INTER-PARLIAMENTARY UNION

CHEMIN DU POMMIER 5
1218 LE GRAND-SACONNEX / GENEVA (SWITZERLAND)

TELEPHONE (41.22) 919 41 50 - FAX (41.22) 919 41 60 - E-MAIL postbox@mail.ipu.org

COMMITTEE ON THE HUMAN RIGHTS OF PARLIAMENTARIANS

► CASE N° PAL/02 - MARWAN BARGHOUTI - PALESTINE

THE TRIAL OF MR. MARWAN BARGHOUTI

Report by Mr. Simon Foreman, lawyer and expert appointed by the Committee on the Human Rights of Parliamentarians in accordance with the resolution adopted by the Governing Council of the Inter-Parliamentary Union at its 173rd session

Introduction

Organisation of the mission

On 3 October 2003, at its 173rd session, the Governing Council of the Inter-Parliamentary Union unanimously adopted a resolution expressing its concern at the plight and conditions of trial of Mr. Marwan Barghouti, a member of the Palestinian Legislative Council, arrested in Palestinian territory by the Israeli army on 15 April 2002 and detained since then.

The resolution decided on the sending of an observer to Mr. Barghouti's trial. However, the hearings of the trial were suspended on 29 September 2003 after the statement by the accused of his defence. The judgment was reserved for delivery at a hearing the date of which is as yet unknown.

The Inter-Parliamentary Union therefore entrusted me with studying the circumstances of the trial, in the light both of the information conveyed by the sources having brought the matter to the attention of the IPU Committee on the Human Rights of Parliamentarians and of the direct contacts I was asked to make.

Before carrying out my mission, I gathered together as much documentation on the trial as possible, including reports on hearings as published in the international press or written by experts of non-governmental organisations. I also read the indictment drawn up by the Office of the State Attorney and the defence memoir filed by Mr. Barghouti's defence.

I travelled to Jerusalem and Tel Aviv from 8 to 10 December 2003 in order to meet the representatives of the two parties in the trial:

- Ms. Devorah Chen, Director of the Department of Criminal Security Affairs and Special Affairs within the Office of the State Attorney, representing the prosecution in all the hearings, received me in her Tel Aviv office in the presence of her legal assistants and representatives of the Ministries of Justice and of Foreign Affairs;
- with respect to the defence, I met in Jerusalem Mr. Jawad Boulus, Mr. Barghouti's main lawyer, and in Paris two French lawyers also picked by Mr. Barghouti for his defence, although they were finally not permitted to take part in the debates: Ms. Gisèle Halimi and Mr. Daniel Voguet.

I also had many meetings in Paris, Jerusalem and Tel Aviv with a number of persons who had attended part of the public hearings, including journalists, observers from non-governmental organisations, a specialist in humanitarian law, Professor Géraud de la Pradelle, professor in the University of Paris-X, who also attended a hearing on behalf of the International Federation for Human Rights, and the Deputy Consul in the General Consulate of France in Jerusalem, Mr. Ludovic Pouille.

During my stay in Israel I was in touch with Ms. Nadia Sartawi, representative of the Palestinian Legislative Council, and Ms. Ruth Kaplan, in charge of international affairs in the Knesset. Ms. Kaplan had originally organised for me a meeting with Mr. Reshef Shayne MP, member of the Knesset Legal Affairs Committee, but the meeting was cancelled at the last minute because, as I understood, it was considered preferable that my contacts remain at the level of the Office of the State Attorney rather than that of the legislature.

Finally, I must say that Ms. Chen very obligingly provided me with the almost complete official documentation of the trial, including:

- the two decisions whereby the High Court of Justice ruled, on 3 and 14 May 2002, on the conditions of detention of Mr. Barghouti, the deprivation of his right to meet his lawyer, and his conditions of interrogation;
- two judgments handed down on the preliminary arguments raised by the defence (jurisdiction and lawfulness of the arrest), one in connection with the detention proceedings and the other with the trial proper;
- the official report of the hearings on the merits.

Most of these documents being in Hebrew, their exploitation took a certain time. I warmly thank Mr. Fouad Bitar, a sworn translator, who carried out full or partial translations and helped me to analyse them.

All these meetings and documents supplied the substance of this report, comprising two parts:

- the first is a descriptive account of the situation since Mr. Barghouti's arrest to date, including the presentation of the various proceedings to which the case has given rise;
- the second part is devoted to an analysis of the stages of the trial in order to examine whether Mr. Barghouti has enjoyed all the guarantees provided for under international law.

I. Account of the situation of Mr. Marwan Barghouti: the trial, its context and its progress

1. Context: the second Intifada, "Operation Defensive Shield" and the capture of Mr. Barghouti

Marwan Barghouti, born in 1959, is an elected member of the Palestinian Legislative Council (PLC), the parliament of the Palestinian Authority established following the Oslo II Accords of 28 September 1995. He has since January 1996 been representing in it the constituency of Ramallah, one of the main West Bank towns and the headquarters of most of the Palestinian institutions, including the PLC.

Mr. Barghouti was elected for Fatah, of which political movement he is the general secretary for the West Bank and to which the President of the Palestinian Authority, Yasser Arafat, also belongs. Analysts generally regard him as a "moderate" on account of his support for the Oslo Accords (an opinion expressed, for example, by the former head of the Israeli intelligence services Ephraim Halevy in *Haaretz* in September 2003).

As one of the young leaders of Fatah, he did not, unlike his elders, become known from years of membership of the PLO, but on the ground in Ramallah. In this respect he was looked on as one of the "figures" of the second Intifada, which began in late September 2000, before the Israeli authorities gradually came to accuse him of being one of the chief instigators of the attacks that started striking Israel in the ensuing months.

Mr. Barghouti went underground in August 2001. On 4 August he narrowly escaped a missile strike by the Israeli army at two vehicles leaving Fatah headquarters. Marwan Barghouti was in one of them but the Israeli Government stated that another person was the target even though, according to the Deputy Minister for Internal Security Gideon Erza, he *"amply deserves to die (...), for he is very much to blame for the attacks against Israel"*.

The next month the authorities persuaded the Jerusalem Magistrates' Court to issue an arrest warrant for him, on 23 September 2001.

On 18 January 2002 Mr. Barghouti published in the *New York Times* and the *International Herald Tribune* an article that attracted much attention: "Want security, end occupation".

After very violent suicide attacks, notably on the occasion of the Easter holidays (30 killed in Natanya when a terrorist blew herself up on 27 March 2002), the Israeli army called up the reserve and in a few days

launched "Operation Defensive Shield" under cover of which it penetrated massively into the occupied territories of the West Bank in order, according to the explanations given on 8 April to the Knesset by Prime Minister Ariel Sharon, to "enter cities and villages which have become havens for terrorists; to catch and arrest terrorists and, primarily, their dispatchers and those who finance and support them".

