



**UNESCO Chair on Human Rights, Democracy, and Peace**  
An-Najah National University



## **INVESTIGATIVE SUMMARY REPORT**

In this report the UNESCO Chair presents its findings with regard to the facts and circumstances related to the death of Usaid Abd Qadus (19) and Muhammad Ibrahim Abdel-Qadr Qadus (16) from the village of Iraq Burin (Nablus Governate) on Saturday 20 March 2010.

This report was compiled after thorough review of forensic reports, UN OCHA Weekly Protection of Civilians Reports, Palestinian National Authority Records (Settlement Portfolio - Northern West Bank), as well as eyewitness accounts of various Iraq Burin residents, a Palestinian Medical Relief Society (PMRS) worker, local journalists, and two international observers.

20 April 2010, Nablus (oPt)

## IRAQ BURIN: BEFORE 20 MARCH 2010

The village of Iraq Burin – which is home to approximately 1,100 people -, is located south of Nablus.<sup>1</sup> Less than 1 km south of Iraq Burin, lays the Bracha settlement. This settlement started out as a military observing base in the early 1980s. After five years it became a built up residential area with settlers moving in permanently and expanding the settlement gradually.

Since then the village of Iraq Burin has lost approximately 90 dunums of farmland due to land confiscation by the Bracha settlement.<sup>2</sup> The population of Bracha settlement grew from around 150 settlers in the late 1980s to approximately 2,200 today.<sup>3</sup>

Violence from the Bracha settlers directed against villagers of Iraq Burin increased significantly from July 2009 onwards.<sup>4</sup> Since June 2009, when settlers burned tens of dunums of agricultural land in villages adjacent to Iraq Burin, the people of Iraq Burin organized peaceful protests every Friday to speak out against the violence that they face from settlers and the Israeli army.

According to Iraq Burin's Village Council and the PNA portfolio holder for settlements in the Northern West Bank, an agreement was reached between Iraq Burin's Head of Village Council, the Committee 'Defending the Land' and the Israeli District Coordination Office (DCO), during a meeting in October 2009. The agreement held that the Israeli DCO would guarantee safety for the villagers and their land, and that the villagers would not hold protests anymore.

On 30 October 2009, the first Friday after the meeting, the people of Iraq Burin refrained from protesting. However, the following day, settlers entered the village, and provoked the residents by praying on their land, throwing stones at the villagers and going into the village's water well. After clashes between the settlers and the villagers ensued, Israeli forces came into the village, firing stun grenades and tear gas. A young Palestinian man was injured and the Israeli army arrested one of Iraq Burin's residents. From that day onwards the villagers of Iraq Burin have held protests every Saturday to again raise the issue of settler violence and land confiscation by the Bracha settlement.

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<sup>1</sup> See also Annex I: map of the Nablus area, including Iraq Burin and the nearby settlement of Bracha.

<sup>2</sup> The first land confiscation by the Bracha settlement took place in 2005 (60 dunums) and in 2007 an additional 30 dunums was taken by the settlers.

<sup>3</sup> Nablus Governate Office, Incident Tracking Documentation of the Portfolio on Settlements in the Northern West Bank.

<sup>4</sup> Ibid. See also the UN OCHA Weekly Protection of Civilians Reports, via <http://www.ochaopt.org>

Since November 2009, the Israeli army arrives to the area around Iraq Burin on Saturdays, before settlers from the Bracha settlement reach the village. Until January 2010, the Saturday protests in Iraq Burin encountered confrontations with small groups of settlers around the village. From January onwards larger numbers of settlers started entering into the village every Saturday, resulting in an increase in confrontations and violence. Settlers from the Bracha settlement often provoke the residents of Iraq Burin by entering onto Iraq Burin lands carrying arms, praying on the land, entering into the village's wells and throwing stones at villagers. Simultaneously, the Israeli army started accompanying the settlers on their way to the village, dispersing the two parties and acting violently against Palestinians who are present as clashes between the settlers and the residents from Iraq Burin would erupt.<sup>5</sup>

Since January there have been several incidents of settler provoked violence in Iraq Burin.

