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COMMITTEE ON THE ELIMINATION  
OF RACIAL DISCRIMINATION

Documents submitted in compliance with  
a special decision of the Committee\*

ISRAEL

[8 August 1994]

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\* By a decision of 7 March 1994, the Committee requested the Government of Israel to submit an urgent report on measures taken to guarantee the safety and protection of the Palestinian civilians in the occupied Palestinian territory and to bring to an end the illegal action of Israeli settlers and to disarm them. The present documents constitute the urgent report requested by the Committee. The annexes to them are available for consultation in the files of the Centre for Human Rights.

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I. Note verbale dated 8 August 1994 from the Permanent Representative of Israel to the United Nations Office at Geneva addressed to the Secretary-General

The Permanent Representative of Israel to the United Nations Office at Geneva presents his compliments to the Secretary-General of the United Nations and has the honour to acknowledge the Secretary-General's note verbale of 28 June 1994, reference No. G/30237/2 (2), recalling the decision of the Committee on the Elimination of Racial Discrimination, taken at its forty-fourth session, requesting the Government of Israel "to submit an urgent report on measures taken to guarantee the safety and protection of Palestinian civilians in the occupied Palestinian territory and to bring to an end the illegal action of Israeli settlers and to disarm them".

This decision was transmitted to the Government of Israel in the Secretary-General's note verbale of 16 March 1994. To this note the Permanent Representative of Israel replied in his note verbale of 31 March 1994, in which the Secretary-General's attention was drawn to the fact that the

Government of Israel had established a "commission of inquiry, in accordance with the Commission of Inquiry Law 1968, regarding the massacre at the Tomb of the Patriarchs in Hebron on 25 February 1994". The Permanent Representative added that, as a matter of courtesy, and without regard to the question of the competence of CERD in the matter, a copy of the commission of inquiry's report would be submitted to CERD when it had been issued.

In accordance with the above-mentioned note, another note to the Secretary-General was sent by the Deputy Permanent Representative of Israel on 30 June 1994, with which an English translation of the introduction (chap. 1), the conclusions (chap. 8) and the recommendations (chap. 9) of the commission of inquiry's report was enclosed.

In his above-mentioned note verbale of 28 June 1994, the Secretary-General also informed the Government of Israel of the date scheduled for the consideration by the Committee of the information requested in the said decision, namely, 10 and 11 August 1994.

Although different views have been expressed up in the Committee in the course of the years, it has always been Israel's position that the Convention on the Elimination of All Forms of Racial Discrimination does not apply to the administered areas (see the Israeli Representative's statements made during the consideration of Israel's fourth, fifth and sixth reports). Thus, although Israel recognizes its responsibility to comply with the provisions of humanitarian law in relation to these areas, it has not included these areas in its report to the Committee under the Convention.

Furthermore, in addition to its lack of territorial jurisdiction, the Committee's substantive jurisdiction in the matter of the massacre in Hebron is also highly questionable. The massacre, committed at the Tomb of the Patriarchs in Hebron on 25 February 1994, was the action of a single individual, acting alone (as was determined by the Commission of Inquiry). It is a very forced interpretation to bring isolated criminal acts committed by individuals within the scope of the Convention.

It is the Government of Israel's understanding that the request for a special report from Israel in such a case is unique in the history of the Convention. Previous requests for special reports have related only to events perpetrated by governmental agencies or large groups of people.

In addition, Israel feels obliged to express its concern at the wording used in the Committee's decision which reaches conclusions (such as the massacre being committed by "settlers" - a determination which the Commission of Inquiry found to be untrue) and suggests solutions before receiving information or holding a hearing. This wording would seem to pre-empt the hearing and render it superfluous.

However, notwithstanding Israel's view that this matter falls outside the jurisdiction of the Committee, the following list of measures taken by the Israeli authorities in the aftermath of the massacre, is supplied as a matter of courtesy.

It should be noted that the list of measures which follows is not complete, since the commission of inquiry only recently submitted its report. Thus, while the Government of Israel has decided to act in accordance with the recommendations contained in the report, the implementation of some of them requires further study by the relevant authorities.