In this context the Israeli army resumed control of Ramallah, which it had evacuated six years earlier under the Oslo process, and succeeded in locating and then, on 15 April 2002, capturing Marwan Barghouti, presented by Israel as the person in charge of Tanzim, the armed branch of Fatah, and as the founder of the al-Aqsa Martyrs Brigades, a clandestine movement which has claimed many suicide attacks since the start of the second Intifada.

Mr. Barghouti has been in detention since that date.

2. The detention of Mr. Barghouti until his trial

On the day he was arrested, 15 April 2002, Mr. Barghouti was taken by the military forces from Ramallah, in West Bank territory, to Jerusalem and jailed in the "Russian Compound" prison. His arrest was reportedly notified to him officially at 6 p.m. by a police officer. An investigation was apparently opened against him regarding his alleged involvement in a number of attacks that took place in the preceding months.

Three days later, on 18 April 2002, Mr. Barghouti was visited by his lawyer, Mr. Jawad Boulus.

That visit was to be the only one for a long period since, immediately after that meeting, the officer in charge of the investigation took the decision to forbid for a period of five or six days the meetings between Mr. Barghouti and his lawyer,[1] on the grounds that the ban was necessary for the purposes of the investigation and for security reasons. As permitted under Israeli regulations, the ban was extended several times until 15 May 2002. The appeals that Mr. Boulus twice filed against that ban were rejected by two Supreme Court rulings on 3 and 14 May 2002.

As an exception to that ban, it was proposed in the first appeal to the Supreme Court that Mr. Barghouti and his lawyer be able to meet briefly in the presence of a member of the security services, who would be entitled to interrupt the meeting if one or the other started talking about the investigation. The meeting took place on 7 May 2002.

Mr. Barghouti thus remained in solitary confinement for a month, except for two visits by his lawyer, one on 18 April where they were able to communicate freely, and the following on 7 May under the supervision of the security services and without that freedom.

It may also be mentioned at this stage that, after two weeks of detention, Mr. Barghouti was rumoured to have fallen ill and been admitted to hospital. To disprove the rumour, the investigation services invited Mr. Boulus, on 30 April 2002, to observe his client walking in the prison courtyard, unbeknown to him.

During that month of isolation, Mr. Barghouti was interrogated by the security services. Right at the beginning of May 2002, at a time when he was denied any contact with the outside world, the Israeli press published information from Shin Beth that Mr. Barghouti had admitted responsibility in planning the attacks and the personal involvement of the President of the Palestinian Authority, Mr. Arafat, in financing them.

On 15 May the communication restrictions placed on Mr. Barghouti ended.

He was permitted to see his wife on 17 May.

On 21 and 22 May he had long working with his lawyers and described to them his conditions of interrogation: physical pressures in the form of sleep deprivation and uninterrupted interrogations, and recourse to what is known as the *shabeh* method, consisting in attaching the person interrogated to a chair and forcing them to sit for several hours in a painful position – in this case protruding nails in the back of the chair aggravated the discomfort by preventing him from leaning back. Mr. Barghouti also said that the interrogators proffered death threats against him and his son.

When the investigation was over, the file was transmitted to the Office of the State Attorney.

---

1 The duration of that ban has not been clarified. The ban was the subject of two Supreme Court rulings as we shall see further, a ruling of 3 May 2002 that the ban was for a duration of six days and one of 14 May 2002 that it was for five days.

The State Attorney is the prosecuting authority in Israel. It is also for him to decide which court is to try the case, when several might be competent to do so. In this instance, the State Attorney made it known that the choice lay between trying Mr. Barghouti before a military tribunal or before an Israeli court of general jurisdiction.

On 11 July 2002 the Office of the State Attorney made public his decision to try Mr. Barghouti before the court of general jurisdiction, namely the Tel Aviv District Court, on the charges of premeditated murder, incitement to murder, abetting murder, attempted murder, complicity in crime, activity in a terrorist organisation, and membership of a terrorist organisation.

3. The trial

We shall briefly set out the charges brought against Mr. Barghouti in section (a), then the organisation of the proceedings in (b), and the organisation of the defence in (c).

(a) The charges brought against Mr. Barghouti

The indictment was drawn up by Ms. Chen, Director of the Department of Criminal Security Affairs and Special Affairs within the Office of the State Attorney, on 14 August 2002.

It accuses Mr. Barghouti of having coordinated a great many terrorist operations directed against Israeli civilian and military targets since the start of the second Intifada, whether suicide attacks with explosives or armed attacks.

The indictment lists 37 attacks or attempted attacks between December 2000 and April 2002 in which Mr. Barghouti is accused of involvement. One of the main attacks is said to be that of 5 March 2002 on a Tel Aviv restaurant: the indictment alleges that Mr. Barghouti authorised the attack and was reported to immediately after. The attack killed three and injured dozens.

He is also accused of having helped finance terrorist operations, in liaison with President Yasser Arafat. According to the indictment, Mr. Barghouti was handed the sum of $20,000 from President Arafat to finance the training of terrorists, and he passed on to the President of the Palestinian Authority requests for funding that he received from terrorist groups, to which the President decided whether or not to accede.

Mr. Barghouti is finally accused of having interviewed candidates for terrorist actions, deciding whether or not to admit them to the groups of which he is presented as being in charge: Fatah, an organisation described as a terrorist group; Tanzim, the armed branch of Fatah; and the al-Aqsa Martyrs Brigades, a clandestine group set up after the launching of the Intifada.

The whole set of facts held against Mr. Barghouti is qualified as premeditated murder, incitement to murder, abetting murder, attempted murder, complicity in crime, activity in a terrorist organisation, and membership of a terrorist organisation.

(b) Organisation of the proceedings

The charges laid against Mr. Barghouti were thus referred to the Tel Aviv District Court.

The proceedings are split into two branches, one being the consideration of the charges and the judgment on guilt and the sentence, and the other the provisional detention pending judgment.

* *Provisional detention*

In Israeli law the judges examining the merits of the case are not competent to rule upon provisional detention, which was the subject of a request from the District Attorney's Office to Judge Zvi Gurfinkel. He was asked to order Mr. Barghouti's detention until the end of the trial.

Before deciding on the request, Judge Gurfinkel had to address a number of objections raised by the defence disputing the competence of the Tel Aviv court to try Mr. Barghouti and rule on his provisional detention, and questioning the lawfulness of his arrest.

Having turned down all those objections in a judgment of 12 December 2002, Judge Gurfinkel ordered the provisional detention of the accused for the duration of his trial.

