instructions on Humanitarian Protection and Discretionary Leave. Further information and guidance can also be found in Asylum Instruction 'UNRWA assisted Palestinians' Caseowners should consult APU via SCW's for further clarification.

3.11 Statelessness

3.11.1 An asylum claim from a Palestinian may be accompanied by a claim to stay in the UK on the grounds that they are stateless.

3.11.2 Treatment. Article 1 of the 1954 Convention Relating to the Status of Stateless Persons defines a stateless person as 'a person who is not considered as a national by any state under the operation of its law.' The UNHCR identifies a stateless person as someone who is 'not recognized by any country as a citizen,' and this definition generally refers to a specific group of people known as *de jure* (legally) stateless persons. It generally does not encompass the many people, *de facto* (or effectively) stateless persons, who are unable to establish their nationality or whose citizenship is disputed by one or more countries. However, a resolution attached to the 1961 Convention recommends that persons who are *de facto* stateless should as far as possible be treated as *de jure*, to enable them to acquire an effective nationality.⁷²

3.11.3 Millions of Palestinians are not only refugees, but are stateless as well. Following the war in 1948, more than 750,000 Palestinians were displaced and became refugees in neighbouring Arab States and in lands now occupied by Israel. Over the succeeding years, the number of Palestinians worldwide has grown to an estimated 8 and 9½ million people. While the Palestinian population theoretically has had a state since the approval of UN General Assembly Resolution 184 (1947), they have been unable to return to their homes. Their claim to a right of return to their homes has been disputed by Israel, leaving them stateless. Apart from Jordan, neighbouring Arab countries have not granted citizenship to Palestinian refugees, leaving around 4 million individuals as *de jure* stateless persons.⁷³

3.11.4 Sufficiency of protection. For the purposes of considering an asylum claim under the Refugee Convention, the applicability of 'state' protection is not a relevant consideration for those considered to be stateless.

3.11.5 Internal relocation. For Refugee Convention claims based on statelessness, consideration of the internal flight is not relevant.

3.11.6 Caselaw.

MA (Palestinian Arabs – Occupied Territories – Risk) Palestinian Territories CG [2007]
UKIAT 00017 Promulgated 20 February 2007

The Tribunal find:-

⁷² Refugees International 'Lives on hold, the scope of statelessness'

⁷³ Refugees International 'Lives on hold, the scope of statelessness'

Para 27 'On the question of returnability, we informed the parties that, in our view, pursuant to the recent judgment of the Court of Appeal in *Gedow and Others v Secretary of State for the Home Department* [2006] EWCA Civ 1342, the precise method of return is not a matter which needs concern us.....'

Para 57 ' In our judgment, in the event that a Palestinian Arab is denied re-entry to the Occupied Territories at the Israeli end of the crossing at King Hussein Bridge, this would not amount to persecution. Palestinian Arabs from the Occupied Territories are stateless and have no right of re-entry into the Occupied Territories unlike a citizen. For the same reason, we do not consider that the denial of re-entry would in itself amount to degrading or inhuman treatment contrary to Article 3.'

Para 62 'If a Palestinian Arab formerly resident in the West Bank who is being removed to the West Bank is refused re-entry into the Occupied Territories at the Israeli checkpoint on the King Hussein Bridge, then he would simply have to turn back into Jordan. The country guidance case on the situation of Palestinians in Jordan is NA (Palestinians – Not at general risk) Jordan CG [2005] UKIAT 00094. That case decided that ethnic Palestinians, whether or not recognised as citizens of Jordan, are not persecuted or treated in breach of their protected human rights by reason of their ethnicity, although they may be subject there to discrimination in certain respects in their social lives in a manner which does not cross the threshold from discrimination to persecution or breach of protected human rights....'

Para 128 'There is no evidence to suggest that individuals who are forcibly returned and have lived abroad for some time would be treated any differently from other Palestinians, whether at the time of seeking re-entry into the West Bank via the King Hussein Bridge, or thereafter.'

