

8 August 2011

Our ref. No. D1003

Attention:

Defense Minister Ehud Barak

Fax: 03-6976218

Dear Sir,

Re: Preparing security forces to deal with anticipated demonstrations in the occupied territories in September 2011

We are writing to you, the minister of defense, to request that you create an appropriate policy and issue relevant instructions to the security forces for dealing with demonstrations in the occupied territories and on the borders of the State of Israel. Having served as prime minister during the events of October 2000, you understand the complexity of these situations and are aware that preparation is essential.

Introduction

1. The media has reported that grassroots organizers are planning non-violent marches and demonstrations in the occupied territories and Israel, including marches toward the Israeli border, to coincide with the Palestinian bid for statehood at the United Nations. Palestinian residents of the occupied territories, Israeli citizens, foreign nationals and international activists will participate in these demonstrations.
2. We have heard reports that the security forces are preparing to handle various scenarios that might take place in September. For example, the media has reported that the security forces are training to use¹ non-lethal means and physical obstacles to disperse and prevent the anticipated demonstrations.²
3. It is essential that the security forces prepare to handle anticipated events. Given the army's history of flawed conduct in dealing with Palestinian demonstrations in the occupied territories³, and given the loss of life that resulted from the handling of the May-June demonstration at the Syrian border, which involved unarmed

¹ <http://www.haaretz.co.il/hasite/spages/1231127.html?more=1>

² <http://www.ynet.co.il/articles/0,7340,L-4083874,00.html>

³ In this matter, see our letter to the commander of the Border Police in Judea and Samaria concerning the mishandling of events by security forces which employed excessive violence and riot-dispersion means during a nonviolent demonstration in the village of A-Nabi Salah - see this link: **[[NO LINK]]**

foreign nationals⁴, we are deeply concerned by the policy dictated and instructions issued thus far.

4. Our concern increased upon reading recently published statements by senior military officers. These statements give the impression that the officers fail completely to acknowledge the right of the Palestinians in the occupied territories to exercise their right to freedom of expression via protests and unarmed demonstrations⁵.
5. The purpose of this letter is to ensure that security forces obey international and Israeli law. We request that they incorporate the lessons learned from previous events - particularly the recommendations of the Orr Committee, which investigated the October 2000 events, when security forces shot and killed 13 Israeli civilians during Land Day demonstrations in the Galilee.
6. Poor preparation for events similar to those expected in September 2011 led to grave consequences, including loss of life. We hope that the policy articulated and instructions issued will this time correspond with Israel's obligations to the civilian population of the territories. This responsibility includes appropriate handling of attempts by foreign nationals to enter Israel's territory, as discussed below.

The right to demonstrate and protest in the occupied territories

7. The right to demonstrate is inextricably linked to the right to freedom of expression, which is a fundamental right according to both international and Israeli law. It must be protected. Restricting that right leads to further violations of human rights, and this must be avoided.
8. It is the duty of the State of Israel and the security forces operating on its behalf to honor and defend the right to freedom of expression of the Palestinians in the occupied territories. This includes the right to demonstrate.
9. **Article 21 of the International Covenant on Civil and Political Rights**, to which the State of Israel is a signatory, anchors the freedom of demonstration in the law, banning its restriction with the exception of "**...the interests of national security or public safety, public order, the protection of public health or morals, or the protection of the rights and freedoms of others.**"
10. The Israeli authorities do not acknowledge that the Palestinians in the occupied territories have the right to freedom of expression. In fact, they actively deny it. Military law in the West Bank⁶ and the conduct of the security forces when

⁴ See article by Anshel Pfeffer on Haaretz Online, "Fatalities in Clashes along Syria's and Lebanon's Borders; Demonstrators entered Israeli Territory" (15 May, 2011) [<http://www.haaretz.co.il/hasite/spages/1227957.html>]; and another article by the same reporter in the same media: "Hundreds of Palestinians Try to Cross the Border; Syrian Reports: 22 Killed" (5 June, 2011) [<http://www.haaretz.co.il/hasite/spages/1230237.html>].

⁵ In this matter, net reported that, speaking before the Knesset Foreign Affairs and Defense Committee, Chief of Staff Gantz referred to potential demonstrations as "a new arch of threats." See at: <http://www.ynet.co.il/articles/0,7340,L-4076298,00.html>.

⁶ Order No. 101 bans incitement and hostile propaganda; see: <http://nolegalfrontiers.org/he/military-orders/mil06>.

dealing with demonstrations and protest activities by Palestinians in the territories suppress freedom of expression and the right to demonstrate.