* *Judgment on the merits*

To judge the facts held against Mr. Barghouti and his penal responsibility, the competent panel was made up of three judges: Ms. Sara Zerota, President, and two co-magistrates, Mr. Avraham Tal and Dr. Amram Benjamini.

The hearings before that panel were spread over one year, from September 2002 to September 2003:
- at the first hearing, on 5 September 2002, Ms. Devora Chen, representing the prosecution, read out the charges; the defence announced that it intended to contest the competence of the Court before any examination of the charges;
- the following hearing was therefore devoted to a statement, by the defence, of the reasons for its questioning the competence of the Court to try Mr. Barghouti;
- on 19 January 2003, the Court handed down a judgment rejecting the defence arguments and declaring itself competent to pass judgment on the merits of the case;
- the hearings to consider the charges took place between April and August 2003, with the appearance in particular of the witnesses called by the prosecution;
- the prosecution presented its conclusions on 24 August 2003;
- the defence presented its conclusions on 29 September 2003.

Since that date the judgment has been reserved.

(c) Organisation of the defence

Around Mr. Jawad Boulus, Mr. Barghouti has been advised by a Palestinian lawyer, Mr. Khader Skhirat, an Israeli lawyer, Mr. Shamai Leibovitz, and two French lawyers, Ms. Gisèle Halimi (former deputy and former French ambassador) and Mr. Daniel Voguet. The lawyers not members of the Israeli Bar (Ms. Halimi, Mr. Voguet and Mr. Skhirat) were not allowed to take part in the hearings.

* *The preliminary objections*

The defence's position throughout the trial was that of questioning the right of the Israeli courts to try Mr. Barghouti, advancing a number of arguments which gave rise to preliminary objections, on which the Court had to respond before considering the case itself.

The defence argued that the Tel Aviv District Court could not try Mr. Barghouti for a great many reasons deriving essentially from international law, which will be presented here in outline (we shall come back to some of these arguments in Part II of this report regarding analysis of the trial):
- the Oslo Accords transferred to Palestinian jurisdiction the authority to try Palestinians, including with respect to attacks carried out against Israelis, and the Accords have been embodied in Israeli law;
- Mr. Barghouti should enjoy prisoner-of-war status pursuant to the Third Geneva Convention;
- the arrest of Mr. Barghouti was unlawful since he was abducted from his home in Ramallah, a Palestinian area, by the Israeli armed forces;
- the transfer of Mr. Barghouti from Ramallah, a territory under Palestinian sovereignty and occupied by the Israeli army, to Israeli territory to be tried in Tel Aviv was in breach of the Fourth Geneva Convention;
- the arrest and trial of Mr. Barghouti violated his parliamentary immunity deriving from his status as a member of the Palestinian Legislative Council.

All those objections were rejected, first by Judge Gurfinkel ruling on the provisional detention, in a first judgment of 12 December 2002, then by the three-judge panel deciding on the merits of the case, in its judgment of 19 January 2003. In substance, the judges responded as follows:
- on the Oslo Accords: first, the Palestinian Authority does not assume the competence transferred to it for prosecuting and punishing terrorists, which precludes reliance on the Accords; second, the competence given to the Palestinian Authority is not exclusive of the competence of the State of Israel and its courts to ensure the security of Israelis and to pass judgment on crimes against Israelis, wherever committed;
- the accused does not meet the criteria for prisoner-of-war status, having acted as an unlawful combatant liable to penal sanctions under domestic law; furthermore, the attacks against civilians

of which he is accused are war crimes punishable by the courts of the countries in which such crimes were committed;
- the international customary rules relating to armed conflicts authorise the Israeli armed forces, for the purpose of protecting Israel's civilian population, not only to go and fight those threatening it wherever they may be but also to arrest and detain them;
- on the Fourth Geneva Convention: it does not prohibit individual transfers of prisoners but mass-scale deportations of populations; furthermore, in accordance with the case-law of the Supreme Court, it cannot be invoked since it has not been incorporated in international customary law and has not been introduced into Israeli domestic law either;
- there is no parliamentary immunity preventing the trial of the accused.

To protest against those decisions, Mr. Barghouti decided to refuse to reply to the Court and asked his lawyers to withdraw. The second part of the trial thus took place without any cooperation from the accused.

* *The withdrawal of the defence*

Persisting in his refusal to recognise the right of the Israeli courts to try him, Mr. Barghouti instructed his lawyers to withdraw from the trial.

The Court then asked the Public Defender's Office to ensure his defence by assigning him a duty defence lawyer. But Mr. Barghouti informed that lawyer that, in consultation with his own counsel, he had decided to adopt an entirely passive attitude and avail himself of his right to silence, and therefore refused any assigned counsel. He added that, should the Court oblige the Public Defender's Office to assist him, his instructions would be to forbid him any participation in the debates.

The Public Defender's Office then asked to be relieved of its task, arguing that the accused already enjoyed legal assistance and was entitled to choose his line of defence. The Court rejected that request on the grounds that, despite the refusal of the accused, a lawyer was still needed to ensure the respect of his rights and forestall any judicial error.

The defence thus adopted a strictly passive attitude. Mr. Barghouti refused to question the 100 or so prosecution witnesses. He refused to discuss the evidence laid against him. On the merits, he merely contested any link between him and the attacks listed in the indictment. The lawyers ha had designated remained present but seated among the public.

* *The closure of the debates*

On 24 August 2003 Ms. Chen presented the prosecution conclusions by going back over and developing the terms of the indictment. One month later, at the hearing of 29 September 2003, Mr. Barghouti was invited to present his own defence. Speaking in Hebrew for an hour, he denounced the political nature of his trial and refused to reply point by point to the prosecution. Instead he set out his view of relations between Israel and Palestine, inviting Israel to choose between coexistence with a Palestinian State and coexistence of two peoples within a single State. Renewing his support for resistance against the Israeli occupation and for the Intifada, he said he was opposed to murders of innocent victims and concluded with an announcement that he would soon be free.

At the close of that hearing, the Court adjourned the case for consideration. No judgment has as yet been handed down. The date for the judgment is not known and will probably, according to the indications gathered, only be known at very short notice.

II. Discussion: a trial falling short of international standards

In the opinion of the persons present at the debates in the Tel Aviv District Court, the hearings were conducted in a relatively impartial climate (apart from a few incidents which we will elaborate on). However, the overall conclusion is that the manner in which the phase leading up to the trial was conducted precluded any possibility of a fair trial.

Owing to the fact that Mr. Barghouti was captured in Palestinian territory during a military operation, before being held incommunicado for several weeks, during which time accusations against President Yasser Arafat "leaked out", the Israeli authorities not only ran the risk of holding a trial in which the political controversy almost inevitably overshadowed the legal debate, but also the risk of a trial based on an investigation using questionable methods and hence on flimsy evidence.