#### Steps taken by the Israeli authorities

1. The Knesset and the Israeli Government as a whole unequivocally denounced the massacre. It was condemned by leading figures in Israel, among them President Ezer Weizman, Prime Minister and Defence Minister Yizhak Rabin, Foreign Minister Shimon Peres and Chief Rabbis Eliahy Bakshi Doron and Yisrael Meir Lau.
2. A Government decision was passed to ensure compensation to the families of the victims.
3. The Cabinet decided, given the extraordinary circumstances involved, to establish a commission of inquiry regarding the massacre (Cabinet communiqué, 27 February 1994). This was an independent commission, established in accordance with the Commissions of Inquiry Law of 1968. The commission was chaired by the President of the Israel Supreme Court and comprised five members, Jewish and Arab, at the highest level. The commission held 31 sessions and heard evidence from 106 witnesses. It also engaged in a thorough examination of the Tomb of the Patriarchs and the surrounding area.
4. After the publication of the commission's report, the Government held a special meeting in which it decided to adopt the report and take upon itself to act in accordance with its recommendations. The Cabinet asked the Prime Minister and Minister of Defence to bring proposals for the implementation of these recommendations before it as soon as possible and decided to hold a detailed discussion of the report once the proposals had been submitted. Methods of implementation of the commission's findings are currently being explored by all the competent authorities.
5. Furthermore, at its meeting of 27 February 1994, the Cabinet decided to take the following measures against radical elements among the Israeli residents in the West Bank:
  - (a) The issue of administrative detention orders against those who instigate or by their actions present a danger to public security;
  - (b) The extension of restraining and supervisory orders against the entry of certain persons suspected of instigation into the Judea, Samaria and Hebron areas; and
  - (c) The disarming of specific individuals suspected of using weapons for purposes other than self-defence and the cancellation of their permits to carry weapons.
6. It was further decided to authorize the Attorney-General to prepare the legal basis for the outlawing of the extremist Jewish organizations "Kach" and "Kahana Chai". Accordingly, at its weekly meeting on 13 March 1994, the Cabinet declared the above-mentioned movements to be terrorist organizations, as well as any other groups acting to achieve similar aims by similar means, even if they bore different names or designations. This declaration also applied to factions or groups attached to the above-mentioned organizations.

7. The Government also reaffirmed its commitment to promote maximum security for all residents, to exercise its full authority to prevent a repetition of any acts of murder, and to continue to act to prevent harm to Jews and Arabs. The IDF and security forces have been directed to act accordingly.

8. In addition to the above-mentioned steps, and in accordance with Security Council resolution 904, it was agreed between Israel and the Palestinians, in an agreement signed at Cairo on 31 March 1994, that in response to the unique situation created in Hebron in the aftermath of the massacre, a temporary international presence would be established in the city of Hebron ("TIPH"). This temporary presence, consisting of representatives from Norway, Denmark and Italy, has assisted in promoting stability and in monitoring and reporting the efforts in the city of Hebron, and has contributed to a feeling of security among Palestinians in the city of Hebron.

9. Finally, the negotiations between Israel and the PLO led to the signing of the historic agreement on the Gaza Strip and the Jericho area on 4 May 1994. Pursuant to this agreement, the region has witnessed the withdrawal of Israeli forces from the Gaza Strip and the Jericho area. The establishment of a Palestinian authority with extensive civilian powers and its own police force in these areas marks the dawn of a new era in Israeli-Palestinian relations. Negotiations between Israel and the Palestinians have now moved to the next stage, the discussion of "early empowerment" i.e. the transfer of further areas of authority to the Palestinians throughout the administered territories.

In conclusion, the Permanent Representative of Israel would note that the massacre in Hebron was a human tragedy and could have been a major obstacle to the continuation of the peace process. With considerable effort the two parties have overcome the obstacles presented by the murder both of Palestinians and of Israelis in terrorist acts, and have been able to continue the peace negotiations. It is to be hoped that the international community will have the understanding and wisdom to support the parties in their historic efforts, and not raise additional obstacles by unnecessarily reopening the wounds of the past.

A number of relevant documents have been attached as an annex to this Note.

## II. EXCERPTS FROM THE REPORT OF THE COMMISSION OF INQUIRY INTO THE MASSACRE AT THE TOMB OF THE PATRIARCHS IN HEBRON

### Chapter 1. Introduction

1. Following the massacre in the Tomb of the Patriarchs in Hebron which occurred on 14 Adar, 5754 - 25 February 1994, the Government decided on 16 Adar, 5754 - 27 February 1994 to appoint a Commission of Inquiry. On 17 Adar, 5754 - 28 February 1994, after consultation with the President of the Supreme Court, it was decided that the Commission would consist of five members. On 17 Adar, 5754 - 28 February 1994, the President of the Supreme Court, Justice Meir Shamgar, decided that he would serve as Chairman of the Commission, and that its other members would be: Justice Eliezer Goldberg, Judge Abed el-Rahman Zouabi, Professor Menachem Ya'ari and Lieutenant General (res.) Moshe Levy. The Commission began hearing evidence on 25 Adar, 5754 - 8 March 1994. Judge Alon Gillon was appointed as the Commission's Coordinator. In accordance with section 13 of the Commission of Inquiry Law, 5729 - 1969, the Chairman of the Commission appointed investigators to collect information; Attorney Michael Shaked of the Attorney-General's office served as the coordinator of the investigators. Attorney Dafna Beinwall of the Attorney-General's office and Deputy Commander Anton Iyov, Inspector Armand Edri and Inspector Daniel Israel of the Israel Police worked with him.

