

Al Marsad's Position Paper on the Nakba and Naksa Day Protests at the UN Monitored Ceasefire Line Near Majdal Shams, Occupied Syrian Golan

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Introduction

1. As a human rights organisation based in the Syrian Golan that has consistently advocated for all state and non-state actors to abide by their obligations under international humanitarian law and human rights law; Al Marsad condemns the illegal, disproportionate and unjustified actions of members of the Israeli Occupying Forces (IOF) against peacefully protesting civilians at the United Nations Monitored Ceasefire Line during May and June 2011.
2. On 15th May (Nakba) and 5th June 2011 (Naksa) IOF used live ammunition to repel unarmed Syrian and Palestinian protesters as they attempted to cross the United Nations (UN) Monitored Ceasefire Line near Majdal Shams. The actions on Nakba and Naksa amounted to grave violations of international humanitarian and human rights laws by the IOF, as will be illustrated by this position paper.
3. In response to these illegal actions, Al Marsad calls for a full, impartial and independent investigation to be conducted and recognised by the Israeli authorities. Al Marsad also calls for those who were killed or injured to be granted justice for casualties that were brought about due to illegal and disproportionate actions. Al Marsad submits that those who were arrested and detained should have their rights to liberty and fair trial vindicated. Moreover, Al Marsad supports that the victims themselves and their families are awarded satisfactory compensation for the violations that have occurred.

Relevant Background

4. The Valley of Tears has been a traditional meeting spot for Syrian villagers in the Golan since the establishment of the UN monitored ceasefire line in 1974 permanently separated families who are unable to cross between areas of Syrian and Israeli control. A steep hill on the Syrian-controlled side close to Mount Hermon is only 500 meters from the village of Majdal Shams, making it an ideal location for families to communicate with one another over loud speakers. The internet and other modern forms of communication have diminished its purely functional

importance in recent years, but its cultural economy as a symbol of separation, occupation and hope for reunification remains strong. Many in the community still gather there to mark important anniversaries or discuss marriages and funerals.

5. The fact that demonstrators gathered at this location to commemorate Nakba and Naksa Days on 15th May and 5th June was therefore not exceptional in itself. Many of the protesters were Palestinian refugees from Haifa, Jaffa and Tiberias whose parents fled during the 1948 War and Syrians who were forcibly transferred from the Golan by Israeli Occupying Forces in the 1967 Arab-Israeli War.

Summary of Events: Nakba Day, 15th May 2011

6. On Nakba day a large number of unarmed Syrian and Palestinian civilian protesters gathered at the UN Monitored Ceasefire line. There were estimated to be between 5,000 and 10,000 at the viewing tower facing the Syrian village of Majdal Shams. Initially seven Israeli soldiers in two personnel carriers were stationed 500 metres to the south of the monitoring tower. In the early afternoon what started off as a small number of protesters attempted to descend the hill from the viewing tower in the direction of Majdal Shams. They were prevented from doing so by Syrian security personnel. A short time later the protesters attempted to descend the hill again, but this time in much larger groups. Hundreds moved towards the ceasefire line, with the group getting bigger and bigger, as those at the front progressed. The present security forces were unable to stop the huge numbers and the peaceful protesters continued despite the threat of landmines. The first protesters to reach the fence on the ceasefire line began to pull it down and eventually the fence collapsed enabling dozens to stream across the military road and into the crowd of local residents. It was at this point that the Israeli soldiers started to fire live ammunition at the peaceful protesters on the road. As the protesters continued to flood into the village many more Israeli soldiers arrived and an exchange of stone throwing from the protesters and teargas from the IOF ensued.
7. During this exchange Druze elders arrived to try and reason with the soldiers, appealing to them to stop using live ammunition against unarmed civilians. Despite their appeals the IOF opened fire on the road running parallel to the fence erected at the ceasefire line where dozens of protesters were still streaming across. An exchange of stone throwing and tear gas continued, during which time many bystanders and peaceful protesters who were not involved in the stone throwing were injured.
8. Some of the protesters managed to make their way into the main square of Majdal Shams under the protection of the local residents. After reaching

an agreement with the Sheikhs the IOF agreed to withdraw from the centre of the village as long as those who crossed into Majdal Shams returned to the other side of the ceasefire line. By mid-afternoon all of the protesters had left the village and returned to the other side of the ceasefire line. As they went the local residents surrounded them offering them protection from the IOF. During this process two bodies of protesters who were shot by the IOF were carried back. Once all of the protesters had returned the IOF began to secure the military road.