- 3.11.7 Conclusion** The UK is a signatory to the 1954 Convention on the status of Stateless Persons, but that Convention does not require signatories to grant leave to stateless persons. There is no provision in primary legislation, the Immigration Rules or Home Office published policies that requires leave to be granted to a person on the basis that they are stateless. A claim on this basis alone would, therefore, fall to be refused on the grounds that leave is being sought for a purpose not covered by the Immigration Rules.
- 3.11.8** The 1954 Convention relating to the Status of Stateless Persons has a similar, although not identical, provision to Article 1D of the Refugee Convention. This is Article 1(2)(ii). This provision should be interpreted as meaning that a person who was receiving protection or assistance from UNRWA on 28 September 1954 (the date that Convention was signed) is not covered by the terms of the Stateless Persons Convention, even if they otherwise meet the definition of statelessness set out in that Convention. Similarly to the Article 1D exclusion clause, the numbers covered by this exclusion provision will be relatively low. Caseowners should consult a Senior Caseworker for further guidance.
- 3.11.9** No distinction is made between applications for leave to remain from stateless people and from people who have a nationality. Stateless people whose applications are successful are granted leave to enter or remain in the usual way. Those whose applications fail are expected to leave the United Kingdom, usually to return to their countries of habitual residence (see **MA (Palestinian Arabs – Occupied Territories – Risk) Palestinian Territories CG [2007] UKIAT 00017**, above). The fact of being stateless is not, therefore, in itself a reason for granting leave to enter or remain in the UK and would not give rise to a grant of asylum or Humanitarian Protection.

Israel

3.12 Ethnic Russians and Eastern Europeans

- 3.12.1** Some claimants will make an asylum or human rights claim based on ill treatment amounting to persecution at the hands of the Israeli Authorities and society due to being ethnic Russian or Eastern European.
- 3.12.2 Treatment** According to 2002 statistics, the proportion of new immigrants to Israel from the states of the former Soviet Union (FSU) declined to an estimated 21,600. In all, over a million immigrants from the FSU have arrived in Israel since the early 1990s. Immigrants from the FSU generally settled in the poorest districts of under-developed, southern Israeli

cities such as Beer-Sheva, Arad and Dimona. The Russia Journal noted in 1999 that a Russian speaker can get by in Israel speaking only Russian because of the number of businesses servicing the immigrant community. The FSU immigrant population have retained their distinctly Russian cultural identity and formed their own economic, social, and political infrastructure within Israel. This infrastructure includes Russian-language neighbourhoods, schools, restaurants, theatres, media, (ibid.) as well as businesses such as non-kosher butchers and Russian-language bookstores. However former Soviet immigrants reportedly complain that they face a hostile bureaucracy and a sense of isolation from the broader Israeli community. There have been feuds between ultra-Orthodox Jews and the immigrant owners of non-kosher butcher shops. The Jewishness of some new arrivals is scrutinized, right down to DNA tests to show they have Jewish relatives⁷⁴

3.12.3 Under the Law of Return, all that is needed to qualify automatically as an Israeli citizen is one Jewish grandparent. That means, therefore, that some unknown number of people entering the State of Israel as immigrants from the SFU are qualified to become citizens immediately but are not Halakhically Jewish, that is Jewish through religious law. The only other way to become an Israeli citizen is through naturalization, the method commonly used by Christians and Muslims. Immigrants from the former Soviet Union who reside in the State of Israel are legal citizens with complete rights except for the laws of personal status, marriage, divorce and some limited cases of inheritance.⁷⁵

3.12.4 In a 2002 Jerusalem Post interview, an official representing a FSU immigrant school noted that Russian-language children are verbally and physically abused, and have a higher drop-out rate than average in the Israeli school system. Israeli representatives reported to the United Nations in 2002 that concern about the quality of the integration of immigrant children into the school system has led to a range of initiatives to promote their educational and social integration yet no systematic, reliable data exists concerning the integration of former Soviet immigrant children.⁷⁶

3.12.5 Sufficiency of protection If the fear is of ill treatment amounting to persecution by the state authorities individuals cannot apply to those authorities for protection. However claimants in this category generally claim to fear general society and can seek redress from the state authorities.