2. The Commission heard most of the testimony in sessions that were open to the public.

3. The Commission held 31 sessions and heard evidence from 106 witnesses, some of them at the Commission's initiative and some at their own request. The complete or partial testimony of 16 witnesses was heard behind closed doors. During one of the first days of its activities, the Commission engaged in a thorough and detailed examination of the Tomb of the Patriarchs and the surrounding area.

4. The Commission made a public announcement requesting that anyone who wished to testify before the Commission, or present it with documents or exhibits, make their intention known to it in writing, for that purpose. Each of the 167 requests was discussed and the appropriate procedure to be followed concerning it was determined.

5. The Commission received 1,140 exhibits, 37 of them written testimony collected by the investigators and the rest orders, documents, files, books, findings from the scene of the crime, expert opinions, photographs, etc. All of this material has been catalogued in files according to a filing number which appears in the full contents.

6. After the hearing of testimony was concluded, the Commission considered whether it was required to provide notices in accordance with section 15 of the Commission of Inquiry Law, 5729 - 1969. After deciding that it was not required to do so, and that the material which was before it was sufficient to allow the findings to be summarized, conclusions to be drawn and recommendations made, this report was prepared.

Jerusalem, June 1994

### Chapter 8. Conclusions

#### 1. Order of contents

7. The Commission's conclusions will primarily follow the order in which the findings were presented, in addition to an overview of the different issues which it discussed. Therefore, we will refrain from repeating all of the reasoning for our conclusions which was covered in earlier chapters. The conclusions will be presented in the following order: responsibility for the killings and whether the assailant had an accomplice; deployment of the security forces and the actions of those directly involved in overseeing the Tomb of the Patriarchs; medical treatment of the injured;

Border Police and Police actions; initial assessment of the situation; carrying weapons inside the Tomb; procedures for prayer services; regulations governing opening fire; application of the law.

8. The recommendations will be based on the lessons drawn from our conclusions presented below.

2. Responsibility for the killing and whether the assailant had an accomplice

9. Dr. Baruch Goldstein bears direct responsibility for the massacre because the evidence unequivocally indicates that he carried it out. Furthermore, all stages of the event, including his preparations and behaviour on the morning of 25 February 1994, as well as both general and specifically ideological conversations which he conducted with others, such as the arguments with Mr. Meir Lapid (exhibit 1088), and an interview with a foreign correspondent early in February 1994 (exhibit 1092), indicate that his actions were premeditated.

10. The evidence presented to us indicates that he acted alone. We were not presented with credible proof that he was helped, while carrying out the killing or prior to that time, by another individual acting as an accomplice, nor was it proven to us that he had secret partners. According to the evidence before us, his wife also was not aware of the matter. The complete secrecy and the decisiveness of his independent act also match the character and behaviour of this assailant, as it emerged from the evidence before us, the gist of which appears in Chapter 2.4 [in the full Report, in Hebrew]. In order to achieve his goal, he took full advantage of the prestige and trust he had acquired while serving as a doctor and reserve officer. His appearance at the Tomb, in uniform, bearing the insignia of his rank, created an impression designed to remove all obstacles from his path. Most of those present were also used to seeing Goldstein occasionally when he came for early morning prayer services. Consequently, his presence at the Tomb did not raise any suspicion or concern, nor draw any particular notice. In that connection, it must be emphasized that those guarding the Tomb did not receive any warning regarding an expected attack by Jews against Muslim worshippers at the Tomb. In contrast to this, warnings were issued regarding an expected attack by Hamas following the distribution of its leaflets in Hebron.

11. As mentioned, we have no evidence before us indicating the existence of an accomplice who knowingly provided backing or cover for Goldstein's actions in the Tomb.

12. Mention was made of an anonymous individual, carrying a Glilon rifle, whom the two soldiers on guard duty next to the East Gate, Kobi and Niv, testified to having seen as he approached the Tomb via the Jawalya corridor. According to them, the anonymous individual arrived after Goldstein and before Eli Ganon, the driver of the "garbage truck". Since he was an unfamiliar face, the suspicion arose in retrospect, that this may have been Goldstein's accomplice, who carried a Glilon for him or perhaps assisted him in some other way. However, other than these two soldiers, the questioning of the other witnesses did not reveal that they saw an individual carrying a weapon as Kobi and Niv had described: the individual was not seen by those guarding the main gate, by Lieutenant Ravivi, or by anyone else who was at the Tomb that morning, including the Waqf guards - who know most of the members of the early morning prayer group or at least recognize their faces - and those praying in the Abraham Hall. Furthermore, the statement that perhaps the person described above was seen sometime close to the arrival of Eli Ganon at the Tomb and after Goldstein's arrival, contradicts the information given that Eli Ganon arrived around 0445, while Goldstein only arrived at 0520 in the Abraham Hall. After the massacre, a list of the names of all those present in the Abraham Hall was made; all were known to the military personnel, and all testified before us and none of them was carrying either a Glilon or an M-16 rifle on that morning.