The purpose of this report is not to judge the political interests that came into play during the trial, but to examine the how the Israeli authorities treated the person detained and prepared the trial against him, from an exclusively technical perspective, in the light of relevant international standards. These standards were often clearly disregarded.

1. Mr. Barghouti's arrest and transfer to Israel

It is likely that Mr. Barghouti's arrest had been decided on several months in advance since a legal framework had been prepared, as evidenced by the arrest warrant issued by the Magistrate's Court of Jerusalem back in September 2001.

During my meeting with Ms. Chen, my counterparts insisted strongly that the procedural rules had been scrupulously respected. In particular, they stressed that the procedure had been conducted by the police and not by the military authorities and similarly that Mr. Barghouti would eventually be tried by a common law judge and not by a military tribunal.

However, Mr. Barghouti was arrested by soldiers and the army does not fall under the police service. The army intervened, in this case, outside Israeli borders since the town of Ramallah, where Mr. Barghouti was arrested and in which he is an MP, is located, according to the Oslo II Accords, in "Zone A", that is, an autonomous Palestinian zone, from which the Israeli army had agreed to withdraw in 1995 and whose sovereignty (including police and judicial sovereignty) is exercised by the Palestinian Authority.

Although the Tel Aviv District Court decided otherwise, this manner of doing things appears to directly contravene both the Oslo Accords and the Fourth Geneva Convention.

(a) Regarding the Oslo Accords

The Oslo II Accords represented an important step towards the creation, as was then envisaged by both parties in the near future, of a Palestinian State, entailing the transfer to the Palestinian Authority of important prerogatives of sovereignty linked notably to security and the administration of justice.

By virtue of the Oslo Accords, the onus is on the Palestinian police and judicial authorities to ensure security in the region by judging crimes committed in Palestinian territory, and notably by sanctioning attacks aimed at Israel from Palestinian territories.

In Mr. Barghouti's case, if indeed the Israeli authorities had been in possession of evidence to warrant his arrest, it would appear that they did not communicate any such information to the Palestinian institutions, which were therefore denied the opportunity of examining these charges and deciding whether there was reason to take the matter further.

The response given by the judges of the Tel Aviv Court includes an admission that the Oslo Accords were not respected. It justifies non-compliance with the Accords by contending firstly that the Palestinian side has not respected the Accords either since, according to the judges, the Palestinians support rather than sanction terrorism; and, secondly, that the Accords do not establish the exclusive competence of Palestinian courts, but permits the coexistence of the rival competence of Israeli courts in cases provided for by domestic law.

In other words, the judges found that the Israeli law that provided for the competence of Israeli courts to judge crimes committed against Israeli citizens should continue to be applied notwithstanding the Oslo Accords.

The purpose of this report is not to make a determination on the interpretation of Israeli law and, in particular, determine whether the rules of jurisdictional competence provided for in domestic law before the Oslo Accords should be considered to have been modified by those Accords, as the defence maintained, or not, as the Court found.

But from an international law perspective, which alone is of relevance to this report, one cannot help noting that in Mr. Barghouti's particular case, the Israeli military and judicial authorities chose to disregard the provisions of the Accord of 28 September 1995, whereby maintaining order and security in "Zone A" falls to the Palestinian side (Articles XIII and XVII), including trying criminal cases (Annex III, Article 1).

The Tel Aviv District Court alleged that the Oslo Accords had been infringed by the Palestinian Authority itself, as though to justify its decision, thereby implying that the Accords had effectively become a dead letter. The Oslo Accords, including the Accord of 28 September 1995, are nevertheless still binding and in force according to the Israeli Supreme Court, which applied it, for example, in the ruling of 3 September 2002 (case HCJ 7015/02 and 7019/02).

(b) Regarding the Fourth Geneva Convention

This Convention of 12 August 1949 is relative to the *"protection of civilian persons in time of war"* and is applied notably to situations where a territory is occupied by the army of a foreign State (Article 2). Israel acceded to the Convention on 6 January 1952.

Article 49 of the Convention will be cited in full for it is in no way ambiguous and requires no interpretation: *"Individual or mass forcible transfers, as well as deportation of protected persons from the occupied territory to the territory of the Occupying Power or that of any other country, occupied or not, are prohibited, regardless of their motive"*.

It is very clearly stipulated that the Occupying Army is prohibited from transferring a prisoner from the occupied territory to Israeli territory, *"regardless of their motive"*.

If the Tel Aviv District Court had applied this rule, it would have necessarily had to conclude that Mr. Barghouti's transfer from Ramallah to Jerusalem constituted a violation of the Fourth Geneva Convention. It should be noted that, pursuant to Articles 146 and 147 of the Convention, such infraction should be subject to penal sanctions.

In order to obviate this rule, the judges of the Tel Aviv District Court applied the jurisprudence of the Israeli Supreme Court, whereby Article 49 cannot be invoked in Israeli courts but, moreover, supposedly does not prohibit the transfer of individual prisoners.

On the first point (inability to invoke the Geneva Convention in court), the State of Israel is, in fact, a "dualist" State as far as international public law is concerned insofar as ratified treaties and conventions bind the State and hold it to its commitments vis-à-vis the international community but cannot be invoked in court if they have not been enacted and incorporated in domestic law. However, the courts spontaneously apply the provisions of international custom, which are considered part and parcel of Israeli law. But prohibiting the transfer of prisoners from an occupied territory to the territory of the occupying power is not regarded as a customary prohibition. For this reason, the courts, including the Supreme Court, continue to consider that an accused individual cannot rely upon Article 49 of the Geneva Convention.

This restriction constitutes an obstacle before the courts alone. At the international level, as was said, breaches of the Convention engage the responsibility of the State of Israel vis-à-vis the international community and there is nothing to prevent the Inter-Parliamentary Union from noting that and being concerned about it.

In the courts themselves, this restriction, in fact, is of little material consequence since the Supreme Court gave its own interpretation of Article 49 of the Fourth Convention in 1988 in an Afu ruling (HCJ 785/87 of 18 April 1988) that this provision actually prohibits only the mass deportation of civilian populations. This interpretation refers to the historical context in which the provisions of the Fourth Geneva Convention were adopted (the years immediately following the Second World War and the mass deportations resulting from that conflict) and concludes that the authors of the Convention could not provide for the case of an isolated individual committing acts of hostility and terror.

This interpretation by the Supreme Court was adopted in turn by the rulings of the Tel Aviv District Court in Mr. Barghouti's case (ruling on the arrest of 12 December 2002 and ruling on the legal basis of the case of 16 January 2003). The judges thereby considered that, even if Article 49 of the Fourth Convention could be directly applied by Israeli law, which in their view it cannot, its provisions would not support Mr. Barghouti's defence.