3.12.6 Although the Israeli National Police lacked sufficient resources, particularly personnel and notably qualified personnel, to address government corruption in 2005, it was generally effective and corruption was generally not a problem. The police utilized training programs and a bureau in the justice ministry reviewed complaints against police officers and imposed disciplinary charges or recommended indictments against officers.⁷⁷ Therefore in the majority of cases the Israeli National Police would be willing and able to offer sufficiency of protection.

3.12.7 Internal relocation If the fear is of ill treatment amounting to persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible. However, claimants in this category generally claim to be in fear of the general society.

3.12.8 The law provides for freedom of movement, and the government generally respected this right in practice for citizens. Citizens generally were free to travel abroad and to emigrate, provided they had no outstanding military obligations and no administrative restrictions. However, the government may bar citizens from leaving the country based on security considerations.⁷⁸

3.12.9 There are schools, bars, restaurants, even entire neighbourhoods that are solidly Russian-speaking.⁷⁹ It is therefore considered not unduly harsh for the majority of appellants to

⁷⁴ Immigration and Refugee Board of Canada

⁷⁵ Immigration and Refugee Board of Canada

⁷⁶ Immigration and Refugee Board of Canada

⁷⁷ USSD 2005 Section 1

⁷⁸ USSD 2005 Section 2

⁷⁹ Immigration and Refugee Board of Canada

internally relocate to an area of the country dominated by Ethnic Russians or Eastern Europeans.

3.12.10 Conclusion Although Ethnic Russians and Eastern Europeans may face some forms of societal discrimination in Israel, the evidence does not suggest that this would lead to ill-treatment amounting to persecution. There is no evidence that Ethnic Russians and Eastern Europeans are any less likely than other citizens of the country to access protection from the State. It is also considered that internal relocation is not generally unduly harsh. Therefore in the majority of cases a grant of asylum or Humanitarian Protection would not usually be appropriate. Claims made under this category are likely to be clearly unfounded and as such may fall to be certified.

3.13 Prison conditions

3.13.1 Claimants may claim that they cannot return to Israel, Gaza or the West Bank due a serious risk that they will be imprisoned on return and that prison conditions are so poor as to amount to torture or inhuman treatment or punishment.

3.13.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason, or in cases where for a Convention reason a prison sentence is extended above the norm, the claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.

Israel

3.13.3 Treatment The law provides detainees the right to live in conditions that do not harm their health or dignity. However, interrogation facilities for Palestinian detainees were overcrowded and had austere conditions. Conditions and treatment at the Russian Compound interrogation centre in Jerusalem remained harsh.⁸⁰

3.13.4 On 3 March 2006, the IDF transferred control of the Ofer Military Detention Camp to the Israeli Prison Service, leaving only two temporary detention centres in the West Bank under IDF control. Conditions in IPS facilities, which house common law criminals and convicted security prisoners (primarily Palestinians), and in the two IDF-controlled Provisional Detention Centres, which hold convicted Palestinian security prisoners, generally met international standards. The International Committee of the Red Cross (ICRC) had access to IPS and IDF facilities. The ICRC regularly monitored IPS facilities, as well as most IDF security prisoner and detention facilities; it did not monitor detention facility '1391'. Pursuant to a 1979 ICRC-Israel agreement, it could not visit interrogation facilities but could meet detainees who had been interrogated in designated areas of these units.⁸¹

3.13.5 On 7 November 2006, a Physicians for Human Rights in Israel (PHR) representative reported medical staff in detention facilities often failed to follow up with prisoners who refused medical treatment. According to PHR, prisoners who needed medical attention sometimes refused treatment for reasons such as mental illness or a fear of making the difficult journey – sometimes as long as nine hours – to a medical facility. In 2005 a reputable international organisation reported receiving information that doctors examined prisoners to determine whether the prisoners could withstand further interrogation.⁸²

3.13.6 The government permitted some NGOs to monitor prison or detention facilities in 2006. In addition NGOs can send lawyers and representatives to meet prisoners in those facilities. PHR was allowed to inspect police detention facilities and make several inspection tours per year but was not given comparable access to IPS facilities. The IBA and public