11. By denying Palestinians in the occupied territories the right to demonstrate, Israel is violating international law, which requires governments to honor and defend the right to freedom of expression and protest, including the right to demonstrate, as well as the right to personal safety and physical integrity.
12. **This attitude must change. Israel, as an occupying force, must allow the full realization of freedom of expression and the right to demonstrate. It must not restrict or harm those rights, except when the expected harm these acts might cause to the state's security interests are serious and real and almost certain.**
13. **The proper application of this rule is particularly important in the occupied territories, where Palestinian civilians have no access to the occupying force's centers of government, and where staging a demonstration is their primary means of making themselves heard.**

Forceful dispersion of protests - the legal framework

14. The security forces should allow civil protest in the occupied territories, granting as much leeway as possible to the freedom of expression.
15. Force may be used to disperse demonstrations that have crossed the boundaries of what is permitted by international law, but the use of force should **follow the law-enforcement rules** -- which are to distinguish between regulations for dispersing demonstrations and those pertaining to the use of force in the framework of an armed conflict. Civil protest is neither a war nor an armed conflict and the individuals partaking in it must not be considered either warriors or civilians who take part in warfare⁷.
16. According to the law, lethal force may be used only in order to prevent **a real and immediate threat to human lives, and only after all other less aggressive⁸ options have been exhausted. It should be clear that firing at unarmed demonstrators is absolutely forbidden.** This rule applies even when dealing with acts that challenge Israel's security interests (e.g., when attempts are made to cross or damage the separation barrier; when flotillas challenge the naval blockage of Gaza; when African refugees cross the border; and at protest marches).
17. These rules apply to the enforcement of law and order; they have been legislated according to both international law and Israeli law.

⁷ In this matter, see an article by Prof. Yuval Shani, "Order Disturbance - Not War" at <http://www.idi.org.il/BreakingNews/Pages/396.aspx>.

⁸ Art. 9 of the Basic Principles on the Use of Force and Firearms by Law Enforcement Officials Adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba, 27 August to 7 September 1990, <http://www.seesac.org/uploads/documents/Basic%20Principles%20on%20the%20Use%20of%20Force%20and%20Firearms%20by%20Law%20Enforcement%20Officials.htm.pdf>

Applying the recommendations of the Orr Committee Report⁹

The following is a summary of the recommendations of **Orr Committee** as they pertain to anticipated events in September

18. The Orr Committee indeed addressed events that took place inside the borders of the State of Israel and not in occupied territory, but since it examined the security forces' methods and policies for dealing with mass civil protests, its conclusions apply to and are binding in the case of civil protests in the occupied territories.

A. The goal: preventing casualties

19. The guiding principle of your policy should address the fundamental duty of the security forces to honor and respect the right to life and physical integrity, as the Orr Committee's report states:

"The events [of October 2000] resulted in a large number of casualties and fatalities during the clashes between the police and the rioters. Given the sanctity of human life, this must be prevented by every means possible. It is the duty of the police to exhaust every possible means, given the circumstances, to prevent casualties. Our recommendations aim at... attaining this goal¹⁰."

⁹ The report by the national commission of inquiry that investigated the clashes between the security forces and Israeli civilians in October 2000 (issued August 2003); which may be perused at:

<http://breitman.homestead.com/vaadat-or>

¹⁰ Ibid, Chapter 6, Cl. 2.

B. The need to provide a clear policy, appropriate training and equipment

20. The failure of the security forces to deal properly with the events of October 2000 was largely due to the lack of appropriate preparation and training. The police also lacked proper equipment, even though the demonstrations were not unexpected. The Orr Committee addresses this:

"The failure was expressed in the absence of a clear policy for dealing with the events that broke out during the first critical two days. It included the absence of sufficient and proper psychological and operational training of the police forces for dealing with incidents of public order violations in general, and events of the type that did take place in particular. It manifested itself in the fact that the police were not sufficiently equipped riot dispersal equipment. It was further expressed by the fact that the police relied on a most problematic piece of equipment - the rubber-bullet firing mini-Galil rifles. The individuals who decided to use the rifle were not sufficiently aware of the numerous risks of using that as the chief means of dispersing the demonstrations. At the same time, not enough was done to impress upon the forces the need to avoid causing bodily harm to demonstrators.¹¹"

21. The Orr Committee also reviewed the important aspects of preparing the security forces properly. This could have minimized the scope and power of the riot dispersal means used, with the resulting fatalities. The committee mainly focused on:

C. Clarifying, introducing, and supervising the implementation of proper procedures

22. The committee felt that establishing new procedures and instructions was not sufficient in itself, stating that it is just as important and crucial to coordinate the new instructions, to eliminate older ones, to introduce them to the forces, to train them properly and, of course, to supervise the practical application of the procedures and instructions with proper documentation¹².

D. Allocation of resources

23. Throughout the report, the Orr Committee discusses the great shortage of resources and budgets, which led to a huge shortage of manpower, and the difficulties this created. The committee summarized its position as follows:

¹¹ Ibid, Cl. 7.

¹² Ibid, Chapter 6, Cl. 23.

"Creating a situation whereby the police are properly equipped and have sufficient manpower and resources for dealing with the full potential of riots requires the allocation of proper budgets.¹³"

E. Mental and psychological preparation of security forces

24. One of the most important and problematic issues the committee addresses in its report is the mental and psychological preparation of security forces:

"Another aspect of dealing with riots pertains to the need for an orderly policy and for training programs that provide the security forces in charge of handling riots with sufficient knowledge and practical coaching for that end. This refers to the psychological aspect as well.... It is not enough to say that the police must show restraint. They should be made aware of things that might prevent them from showing restraint and make it difficult for them to exercise self-control in such situations. They should be exposed to that in training, simulations, and feedback sessions that should help them truly understand those things and how they impact on their activities¹⁴."

