

TORTURE OF TERRORISTS IN ISRAEL: THE UNITED NATIONS AND THE SUPREME COURT OF ISRAEL PAVE THE WAY FOR HUMAN RIGHTS TO TRUMP COMMUNITARIANISM

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I. INTRODUCTION

The General Security Service of Israel, also known as the Shin Bet, investigates individuals suspected of being involved with crimes against Israel's security.¹ Some people view the various interrogation methods employed by the

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1. H.C. 5100/94, Pub. Comm. Against Torture in Israel v. The State of Israel et al.; H.C. 4054/95, The Ass'n for Civil Rights in Israel v. Prime Minister et al; H.C. 5188/96, Wa'al Al-Kaaqua and Ibrahim Abd'allah Ganimat: Ctr. For Defense of the Individual v. Gen. Security Service et al; HCJ 6536/96, Hat'm Abu Zayda v. Gen. Security Service; H.C. 7563/97, Abd Al Rahman Ismail Ganimat and the Pub. Comm. Against Torture in Israel v. Minister of Defense et al; H.C. 7628/97, Fouad Awad Quran and the Pub. Comm. Against Torture in Israel v. Minister of Defense et al.; President Barak gives the opinion, at <http://www.court.gov.il/mishpat/html/en/verdict/judgment.rtf> (last visited Jan 17, 2001) [hereinafter Torture Case].

General Security Service as a violation of human rights, while others see them as necessary to uphold Israel's "communitarianism" ideology. Israel has historically prioritized the community's interests over individual human rights because the State of Israel has had reason to be concerned with the safety of its community due to ever-present problems with peace. The State of Israel has been engaged in an immutable struggle for both its security and existence from the day it was founded due to terrorist organizations.² These terrorists have attacked major cities in Israel, such as Jerusalem and Tel Aviv, often killing and injuring innocent people. One hundred and twenty-one people were murdered by terrorist attacks between January 1, 1996 and May 14, 1998.³ In addition to the 121 deaths from terrorism, 707 people were injured.⁴ This has concerned Israeli legislators and citizens.

The General Security Service uses specific interrogation methods to quash future terrorist attacks in the hope of saving lives. The question pondered by judges, politicians, and the entire Israeli nation is, "how does Israel maintain a high level of security in the Israeli community by eradicating heinous acts of terrorism and simultaneously protect the human rights of terrorists?" This Note will look at Israel's current "constitution" and analyze some of the implicit laws used to govern Israel's stance on human rights. In addition, this Note analyzes the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and explores the reaction of prominent Israeli leaders after the United Nations asked Israel to become a member of the Convention. Finally, this Note dissects the recent Supreme Court of Israel's decision condemning the interrogation methods used on terrorists by the General Security Service of Israel.

II. ISRAEL'S JUDICIAL INFRASTRUCTURE

A. Constitution

Israel does not have a written constitution.⁵ Upon the founding of the State of Israel in May 14, 1948, Israel's Declaration of Independence contained an explicit promise to prepare a written constitution by October 1, 1948.⁶ Unfortunately, due to religious parties objecting to the drafting of a written constitution, and the secular parties objecting to a reference of divine authority, a political consensus could not be arrived at concerning the formalities and

2. *Id.*

3. *Id.*

4. *Id.*

5. The Knesset as Constituent Assembly, *The Constitution* (1998), at http://www.knesset.gov.il/knesset/knes_eng_mimshal_hoka.htm.

6. Menachem Hofnung, *The Unintended Consequences of Unplanned Constitutional Reform: Constitutional Politics in Israel*, 44 AM. J. COMP. L. 585, 588 (1996).

language of the constitution.⁷ Fortunately, the United States has a written Constitution, so that when constitutional issues arise in day to day life, governmental and judicial entities have a formal guideline setting out what is considered constitutional. Since Israel lacks a written constitution, the Supreme Court uses other means to determine the constitutionality of issues in Israel. Over the years, the Supreme Court sitting as the High Court of Justice, via judicial interpretation and judicial activism, was able to establish several universal human rights that are ingrained in national constitutions elsewhere.⁸ Through its jurisdiction as a High Court of Justice, the Supreme Court maintains and strengthens human rights.⁹