13. Neither did anyone see the person described above as he left the Tomb; none of the Muslim worshippers testified that there was a Jewish worshipper carrying an M-16 rifle (assuming that he had handed the Glilon to Goldstein and received the M-16) in the stream of those exiting via the Jawalya corridor. In contrast, there were those who saw a worshipper from the early morning prayer service (Shaul Kandy) who entered the Tomb, on his way from the rest room, while the stream of Muslim worshippers was rushing forth to get outside. No one found an M-16 rifle in the Tomb, but had it been replaced with Goldstein's Glilon and not been taken out of the Tomb, it would have had to turn up inside. As was mentioned, the evidence showed that the reports communicated via walkie-talkie regarding an M-16 and a pistol which were supposed to be next to Goldstein's body and which disappeared, ostensibly, were also based on the statements by Kobi and Niv in which Goldstein, in their opinion, was carrying an M-16 rifle and not a Glilon.

14. The point is that no one saw an unknown individual, as described above, engaged in any act which can be understood as aiding Goldstein, nor were any shell casings found to indicate the possibility that shots were fired from an additional weapon in the Isaac Hall. On the steps outside the Tomb next to the main gate, a single shell casing was found and mistakenly put in with the shell casings gathered from the Isaac Hall. In Chapter 2 [in the full Report, in Hebrew] above, we discussed the reasons for the mixing of this casing with the other casings in one bag. Indeed, all of the casings gathered were identified by the weapon from which they were fired, except one. Furthermore, there is no reason to assume that while the casings were being collected, the specific casings belonging to the weapon of another person were the ones which disappeared; all 5.56 mm casings are identical from the outside and only a forensic analysis can identify which weapon it belongs to. It is therefore not possible to selectively gather from the floor 5.56 mm casings from a specific weapon in order to hide them. There was also no physical opportunity to carry out such a collection, certainly not while the Muslim worshippers were still in the Hall, and not afterwards either, after the soldiers and police officers had entered the Hall. The single casing found on the outside stairs must therefore, apparently, be the unidentified casing from the bag of casings gathered at the scene of the crime. In addition, the casing found on the stairs cannot be the casing of a bullet fired from Goldstein's Glilon: it was proven that no one fired before the massacre, and after the massacre, the Glilon was already hidden beneath the bookcase of Koranic texts in the Isaac Hall.

15. No fragments of a hand-grenade were found in the Hall nor were there signs of damage caused by grenade fragments in the walls. No hand-grenade fragments were found in the bodies of the injured who were operated on or x-rayed.

16. Those Muslim worshippers who turned around after the shooting started, clearly saw only one gunman in the Hall, whom they described. Their descriptions of his face and image exactly matched those of Goldstein; some of the worshippers had even recognized him before this. The connection to Goldstein also follows from the sequence of events, since the person whom the Muslim worshippers identified as the gunman, was later attacked by some members of the congregation and killed. The worshippers who assaulted Goldstein before he was killed did not claim at the same time, that there was another gunman in the Hall, or that there was someone shooting to provide cover for Goldstein.

17. A few of the Muslim worshippers did indeed testify that they heard shots from another source, or which sounded differently, and there was

also someone who said he saw soldiers shooting into the Isaac Hall from its main entrance. However the questioning of witnesses, or of those who submitted statements, as the case may be, in order to investigate the credibility of their version, did not convince us of the credibility and truth of this claim; rather it did the opposite. Thus for example, Haj Ahmad Nasr (p. 2,247), claimed that he saw the half-inch barrel of a weapon inserted into the Isaac Hall from an opening in the door of the Abraham Hall. But, in effect, while testifying before us, he retracted his description, which also did not correspond to the [physical] circumstances of the site, in which there is no opening similar to the one which he described, in the door separating the Abraham Hall and the Isaac Hall (photo exhibit 324). Rafet Fahmi el-Kerki also referred to an aperture in the door separating the Abraham Hall and the Isaac Hall (p. 1,242), although there is no such aperture. Abd el Hafez Salman al-Jibri (p. 1,148), testified before us about, "six or seven gunmen", yet could not explain why he did not mention such a crucial fact when he gave a statement to the Police shortly after the massacre took place. The testimony of Muhamed Musbah Al-Jibri and Zalah Iyash Al-Jibri contained contradictions between testimony which was presented before us, and that presented previously in written statements taken shortly after the massacre. Yusri Mahmud Musa al Jimail described the sound of two different types of shots (one light and one heavy); thus, according to him, two different types of weapons were used, yet this does not at all correspond with the findings, such as the kinds of casings gathered in the Hall. Of course, it is possible that the witness erred in assessing the link between the different sounds of the shots and the differing distances from the source of the shooting, and that he perceived the shots fired from the Jawalya corridor as coming from inside the Isaac Hall. Incidentally, this witness broke the law in telling a blatant falsehood: according to him, soldiers fired intentionally on anyone who left the "pishpesh" door in the direction of the Jawalya corridor (p. 1,080). No other witness made such a claim and the other evidence proved that this never happened.