Summary of Events: Interval Period, 16th May to 5th June 2011

9. On 16th May the IOF used bulldozers to construct a trench in the minefield 150 metres inside UN monitored ceasefire zone. The trench was filled with coils of razor wire and several concrete barriers were installed at intervals along the military road. In addition, a fortified sniper box was installed with a prime view of the ceasefire fence, trench and minefield.
10. Between 16th May and 5th June security personnel questioned the doctors who had provided medical assistance to the protesters on Nakba day.
11. During this period military checkpoints were set up on the two main roads leading into Majdal Shams. and on the morning of the 5th June all access to the village was suspended.

Summary of Events: Naksa Day, 5th June 2011

12. On the morning of 5th June all access to the village was suspended and helicopters began to patrol the area. Protesters began to arrive at 10am at the viewing stand opposite Majdal Shams. It is estimated that there were 1,000 protesters at the viewing stand. Residents of Majdal Shams – men, women and children – gathered close the military road where there was an insignificant amount of security personnel present. By mid-morning a handful of protesters began to descend the hill and approach the new trench. Within minutes there was an increase in the number of IOF and groups of soldiers were deployed at regular intervals along the road, including a number of sniper teams. The protesters continued to the trench and began to fan out along its length. A number of the protesters descended into the trench and began to pull at the razor wire. As the protesters persisted the IOF fired live ammunition killing or severely injuring a number of protesters. Some of the protesters began to carry the casualties back to the viewing stand and others remained crouched in the trench. The IOF fired live ammunition once again at the protesters for an extended period of time. It is only once this ceased that the IOF issued a warning over the loud speaker that anyone who damaged security infrastructure or attempted to breach the ceasefire fence was putting themselves at risk.

13. The protesters continued their efforts for seven more hours, trying to enter the trench at different locations. The IOF consistently responded with shooting live ammunition and the casualties grew in numbers. By late evening riot-control personnel arrived on the military road and fired a barrage of tear gas towards the trench forcing the protesters to quickly withdraw back up the hill. Some protesters who were trying to assist casualties found it difficult to climb the hill and got caught in a dense cloud of teargas. Local residents on the Majdal Shams side of the ceasefire fence began to throw stones at the IOF who responded by firing tear gas towards the residents. In addition, riot-control personnel and mounted police descended upon the village. With the intervention of the religious elders and community leaders the situation was eventually defused and by 8pm the IOF withdrew from Majdal Shams.

Summary of Events: Deaths, Injuries and Arrests

14. Three people were killed by the IOF on Nakba day and 23 on Naksa day. 350 casualties were reported after Naksa day alone. The Israeli police have arrested more than 20 local residents who they suspect of throwing stones during the protests. One of the accused has pleaded guilty to his charges and has been sentenced to eight months in prison.

15. In addition, the IOF has continued to fortify the ceasefire line creating more trenches, planting more landmines and building a larger security fence.

Illegality of IOF's Actions

16. As a member of the United Nations Israel is subject to a range of customary international laws which protect against crimes against humanity, war crimes and crimes of aggression. In addition, Israel has ratified a number of instruments which place obligations on it to uphold various international humanitarian and human rights laws. With the actions of its military personnel on 15th May and 5th June 2011, Israel is guilty of gravely violating a number of these obligations.

International Humanitarian Law

17. As a party to the *IV Geneva Convention relative to the Protection of Civilian Persons in Time of War*. Geneva, 12 August 1949, Israel is obligated to respect its provisions. Although Israel has not signed the *Protocol Additional to the Geneva Convention (Protocol I)* state practice has established many of its provisions as norms of customary international law, which is universally binding. Al-Marsad submits that the extensive use of live-ammunition by the IOF against unarmed protesters on 15th May and

- 5th June at the UN monitored ceasefire line amounted to grave breaches of the *Geneva Conventions* and customary international law.
18. The protesters who demonstrated at the ceasefire line on 15th May and 5th June were protected persons within the meaning of Article 4 of the *Fourth Geneva Convention*. Article 27 of the *Fourth Geneva Convention* prohibits attacks against protected persons and “especially against all acts of violence.” Article 51(1) of *Additional Protocol I* prohibits all attacks against civilians.
19. It appears that the IOF were caught off-guard on 15th May when protesters crossed the minefield in the UN monitored ceasefire line, breached the fence and entered Majdal Shams. Of course, that does not absolve them of responsibility for firing on unarmed protesters who posed no imminent threat to the safety of security personnel. Conversely, the actions of the IOF on 5th June were clearly the implementation of a policy developed by senior officials and military officers. The construction of the trench and the installation of fortified positions along the military road suggest that planning for the Naksa day protest began soon after the events of 15th May. Statements made by Prime Minister Benjamin Netanyahu in the days preceding Naksa Day make it clear that the IOF were acting on instructions from the highest political circles.¹ Their actions could therefore be characterized as ‘wilful killings’ of protected persons, which constitutes a grave breach of the Geneva Conventions under Article 147.
20. Al-Marsad further asserts that the decision to deploy soldiers armed with live ammunition to confront unarmed protesters, when less harmful means were available to accomplish the same object, was a violation of the principles of proportionality and precaution in attack. On 5th June a large contingent of anti-riot security personnel, armed with non-lethal crowd-dispersal weapons, was available to be deployed at any moment. Officials made the decision to deploy regular soldiers and snipers to engage the protesters instead.
21. Counter to IOF claims, video evidence confirms that protesters were not given a verbal warning until fully 20 minutes after the first shots had been fired and 8 or 9 casualties were being evacuated. It is also clear that the first shots fired were not ‘warning’ shots, but were directed at the protesters and caused casualties. The IOF issued statements following Naksa Day that only ‘a few’ live bullets were fired during the incident.² After reviewing hours of video footage, Al-Marsad estimates that the IOF fired between than 1,000 and 1,500 rounds of live-ammunition between