⁸⁰ USSD Country Report 2006: Israel and the occupied territories: Section 1

⁸¹ USSD Country Report 2006: Israel and the occupied territories: Section 1

⁸² USSD Country Report 2006: Israel and the occupied territories: Section 1

defenders were permitted to inspect IPS facilities. The IBA has agreements with the government allowing selected lawyers to inspect prison, detention, and IDF facilities within the country.⁸³

3.13.7 Conclusion IPS and IDF prison conditions in Israel generally meet international standards for Israeli citizens and Palestinians. Whilst police detention and interrogation facilities for Palestinians in Israel are poor, with overcrowding and austere conditions being a particular problem, conditions are unlikely to reach the Article 3 threshold. Where Palestinian claimants can demonstrate a real risk of imprisonment in police detention or interrogation facilities on return to Israel, a grant of Humanitarian Protection will not usually be appropriate.

3.13.8 However, individual factors should always be considered, to determine whether detention will cause an individual in his particular circumstances to suffer treatment contrary to Article 3. Relevant factors are the likely length of detention, the type of detention facility, and the individual's age and state of health. Where the particular circumstances suggest that treatment is likely to breach the Article 3 threshold, a grant of Humanitarian Protection will be appropriate. If, however, the risk of imprisonment arises for a Convention reason, a grant of asylum will be appropriate.

Gaza and the West Bank

3.13.9 Treatment Prison conditions in Gaza and the West Bank were poor in 2006; most were destroyed during the Intifada and have not been reconstructed; prisoners were kept informally incarcerated. There were separate facilities to hold juvenile prisoners. Prison facilities were poorly protected and subject to intrusions by outsiders. The Palestinian Authority generally permitted the ICRC access to detainees and allowed regular inspections of prison conditions; however, the PA denied access to some detainees for 14 days following their arrests. The PA permitted monitoring of its prisons, but human rights groups, humanitarian organizations, and lawyers reported difficulties gaining access to specific detainees. Human rights organizations stated their ability to visit PA prisons and detention centres varied depending on which organisation ran the facility. Human rights monitors said prison authorities did not consistently permit access to PA detention facilities, and they rarely could see inmates being interrogated.⁸⁴

3.13.10 The conditions of Israeli permanent prison facilities generally met international standards. The standards were less likely to be met in provisional detention centres. The detention and interrogation facilities for Palestinian detainees, including the four interrogation centers (Shikma, Kishon, Petah Tikva, and the Jerusalem Internment Center) were austere, overcrowded and provisional. Israel held at least 93 Palestinian prisoners in some form of solitary confinement. Israel permitted independent monitoring of prison conditions by the ICRC and other groups, although human rights groups reported delays and difficulties in gaining access to specific detainees. Human rights groups reported frequent, unnotified transfers of detainees and significantly limited ability by families of Palestinians imprisoned in Israel to visit.⁸⁵

3.13.11 Conclusion Whilst prison conditions in Palestinian National Authority run prisons remain poor, with reports of dilapidated facilities and overcrowding, these conditions will not normally be sufficiently severe to meet the high Article 3 threshold.

3.13.12 Even where claimants can demonstrate a real risk of imprisonment on return to the Gaza or the West Bank, a grant of Humanitarian Protection will not generally be appropriate. However, individual factors should always be considered, to determine whether detention will cause an individual in his particular circumstances to suffer treatment contrary to Article 3. Relevant factors are the likely length of detention, the type of detention facility, and the individual's age and state of health. Where the particular circumstances suggest that

⁸³ USSD Country Report 2006: Israel and the occupied territories: Section 1

⁸⁴ USSD 2006 Annex: Section 1

⁸⁵ USSD 2006 Annex: Section 1

treatment is likely to breach the Article 3 threshold, a grant of Humanitarian Protection will be appropriate. If, however, the risk of imprisonment arises for a Convention reason, a grant of asylum will be appropriate.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 4.2** With particular reference to Israel, Gaza and West Bank the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instructions on Discretionary Leave and on Article 8 ECHR.
- 4.3 Minors claiming in their own right**
 - 4.3.1** Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.
 - 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period as set out in the relevant Asylum Instructions.
- 4.4 Medical treatment**
 - 4.4.1** Claimants may claim they cannot return to the West Bank, Gaza or Israel due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