- On Saturday 23 January 2010 settlers from the Bracha settlement (east of the village) entered Iraq Burin where they clashed with the residents. The Israeli army then arrived at the village and used tear gas and rubber bullets to disperse the settlers and the Palestinians, injuring two Palestinian teenagers.
- On Thursday 28 January 2010, settlers uprooted newly-planted seedlings of olive trees from land near Iraq Burin. Two days later, on Saturday, a group of settlers entered the village after which clashes erupted between them and the villagers, which subsequently led to the arrival of Israeli forces who dispersed the two parties.
- On Tuesday 9 February 2010 settlers attacked east of Iraq Burin and clashes follow in which Ameer Qadus (18 years old) was shot in the back of his thigh with live ammunition by settlers while herding his sheep on Iraq Burin land. Ameer was shot while running away from the settlers' gunfire.
- On Saturday 20 February 2010 clashes occurred in the vicinity of Iraq Burin between the villagers and settlers from the Bracha settlement. Several Palestinians were injured when the Israeli army intervened, including a 17-year old, who was hit in the back of his leg by a rubber coated metal bullet.
- On Saturday 6 March 2010 four Palestinians were injured when clashes erupted as they tried to prevent settlers from the nearby Bracha settlement from entering into their village.
- On Saturday 13 March 2010 a group of settlers from the Bracha settlement entered the proximity of Iraq Burin village. When villagers confronted the settlers, the Israeli army

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<sup>5</sup> This observation was made by eyewitnesses living in the village, international observers, and local journalists that cover the weekly protests. These eyewitness accounts are corroborated by UN OCHA's Weekly Protection of Civilians Reports.

came to the site, leading to clashes between the army and Palestinians. Several Palestinians were injured by rubber coated metal bullets, tear gas canisters, and tear gas inhalation.

It is important to stress that settler violence directed against Palestinian civilians is prevalent throughout all of the West Bank. In the weekly Protection of Civilians Reports produced by the UN Office for the Coordination of Humanitarian Affairs (OCHA), regular settler attacks on Palestinian villages, farmland, and road travelers are recorded. Additionally, during the annual olive harvesting period numerous incidents take place in which settlers intimidate or physically assault Palestinian farmers who are attending to their land. Furthermore, stone throwing and the destruction of olive trees are means used by the settlers for systematically attacking Palestinians and their livelihoods in the West Bank.<sup>6</sup> The Palestinian National Authority (PNA) records show a significant increase in settler violence directed against Palestinian civilians and property throughout the West Bank over the past years. For example, in the Nablus Governate during the first quarter of 2010 there were 65 such incidents reported, compared to a total of 220 incidents in 2009 and 170 in 2008.

A specific reason for concern is the so called “price tag” or “mutual responsibility” strategy engaged in by settlers. This strategy emerged during 2008 and is a tactic used by settlers in which they “exact a ‘price’ against Palestinians and their property in response to attempts by the Israeli authorities to dismantle ‘unauthorized’ settlement outposts.”<sup>7</sup> In contrast to settlements, which are illegal under international law but not Israeli law, settlement outposts are illegal under international as well as Israeli law.<sup>8</sup> United Nations’ OCHA has expressed its concern that “while the stated goal of the strategy is to prevent the removal of settlement outposts, attacks in this context may be tailored in ways that contribute to ongoing efforts by Israeli settlers to depopulate certain West Bank areas from their Palestinian residents.”<sup>9</sup> In recent years several cases of systematic attacks from Israeli settlers against Palestinians have “directly contributed to the massive displacement, either temporarily or permanently, of entire Palestinian communities.”<sup>10</sup> Furthermore, Israel has failed to hold perpetrators accountable in cases of settler violence. According to Yesh Din, an Israeli human rights organization, 90% of the Israeli police investigations into cases of settler violence against Palestinians were closed without the suspect(s) being indicted or prosecuted.<sup>11</sup>

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<sup>6</sup> For example see; UN OCHA oPt, Weekly Protection of Civilians Report, 21-27 October 2009, page 2. weblink: [http://www.ochaopt.org/documents/ocha\\_opt\\_protection\\_of\\_civilians\\_weekly\\_report\\_2009\\_10\\_27\\_english.pdf](http://www.ochaopt.org/documents/ocha_opt_protection_of_civilians_weekly_report_2009_10_27_english.pdf)

<sup>7</sup> UN OCHA oPt “The price of law enforcement failure: Israeli settler violence and the evacuation of outposts”, Factsheet, November 2009, page 1.