B. *The Basic Laws*

The Proclamation of Independence in Israel states that human rights in Israel are premised upon the appreciation for the value of man, the sanctity of his life and on his being free.¹⁰ Although Israel has no written constitution to regulate and guide constitutional issues, Israel has found an adequate substitute in the Basic Laws. Ten years after the founding of the State of Israel on May 14, 1948, the Knesset invented what eventually became the first of eleven Basic Laws.¹¹ The following Basic Laws have been adopted: Basic Law: the Knesset, (1958); Basic Law: Israel Lands, (1960); Basic Law: the President of the State (1964); Basic Law: the State Economy (1975); Basic Law: the Army (1976); Basic Law: Jerusalem the Capital of Israel (1980); Basic Law: the Judiciary (1984); Basic Law: the State Comptroller (1988); Basic Law: Human Dignity and Liberty (1992); Basic Law: the Government (1992); and Basic Law: the Freedom of Occupation (1994).¹²

The Basic Law utilized when Israel sets out to protect human rights is Basic Law: Human Dignity and Liberty (1992).¹³ This Basic Law states that

7. *Id.* at 588.

8. *Id.* at 592.

9. The Courts' Directorate, *The Judiciary: The Court System, Functions and Structure* (1999), at <http://www.israel-mfa.gov.il/mfa/go.asp?MFAH00gz0> (last visited Jan. 17, 2001).

10. The Knesset as Constituent Assembly, *supra* note 5, at 2.

11. *Basic Laws-Introduction* (1999), at http://www.knesset.gov.il/knesset/knes/eng_mimshal_yesod1.htm. The Knesset acts as the House of Representatives of Israel, which sits in Jerusalem and functions as the Israeli Parliament. *See id.* The Knesset holds the powers of the legislative branch similar to those held in the legislative branch of the United States. *See Hofnung, supra* note 6, at 594.

12. *Basic Laws-Introduction* (1999), at http://www.knesset.gov.il/knesset/knes/eng_mimshal_yesod1.htm.

13. Yitzhak Shamir et al., *Basic Law: Human Dignity and Liberty* (1994), at <http://www.israel-mfa.gov.il/mfa/go.asp?MFAH00hi0>. Sections 1-11 of Basic Law: Human Dignity and Liberty expressly provide:

1. The purpose of this Basic Law is to protect human dignity and liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic

the fundamental human rights in Israel are based on appreciation of the value of a man's life and his freedom to live.¹⁴ The primary focus of the law is "to defend Human Dignity and Liberty, in order to establish in a Basic Law the values of the State of Israel as a Jewish and democratic state."¹⁵ The Basic Law determines that human liberty in Israel consists of the right to leave and enter the country, the right to privacy and intimacy, the right to immunity from searches involving one's property, body and possessions, and the right to avoid breaches of the privacy of one's speech and writings.¹⁶ Violations of the dignity or freedom of man is not permitted unless it is done in accordance with the law.¹⁷ It is here where the Basic Law starts to resemble fundamental rights that are present in national constitutions elsewhere. The ultimate question for the

state.

2. There shall be no violation of the life, body, or dignity of any person as such.
3. There shall be no violation of the property of a person.
4. All persons are entitled to protection of their life, body, and dignity.
5. There shall be no deprivation or restriction of the liberty of a person by imprisonment, arrest, extradition or otherwise.
6. (a) All persons are free to leave Israel. (b) Every Israel national has the right of entry into Israel abroad.
7. (a) All persons have the right to privacy and intimacy. (b) There shall be no entry into the private premises of a person who has not consented thereto. (c) No search shall be conducted on the private premises of a person, nor in the body or personal effects. (d) There shall be no violation of the confidentiality of conversation, or of the writings or records of a person.
8. There shall be no violation of rights under this Basic law except by a law befitting the values of the State of Israel, enacted for a proper purpose, and to an extent no greater than is required.
9. There shall be no restriction of rights under this Basic Law held by persons serving in the Israel Defense Forces, the Israel Police, the Prisons Service and other security organizations of the State, nor shall such rights be subject to conditions, except by virtue of a law, or by regulation enacted by virtue of a law, and to an extent no greater than is required by the nature and character of the service.
10. This Basic Law shall not affect the validity of any law in force prior to the commencement of the Basic Law.
11. All governmental authorities are bound to respect the rights under this Basic Law.
12. This Basic Law cannot be varied, suspended, or made subject to conditions by emergency regulations; notwithstanding, when a state of emergency exists, by virtue of a declaration under section 9 of the Law and Administration Ordinance, 5708-1948, emergency regulations may be enacted by virtue of said section to deny or restrict rights under this Basic Law, provided the denial or restriction shall be for a proper purpose and for a period and extent no greater than is required.