Israel

- 4.4.2** Primary care is highly accessible in Israel. In three of the four health plans, the cost of primary care visits to health plan physicians is fully covered by NHI where co-payments are limited to specialist visits. There are over 5000 primary care providers (PCPs) working with the health plans throughout the country.⁸⁶ Family health centres are primarily staffed by public health nurses, with a small number of physicians involved, and have developed the capacity to engage in intensive outreach efforts in the areas of immunization and well-child care more generally in Israel.⁸⁷
- 4.4.3** Vaccination coverage in Israel is high with about 90–92% coverage reported among infants in 2003.⁸⁸ Whilst all Israeli hospitals operate outpatient clinics, most specialized ambulatory care has traditionally been provided in community-based settings. There has been a further shift in the locus of specialist care from the hospital to the community.⁸⁹ Specialists tend to be concentrated in urban areas. This can result in inconvenience and access problems for

⁸⁶ European Observatory on Health Care Systems 2003. Page 41

⁸⁷ European Observatory on Health Care Systems 2003. Page 51

⁸⁸ European Observatory on Health Care Systems 2003. Page 52

⁸⁹ European Observatory on Health Care Systems 2003. Page 58

people living in the periphery and in small villages, although distance does not prevent most residents from visiting specialists. Waiting times for specialists also appear to be reasonable.⁹⁰ Israelis have access to a secure, safe and stable supply of a wide range of pharmaceuticals.⁹¹

- 4.4.4** In 2000 Israel had approximately 5600 psychiatric beds – 1.23 beds per 1000 population over age 14. Only 5% of those psychiatric beds were in general hospitals; 95% were in psychiatric hospitals. The proportion of psychiatric beds in general hospitals is lower than in most western countries, but as in other countries the trend is for a higher proportion of the beds to be located in general hospitals. The psychiatric hospital network comprises 18 psychiatric hospitals, of which 10 are government owned, 6 privately owned and 2 owned by health plans. In addition, there are 12 psychiatric departments in general hospitals and one in the prison system.⁹²
- 4.4.5** The Article 3 threshold will not be reached in the great majority of medical cases and a grant of Discretionary Leave will usually not be appropriate. However, where a caseworker considers that the circumstances of the individual claimant reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

Gaza and the West Bank

- 4.4.6** In addition to the public health services available and those provided by charitable and voluntary organizations, the main providers of health care for the Palestinian population are the Palestinian Red Crescent Society and other Palestinian nongovernmental organizations and UNRWA.⁹³
- 4.4.7** UNRWA's policy is to provide essential health services to eligible Palestinian refugees, consistent with the humanitarian policies of the United Nations and the basic principles and concepts of the World Health Organization. The level of service corresponds to the varying needs of the refugees which, in turn, depend upon their living conditions. Camp residents use UNRWA facilities because of ease of access. Many refugees residing outside the camps also use UNRWA health centres, especially for preventive services. Other refugees, living in towns or remote villages situated at a distance from the nearest UNRWA health centre, tend to use local community facilities whether private, voluntary or public health.⁹⁴
- 4.4.8** The Palestinian Red Crescent Society, established in 1986, has adopted the principles of primary health care. Accordingly, in 1990 the Society formulated a national health plan for the Palestinian population, in coordination with responsible officials in health centres inside the occupied territories as well as with other Palestinian health institutions beyond their borders.⁹⁵
- 4.4.9** The Palestinian Red Crescent Society channels its services through 200 health centres providing primary health care facilities and 15 maternal and child health care centres. Secondary and tertiary health care facilities are made available through a series of hospitals located in places with large Palestinian population densities.⁹⁶
- 4.4.10** There were two psychiatric hospitals, in Gaza with 34 beds (started in 1979) and in the West Bank with 320 beds (started in 1960). There are two general hospital psychiatric units at Nablus and Tulkarm with 4 inpatient beds each (established in 1980). There are no private psychiatric hospitals. There is a child mental health clinic and the Gaza Community Mental Health Centre. There are no specialized drug dependence treatment centres.