<sup>8</sup> See also: Opinion Unauthorized Outposts (‘Sasson Report’), Adv. Talia Sasson, 2005.

<sup>9</sup> UN OCHA oPt “The price of law enforcement failure: Israeli settler violence and the evacuation of outposts”, Factsheet, November 2009, page 3.

<sup>10</sup> Ibid.

<sup>11</sup> For further reading see Yesh Din, “Law Enforcement upon Israeli Civilians in the OPT”, Data Sheet, July 2008.

This impunity raises more concerns for the safety of Palestinian villagers, such as the residents of Iraq Burin, who are at risk of settler violence.

# **FACTUAL SYNOPSIS OF THE IRAQ BURIN KILLINGS ON SATURDAY 20 MARCH 2010**

On Saturday 20 March 2010, around 6.00h Israeli army troops are seen around Iraq Burin and subsequently moving into a building under construction on the eastern side of the village.

At approximately 8.00h the soldiers move onto the mountain sides surrounding the village on the southern and eastern side of Iraq Burin.

According to at least five eyewitnesses, no settlers were seen in the vicinity of the village at all that day. According to the villagers this was the first Saturday since the weekly Saturday demonstrations started in November 2009 that no settlers were seen near the village. Usually the Bracha settlers would come close to or into the village on Saturdays (especially during demonstrations).

As has become routine on Saturdays in Iraq Burin, two medical teams (one from the Palestinian Medical Relief Society and one from the Palestinian Red Crescent Society) arrive at the village in two ambulances at approximately 11.00h in order to guarantee medical assistance to possible casualties as a result of confrontations that may ensue during the demonstration.

At around 12.30h the residents of Iraq Burin start their weekly demonstration on the eastern side of the village.

According to eyewitness accounts, around 13.00h the soldiers start shooting live rounds into the air from the hill facing the eastern side of the village. After firing the live rounds the Israeli army begins shooting rubber bullets at the protesters, not leading to any injuries. Then boys and young men - between the ages of 12 to 25 -, clash with the army; the soldiers shooting tear gas and rubber coated metal bullets, and the boys/men throwing stones.

The demonstration and confrontations at the eastern side of the village finish around 14.30h and the Israeli army leaves the area.

Around 15.00h approximately 5 armored jeeps (of the Israeli army and Border Police) enter the village from the western side and carry out searches and arrests in several homes. The boys in

the village scatter throughout the central area of Iraq Burin and hide from the troops. At least three young teenage boys are taken from a house and released a few minutes later. Walid Saleh Qadus (19) is arrested in his aunt's home in the village, and was subsequently detained for one week.

After the searches and arrests the Israeli army and Border Police move their jeeps onto the village's main road and position their vehicles approximately several dozen meters east of the crossroad. Soldiers fire sound grenades towards the western side of the street (on the opposite side of the crossroad), from where several boys are throwing stones.

One Israeli soldier comes out of one of the army jeeps and positions himself (with one knee on the ground) on the road, directing his weapon towards the western end of the street and crossroad. The distance between the Israeli soldiers and jeeps and the Palestinian boys is approximately 60 meters.

Around 15.30h a minibus coming from Nablus arrives at the village's main road. The passengers, including Muhammad and Usaid, get off the bus and move to the side of the road, close to the mosque.

A witness overhears one of the troops say "*ten lo*" ("*give him*" in Hebrew) after which the positioned soldier fires two shots of live ammunition. The first bullet hits Usaid Abd Qadus (19) in the forehead, when walking onto the main street. As Muhammad Ibrahim Abdel-Qadr Qadus (16) rushes to his cousin Usaid and reaches down to help him, he gets shot in the chest with the second metal bullet. The shots that killed Muhammad and Usaid were fired at approximately 15.40h. Neither Muhammad nor Usaid participated in clashes with the Israeli army that day.