14. *The Existing Basic Laws: Summary* (1998), at http://www.knesset.gov.il/knesset/knex/eng_mimshal_yesod2.htm.

15. *Id.*

16. *Id.*

17. *Id.*

Supreme Court sitting as the High Court of Justice is whether the interrogations at issue in the Torture Case violate the dignity and/or freedom of man, and if so, whether this should be permitted in accordance with the law.

III. UNITED NATIONS CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

On November 2, 1991, Israel consented to becoming a member of the "United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment," which was implemented by the United Nations General Assembly in 1984.¹⁸ Section 2 of Basic Law: Human Liberty and Dignity which prohibits the "violation of the life, body, or dignity of any person as such", and Section 4 of the aforementioned Basic Law, which grants all persons the right to protection against such violations, have constitutional status in Israel's legislative framework.¹⁹ Section 2 of the Basic Law gives the Supreme Court of Israel power to scrutinize legislation that could violate an individual's liberty and/or dignity:

The Supreme Court arguably has the power to void any legislation enacted after the entry into force of the Basic Law which violates the above provision. The Court for this reason may not deem previously enacted laws void, but they will be interpreted in accordance with the fundamental principles of sanctity of life, integrity of the body and primacy of human dignity, broadly construed. These provisions in the Basic Law, then, may be deemed to constitute a general prohibition of cruel, inhuman or degrading treatment or punishment, including torture, and are binding *vis-à-vis* both public and private entities.²⁰

Some of the issues raised with the ambit of Israel's presentation before The Human Rights Committee Against Torture were themes regarding the state of emergency in Israel, the right to life, and the techniques used by the General Security Service when interrogating terrorist suspects.²¹ The Human Rights

18. Matthew G. St. Amand, Note, *Public Committee Against Torture In Israel v. The State of Israel Et Al: Landmark Human Rights Decision By the Israeli High Court of Justice Or Status Quo Maintained?*, 25 N.C. J. INT'L L. & COM. REG. 655, 671 (2000).

19. *Second Periodic Report of Israel Concerning the Implementation of The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment* (1998), at <http://www.mfa.gov.il/mfa/go.asp?MFAH024k0> [hereinafter *Second Periodic Report*] (quoting Human Rights Committee Against Torture).

20. *Id.* § 5.

21. Alan Baker & Ady Schonmann, *Presenting Israel's Case Before International Human Rights Bodies*, in JUSTICE - THE INTERNATIONAL ASSOCIATION OF JEWISH LAWYERS AND JURISTS 23 (1998), available at <http://www.israel-mfa.gov.il/mfa/go.asp?MFAH0ddr0> (last visited Jan. 17, 2001).

Committee Against Torture stated that the Committee will have many functions, and, in particular to Israel, will endeavor to scrutinize and watch over the General Security Service's activities, specifically their interrogation methods that may amount to torture.²² The question then asked is "what is torture?" Torture is defined as:

Any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted upon an individual for purposes such as retrieving vital information and/or a confession...when such pain or suffering is inflicted by the instigation of or with the acquiescence of a public officer or anyone else acting in an official representative capacity²³

The founding parties of the Convention were unable to agree on whether or not to completely prohibit both components of the title of the Convention.²⁴ Although this decision was never officially agreed upon, and Article 1 of the Convention only prohibits "torture," clear guidelines and detailed instructions have been created for the purpose of guiding the General Security Service in all aspects of the interrogation procedures.²⁵