25. Referring to specific mental preparation, the committee addresses the direct link between the police officers' physical training and the level of their anxiety when dealing with mass demonstrations, and limiting the use of force¹⁵.
26. The committee makes a clear distinction between dispersing demonstrators and dealing with belligerent activities, specifically referring to the grave consequence of the police applying a belligerent attitude to riot-dispersion operations¹⁶.

F. Appropriate use of force and riot-dispersal methods

27. The Orr Committee sharply criticizes the use of excessive force during the events of October 2000, particularly the unnecessary and illegal use of rubber bullets and other potentially lethal means¹⁷.
28. In Clause 32 of Chapter 6 of the report, the committee elaborates on the steps that should be taken to avoid similar failures in the future:

"The committee feels that **it should be made unequivocally clear that the use of live fire, including by snipers, is not a means of crowd dispersion** that the police should use. Live fire should be employed only when handling special situations, such as real and immediate threats to human lives or rescuing hostages.... **The guiding**

¹³ Ibid, Chapter 6, Cl. 30

¹⁴ Ibid, Chapter 4, Cl. 33.

¹⁵ Ibid, Chapter 6, Cl. 233.

¹⁶ Ibid, Chapter 4, Cl. 227.

¹⁷ Ibid, Chapter 4, Cl. 227 and 248.

rule must be that potentially lethal means should be used only when there is a real and immediate threat to human life, and only when the means in question allows for exclusively targeting the individuals who present that threat, and no one else. In all other situations, the police must use non-lethal means."

29. In addition to banning the use of live fire, the committee explicitly recommends that the police exclude the use of mini-Galils' rubber bullets as a means of crowd dispersal:

"Rubber mini-Galils should not be used due to the risks we elaborated on above. The police must stop using them. ... The guiding rule must be that potentially lethal means should be used only under circumstances of real and immediate threats to human life, and only when the means in question allows for targeting only the individuals who create the said life threat, and no one else. In all other situations, the police must use non-lethal means¹⁸."

30. Referring to the incorrect use of crowd dispersal means, the committee sharply criticized the fact that the police were insufficiently trained, particularly in measuring the legal firing distances¹⁹.
31. In the abstract of its report, the committee addresses the consequences of the methods used by the security forces to disperse the demonstrators. It addresses, as well, the balance of power between the police and the public they were dealing with, and the severity of bodily harm that can be caused by those means²⁰.
32. The committee concluded: "**The police must use non-lethal means that they know how to use, and they must be aware of their duty to exhaust all other means [of riot dispersal] before using more serious measures.**"²¹"

Summary

33. The demonstrations in the occupied territories, if and when they take place, must not be suppressed by force. Freedom of expression and the right to demonstrate are human rights acknowledged by Israeli and international law. Forceful dispersion of such demonstrations should occur only when the security forces are nearly certain that there is an imminent threat to public safety.
34. Should the security forces prepare for them while considering every aspect of proper handling civil protests as listed above, whether they take place in the territories or near the state's borders, they would minimize the threat that such

¹⁸ Ibid, Chapter 6, Cl. 32.

¹⁹ Ibid, Chapter 4, Cl. 232

²⁰ Ibid, Chapter 6, Cl. 31.

²¹ Ibid, Chapter 6, Cl. 34.

events might recur in the future, and ascertain that human lives and human rights are protected while handling such events.

35. In view of the above, we hereby demand that you take steps to devise an appropriate policy for the security forces' handling of marches and protest rallies in the occupied territories and near the State of Israel's borders, and to make sure that appropriate preparations are made. The most important instruction to the security forces is that it is strictly forbidden to fire at unarmed demonstrators, and that they must do everything in their power to avoid inflicting casualties.
36. We further request that you update us on the policy you determine and on the means allocated for its application and enforcement.

Sincerely,

Attorney Rajad Jeraisi

Attorney Dan Yakir, Legal Advisor

CC:

- Prime Minister Benjamin Netanyahu, by fax: 02-5664838
- IDF Chief of Staff Beni Gantz, by fax: 03-5698299
- Maj. Gen. (Res.) Ehud Shani, Defense Ministry director general, by fax: 03-6976717
- Attorney Ahaz Ben-Ari, defense establishment's legal advisor, by fax: 03-6976746
- Maj. Gen. Eitan Dangot, coordinator of government activities in the territories, by fax: 03-6976306
- Maj. Gen. Avi Mizrahi, Central Command commander, by fax: 02-5305741
- Maj. Gen. Avihay Mandelblitt, Military Judge Advocate, by fax: 03-5694526
- Brig. Gen. Nitzan Alon, commander of the Judea and Samaria Region Division, by fax: 02-9970436
- Col. Eli Bar-On, legal advisor for Judea and Samaria Region Division, by fax: 02-9977326