A paramedic from the Palestinian Medical Relief Society (PMRS), who had moved around the main street and troops a little earlier, to be on the boys'/western side of the main road, helps carrying the two boys towards the nearest vehicle; the minibus that Muhammad and Usaid had arrived in a little earlier. The remaining paramedics try to bring their ambulances – from behind the troops - to the boys but are prevented from doing so by the Israeli soldiers.

In absence of an ambulance, the boys are put inside the minibus, which is driven by Zakareya 'Adel Qadus. The driver evades an attempt by the Israeli forces to block its exit from the village. The vehicle reaches the only entrance/exit road of the village, and stops there in order to wait for the two ambulances. Being critically injured, both boys are in need of receiving medical

attention inside the equipped and staffed ambulances, which are trying to reach them from the village.

Subsequently, the Israeli troops move their jeeps onto the village's only entrance/exit road and park there. The ambulances, with paramedics on board, try to pass through in order to reach the injured boys, who are still inside the minibus. However, the soldiers block the passage of the ambulances, step out of their vehicles and order all medical aid workers to get out of the ambulances. Claiming that they need to check the ambulances, the soldiers hold the medical teams at gunpoint and search the vehicles. The paramedics urge the soldiers to let the ambulances pass and make it clear to the soldiers that it is a crime to prevent medical aid from reaching the injured boys. Without the paramedics asking the soldiers to provide any information regarding the shooting, one of the soldiers tells the paramedics; "listen carefully, we did not shoot live bullets".

After 7 to 8 minutes, the PMRS and Red Crescent teams are allowed to pass through in their ambulances, but by that time, the injured boys are already taken to Rafidya Hospital (Nablus) in the minibus.

Muhammad is announced dead upon arrival at the hospital and Usaid dies the following morning at approximately 3.30h, several hours after undergoing surgery in an attempt to save his life.

### **Use of Live Fire**

Despite claims made in the media by the Israeli authorities that only 'riot-dispersal measures' and no live fire was used and that Muhammad's and Usaid's injuries were caused by rubber coated metal bullets, all evidence – including X-ray photos and forensic expert reports - indicates that in fact live fire was used to shoot both boys.

Usaid was shot in the middle of the forehead. An X-ray of Usaid's head,<sup>12</sup> taken at Rafidya Hospital, shows a metal bullet was lodged inside his head. The bullet did not exit the head, which corroborates the eye witness accounts stating that the shot was fired from approximately 60 meters distance.

The injury that led to Muhammad's death was caused by a metal bullet that entered the upper chest in the area of the heart, and exited from the lower back on the same (left) side. The

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<sup>12</sup> See Annex II, X-ray of Usaid Abd Qadus' head, 20 April 2010, Rafidya Hospital, Nablus.

entrance wound is small and circulated and the clothing around the bullet hole was burned, which indicates that it was a metal bullet which was fired horizontally and directly. Being fired 'directly' means that the bullet did not hit anything else that could have caused it to change direction before it hit Usaid. The details of the exit wound in the lower back, as described in the forensic expert report, further indicate that a metal bullet was used.

# LEGAL ACCOUNT

## Applicable International Law

From 1967 until now Israel has occupied the Palestinian Territory. Consequently, Israel – as the Occupying Power - is subject to several bodies of public international law, which create obligations regarding its conduct in the existing armed conflict and occupation. These bodies of law include the Hague Regulations, the Fourth Geneva Convention, and the Convention on the Rights of the Child. The first two treaties are part of customary international law. Additionally, both the Fourth Geneva Convention and the Convention on the Rights of the Child were signed and ratified by Israel.

## Use of Live Fire

Three elementary principles of international humanitarian law govern the use of force. These principles – which are part of customary international law - are; distinction, necessity and proportionality. All three of these principles must be abided by for the use of force to be lawful. None of these principles were upheld by the Israeli forces when it conducted its operation in Iraq Burin on Saturday 20 March 2010.