On October 24, 1995, Former Prime Minister of Israel Yitzhak Rabin gave a speech to the United Nations General Assembly on the 50th Anniversary of the United Nations. The speech included a plea to the United Nations to help strengthen and support the war on terrorism:

The United Nations must continue giving expression to the new reality in the Middle East. We must all be at the forefront of the fight against the forces which threaten peace and security in the region, to all countries, to all the peoples of the region and in the entire world...the UN must intensify the international struggle against terrorism and its supporters. Terrorism is the world's cancer today. Don't fool yourselves, even if you ignore terror it can enter any of your homes. Terror must be defeated. Peace must win. This is a fight that we cannot afford to lose.²⁶

22. See *Second Periodic Report*, *supra* note 19 § 13.

23. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature Dec. 10, 1984 (entry into force June 26, 1987), available at http://www.unhcr.ch/html/menu3/tb/h_cat39.htm [hereinafter *Convention Against Torture*]. See St. Amand, *supra* note 18, at 671.

24. St. Amand, *supra* note 18, at 671. The parties were in disagreement on whether to "prohibit both torture and "other cruel, inhuman or degrading treatment or punishment." *Id.*

25. Alan Baker & Ady Schonmann, *supra* note 21, at 9.

26. Yitzhak Rabin, *Address to the UN General Assembly, on the 50th anniversary of the United Nations* (1995), available at <http://www.israel-un.org/archive/rabinun5.htm>.

Yitzhak Rabin, if still alive, would probably be somewhat disheartened after the results of the United Nations General Assembly's decision on the interrogations in Israel. In fact, many of the political leaders in Israel were dissatisfied with the result of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. This discontent stems from an already historically unstable relationship between Israel and the United Nations.²⁷ In the United Nations General Assembly there exists a long-standing history of scrutinizing Israel more than other countries.²⁸ The General Assembly devotes seven out of 140 items of its agenda to Israeli-generated issues.²⁹ Within the General Assembly, the Commission on Human Rights often implements completely lopsided resolutions against Israel.³⁰ "Israel is the object of more investigative committees and special representatives than any other state in the entire UN system."³¹ The United Nations has continually held Emergency Special Sessions of the General Assembly in Jerusalem.³² During the 48th Special Session of the General Assembly, two resolutions on terrorism were talked about, one in the Third Committee and one in the Sixth Committee.³³

The Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment caused anxiety within the Israeli delegation, headed by the Israeli Foreign Ministry Legal Advisor, Alan Baker and Deputy State

27. Gad Yaacobi, *Israel and the United Nations: A New Perspective* (1994), at <http://www.israel-mfa.gov.il/mfa/go.asp?MFAH0cfn0>. Gad Yaacobi is the Israeli Ambassador to the United Nations.

28. *Israel and the UN- An Uneasy Relationship* (1999), at <http://www.israel-un.org/Israelun/isrun/isrun1.htm>. The General Assembly is the voice of the United Nations on International issues.

29. *Id.*

30. *Id.* § 4.

31. *Id.* § 5.

32. *Id.* § 8. These Emergency Special Sessions were originally adopted in 1950 for serious emergencies, such as the Korean War. In the last fifteen years, these Emergency Special Sessions have only been regarding Israel. To make it even clearer as to the meaning behind this past behavior of the General Assembly, the Emergency Special Sessions were not held when the mass-genocide took place in Rwanda, nor were the Sessions held during the "ethnic cleansing" in the former Yugoslavia.