⁹⁰ European Observatory on Health Care Systems 2003. Page 59

⁹¹ European Observatory on Health Care Systems 2003. Page 78

⁹² European Observatory on Health Care Systems 2003. Page 83

⁹³ WHO

⁹⁴ WHO

⁹⁵ WHO

⁹⁶ WHO

Nongovernmental organizations such as the Swedish International Relief Association run facilities for those with learning difficulties.⁹⁷

- 4.4.11** The Article 3 threshold will not be reached in the great majority of medical cases and a grant of Discretionary Leave will usually not be appropriate. However, where a caseworker considers that the circumstances of the individual claimant reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of Discretionary Leave will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave.

5. Returns

- 5.1** Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

Voluntary return

- 5.2** Israeli, Gaza or West Bank residents may return voluntarily to their respective regions at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organization for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in Israel, Gaza or the West Bank. The programme was established in 2001, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Those wishing to avail themselves of this opportunity for assisted return should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

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Asylum and Appeals Policy Directorate

6 June 2007

ANNEX

Palestinian Factions

NB: This list is not exhaustive

The Nationalists:-

The Palestine Liberation Organization (PLO)

The establishment of the state of Israel in 1948 and the rise of Palestinian nationalism throughout the 1950s led to the creation of the Palestinian National Liberation Movement in 1957 headed by Yasir Arafat. In 1964, in partial response to the wider trend of militant radicalism, the Arab League founded the Palestine Liberation Organization (PLO). It is a diverse organisation that represents all Palestinians around the world, administered by an executive committee, elected by a Central Council, which in turn is elected by the Palestine National Council (PNC). The PNC is the highest decision-making body of the PLO. Although the PLO is separate from the PA, most analysts contend that the PLO dominates PA institutions. Palestinian factions generally agree that the PLO is the most legitimate representative of Palestinians.⁹⁸

Its original goal was the destruction of the state of Israel through armed struggle. It was initially controlled for the most part by the Egyptian government. The original PLO Charter stressed Israel's annihilation, as well as a right of return and self-determination for Palestinian Arabs. The 1993 Oslo Accords led to the creation of the Palestinian Authority, following which the PLO officially adopted a two-state solution, with Israel and Palestine living side by side contingent on specific terms, such as making East Jerusalem the capital of the Palestinian state, and giving Palestinians the right of return.⁹⁹

In 1993, PLO chairman Yasser Arafat recognized the State of Israel in an official letter to its Prime Minister, Yitzhak Rabin, and renounced terrorism and acts of violence. In response to Arafat's letter, Israel recognized the PLO as the legitimate representative of the Palestinian people. Since 1993, the PLO has transformed itself into a quasi-government, the PA, with Fatah still playing a dominant role. Arafat was the Chairman of the PLO Executive Committee from 1969 until his death in 2004. He was succeeded by Mahmoud Abbas (also known as Abu Mazen).

Fatah¹⁰⁰

Fatah (or al-Fatah, an acronym standing for Harakat Al-Tahrir Al-Watani Al-Filastini - the Movement for the National Liberation of Palestine), was founded in 1959 by Yasser Arafat and served as his power base within the PLO. Fatah is a secular Palestinian nationalist organisation whose original ideology rejected the legitimacy of Israel and advocated violence as a means to drive Israel out of Palestine. Initially Fatah operated in secret, organising attacks against Israel. It stressed Palestinian self-sufficiency as the key to defeating Israel and creating an independent Palestinian state. Fatah emerged from the underground in the mid-1960s and aligned itself with the PLO, establishing itself as the dominant faction in the PLO. By 1969 Arafat was serving as the PLO's Chairman.

Many Fatah members are actively engaged in legitimate PA government activities, However, certain factions within Fatah have recommitted themselves to violence. The al-Aqsa Martyrs Brigade (AAMB) and the Fatah-Tanzim have been implicated in terrorist activities against Israeli targets. The exact nature of the relationships between the Tanzim, the al-Fatah leadership and the al-Aqsa Martyrs Brigade remains unclear. Al-Fatah's leadership has publicly renounced terrorist activity and claims that the Tanzim and al-Aqsa Martyrs Brigades operate independently.