18. Therefore, the allegations that shots with different sounds were heard, that the barrel of a weapon was inserted through an opening from the Abraham Hall; accounts of the presence of three, six or even seven gunmen; as well as other similar claims made by some of the Muslim worshippers were inconsistent, and have not been substantiated. Nor have they been in any way supported by the Waqf workers, Salmon or Abu Salah.

19. Perhaps the fact that the versions provided by the Muslim worshippers were inconsistent and unfounded in comparison to the objective facts should not surprise us: following a traumatic event such as was experienced by the worshippers in the Isaac Hall - with casualties falling all around them, and their own lives in danger - it is often difficult to be precise, uniform and consistent in the recollection and description of events (as in the "Rashomon" syndrome); in addition, some of the witnesses may have wished to place the responsibility for the events on the shoulders of all the military personnel and all of the Jewish worshippers present at the Tomb at the time.

20. Needless to say, had there been an additional gunman standing at the main entrance to the Isaac Hall, as has been claimed, worshippers would have attempted to escape by a different route.

21. There remains, of course, the possibility that the unknown individual arrived at the site only to carry Goldstein's Gilon, and to exchange it before the shooting with the M-16 supposedly carried into the Tomb by Goldstein, or in order to assist Goldstein in some other way (such as the opening of the Yosefiya door). If we examine this possibility, it is not clear why Goldstein, who did not conceal his identity, would want to carry a weapon other than his personal one, especially as it seems clear from the events that he had intended to use the Gilon for the shooting; why then would he have wanted to exchange weapons?

22. In conclusion, the fact that only Kobi and Niv saw an unknown individual, and no one else saw him either entering, exiting or moving within the Tomb, raises doubt both as to the accuracy of their reconstruction, and as to their attribution of the matter to the day in question. Kobi and Niv may have simply been mistaken in ascribing the arrival of this unknown person to the day of the massacre, as before the shooting there was nothing to call their attention to specific individuals entering the site.

23. As already mentioned, there is no evidence that a hand-grenade was thrown; (in light of tests of sounds made by shooting described in the expert opinion of Lieutenant Colonel Isser Wexler of the ordnance corps; exhibit 1,096), the loud noise heard at the beginning of the shooting could have been the result of two shots having passed close to the microphone near the mehrab (podium) serving the Imam, so that the microphone might have amplified the noise and made it sound like that of an explosion. It should be mentioned here, that the marks made by the impact of two bullets were found inside the mehrab and in a nearby wall.

24. Our conclusion is that the evidence before us does not support the conclusion that an additional person was present, who shot at the Isaac Hall or into it, or that Goldstein had an accomplice, or an assistant at the Tomb. The evidence before us indicates that Goldstein acted alone.

25. The question arises, of whether the [Jewish] worshippers from the early morning prayer group at the Abraham Hall helped Goldstein by giving tacit consent to the opening of the door leading from the Abraham Hall to the Isaac Hall, in order to enable Goldstein to enter the Isaac Hall. This theory was brought up in Second Lieutenant Raviv's first statement. The worshippers, all of whom have been questioned in the matter, have denied this entirely. Most of them also claimed that they had not seen Goldstein in the Abraham Hall, although it is clear that he had been there that morning, as three members of the prayer group testified to that effect, and since that Hall is where Goldstein's bag was found. Clearly, a denial of the opening of the door is not sufficient to dismiss the possibility that this is in fact what happened. However, this issue is linked to the broader question of how Goldstein entered the Isaac Hall.

26. A detailed analysis of Goldstein's entry into the Isaac Hall appears in Chapter 2 [in the full Report, in Hebrew], where we also reviewed the three possible routes of entry, and discussed the considerations supporting or contradicting the use of each of them. The routes are: the main entrance, the door connecting the Abraham and the Isaac Halls, and the door leading from the Yosefiya Hall to the Isaac Hall.

27. As mentioned previously in Chapter 2 [in the full Report, in Hebrew], we cannot rule out the possibility that Goldstein entered via the main entrance to the Isaac Hall, without Raviv noticing. None the less, we rejected Abu Salah's theory as not credible, and we enumerated the contradictions in his statements - including those between his statement and that of the head of the security detail, Hashalmon - and the absence of logic in his version of his movements before and after the shooting began. We also accept Raviv's claim that he was in the plaza during the critical period, that is, from the time Goldstein reached the plaza and the inner courtyard around 0520, until the shooting began. Raviv's version of this is supported by additional witnesses, among them the head of the Waqf guard, Hashalmon, as well as Muslim and Jewish worshippers.

28. However, it is possible, for example, that Goldstein passed through the plaza en route to the main entrance of the Isaac Hall behind Raviv's back while the latter was approaching the wicket door, and therefore Raviv did not notice Goldstein. Raviv's remarks indicate that he did not remain

stationary next to the wall of the Sarah Hall, but rather that he roamed - as he was permitted to do - back and forth within the plaza and even approached the wicket door.