Opening fire on unarmed civilians, and especially children, violates the principles of distinction, necessity and proportionality altogether. Since there were no combatants or other military targets in the vicinity, opening fire on the people in Iraq Burin goes beyond disregard of the distinction principle and can be labeled as the willful targeting of civilians with live fire.

As is documented in numerous news reports, the Israeli authorities argue that the troops felt forced to fire as they found themselves “caught in a conflict with Palestinians hurling stones.”<sup>13</sup> However, it is important to note that at the time of the shooting there was a safe distance (approximately 60 meters) between the soldiers and the boys in the village. The boys - some of whom were throwing rocks - could not possibly pose a threat to the lives of the Israeli soldiers who arrived in the village in armored jeeps and who were inside their jeeps moments before the shooting. The soldier who shot the metal bullets, came out of his jeep solely for the purpose of positioning himself on the road for firing live ammunition. Furthermore, the soldiers’ assessment of the security situation did not prevent them from entering the village and walking through it by foot in order to arrest people from several houses. The army conducted an incursion and arrest operation

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<sup>13</sup> “IDF probe suggests failures during fatal clashes with Palestinians “, Ynetnews (5 April 2010) weblink; <http://www.ynetnews.com/articles/0,7340,L-3871823,00.html>

in Iraq Burin shortly after the overall situation had calmed down, during which they briefly held and subsequently released at least three young teenagers. The purpose of this incursion and arrest operation is questionable, seeing the timing of the operation and seemingly random targeting of young teenagers for arrest. The circumstances indicate underlying purpose that do not match with enduring and restoring public order and safety, as Israel is obliged to do according to Article 43 of the Hague Regulations. Concluding from the above, the statements made by the Israeli army and the Israeli authorities do not match the conduct of the Israeli troops on 20 March 2010, nor does the factual evidence. There is no indication that the troops could have had any reasonable grounds to believe that their lives were in danger under the given circumstances. Therefore, the principle of necessity was also violated by the use of live fire.

Finally, the principle of proportionality was flagrantly violated by using live ammunition to respond to stone-throwing youth in the village. The soldiers, who were wearing protective uniforms, and were inside their jeeps right before shooting the live ammunition, had other means at their disposal to respond to the stone-throwing.

### **Willful Killing**

The death of Muhammad and Usaid was caused by two targeted shots with metal bullets, fired by the Israeli forces. As was established in the previous paragraph, those shots could not have been justified by military necessity. Two remaining required elements for such a use of violence to constitute the crime of willful killing are *actus reus* (material element) and *mens rea* (intent). As becomes clear from the findings presented above, the Israeli forces fired targeted shots (in the head and chest) of live ammunition at two unarmed boys, which confirms that the Israeli forces were shooting at civilians, from who they know are protected under international humanitarian law (*actus reus*). Considering the method applied by the army (a positioned soldier shooting at the upper bodies), the intent to cause the deaths of the civilians fired at becomes apparent. Hence, the fulfillment of the *mens rea* requirement can also be confirmed. The willful killing of civilians constitutes a grave breach of the Fourth Geneva Convention (under Article 147 thereof), which consequently constitutes a war crime, and is subject to compulsory universal jurisdiction.

Because of the actions of the Israeli army, Muhammad and Usaid have both been deprived of the inalienable and most fundamental human right; their right to life, which is enshrined in Article 3 of the Universal Declaration of Human Rights.

### **Withholding Medical Aid**

After shooting Usaid and Muhammad, the Israeli forces actively obstructed the access of medical aid to both victims. First they attempted to prevent the minibus, carrying both boys, from leaving the village and bringing the boys to the nearest hospital. Subsequently they blocked the way of the two ambulances on site, as the medical teams wanted to access the wounded boys. These acts constitute a violation of Article 56 of the Fourth Geneva Convention which dictates that Israel has the duty to allow medical personnel to carry out their duties.

### **Special Protection for Children in Armed Conflict**

Israel has signed and ratified (in 1992) the Convention on the Rights of the Child, which is a binding instrument under public international law. One of the core principles of the Convention on the Rights of the Child is the right to life, which is enshrined in Article 6 of the Convention. Muhammad was 16 years old when the Israeli army killed him and according to the Convention (and Israeli law) he falls within the within the definition of a child. Most of the Palestinians clashing with the Israeli army around and later inside Iraq Burin that day were children. Making a group of children or individual children a target of willful killing is the gravest possible violation of the Convention on the Rights of the Child.