33. Yaacobi, *supra* note 27, § 9 (Resolutions on Terrorism). The Third Committee is in charge of social, humanitarian and cultural issues, and the Sixth Committee is in charge of legal issues. Turkey introduced the resolution in the Third Committee, and effectively condemned terrorism as a violation of human rights. Syria and Pakistan tried to qualify the censure and formed amendments that would exempt terrorism that was performed in resistance to "alien domination." These amendments never went through and the majority adopted the resolution. In the Sixth Committee, nothing was decided on the topic of international terrorism and the Committee made the decision to postpone the international terrorism issue until the following year. *Id.*

Attorney, Yehuda Shaffer.³⁴ The Israeli delegation alleged that the use of "moderate physical pressure" on detainees in extraordinary circumstances, in order to retrieve vital information concerning present terrorist attacks, cannot be considered torture or cruel, inhuman or degrading treatment.³⁵ In its statement to the Committee, Israel explained in great detail its dilemma.³⁶ This dilemma is the need to procure vital information from suspected terrorists about forthcoming acts of terrorism in order to thwart such events from happening and thereby saving human lives; and at the same time, fully practice human rights norms, specifically those emphasized in the Convention Against Torture.³⁷

The work of the General Security Service has proven to avoid many disasters.³⁸ The GSS investigators have foiled some 90 plans for large-scale terrorist activities when time was running out.³⁹ Unfortunately, some extremist groups, in opposition to talks of peace, are able to slip past the Israeli security; and in doing so, cause many individuals to die or be severely injured. Explosions in Haifa and Tiberias occurred almost simultaneously, and not surprisingly the explosions took place the day following the signing of the

34. The Israeli Foreign Ministry, *United Nations Committee Against Torture- Summary of the Israeli Opening Statement* (1998), at <http://www.israel-mfa.gov.il/mfa/go.asp?MFAH01ni0>.

35. *Id.*

36. The Israeli Foreign Ministry, *Israel Reaction to the Conclusions of the Committee Against Torture* (1998), at <http://www.-mfa.gov.il/mfa/go.asp?MFAH01ni0> [hereinafter *Israel Reaction*]. The Justice Ministry Spokeswoman stated that:

The signing of the Declaration of Principles (start of the peace process between Israel and the PLO) between Israel and the Palestine Liberation Organization has given rise to a great deal of opposition amongst the extremist groups on both sides. In fact, the process prompted an unprecedented outburst of atrocities on the part of Palestinian terrorist organizations, which began to carry out acts of terrorism within the State of Israel, in order to shatter the peace process. Terrorists were dispatched to carry out suicide bombings, in which many people were killed and injured. Since September 12, 1993, when the Declaration of Principles was signed, until today, two hundred and fourteen Israelis have been killed in terrorist attacks in Israel; of these, one hundred and forty-three were civilians, and seventy one were members of the security forces. Also, one hundred and fifty one Palestinians were killed in these attacks.

Justice Ministry Spokeswoman, *Statement By Israeli Representative At 18th Session of United Nations Committee Against Torture* (1997), at <http://www.israel-mfa.gov.il/mfa/ go.asp?MFAH0cif0>.

37. *Israel Reaction*, *supra* note 36.

38. Justice Ministry Spokeswoman, *Statement by Israeli Representative at 18th Session of United Nations Committee Against Torture* (1997), at <http://www.israel-mfa.gov.il/ mfa/go.asp?MFAH0cif0>.

39. *Id.* As noted in paragraph twenty four of the special report: "Among these planned attacks are some 10 suicide bombings, seven car bombings, 15 kidnappings of soldiers and civilians, and some 60 attacks of different types including shootings of soldiers and civilians, hijacking of buses, stabbing and murder of Israelis, placing of explosives, etc." Israel has a top priority for thwarting terrorism and a tremendous importance is given to the importance of saving human lives; this comes as a result of the interrogators' work. *See id.*

Sharm agreement.⁴⁰ The extremist Islamic groups, such as the “ Hamas” and the Islamic “ Jihad,” have decided to choose a murderous path of destruction to express their dismay with the peace process.⁴¹

The General Security Service’s counter-operations and interrogations slow the Hamas’ and Islamic Jihads’ ability to recruit would-be terrorists.⁴² This causes terrorist groups to use alternative methods to recruit, and in desperate circumstances, try to recruit Israeli Arabs. Faced with the uphill battle of trying to protect the land and citizens of the State from terrorism, Israel and the General Security Service must also try to find a way to safeguard the human rights of the suspected terrorists.