Al-Aqsa Martyrs Bridgade (AAMB)¹⁰¹

⁹⁸ CRS Report for Congress: 8.06.05: Palestinian Factions

⁹⁹ MIPT Terrorism Knowledge Base

¹⁰⁰ MIPT Terrorism Knowledge Base

¹⁰¹ MIPT Terrorism Knowledge Base

Al-Aqsa Martyrs Brigade (AAMB) is a secular, nationalist terrorist group. Its primary tactics are suicide bombings and firearms attacks. While the group's primary objective is to forcibly remove Israelis from the West Bank, Gaza Strip and Jerusalem, the group also targets civilians and soldiers in Israel. It emerged at the outset of the 2000 Palestinian intifada and has carried out shootings and suicide operations against Israeli civilians and military personnel in Israel and the Palestinian territories, rocket and mortar attacks against Israel and Israeli settlements from the Gaza Strip, and the killing of Palestinians suspected of collaborating with Israel. It operates in Israel, the West Bank, and Gaza Strip and has only claimed attacks inside these three areas.

Al-Tanzim ¹⁰²

The origins of the Tanzim lie in the leadership group of al-Fatah that remained in the Occupied Territories while the mainstream branch of al-Fatah was based in Jordan, Lebanon and finally Tunisia. After the 1993 Oslo Accords brought the al-Fatah and PLO leadership back to the Occupied Territories, tension rose. The Tanzim held political and military sway on the ground but were not included in the PA leadership. Marwan Barghouti emerged as the leader of this group. He originally acted as a reformer, crusading against corruption in the PA and advocating peaceful negotiations with Israel. As he realised that the time and political climate were not ripe for reform in the territories, Barghouti and his group resorted to terrorism rising to public prominence during the beginning of the al-Aqsa intifadah in September 2000.

The Popular Front for the Liberation of Palestine-General Command (PFLP-GC) ¹⁰³

The PFLP-GC was established in 1968 by Ahmed Jabril, a former captain in the Syrian Army, when it split from the PFLP. It has supported armed insurrection against the Israeli occupation. It joined the PLO in 1974 but its membership was suspended 10 years later. It since became violently anti-PLO. It has certain Marxist characteristics. The group's operational infrastructure is primarily located in Syria and Lebanon. It usually launches attacks from Lebanon, minimising its presence in Gaza and the West Bank.

Democratic Front for the Liberation of Palestine (DFLP) ¹⁰⁴

The DFLP is a Marxist-Leninist Palestinian secular nationalist movement. It broke away from the Popular Front for the Liberation of Palestine in 1969 over ideological and personal differences. It sought to refocus on leftist ideology, believing that the ultimate goal of Palestinian nationalism could not be achieved without Marxist revolutions throughout the entire Middle East. It has generally focused its violent activities within Israel and the Palestinian Territories. In the late 1990s, the DFLP appeared to reverse its opposition to the peace process, increasing cooperation with the Palestinian Authority and reconciling with Arafat. As a result, the DFLP was removed from the US State Department's list of Foreign Terrorist Organizations. Nevertheless, it appears that the DFLP has remained engaged in anti-Israel activities, and has continued to conduct limited operations against Israeli targets.

Popular Resistance Committees ¹⁰⁵

Popular Resistance Committees (PRC) is a radical Palestinian terrorist organisation based in the Gaza Strip. It was founded by Jamal Abu Samhadana (killed June 2006) a former member of al-Fatah and the Tanzim. The membership of the PRC encompasses both the secular and fundamentalist Palestinian movements – terrorists from Hamas, the PFLP, al-Fatah and the Tanzim are all in the ranks of the group. Ex-members of the Palestinian Preventive Security apparatus, part of the security forces of the PA, are also reported to be active in the PRC. The group maintains its 'armed wing' under a separate name, the Salah al-Din Battalions/Brigades, although the PRC as a whole does not have any focus beyond armed terrorism. The PRC continue

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to be an active force where their main method of attack has been firing rockets from the Gaza Strip into towns in southern Israel and Jewish settlements inside Gaza. This group are reported to have killed two Israeli soldiers and captured another soldier Gilad Shalit in June 2006. They also announce they had kidnapped a Jewish settler in the West Bank shortly afterwards. However, it is unclear whether or not PRC or Hamas were the main group behind these high-profile kidnappings.