The position of the Israeli authorities (including its judicial authorities) regarding Article 49 of the Fourth Convention openly contradicts the provisions of the text cited above in full to show that it required absolutely no interpretation whatsoever. The authors of the Convention expressly provided not only for the case of mass deportations but also, and just as expressly, for the case of the forcible transfer of individuals.

For this reason, in Israel itself, the Afu jurisprudence is criticised by a number of authors and even by some judges.

But regardless of the jurisprudence prevailing in Israeli domestic law, the fact remains, as we said earlier, that breaches of the Fourth Convention engage Israel's responsibility in the international legal sphere, which is something that the Inter-Parliamentary Union is in a position to point out and regret.

The theory that Article 49 prohibits mass deportations alone and authorises the individual transfer of prisoners is not subscribed to by any international organisation. In fact, it contradicts the doctrine of the International Committee of the Red Cross.

It is important to emphasise that Article 147 of the Fourth Convention lists the acts which it considers to be "grave breaches". This list includes, notably, the *"unlawful deportation or transfer or unlawful confinement or … depriving (a protected person) of the rights of fair and regular trial prescribed in the present Convention".* Pursuant to Article 146, the High Contracting Parties are bound to provide effective penal sanctions for persons committing these grave breaches.

The IPU Committee on the Human Rights of Parliamentarians is therefore in a position to note that Mr. Barghouti's transfer from Ramallah (which is an occupied territory according to the United Nations Security Council's constant analysis) to Jerusalem and then to Tel Aviv for trial constitutes a grave breach of the Fourth Geneva Convention.

2. The right to be informed without delay of the reasons for one's arrest and detention and to be informed of one's rights

According to Article 9(2) of the International Covenant on Civil and Political Rights, ratified by Israel in 1991, "*Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him*".

I was told that Mr. Barghouti was officially notified of his arrest not at the time of his arrest by the army but at the end of the day, upon arriving at the Russian Compound detention centre when he was handed over to a police officer.

I asked Ms. Chen, from the State Attorney's Office, if it had been then that Mr. Barghouti was informed of the reasons for his arrest and of his rights. I was not given a clear answer. Ms. Chen stressed that Mr. Barghouti had been able to meet unconditionally with his attorney during his third day of detention and that he was very aware of his rights, particularly as he had already been arrested in the past. But it is not for the authorities to assess whether a person is sufficiently informed and dispense with informing him of his rights. Although access to a lawyer is in itself the right of persons deprived of their freedom, that does not entitle the authorities to assign to the lawyer the obligation of informing detained persons of their rights, particularly since several days may pass before they meet their lawyer, as was the case here.

In any event, the information to which detained individuals are entitled is not confined to their rights, but should also extend to the reasons for their arrest, and should be communicated to them at the time of their arrest. Mr. Barghouti was apparently told the reasons for his arrest when it was notified to him at the end of the day on 15 April 2002, i.e. several hours later. The charges laid against him, murder and attempted murder at the time, were communicated to him when he appeared before the judge for the first time on 22 April 2002.

3. Right to be brought promptly before a judge

Article 9(3) of the International Covenant on Civil and Political Rights provides that *"Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release"*.

The purpose of this first appearance before a judge is to ensure an impartial and independent review of the legality of the arrest and detention and to determine whether the detention needs prolonging.

In Mr. Barghouti's case, Mr. Boulus told me that the accused first appeared before a judge only on 22 April 2002, a week after his arrest, and that he appeared without the presence of his lawyer, who was heard separately and was denied access to the file.

I asked Ms. Chen about the delay in the court appearance. During my interview with her, she was unable to verify in the case file – which she did not have in its entirety – the reply to each of my questions. Likewise with this question. Ms. Chen told me that the file contained the minutes of the hearing held on 22 April 2002, but she thought that a first court appearance had been held 96 hours after the arrest.

As I did not have access to the file, I was unable to verify that point. I do wish to observe, however, that the ruling handed down by the Supreme Court of 14 May 2002 mentions a decision delivered on 22 April 2002 prolonging Mr. Barghouti's detention, but fails to mention any previous ruling.

A delay of one week seems excessive in the light of Article 9(3) of the Convention, even though the expression used, "within a reasonable time", does not set a deadline or stipulate a maximum number of days. But it is generally considered that it should not exceed a few days and for purposes of comparison, the following delays were found to be excessive:

- One week: the Human Rights Committee, established by the Covenant, considered a delay of one week to be excessive[2]. In that case, the detained individual risked the death penalty, but we should note that Mr. Barghouti risks the maximum penalty provided for by Israeli criminal law, life imprisonment.
- One week: the Inter-American Commission on Human Rights criticised Cuba's Criminal Proceedings Act because detained individuals could theoretically remain deprived of their freedom for one week before appearing before a judge[3].
- 4 days and 6 hours: The European Court of Human Rights considered that such a delay in bringing a detained individual before a judge was unsatisfactory[4].

If it had been confirmed that Mr. Barghouti's first appearance before a judge took place only a week after his arrest, that would mean that he remained in the hands of the investigators during all that time without any jurisdictional oversight. The delay could therefore be criticised as excessive and depriving Mr. Barghouti of a fundamental guarantee provided for by international law.

It must also regretfully be pointed out that, for his appearance before the judge to prolong his detention, Mr. Barghouti was not allowed to be accompanied by his lawyer as a result of the existing order prohibiting him from communicating with his counsel.

Mr. Boulus explained that, for that hearing, Mr. Barghouti and his lawyer were made separately to enter the courtroom where the military judge was presiding. It was located within the Russian Compound itself, the detention centre where Mr. Barghouti was imprisoned, without any possibility of communicating with his counsel or preparing for the hearing.

In these conditions, the guarantees provided in Article 9(3) of the Covenant were breached.

4. Incommunicado detention

As mentioned earlier, Mr. Barghouti was allowed to see his lawyer on 18 April 2002, three days after his arrest. Subsequently, the police officer in charge of the investigation decided to prohibit any other meeting and this decision was extended until 15 May.

Mr. Boulus contested these decisions twice before the Supreme Court, which on both occasions rejected his request, arguing that such decisions were justified by the nature of the inquiry and in the interests of security in the region[5]. The Supreme Court delivered these two rulings without the possibility of discussion after hearing the reasons advanced by the investigators and after examining the documents presented by them without any of these being presented to Mr. Boulus or being open to discussion. The ruling of 3 May 2002 states: "We are convinced that, in the light of the circumstances of this case, security reasons and the nature of the investigation, it was impossible for us to reveal and explain to the defence counsel the reasons given to us". The second request followed the same procedure and resulted in the ruling of 14 May 2002.