¹ <http://www.bbc.co.uk/news/world-middle-east-13660311>

² <http://www.haaretz.com/news/diplomacy-defense/idf-only-a-few-live-bullets-fired-during-naksa-day-protest-on-syria-border-1.366300>

11:50am and 7pm, despite the fact that no protester was ever closer than 150 meters to any IOF personnel.

22. The principles of proportionality and precaution in attack are explicitly articulated in *Additional Protocol I*, Articles 51(5)(b), 57(2)(a)(ii) and 57(3) and state practice has established these principles as norms of customary international law.³ These articles make it clear that: attacks that will cause excessive loss of civilian life in relation to the concrete military advantage anticipated are prohibited; All feasible precautions in the choice of means and methods of warfare must be taken with a view to minimizing loss of civilian life and injury; and where a choice is possible between several military objectives for obtaining a similar advantage, the object selected must be the one which will cause the least danger to civilian lives.
23. The IOF are well trained in riot control techniques and indeed the use of tear gas at the end of Naksa Day successfully dispersed the crowd of protesters. The decision to use live ammunition first might well have been designed to send a message to protesters that any future demonstrations would have lethal consequences. Article 51(2) of *Additional Protocol I* prohibits acts or threats of violence the primary purpose of which is to spread terror among the civilian population.
24. Article 29 of the *Fourth Geneva Convention* and Article 91 of *Protocol I* make it clear that States are responsible for the actions of their armed forces. Al Marsad submits that the actions of the IOF on 15th May and 5th June amounted to grave breaches of the *Geneva Convention* and customary international law. Article 148 of *Geneva Convention IV* states that no High Contracting Party can absolve itself or any other party of liability in respect of breaches of the Convention. Article 149 declares that at the request of any Party to the conflict and enquiry shall be instituted concerning any alleged violation of the Convention.

War Crimes

25. Israel may no longer be a state party to the *Rome Statute 1998* however that does not mean that it is not guilty of the crimes set out within this piece of legislation as they are also recognised within international customary law. The only disadvantage is that Israel no longer recognises the jurisdiction of the International Criminal Court making it difficult to take a case against Israeli authorities.
26. Israel has attempted to annex the Syrian Golan with a range of policies including enacting the Golan Heights Law 1981, expropriating land, building illegal Jewish settlements and imposing Israeli administration and

³ Israel's *Manual on the Laws of War* states that "one should plan the means of attack in a way that will prevent, or at least reduce, the injury to the civilian population." (1998) p.39

laws upon the region. Nevertheless, the Golan remains Syrian territory under the occupation of Israel; an occupation which is viewed as null and void by the international community. Therefore, as set out above the protection of the Geneva Convention is engaged.

27. The events of Naksa and Nabka days are just another example of the policies which are adopted systematically by the IOF across all of the occupied territories – in the Golan, Palestine and Israeli occupied parts of Lebanon. As such these are further incidents that can be added to a very long list that show Israel is guilty of war crimes. Using Article 8 of the *Rome Statute 1998* as a reference for the definition of war crimes there are a range that Israeli authorities have committed throughout its prolonged occupation. With regard to these two particular days Al Marsad believes that the IOF's actions were committed as part of a "plan or policy" in which "wilful killing" was ordered and carried out.⁴ For this the IOF should be held accountable through conducting as a fair, impartial and independent investigation on the basis of which those who deemed responsible to be brought before a court of law and face the consequences of their actions.

Human Rights Law

a) Right to Life

28. Following the events of Nakba and Naksa day 26 people were killed and 350 people were left injured as a result of the IOF's actions. These casualties and many of these injuries were due to the use of live ammunition by the military. The majority of those who were affected were peacefully protesting civilians and even those who responded with violence did so using only stones. Such a reaction from the IOF was a disproportionate response which was unjustified and amounted to severe violations of the right to life of the people that were directly hit and the thousands of bystanders on both sides of the ceasefire line.