IV. INTERROGATION METHODS USED ON TERRORISTS RULED UNCONSTITUTIONAL

The issue in the Torture Case was a complicated one. The Supreme Court of Israel, sitting as the High Court of Justice, was forced to make a decision that would ultimately affect the entire society of Israel. On September 6, 1999, in *Public Committee Against Torture in Israel v. The State of Israel*, the Supreme Court of Israel ruled that several of the predominantly used interrogation methods applied by the General Security Service in seeking confessions of suspected terrorists, were unconstitutional per se.⁴³

The purpose of using physical means on terrorists is so that the terrorists confess that they have first-hand knowledge of danger in the public sphere and to extrapolate and use that information for the sake of the general welfare of Israel. While General Security Service interrogators in Israel have used physical means to secure incriminating evidence against suspected terrorists, the United States forbids police interrogators from forcing individuals to be a witness against himself or herself,⁴⁴ because the United States Constitution has the Bill of Rights containing the Fifth Amendment, which, among other things, safeguards individuals from self-incrimination. In addition, the United States extends “Miranda Rights” to United States citizens, stemming from the

40. Ronni Shaked, *Yediot Ahronot* [Unskilled Terrorists] (1999), at <http://www.israel-mfa.gov.il/mfa/go.asp?MFAH0f0h0>. The Sharm agreement is a peace agreement between the Islamic and Israeli nations, which was rejuvenated at Sharm el-Sheikh, Egypt.

41. *Id.* The Hamas and Islamic Jihad are two prominent Islamic organizations that are in opposition to the peace process, and therefore are involved in acts of terrorism. However, it has not been proven that the Hamas and/or the Islamic Jihad were behind the attacks in Haifa and Tiberias.

42. *Id.*

43. St. Amand, *supra* note 18, at 656. The General Security Service is the main body responsible for trying to fight terrorism in Israel. *Id.*

44. See generally U.S. CONST. amend. V. In applicable part, the Fifth Amendment of the Bill of Rights states, “No person shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law. . . .” *Id.*

landmark case of *Miranda v. Arizona*, which gives the suspects of crimes “the right to remain silent.”⁴⁵ The Israeli Knesset has attempted to ratify a Bill of Rights similar to that of the United States for many years, however opposition from special interest groups has impeded the task.⁴⁶ While no “Bill of Rights” exists in Israel, the privilege against self-incrimination is generally upheld. Haim Cohn, a retired justice of the Supreme Court of the State of Israel, said, “[a]lthough it isn’t stated verbatim, the reason for the exclusion of all self-incriminatory evidence is the desire to prevent confessions being elicited by torture or other violent means.”⁴⁷ Contemporary Israeli law permits a confession to be used, but only if procured without violent means; the confession must be free and voluntary.⁴⁸ Still, many times the General Security Service has been forced to use physical means to gain confessions out of terrorists in the hope of saving lives. The decision to utilize physical means in a specific instance is premised on internal regulations, requiring permission from the various ranks of the General Security Service chain of command.⁴⁹ Different interrogation methods are used depending on the suspect, both in relation to what is required in the particular circumstance and to the probability of procuring authorization from within the ranks of the General Security Service hierarchy.⁵⁰ The physical means used by the General Security Service were presented to the Supreme Court sitting as the High Court of Justice in *Public Committee Against Torture in Israel v. The State of Israel* by the General Security Service investigators.⁵¹ These are the physical means that will now be discussed.

A. *The Physical Means*

1. Shaking

Among the interrogation tactics cited in the General Security Service’s regulations, shaking is considered the most brutal.⁵² Shaking constitutes “the forceful shaking of the suspect’s upper torso, back and forth, repeatedly in a manner which causes the neck and head to dangle and vacillate rapidly.”⁵³ The shaking is capable of causing severe trauma to the brain, injure the spinal

45. See generally *Miranda v. Arizona*, 384 U.S. 436 (1966).

46. St. Amand, *supra* note 18, at 663.

47. Irene Merker Rosenberg & Yale L. Rosenberg, *In The Beginning: The Talmudic Rule Against Self-Incrimination*, 63 N.Y.U. L. REV. 955, 1049 (1988).