---

2 Mc Lawrence versus Jamaica, 29 September 1997, para. 5.6.

3 Seventh report on the human rights situation in Cuba, 1983.

4 Brogan *et al.* versus United Kingdom, 29 November 1988, para. 62.

5 Decisions of 3 May 2002 and 14 May 2002, cited earlier.

When she met with me, Ms. Chen assured me that the suspension of all contact between the arrested individual and his/her lawyer was a measure provided for by Israeli law not only for Palestinian but also for Jewish prisoners.

The fact that a debatable measure is applied in many cases does not make it acceptable, and the status or religion of the individuals subjected to such a measure has absolutely nothing to do with its legality by reference to international standards.

The Human Rights Committee, established by the Covenant on Civil and Political Rights to monitor compliance, considers that all arrested persons shall be entitled to legal counsel immediately[6]. This right cannot be exercised just once and then revoked as it was in this case.

This suspension decided by the authorities in charge of the investigation and approved without the possibility of discussion by the Supreme Court placed Mr. Barghouti in a situation of incommunicado detention that is difficult to justify. It is impossible "blindly" to accept the justification admitted by the Supreme Court with no questions asked. The idea of a jurisdictional authority overseeing an administrative or police-related decision means by definition that such oversight must be transparent. The fact that the judges refused to inform the lawyer of the reasons why he was barred from seeing his client means that their decision cannot, in my opinion, be taken into consideration as validly justifying these methods.

Several institutions have condemned prolonged incommunicado detention. The United Nations Commission on Human Rights stated that such a measure facilitated torture and could itself constitute a form of cruel, inhuman or degrading treatment[7]. The Human Rights Committee considered that it could constitute a breach of Article 7 of the Covenant (prohibiting torture or cruel, inhuman or degrading treatment) or Article 10, which states that: *"All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person"*[8].

In Mr. Barghouti's case, the Israeli authorities extended the incommunicado detention for a long period, one month. During that time, they allowed Mr. Boulus on one occasion to observe his client walking in the courtyard of the detention centre in order to disprove rumours that Mr. Barghouti had been hospitalised. Subsequently, they let the MP meet with his lawyer on 7 May, under the supervision of a security guard, but they were not allowed to discuss the case.

At the same time, the Shin Beth (Israeli internal security services) published in the press that Mr. Barghouti had confessed to involvement in various terrorist attacks and had even implicated the President of the Palestinian Authority, Mr. Yasser Arafat. Mr. Barghouti denied those claims as soon as he was given the opportunity to do so at his public trial.

The duration of his incommunicado detention already constituted a grave violation of Mr. Barghouti's rights. It is surprising that the ban on communicating was valid only for Mr. Barghouti and that the detainee to do for a period of time when he could not react to what was being said about him, either publicly, possibly through his lawyers, or even just to the latter.

The authorities have a price to pay for resorting to such practices: it greatly discredits the evidence they claim to have gathered during those weeks of interrogation, which nevertheless constitutes one of the bases of the charge, particularly since Mr. Barghouti has claimed that he was subjected to cruel, inhuman and degrading treatment during the interrogations. Those claims were not investigated.

5. Allegation of cruel, inhuman or degrading treatment

While Mr. Barghouti was held incommunicado, his lawyer, Mr. Boulus, filed submissions before the Supreme Court in the course of the two appeals mentioned earlier, expressing fear regarding the treatment that would be meted out to him, particularly in relation to receiving the care he might need in consideration of his health status, and fear that he would be interrogated using the *shabeh* method, which combines sleep deprivation with preventing the prisoner from relaxing (being forced to sit on a chair where it is impossible to stay in a stable position – and Mr. Barghouti was later to speak of nails sticking through the back of the

---

6 Observations on Georgia, 9 April 1997, para. 28.

7 Resolution 1997/38 para. 20.

8 Albert Womah Mukong versus Cameroon, 21 July 1991, and Megreisi versus Libya, 23 March 1994.

chair to prevent him from leaning back on it) and constant interrogations lasting several hours or days without any contact with the outside world (in addition to being denied the right to have a lawyer present).

Before the Supreme Court, the authorities declared that Mr. Barghouti was receiving all the care he needed, and that the investigations were being conducted without bringing any pressure to bear on the prisoner.

They nevertheless submitted that there were good reasons for refusing the prisoner the right to a visit by his lawyer, as we have seen, and implicitly admitted that they had deprived the prisoner of sleep, set out in a statement in which reference was made to the case law of the Supreme Court.

This is a reference to a judgment handed down on 6 September 1999 by the Supreme Court, drawing a distinction between sleep deprivation intended to harm the prisoner, which is prohibited, and sleep deprivation to meet the needs of interrogation, which is tolerated: *"Indeed, a person undergoing interrogation cannot sleep as does one who is not being interrogated. The suspect, subject to the investigators' questions for a prolonged period of time, is at times exhausted. This is often the inevitable result of an interrogation, or one of its side-effects. This is part of the "discomfort" inherent to an interrogation. This being the case, depriving the suspect of sleep is, in our opinion, included in the general authority of the investigator"* (para. 31).

This Supreme Court decision was criticised by the United Nations Committee Against Torture at its 29th session (November 2001): *"The court prohibits the use of sleep deprivation for the purpose of breaking the detainee, but stated that if it was merely incidental to interrogation, it was not unlawful. In practice, in cases of prolonged interrogation, it would be impossible to distinguish between the two conditions".*

In the case of Mr. Barghouti, the state attorney did not deny before the Supreme Court that he had been deprived of sleep, but he said that the programme of investigations allowed him to sleep *"for a reasonable number of hours"* (Order of 3 May 2002). During the second appeal before the Supreme Court, the authorities declared that Mr. Barghouti could *"sleep for a reasonable number of hours"*, and in its decision of 14 May 2002, the Court stated that it had examined – in the absence of both Mr. Barghouti and his lawyer – the conduct of the inquiries and had been *"convinced that no inadmissible measure had been used against the appellant"*. The Court failed to indicate what, in its opinion, would make a distinction between an admissible and an inadmissible measure, but the Order of 14 May 2002 was drafted by the President of the Court, Mr. Barak, who was also the drafter of the decision of 6 September 1999 which concluded that *" depriving the suspect of sleep is, in our opinion, included in the general authority of the investigator"*.

When Mr. Barghouti was able to talk freely to his Counsel at the end of May 2002, he said that he had been subjected to *shabeh*. He also claimed that his interrogators had threatened to kill both him and his son.

When I asked Ms. Chen how these allegations had been dealt with, she replied that Mr. Barghouti had not made them before the Court, particularly the allegation about sleep deprivation, as he ought to have done. Had he raised the issue of the conditions under which he was being interrogated, the matter would have been discussed before the Court, which would have devoted the time needed for it. The interrogators would have been called to testify, and Mr. Barghouti and his lawyers would have had the opportunity to question them. Had these inquiries conducted before the Court confirmed Mr. Barghouti's allegations, that would have affected the outcome of the trial, and more specifically all the statements that had been made by Mr. Barghouti as a result of the use of these methods would have been disregarded.