The 'Islamists':-

Hamas ¹⁰⁶

Hamas is an acronym of the Harakat al-Muqawama al-Islamiyya or 'Islamic Resistance Movement'. The acronym is also the Arabic word for 'zeal.' Hamas is an outgrowth of the Muslim Brotherhood. The Muslim Brotherhood is a Sunni, Islamist, religious movement that originated in Egypt and seeks broad social, moral, and political reforms based upon Islam. From the late 1960s, Hamas's founder and spiritual leader, Sheikh Ahmed Yassin, was actively involved in non-violent Muslim Brotherhood activities in the Palestinian Territories, including preaching, education and charity work. By the early 1980s Yassin's ideology had begun to radicalize with Yassin more openly espousing violence against Israel. After the outbreak of the first Palestinian intifada in December 1987, Hamas was established as the political arm for MB activities and Hamas members began actively promoting the uprising. In August 1988, Hamas released its official charter. Hamas is dedicated to creating an Islamic state in the territory of 'Palestine' (all of Israel and Palestinian Territories). According to Hamas' charter, the land of Palestine has been endowed to Islam, and it is therefore the duty of all Muslims to liberate Palestine through violent jihad.

As part of its Islamist ideology, Hamas maintains an active network of social services within the Palestinian Territories. Hamas's substantial financial support has enabled it to provide social services, such as education, health care, and recreation services that the PA has been unable to provide. This social work has substantially increased popular support for Hamas, drawing political support away from the Palestinian Authority. Hamas has been able to leverage its popular support into increased support for its terrorist activities.

In January 2006, Hamas ran candidates for Palestinian parliamentary elections and won a landslide victory. It has continued to maintain a hard line against Israel and remains an active militant group. In 2006, factional clashes with its main rival, al-Fatah, consumed the Gaza Strip and led to many deaths on both sides.

Izz al-Din al-Qassam Brigades ¹⁰⁷

Hamas maintains a political wing that manages the group's overall policy and a highly compartmentalised military wing formed in 1992, the Izz al-Din al-Qassam Brigades, that conducts terrorist activities. Hamas terrorists have conducted many attacks, including large-scale suicide bombings, against Israeli civilian and military targets. The group curtailed major terrorist activities in 2005 after agreeing to a temporary period of calm brokered by the Palestinian Authority in February. Despite Hamas's general adherence to the calm, it maintained its military capabilities and launched Qassam rockets from the Gaza Strip against Israeli targets on a number of occasions. Hamas has limited its terrorist operations to Israeli military and civilian targets in the West Bank, Gaza Strip and Israel. It has tens of thousands of supporters and sympathizers. ¹⁰⁸

Palestine Islamic Jihad (PIJ) ¹⁰⁹

The PIJ was founded in the late 1970s by a group of radical Palestinian activists living in Egypt. It is a violent offshoot of the Muslim Brotherhood and is committed to the creation of an Islamic state in all of historic Palestine and the destruction of Israel through attacks against Israeli military and civilian targets. It believes that the Arab-Israeli conflict is not a national dispute over territory but

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rather a fundamentally religious conflict. The group rejects any political arrangements or diplomatic activity to solve the conflict. It initially operated out of Egypt but was exiled to Gaza in the 1980s. During the first Palestinian intifada that began in 1987, the PIJ leadership was exiled to Lebanon. Many of its leaders established direct contact with Iranian officials and PIJ operatives began training at Hezbollah camps in Lebanon. Its headquarters were established in Damascus in 1989 where it has remained. PIJ strongly opposed the Oslo Accords and attempted to derail the peace process by committing a number of terrorist attacks against Israel. The Israeli authorities assassinated leader Shafaqi in 1995 but the group sprang back to life at the beginning of the second intifada. Since 2000 it has claimed responsibility for scores of terrorist attacks in Israel. It remains a relatively small organisation with a limited base of support partly because of its exclusive focus on terrorist attacks and unwillingness to offer a network of social services like Hamas. Its prominence has fallen since 1995 due to a change in leadership, a series of US arrests and the construction of security fences making terrorist attacks more difficult.