48. *Id.*

49. *Torture Case*, *supra* note 1, § 8.

50. *Id.*

51. *Id.*

52. *Id.* § 9.

53. St. Amand, *supra* note 18, at 658-59.

column, causing the suspect to faint, vomit and urinate without control and suffer intense head pain.⁵⁴ The State of Israel entered into evidence several contradicting expert opinions as to the effects of shaking.⁵⁵ In *The Association of Civil Rights in Israel v. The Prime Minister of Israel and The Minister of Justice*, the suspect involved in question died after being shaken.⁵⁶ The victim's death was caused by an uncommon complication resulting in the atrophy of the lung.⁵⁷ Although this may have been an extremely rare case, it shows that shaking has the potential to cause serious injury and, in rare instances, death.

2. The Shabach Position

When the General Security Service puts a suspect in the "Shabach" position, that individual is made to sit in a low chair, with the seat tilted forward towards the ground.⁵⁸ The suspect then has his hands tied together behind the chair, and the suspect's head is covered by a hood while powerfully deafening music is emitted within inches of the suspect's head.⁵⁹ Affidavits indicate that suspects were exposed to the Shabach position for extended periods of time, and this prolonged exposure may cause severe muscle pains to the upper torso and head.⁶⁰ The State contends that the suspect's hands were tied to ensure the safety of the Shin Bet interrogators, and that the playing of noisy music and head covering was done for the purpose of preventing contact among the terrorists in the room.⁶¹

3. The Frog Crouch

This method appeared in *Wa'al Al Kaaqua, Ibrahim Abd'allah Ganimat, and Center for the Defense of the Individual v. The General Security Service and the Prison Commander-Jerusalem*.⁶² The Frog Crouch required that the suspects "crouch on the tips of their toes" for five-minute intervals.⁶³

54. *Torture Case, supra* note 1, § 9. This is taken from an expert opinion in a prior application in 1995.

55. *Id.* The State claimed that: 1. Shaking posed no fatal danger to the suspect; 2. The risk to life from shaking is atypical; 3. That no evidence exists that shaking results in any fatal damage to the body; 4. That there was no medical literature on point that could show that shaking alone proximately caused a person to die; and 5. That physicians are present at all interrogations to protect the individual when there is possible danger of medical damage. *Id.*

56. *Id.*

57. *Id.* § 9.

58. St. Amand, *supra* note 18, at 659.

59. *Id.*

60. *Torture Case, supra* note 1, § 10.

61. *Id.*

62. *Id.* § 11.

63. St. Amand, *supra* note 18, at 658.

4. Excessive Tightening of Handcuffs

Many applicants in the recent past have complained of unnecessary tightening of the hand or leg cuffs and the fact that the handcuffs were particularly small, and often disproportionate to the victim's arm and leg size.⁶⁴ Due to this excessiveness and the long duration of the interrogations, the victim may suffer severe harm to the arms, hands, and feet.⁶⁵ The State admits to using hand and leg cuffs in their interrogations, but denies using abnormally small cuffs, stating that the cuffs used are of standard size and are applied with normal tightness.⁶⁶

5. Sleep Deprivation

Since the Shabach position and loud music can last for long periods of time, some interrogated suspects have complained that they have been deprived of sleep, although the State claims that loss of sleep is incidental to the process of the interrogation and not done with an intention to exhaust the suspect.⁶⁷

B. Petitioner's Argument

The petitioners argued that the Shin Bet did not have the authority to conduct interrogations, since no statute existed that would grant the authority necessary to do so.⁶⁸ The petitioners also argued that the General Security Service's physical interrogation tactics constituted an infringement on the suspects' human dignity, and even more so, constituted a criminal offense on the part of the interrogators.⁶⁹ They continued to explain to the court that the General Security Service is not authorized to conduct any physically intrusive interrogations without complete authority from the legislator pertaining to the implementation of such physical interrogations and in compliance with Basic Law: Human Dignity and Liberty.⁷⁰ These arguments were countered by a few defenses asserted by the State of Israel, both in defense of the interrogation procedures employed by the Shin Bet and of the possible criminal liability of each individual interrogator.