Ms. Chen expressed regret that Mr. Barghouti had turned to the media or to such organisations as the Inter-Parliamentary Union to complain about the treatment while failing to use the procedure provided by the law.

But the argument that the most appropriate procedure for investigating allegations of mistreatment is for the prisoner to raise those allegations in the course of the trial in which he is the defendant is a dubious one. For it means, in effect, that allegations of maltreatment can only be investigated if the defendant agrees to cooperate in his own trial and, ultimately defend himself in the way that the prosecution wants him to defend himself. Whatever one may think of the defence system adopted by Mr. Barghouti, the defendant in a criminal trial must remain totally free to choose whatever method of defence he sees fit. Mr. Barghouti has chosen to challenge the jurisdiction of the Tel Aviv District Court on highly relevant grounds under international law. Even though the Court rejected those grounds, Mr. Barghouti decided subsequently to refuse to take part in the trial, answer any questions put to him, and cross-examine any witnesses.

For the allegations of maltreatment to be examined in the manner indicated by Ms. Chen, Mr. Barghouti should have asked the Court to disregard the statements made to the investigators during the inquiries, on the ground that they had been obtained as a result of unacceptable pressure. This would have meant that Mr. Barghouti would have had to bring up his statements again, and also take part in the debate on the quality of the evidence before the Court, which would not have been compatible with his decision to deny the jurisdiction of the Court.

In reality, the only appropriate way for allegations of maltreatment to be examined is to open an inquiry into them, as provided, for example, by Article 12 of the United Nations Convention against Torture, which was ratified by Israel in 1991. One cannot accept the proposition that this inquiry can only be conducted in the course of a trial against the defendant.

6. Access to a lawyer and the right of defence

According to Article 14(3) of the International Covenant on Civil and Political Rights, any person accused of a criminal offence has the right *" to communicate with counsel of his own choosing"* (para. (b)) and *"to defend himself [...] through legal assistance of his own choosing"* (para. (d)). Exercise of this right, which the Israeli authorities ought to have guaranteed to Mr. Barghouti, has been thwarted on various occasions.

(a) Restrictions on communications between Mr. Barghouti and his counsel

The refusal to permit Mr. Barghouti to meet his lawyers between 18 April and 15 May 2002 has already been examined above. Mention has already been made of the exception was made to this ban on 7 May when Mr. Boulus was able to meet his client, but only in the presence of a security guard and with a prohibition on making any reference to the case. These restrictive conditions are in clear violation of Article 14 (3) (b) of the aforementioned Covenant, which guarantees freedom of communication between the accused and his counsel. According to the construction placed on this text by the Committee on Human Rights, it *"(requires) counsel to communicate with the accused in conditions giving full respect for the confidentiality of their communication"* (General commentary 13(9)).

Mr. Barghouti's French lawyers have encountered the greatest difficulties whenever they have asked to be able to see him, even though the Israeli Ambassador to France had said that it would be possible. Although a first meeting was able to be held on 5 September 2002, the second meeting on 21 November 2002 in Tel Aviv prison was cut short after one hour by a prison security official, who was apparently furious because the French lawyers had been let in.

Lastly, on 29 September 2003 neither Ms. Halimi nor Mr. Boulus was given permission to meet Mr. Barghouti in Beer Sheva prison in the Negev. Mr. Boulus has told me that he has been refused visits on several occasions since the end of the trial, and that he has reported this to the President of the Israeli Bar Association.

Lastly, the meetings in the prison have not been confidential, but have taken place under the supervision of a prison guard.

(b) Prohibition on advocates who are not members of the Israeli Bar from taking part in the Court debates

Neither Ms. Halimi, nor Mr. Voguet and Mr. Skhirat have been permitted to take part in the Court hearings. The French lawyers were only permitted to sit in the public gallery. This situation seems to be dictated by current Israeli legislation.

(c) Pressure on the lawyers

On one of her visits to Israel as part of defence remit Ms. Halimi was detained on arrival at Tel Aviv airport and interrogated for two hours. Her case papers were taken away from her and examined, and even photocopied, in violation of the rules governing professional confidentiality. Those intimidating measures prompted an official protest from the Paris Bar through the Bar President.

Mr. Boulus has told me that the prison authorities lodged a complaint against him with the Israeli Bar Association, accusing him of having acted as an intermediary between Mr. Bargouti and an Israeli newspaper which had published an interview with him while he was imprisoned (a charge that Mr. Boulus has denied).

These events do not lead to the conclusion that such severe systematic pressure is being brought to bear on him that it jeopardises his defence, but they are deplorable and demonstrate the tense climate in which professional lawyers have to perform their services.

We would recall that in the General Comments on the provisions of the International Covenant on Civil and Political Rights, the Committee on Human Rights emphasised that lawyers should be protected from all *"restrictions, influences, pressures or undue interference from any quarter"* (general comment 13, para. 9).

7. The debate in court

(a) Publicising the trial proceedings

According to journalists and the observers who were able to attend the trial, the climate was sometimes very tense.

On several occasions the press reported incidents, insults, the expulsion of the accused, and protests from the public against the lawyers.

The Israeli authorities hoped to give this trial considerable publicity. The media coverage was huge. Rostrums were installed outside the courtrooms so that the spokespersons of the judicial and government authorities were able to talk to the press. Numerous victims of bomb attacks and their families were present in Court.

Yet despite this wish for wide publicity to be given to the trial proceedings, it would appear that access to the courtroom was not so easy for everyone.

Mr. Bargouti's wife and son, for example, failed to obtain permission to leave Ramallah to attend the trial. An observer from the International Federation for Human Rights was refused entry into Israel when she arrived to attend a court session in early October 2002.

Mr. Boulus and Ms. Halimi have told me that during the early sessions of the trial, access to the courtroom was difficult even for the lawyers, let alone for the other independent observers who had come to witness the trial. At one of the first sessions, Mr. Bargouti and his lawyers were mobbed, and had to be removed through an emergency exit.

After that, a modus vivendi was established between the court authorities and the defence. Several places were set aside for the defence in the courtroom, two other rooms were linked by video to the courtroom for the general public and the journalists, except for those who were individually authorised to enter the courtroom itself.

(b) Lack of presumption of innocence

An incident occurred during Mr. Barghouti's first appearance, on 5 September 2002, before the panel presided over by Ms. Zerota.

After Mr. Barghouti had described himself as a *"fighter for peace for both peoples"*, she interrupted him and said *"one who fights for peace doesn't turn people into bombs and kill children"*.