29. It is also possible that Goldstein's movements, as reviewed in retrospect and in light of what we now know, did not on that morning, in Ravivi's eyes attract any particular attention. Ravivi explained, as mentioned previously in Chapter 2.4, that Goldstein as a doctor and as a reserve officer, accepted by the army authorities, did not raise any suspicions whatsoever. At the same time, Ravivi thought that Goldstein could not pass behind him in the relatively small plaza without his noticing, even if he (Ravivi) was moving from the wall of Sarah Hall to the wicket door.

30. Also reviewed was the possibility, which was analysed at length in Chapter 2 [in the full Report, in Hebrew; sections (32) and (34) (6) and (7)], that Goldstein chose to enter via the Yosefiya [passage]. There he could open the door without drawing the attention of the soldiers on guard, the Jewish worshippers, or the Waqf guards, while at the same time leaving himself an opening through which to escape.

31. Entry via the Abraham Hall is also a theoretical possibility. However on the side of the Isaac Hall, as described in Chapter 2 [in the full Report, in Hebrew], obstacles were placed, among them a heavy chair and a wooden beam, in order to make opening the door difficult. Moving these objects might have caused the Muslim worshippers next to the northern wall inside the Isaac Hall to take early notice of the opening of the door. Taking into account Goldstein's familiarity with all of the activities in the Tomb, he surely also knew that there usually was a ladder placed there which would prevent the opening of the door.

32. The conclusion concerning this point, as noted in Chapter 2 section (34) (8) is that we have no reliable proof of how Goldstein entered the Isaac Hall: all three alternatives are possible, but of the three, entry via the main entrance or via the Yosefiya door are the most likely. In the absence of conclusive evidence, it is not possible to reach a more decisive determination.

### 3. Carrying weapons inside the Tomb of the Patriarchs

139. Our recommendation is that entry into the Tomb by individuals carrying weapons be absolutely prohibited and that civilians or soldiers not carry weapons inside the Tomb, except for the special security force operating inside the Tomb or for a backup unit which is called in the event of an emergency.

140. Arrangements for depositing weapons at the entrance to the Tomb should be made. They will apply on Saturdays and holidays as well.

141. Responsibility for overseeing the depositing of weapons will lie with the commander of the Tomb who will be assisted by the guard unit.

### 4. Security supervision at the Tomb of the Patriarchs

142. During an emergency, the guard unit will operate as an additional backup and alert force outside the Tomb.

143. Effective devices for detecting weapons should be posted at the gates.

144. In the event of life-threatening situations (fire, attack etc.), exit via all gates will be possible.

145. All activities in the Tomb will be adequately monitored by closed circuit television. The closed circuit television system will have audio and video recording capabilities.

146. First aid procedures in the Tomb will be established and fire extinguishing and first aid equipment will be available on the site.

### 5. Visits to the Tomb of the Patriarchs

147. Visitors will be permitted to enter the Tomb during designated hours, but the commander of the site can decide that the number of visitors at a given hour will be limited, as circumstances and events dictate. If, in his opinion, security concerns require it, the commander of the Tomb may prohibit altogether the entry of visitors for a specific period.

### 6. Enforcement of the law

148. It will be established in the procedures that the full authority over, and responsibility for, investigating and trying Jewish residents and other Israelis, lies with the Israel Police. There will be no change in existing procedures in this matter with regard to other residents of Judea and Samaria.

149. All aspects of the role of the Police should be clearly defined and sufficient manpower should be allocated to enable them to fulfil their functions.

150. Coordination between the army and the Police should guarantee military assistance for the police either by providing military escorts or in other ways, and by establishing a steady flow of information on offences and maintaining order, which will facilitate Police investigations.

151. It is suggested that the budget for Police operations in the territories be included directly in the overall Police budget, thereby freeing the police from dependency on the Civil Administration budget.

152. To open a case, the rules set forth in the guidelines of section 59 of the Criminal Procedure Law (consolidated version), 5742-1982, will apply, according to which the Police open an investigation when they are informed of an offence in any way, not only when the injured party lodges a complaint.

153. The handling of investigations, including the guidelines for closing a case due "to lack of public interest", or to insufficient evidence, will be

done according to the rules designated in the law mentioned.

154. It is proposed that the Attorney General establish procedures for coordination between the Police, the State Attorney General's office and the District Attorney's office which will guarantee supervision and follow-up of cases, including overseeing every decision regarding the closing of a case, the issuance of indictments, and the conduct of court proceedings. The Attorney General will designate an individual to conduct this monitoring.

155. The Police will look into the possibility of opening a Police station in every major Jewish settlement in Judea and Samaria.

156. Since law enforcement is the central role of the Police, and since policemen are better trained in handling disturbances of the peace, it will be preferable, whenever possible, to employ Police officers (including Border Police), to deal with disturbances on the part of Jews, rather than regular army personnel or reservists.