29. The right to life is protected within a range of instruments, all of which Israel has ratified or is subject to as a recipient of customary international law:

- Article 3, *Universal Declaration of Human Rights 1948*;
- Article 6(1), *International Covenant on Civil and Political Rights 1966*;
- Article 6, *Convention on the Rights of the Child 1989*; and
- *United Nations General Assembly Resolution, 'Extrajudicial, Summary or Arbitrary Executions'*, 12 November 2010.

⁴ Articles 1 and 2(a)(i), *Rome Statute 1998*.

30. ICCPR General Comment No 6, 1982 clarifies what is meant by the right to life. It states the right to life “is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation... it is a right which should not be interpreted narrowly...” With this in mind, the Office of the High Commissioner for Human Rights (OHCHR) proposed that “State parties should take measures not only to prevent and punish deprivation of life by criminal acts, but also **to prevent arbitrary killing by their own security forces** [emphasis added]...” It cannot be stressed enough that the IOF’s actions on Nakba and Naksa day were disproportionate and unjustified. Taking such actions against civilians and to do so as trained members of state forces violates the very core of the right to life. For this the IOF should be held accountable.

31. Furthermore, a new resolution has been introduced by the United Nations which calls upon States “to ensure the effective protection of the right to life of all persons under their jurisdiction and to **investigate promptly and thoroughly all killings, including those targeted at specific groups of persons** [emphasis added]...”⁵ To date the Israeli authorities have failed to fulfil this obligation by refusing to conduct or recognise an investigation by a fair, impartial and independent body. Aside from this ensuring that justice will be served, it will help to ensure that such a reaction by the IOF will not happen in the future.

b) Right to Liberty and Security of Person

32. Article 9(1) of the *International Covenant on Civil and Political Rights 1966* protects the right to liberty and security of the person, prohibiting arbitrary arrest or detention.⁶ It also includes the right to be informed of the reasons for deprivation of liberty. Al Marsad calls upon the Israeli authorities to ensure these rights are guaranteed and delivered to those who have been arrested following the events on the Nakba and Naska days. Al Marsad further calls for compensation to be awarded in cases where the full rights of detainees are not delivered and for measures to be taken to ensure this does not happen in the future.

c) Right to Fair Trial

33. The right to a fair trial is provided for within Articles 14 and 16 of the *International Covenant on Civil and Political Rights 1966*.⁷ Israel has ratified this treaty and is obliged to protect and uphold its rights. Al Marsad

⁵ A/C.3/65/L.29/Rev.1, ‘Extrajudicial, Summary or Arbitrary Executions’, 12 November 2010, at para 6(b).

⁶ See also Article 3, *Universal Declaration of Human Rights 1948*.

⁷ See also Articles 6, 7, 8 and 10, *Universal Declaration of Human Rights 1948*.

calls on the Israeli authorities to ensure that those who were arrested and face charges for the events of Nakba and Naksa days to be awarded a fair trial. Within this right they should:

- be awarded a trial within a reasonable amount of time;
- be protected against pre-trial publicity which may result in an unfair trial;
- not be subjected to a trial which takes an unreasonable amount of time;
- be brought before an independent and impartial tribunal;
- be ensured presumption of innocence;
- be granted the right to silence and privilege against self-incrimination;
- be granted prompt legal representation which runs the course of proceedings;
- be granted a public hearing;
- be guaranteed public pronouncement of judgment;
- be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;
- be awarded adequate time and the facilities for the preparation of his defence;
- be provided with the opportunity to examine witnesses; and
- be granted free assistance of an interpreter if required.

Declaration

34. Al Marsad's position is very clear, it is calling upon the IOF and Israeli authorities as a whole to uphold and protect the rights and principles laid out in this position paper. Israel has promised to honour these rights and principles through its ratification of various international laws and its membership of the United Nations.

35. Al Marsad calls on the international community, especially member states of the Geneva Conventions, to respect their obligations and launch an investigation into the actions of the IOF on 15th May and 5th June 2011 at the UN monitored ceasefire line near Majdal Shams. The events that unfolded on Nakba and Naksa days which left 26 dead, over 350 injured and dozens arrested were a consequence of the disproportionate and unjustified actions of the IOF. There are further doubts over whether the Israeli authorities are satisfying their obligations concerning the right to liberty and right to a fair trial for those who arrested and those who remain detained following these events.

36. The bottom line is these actions constitute grave violations of international customary law, international humanitarian laws and international human rights laws. To allow the IOF to continue to escape accountability makes a farce of international law, which is essential in protecting the rights of

human beings and ensuring everyone is guaranteed a fair and just existence.