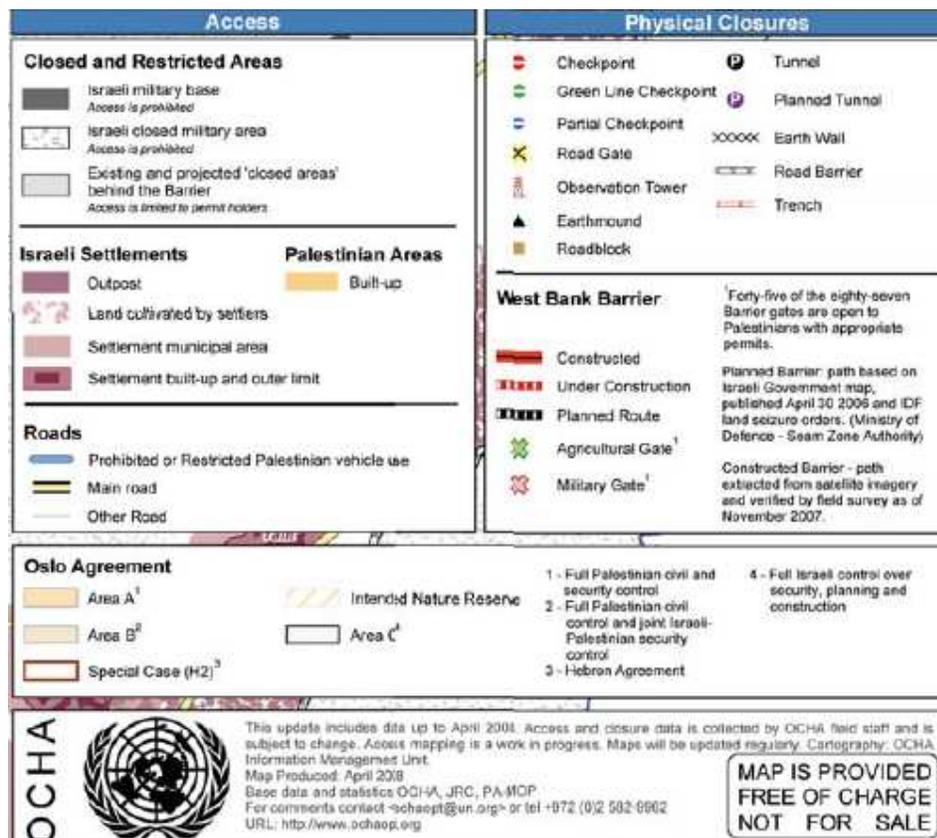
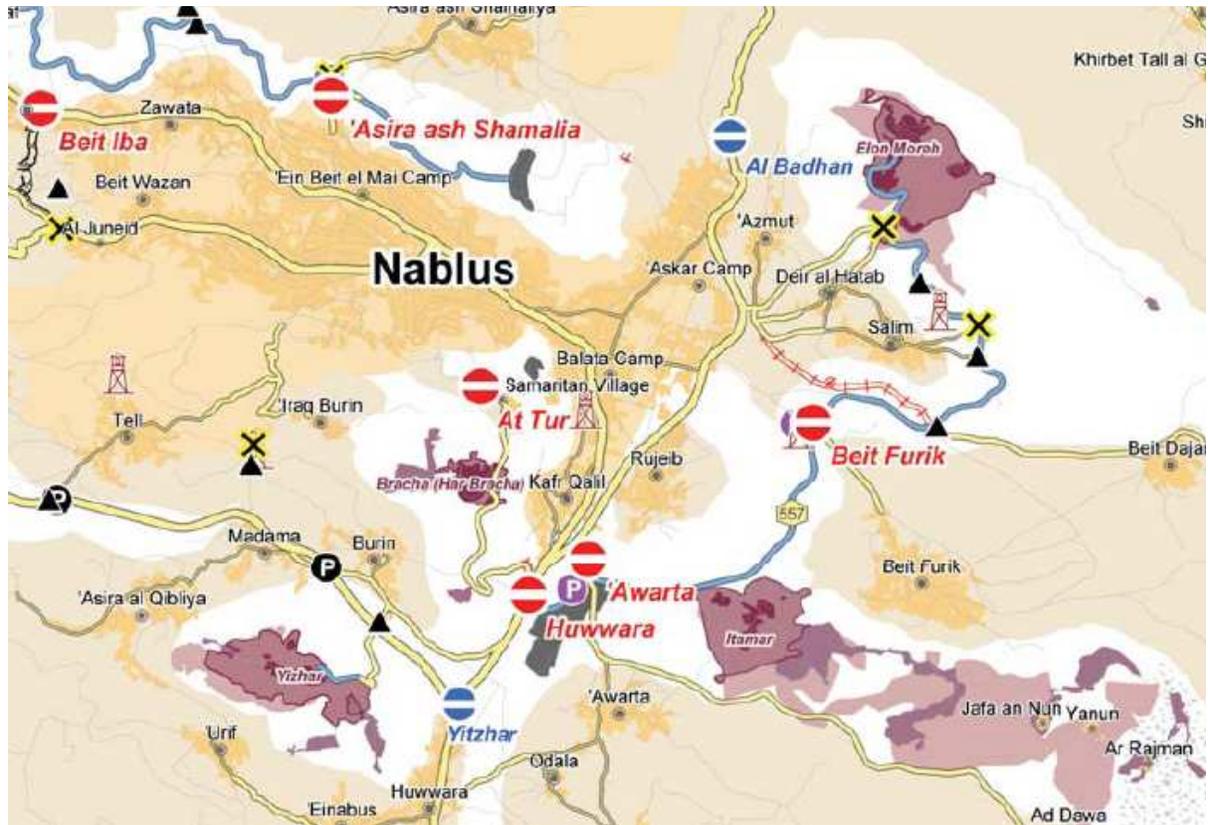
### **Obligation to Investigate**