#### 7. Use of weapons

157. It is suggested that the open fire instructions be reformulated in a clear manner, with reference to disturbances and violent offences.

158. In Judea and Samaria, a standard version of the regulations governing opening fire will be set out, which both the IDF and the Police will follow.

159. It is suggested that an order be issued stating that a citizen who uses a weapon in his possession, must immediately report his use of his weapon at the police station nearest to where the incident occurred, or to his home.

160. At least once a year, or after unusual events, a review will be conducted of the policy of distributing weapons to the Jewish citizens of Judea and Samaria.

#### 8. Briefing and relaying intelligence

161. Intelligence activity is essential as a means of preventing organization by terrorist groups, which by its nature is conducted in secret. However, it is suggested that in each case, the military, Police or command level beyond which the warning information will not be passed, be considered. This should also be expanded to include the briefing of lower level Police or army echelons than is the practice today, in order to enhance their understanding of terrorist acts and their ability to prevent them.

#### 9. Disciplinary and organizational conclusions

162. There is nothing in our recommendations detailed above which detracts from the obligation of the relevant authorities to identify the disciplinary and organizational deficiencies and weaknesses detailed in this report, and to take the necessary steps required to remedy them.

### Chapter 10. Epilogue

163. The massacre at the Tomb of the Patriarchs in Hebron was a base and murderous act, in which innocent people bending in prayer to their maker were killed. It is an unforgivable act, which caused inconsolable grief to the families of the fallen and injured victims, several of whom were permanently disabled.

164. The massacre was one of the harshest expressions of the Jewish-Arab conflict.

165. We were asked to investigate the massacre and to determine findings and draw conclusions regarding the circumstances related to it. Thus, in our investigation, we covered the circumstances surrounding the massacre and its results, and we also dealt with certain general issues which, while not directly related to the massacre, were part of the circumstances indirectly related to the event. We discussed these issues in an effort to remove every obstacle and impediment to, and to assist in the maintenance of, the just administration of government.

166. We presented the lessons which must be learnt from this tragic incident so that, as far as possible, the repetition of criminal acts such as these can be prevented. We made a series of recommendations meant to assist in returning things to normal both in the Tomb of the Patriarchs in particular, and generally in Hebron.

167. Let us hope that our inquiry and our report will indeed contribute to that end.

### Chapter 11. Publication of the report

168. According to the guidelines set out in section 20(1) of the Commission of Inquiry Law, this report will be made public after it is submitted to the Government. The report submitted to the Government will include the protocol of our hearings, as well as all exhibits.

169. The protocols of the Commission's discussions were taped in full in accordance with the decision of the Chairman of the Commission. The protocols of the open sessions and the exhibits not classified for reasons of State security will be open for the review of anyone interested. In accordance with regulation 8(2) of the Commission of Inquiry Regulations (Procedures), 5730-1969, we have decided that the right to review the protocol of the closed sessions and the exhibits that are classified for reasons of State security will be given to whomever the Cabinet decides.

170. This report was signed on 13 Tamuz 5754 - 26 June 1994.

Meir Shamgar  
Commission Chairman

Eliezer Goldberg  
Commission member

Abd el Rahman Zouabi  
Commission member

Menachem Yaari  
Commission member

Moshe Levy  
Commission member

### III. MEMORANDUM OF UNDERSTANDING ON THE ESTABLISHMENT OF A TEMPORARY INTERNATIONAL PRESENCE IN HEBRON

The Temporary International Presence in Hebron (hereafter referred to as TIPH) is established under the Agreement between Israel and the Palestine Liberation Organization on security arrangements for Hebron of 31 March 1994 (hereafter referred to as "the Agreement"). The Agreement contains the terms of reference for TIPH, and sets out its mandate in particular as set forth in paragraph A.3 of the Agreement. Its area of operation will be in accordance with the attached map.

The participation of Denmark, Italy and Norway is limited to a period of three months. Any prolongation could only be considered in accordance with paragraph A.10 of the Agreement.

#### A. Organizational structure

1. TIPH will consist of 90 members from Norway, 35 from Denmark and 35 from Italy; 60 shall be field observers, and the rest shall be office staff and support personnel.
2. All members of TIPH will operate under an integrated command structure. Office staff, support personnel and field observers shall have an equal status as members of TIPH.
3. The Head of Mission (hereafter referred to as "HOM") will be appointed by Norway. He will work in close cooperation with two Deputy Heads of Mission (hereafter referred to as "DHOM"). Important decisions on matters of principle or internal policy will be made by the three jointly. The HOM will have the authority to direct and instruct all personnel assigned to him as he may deem necessary to accomplish the mission.
4. The DHOM, with equal status, will be appointed one by Denmark and one by Italy. A TIPH staff will be established to assist the HOM and DHOM. The DHOM will primarily be responsible for personnel/logistical matters and operational/civil affairs respectively.
5. Each contributing country may appoint, among its personnel, a contingent representative responsible for practical and administrative matters concerning his national contingent.
6. In the relationship between the TIPH contingencies ultimate decision-making authority in TIPH matters remains with the Governments of the three participating countries. In matters which require decisions by the three jointly, consultations will take place urgently.
7. In the city of Hebron the members of TIPH will wear a white uniform with an emblem consisting of the letters TIPH. The 60 observers will also wear arm-bands marked "Observers" in English, Arabic and Hebrew.
8. TIPH will provide its members with an ID card in English, Arabic and Hebrew.
9. The working language of TIPH is English. Qualified interpreters will be TIPH employees from the contributing countries.
10. TIPH headquarters and accommodations will be established in premises in the city of Hebron.