64. *Torture Case*, *supra* note 1, § 12.

65. *Id.*

66. *Id.*

67. *Id.* § 13.

68. *St. Amand*, *supra* note 18, at 657-58.

69. *Torture Case*, *supra* note 1, § 14.

70. *Id.* See *Basic Law: Human Dignity and Liberty*, *supra* note 13, and accompanying text.

C. Respondent's Argument

Although torture is prohibited under Israeli Law, the 1987 Landau Guidelines allow the use of "moderate physical pressure" of suspected terrorists in limited cases where the information sought is vital to prevent death via terrorist bombings.⁷¹ The State feels the interrogation practices fall within these Landau guidelines and hence do not constitute torture. The General Security Service investigators claim they are in fact authorized to investigate and interrogate those who are suspected of endangering Israel's security.⁷² The State also argues that the physical means implemented are legal under the "necessity defense."⁷³ The necessity defense is a matter open for debate for some time.⁷⁴ The General Security Service mentions to the Supreme Court of Israel that the necessity defense should apply because of the "ticking time bomb" argument.⁷⁵ This argument is premised on the fact that there is an imminent danger that exists and therefore a corresponding immediate need to preserve human life.⁷⁶ Finally, the General Security Service asserted that the necessity defense is available to each individual interrogator if faced with criminal liability for improper interrogation.⁷⁷

V. CONCLUSION

The Supreme Court of Israel, sitting as the High Court of Justice, ruled against the State of Israel, finding that the General Security Service did not have the authority to implement the various physical methods of interrogation on the terrorist suspects.⁷⁸ In its decision, the Supreme Court of Israel emphasized that Israeli law forbids the challenged physical interrogation practices, because "1) they offend the general notions of interrogation law, 2) the practices could not be justified by the necessity defense, and 3) no legislation authorized the use of such practices."⁷⁹ The Court concluded that any justification for allowing physical means of interrogation should be decided by the legislature, that the

71. Baker and Schonmann, *supra* note 21, § 4. See also St. Amand, *supra* note 18, 655 n. 91 (2000).

72. *Torture Case*, *supra* note 1, at 15.

73. *Id.*

74. *Id.* § 34. See also Alan Dershowitz, *Is it Necessary to Apply 'Physical Pressure' to Terrorists- And to Lie About it?*, 23 ISR. L. REV. 193 (1989).

75. *Id.* § 34. See also Mordecai Kremnitzer, *The Landau Report - Was the Security Service Subordinated to the Law or the Law to the Needs of the Security Service?*, 23 ISR. L. REV. 216, 244-247 (1989).

76. *Id.* at § 34.

77. St. Amand, *supra* note 19, 659-60.

78. *Torture Case*, *supra* note 1, at § 40. Recall that the physical methods of interrogation used by the Shin Bet included shaking, the "Shabach position," the "Frog crouch," excessive tightening of cuffs, and sleep deprivation.

79. St. Amand, *supra* note 19, at 660.

legislature represents the people, and therefore, any discussion about this issue should be presented in front of the legislature.⁸⁰ The effect of the Supreme Court's decision has been to eliminate the uses of the interrogation methods by the General Security Service, producing a wide range of controversy as to whether or not the General Security Service should be allowed to conduct these kinds of interrogations on suspected terrorists.⁸¹

This decision by the Supreme Court of Israel to ban the interrogation methods used by the General Security Service has raised many questions. To put it cliché, the State of Israel was caught between a rock and a hard place. What price, if any, should be paid in order to eradicate terrorism in Israel? Should the fundamental human rights of terrorists be compromised for the sake of the Israeli community? The Supreme Court of Israel, along with the United Nations' Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, have paved the way for human rights to trump communitarianism. In keeping with their position that individual rights should be the highest priority, human rights activists vehemently support the recent decision, and feel that Israel has taken a step in the right direction. Conversely, members of Israeli security maintain that this decision will lead to enormous problems for the general welfare and citizenry of Israel. Which side is correct remains to be seen.

80. *Id.* at 661.

81. *Id.* at 675.