Since the case of Iraq Burin concerns grave breaches of the Geneva Conventions, Israel is obligated (under Article 146 of the Fourth Geneva Convention) to investigate the case, and punish those responsible. However, so far no actions by the Central Command or Chief of Staff of the Israeli military have been undertaken that could equate to fulfillment of the duties under Article 146. If no adequate action is taken by the Israeli military leadership to investigate and punish these war crimes, the leadership will subsequently also be accountable under international humanitarian law.

## URGENT APPEAL

- The Chair further calls upon the international community to hold the perpetrators of war crimes, such as the forces who operated in Iraq Burin on 20 March 2010, accountable through the principle of compulsory universal jurisdiction. The State of Israel commits war crimes in the Occupied Palestinian Territory on a daily basis, so far with total impunity. It is the legal responsibility of the international community to sanction the state of Israel and hold it accountable for its acts in violation of international humanitarian law.
- The UNESCO Chair of An-Najah National University (Nablus, oPt) expresses its concern about the prevalent settler violence against Palestinians in the West Bank and urges all High Contracting Parties to the Fourth Geneva Convention to hold Israel accountable for its continuing violation of international law by the illegal establishment and expansion of settlements in the West Bank (including East-Jerusalem). In addition to the political implications of the illegal settlements in the West Bank, these settlements also form a substantial and alarming threat to the security of Palestinians and the prospects of sustainable peace in the future.
- We urge the Prosecutor of the International Criminal Court, Mr. Moreno-Ocampo, to act under article 15 of the Rome Statute and initiate preliminary investigations, *proprio motu*, into war crimes committed by Israel throughout the Occupied Palestinian Territory on an ongoing basis. The killing of Usaid and Muhammad Qadus would be one of the many cases falling into the Court's jurisdiction.

ANNEX I: map of the Nablus area, including Iraq Burin and the nearby settlement of Bracha.



Source: UN OCHA, West Bank and Gaza Closure Maps, April 2008, page 6.

ANNEX II: X-ray of Usaid Abd Qadus' head, showing a metal bullet lodged in the skull.