Such a statement was most surprising coming from a judge who has the responsibility of ruling on the guilt of the defendant, and who, from the very outset of the trial, expressed a categorical opinion on the case. Mr. Barghouti probably should have been entitled to ask his judge to withdraw from the case because of this failure of her duty to show impartiality.

Another similar incident occurred outside the courtroom which necessarily upset the tranquillity of the proceedings: in July 2003, some newspapers announced that the Israeli Government was tempted to negotiate the release of Mr. Barghouti under a prisoner exchange scheme, and that the Israeli Attorney General, Mr. Elyakim Rubinstein, had written to the Prime Minister to oppose this, declaring, in a letter which was made public, that Mr. Barghouti was a *"first-rate architect of terrorism"*. Once again, this statement prejudged the outcome of a trial that was still ongoing, and demonstrated contempt for the presumption of innocence, which is surprising coming from a person in his position.

(c) The evidence adduced

In support of the charges, the State Attorney's Office filed above all the statements and declarations made by the accused and by a few other individuals.

I have not been able to gain access to the material evidence adduced, which essentially comprises documents seized by the army in Mr. Barghouti's office. Mr. Boulus explained to me that they were mainly letters addressed to Mr. Barghouti in his capacity as a parliamentarian, and that no document originated by Mr. Barghouti had implicated him in the acts of which he was being accused.

The prosecution had called some 100 witnesses. The transcripts of the sessions, which were given to me in Hebrew and which I was able to consult with the assistance of a sworn translator, Mr. Bitar, stated that 96 prosecution witnesses had been heard.

This figure should be seen in proportion, because 63 of these 96 people were investigators or individuals associated with the investigation into Mr. Barghouti, or investigations into the attacks that had been ascribed to him, and who were therefore unable to give a personal testimony regarding his involvement.

Furthermore, 12 of these witnesses were victims or witnesses of bomb attacks and had given their account of them, but they had no information regarding the personal involvement of the accused.

According to the prosecution, only 21 of the prosecution witnesses were actually in a position to testify directly regarding Mr. Barghouti's role in these attacks. But none of these 21 individuals in fact accused him. About 12 of them explicitly told the court that he was not involved. Most of them quite simply refused to answer the questions of the court, generally on the ground that it had no jurisdiction to judge Mr. Barghouti.

Faced with the refusal of most of the subpoenaed persons to testify, the court had to fall back on the written statements collected by the investigators. I have not had the opportunity to examine these documents but, according to the trial transcripts, some of the subpoenaed witnesses had signed statements when heard by the investigating services, declaring that Mr. Barghouti might have been informed of certain bomb attacks before they had taken place, or that he may have sent money to finance the attacks, or had ordered the purchase of weapons for the attacks. Several witnesses told the court that these statements had been obtained under duress.

8. The conditions under which Mr. Barghouti has been detained until now

Today, and ever since the end of this trial, Mr. Barghouti has been held at the Beer Sheva prison in the Negev Desert in southern Israel (the region furthest away from his family, who live in Ramallah).

He is being kept in solitary confinement, and the only visits permitted are from his lawyers (who sometimes encounter the difficulties mentioned in paragraph 6(a) above). With the sole exception of one visit from his wife on 17 May 2002, he has not been able to see any family member since his arrest.

He is confined to a tiny cell (measuring about 140 x 180 centimetres) which he is not permitted to leave, even to take his meals, and is only allowed 45 minutes' exercise a day in a very small yard.

Mr. Barghouti is suffering from pulmonary problems, and he has sometimes had serious difficulties in gaining access to medical treatment.

Conclusion

This report is addressed to the Committee on the Human Rights of Parliamentarians, for its session of 18-22 April 2004. As yet there is still no news about the verdict of the Tel Aviv District Court, which has reserved judgment since 29 September 2003.

According to the case papers, from Mr. Barghouti's arrest on 15 April 2002 to the trial itself, the Israeli authorities and the prosecution had tried to turn it into a media event, a symbol, putting on trial one of the men who epitomise the Intifada, and presenting him as a terrorist.

From the beginning of the investigations until the final day of the trial, the prosecution put almost as much effort into staging a media event as it did into working on the legal aspects:

- by organising information leaks, claimed to have come from the interrogations of Mr. Barghouti, at a time when he had been held incommunicado, so that neither he nor his lawyer could possibly have answered any questions;
- by deciding to organise a public trial before the Tel Aviv District Court, rather than a trial behind closed doors before military judges, as has generally been the case in the past for other individuals arrested by the Israeli army in the Occupied Territories;
- by staging the trial as a major media event, selectively admitting and accompanying members of the public, and organising press contact points even in the precincts of the Court.

It is true that of all the Palestinian prisoners currently being detained by Israel, Mr. Barghouti is the most senior member of the Palestinian Authority hierarchy, and is said to be close to Mr. Arafat.

Nevertheless, this has also been the result of the Israeli Government's decision to make his capture and subsequent trial, into a political as well as a judicial or security issue. It is therefore hardly surprising that this has led to excesses, such as the following:

- the statement by the Israeli Deputy Minister of Homeland Security saying that Mr. Barghouti *"thoroughly deserves death"*;
- the statement by the Attorney General calling him a terrorist;
- the way in which his lawyers have been prevented from meeting him, and particularly the long interrogations to which his French lawyer, Ms. Halimi, was subjected on her arrival at the airport;
- Israel's refusal to allow in an observer from the International Federation for Human Rights.

These incidents have quite obviously been facilitated by the climate that has made this trial increasingly more a political, rather than a judicial, matter, but also by a breakdown of Israeli law placing it in breach of international law, by authorising prisoner transfers (which is clearly prohibited by the Fourth Geneva Convention) or tolerating interrogation methods which should be prohibited, in addition to the laws making it possible to keep a prisoner incommunicado for excessively long periods.

The Israeli authorities are right to point out that their country is up against blind terrorism posing serious security problems that they have to address. This report is not the right place to discuss the origins of this terrorism, or ways of putting an end to it, but it does illustrate that the methods chosen to deal with it have been inconsistent with the rule of law, and sight has been lost of such equally essential principles as the absolute priority that must under all circumstances be given to respect for the physical integrity of prisoners.

The numerous breaches of international law recalled in this report make it impossible to conclude that Mr. Barghouti was given a fair trial.

Most of the persons contacted are convinced that Mr. Barghouti will receive a severe sentence, but all are equally convinced that the verdict will have no legitimacy because it will have been dictated far more by intense media pressure and political interests than by any rigorous application of procedures respecting the integrity of the defendant and his right of defence.

The Barghouti case has very clearly demonstrated that, far from bringing security, the breaches of international law have, above all, undermined the authority of Israeli justice by casting discredit on its conduct of investigations and the procedures used.