#### B. Operational guidelines

1. As foreseen in the Agreement, TIPH will maintain close coordination with the Mayor of Hebron and the Head of the Civil Administration in the District of Hebron.
2. TIPH will elaborate daily situation reports based on human rights standards. TIPH will report to the Joint Hebron Committee according to paragraph 5 in the Agreement. These situation reports could also be forwarded to the Chair of the Ad Hoc Liaison Committee of donors (hereafter referred to as "AHLC"). The Chair of AHLC will promptly transmit these reports to each of the contributing countries. TIPH will report every second week to the Joint Israeli Palestinian Liaison Committee and to AHLC.
3. Members of TIPH will enjoy freedom of movement for the performance of their tasks in the city of Hebron. In case of any restrictions in accordance with paragraph A.7 of the Agreement, orders to that effect must be approved by the military commander of the Hebron area. Such restrictions will always be reported from TIPH to the Chair of AHLC, to the Joint Hebron Committee and to the Joint Palestinian Israeli Liaison Committee. Members of TIPH will not enter privately held areas in the city of Hebron or military camps and security installations without specific



permission from the holder or from qualified military security personnel.

4. In order to execute its mandate, TIPH will establish the necessary links and modalities of cooperation with ICRC regarding prisoners and their records.
5. As a basis for its reporting activities (not for public use), TIPH may use necessary equipment, including photo and video equipment.
6. For the purpose of entering and leaving the area the necessary arrangements will be made according to the Agreement.
7. Members of TIPH will not interfere in disputes or incidents. Disputes or incidents will be reported immediately to HOM.
8. Internal safety measures will be taken, after appropriate coordination, by TIPH to protect its personnel in their functions on and off duty.

#### C. Logistics and support

1. The TIPH will set up an internal communication network (mobile- transceivers, in all vehicles and to members of TIPH). It will also be provided with an external communication set-up: telephones, fax and satellite communication. The Israeli authorities will allocate the necessary frequencies.
2. A logistics and support organization will be set up, including the necessary staff and equipment.
3. In meeting the logistical needs, such as housing, food, fuel, repairs, medical services etc., the TIPH may make use of local resources. The employment of local personnel will be coordinated through the Joint Hebron Committee.
4. All TIPH vehicles will be equipped with special license plates. TIPH vehicles used for the performance of its function in the city of Hebron will also be marked with emblems. TIPH vehicles will carry only members of TIPH.

#### D. Privileges and immunities

1. In the area of, and in connection with its activities, TIPH shall enjoy such privileges and immunities as are necessary for the fulfilment of its task including immunity of its premises. Similarly it shall enjoy privileges and immunities necessary for the independent exercise of its functions.
2. Members of TIPH shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions in their official capacity, including the time spent on journeys in connection with their mission. In particular they shall be accorded:
  - (a) Immunity from personal arrest or detention and from seizure of their personal baggage;
  - (b) In respect of words spoken or written and acts done by them, immunity from legal process of every kind. Such immunity shall continue irrespective of the cessation of their mission;
  - (c) For the purpose of their communications with the respective Governments, the right to use codes and to receive papers or correspondence by courier or in sealed bags. No official communication directed to the TIPH or to any of its staff members, nor any outward official communication of TIPH, by whatever means or in whatever form transmitted, shall be detained in any way or suffer any interference with its confidentiality;
  - (d) The same immunities and facilities in respect of their personal baggage as accorded to diplomatic envoys.
3. Privileges and immunities are granted to members of TIPH in the interest of the fulfilment of the Hebron Agreement and not for the personal benefit of the individuals themselves. The immunity of any staff member may be waived by the sending State.
4. The States participating in TIPH and members of TIPH shall not be liable for any act or omission performed under the terms of this MOU, except in case of gross negligence or wilful misconduct.

#### E. Final provision

This Memorandum of Understanding enters into force on the date of its signature, and shall, subject to the provisions of paragraph D.2(b), remain in force for the three months duration, or any agreed upon prolongation, of the Temporary International Presence in Hebron.

Done at Copenhagen May 1994 in three originals in the English language

For the Government  
of Denmark

For the Government  
of Italy

For the Government  
of Norway

