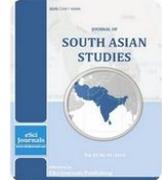




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## THE WORTHLESSNESS OF PALESTINIANS: THE OCCUPIED PALESTINIAN TERRITORIES, CAMP, *HOMO SACER* AND ISRAELI DEATH POLICY

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### ABSTRACT

This article discusses the meaning of human rights reports about violence, Israeli violations and death of civilians on West Bank and Gaza Strip on the new millennia. The concepts of camp and *homo sacer* - together with Yiftachel, Hajjar and Gordon reflections on Israeli occupation and legality - help to consider the way Palestinian life is easily taken off and to understand this specific situation and the reports. At the same time, use this theoretical framework to read the sources of analysis forces us to look better the differences between the two occupied territories until the Protective Edge operation (2014). The human rights reports of UN and NGOs analyzed on this article show the lack of legal protection of the occupied Palestinian population, exposed to sheer, indiscriminate and unpunished violence, practiced both by Israeli civilians (settlers) and state agents. Rather than an isolated case, an alleged exception in a context of global advancement of legal protection of vulnerable populations, disrespect for international humanitarian law and international human rights in the Occupied Palestinian Territories reflects the large distance to be covered until the practical implementation of international instruments of protection. The Middle East conflict corroborates Giorgio Agamben thesis that, in present days, the legal exception became the rule and part of world population as *homo sacer* is submitted to violent death and to all kinds of abuse and rights violations.

**Keywords:** Camp, Gaza Strip, *Homo sacer*, Israel, Israeli unilateral disengagement, Palestinians.

### INTRODUCTION

On a very current article on Gaza Strip situation few authors after Israeli unilateral disengagement in 2005, i.e. Darryl Li (2006) elucidates the new political and military guidelines of the occupation by distance. Although Li asserts the relevance of Agamben concept of *camp*, he considers it supposedly too general to be usefully applied to Gaza Strip reality. On the contrary, some authors resorted to Agamben concepts to define the situation created by Israel on the Occupied Palestine Territories (OPT). According to Slavoj Žižek (2003) the *refuseniks* acts and the cycle of violence provoked by Israeli silent expansion over the OPT reveals the "aspect of reduce an entire nation to the *homo sacer* condition, by submitting it to a written and no-written regulations network that removes its autonomy as members of a political community" (Paulo, 2003). For Castor Bartolomé Ruiz, former coordinator of the

UNESCO chair of Human Rights, the Palestinians of the OPT integrates the group of populations actually living on "a state of exception". The OPT deserves special attention, as "authentic legal paradox and an example of bio-political control by the State of Israel". His population, as "potential terrorist threat", is "fenced", "controlled in all its forms of subsistence" and "monitored in all his movements". "Palestinian Territories are currently authentic models of fields of exception over which are applied the sovereignty of force as a method of control" (Ruiz, 2007). The final objective is "population control" involving "selective death of people, a strategic dispersal of populations, an enclosure and fragmentation of populations groups" (Ruiz, 2007).

This vicious control and the unpunished human rights abuses of Palestinians by Israeli army and settlers can be better understood if we consider the occupant state as an ethocracy, concept that allows interesting connections with the creation of *camp* and exposure of entire populations to bare life or *homo sacer* condition.

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For Oren Yiftachel (2006) ethnocracy is a state appropriated by a majority ethnic group that utilizes its institutions to advance collective and ethnic goals – mostly expand the control over disputed territories. Both in Israel and the OPT, instead of an inclusive body of citizens empowered in a given territory (*demos*) the central organizing principle is *ethnos*, that determines membership by common Jewish ethnic origin and not by territorial criterion, and there is no clear and permanent borders (prerequisites for a *demos*). In that sense, while a Jewish settler living on the West Bank is an Israeli citizen, his Arab neighbors are not. The Law of Return (1950) exemplifies this ethnic criterion, been the cornerstone of the discriminatory system modeled to advance the judaization project on Palestine/Israel, that Yiftachel calls “Creeping Apartheid”. Behind the unequal rights are colonialism and discrimination as factors obliterating the democracy, together with diminished public accountability of media and the central role of the military in shaping public policy and culture and the state territory? In sum, Israel is not a democracy because there is a cleavage between citizenship and geography and the state gives primacy to the Jewish ethno-confessional group and continues to have a discriminatory regime that craves the judaization of the territory. Israel lacks a consolidated *demos* and is a state for a defined *ethnos* that legally owns exclusive privileges (Law of Return, Citizenship, Basic Law – Israel as a Jewish and democratic state – and a series of specific laws and practices that favor Jewish citizens in crucial questions, as land ownership, education and division of resources), which contradicts *per se* the grounds of equal citizenship and democracy (Yiftachel, 2006).

The judaization process undertaken as an ethnocracy provokes ethnic violence and can be related to the subjugation of the other – whose territory is desired – to bare life. In face of the state, the Palestinians in OPT- as a non-normalized, menacing and demonized group – have their rights constrained and the connivance with a series of abuses ensured (Yiftachel, 2006). With the state apparatus dominated by the majority group and functioning as his instrument to reach ethnic and territorial interests at the expense of the minorities, the victims of abuses cannot have access to impartial and objective investigative procedures. The military justice lacks conditions to pursue effective investigations that bring accountability of at least a significant part of the

cases. As long as the legal system is dependent, opaque, slow and responsive to pressure and political/ethnic influence, it proportionate no truly justice or significant compensation, excluding Palestinians of justice and exposing them to sovereign exception. Despite all the bureaucracy involved (the military justice, the Palestine Authority, the Israeli High Court of Justice, and so on), the human rights reports show that, generally, the Palestinians in West Bank and even more in Gaza Strip can be abused and killed without constitute a criminal offense.

It is significant to note, together with the appointments of Yiftachel about ethnocracy, that for Giorgio Agamben (2007) the *camp* emerged alongside with new citizenship and denationalization laws and the firsts were created in Spanish and British colonial contexts to imprison anti-colonial rebels. We can recall Michel Foucault (2008) reflections on bio-politics, concluding that the biological transcript of the political discourses – and the consequent birth of the bio-politics and racism – occurred in the colonial context too, at the moment that the sovereign power needed to justify the right to cause the death of some to safeguard the health of the social whole (Foucault, 2008).

*Acamp* is a place regulated by the laws of exception. For Agamben (2007), the legal exception is based on the violence and state arbitrariness and is unattended to legal standard as ordinary or prison right (although the exception is included in it as exclusion), being the basis and the hidden bio-political paradigm of modernity and sovereignty. Paraphrasing Hannah Arendt, the *camp* is the place where “everything is possible”, is the materialization of the exception where it is consummated and becomes the permanent rule for indefinitely time. In it - as space of exception kept to the fullest possible indeterminacy and without any control or link with the current legal order -, the law is fully suspended and the distinction between fact and law, life and death and legality and illegality are blurred. Let live or die depends on the sovereign decision. Alongside the Nazi case, also constitute a *camp* situation a lot of contemporary places, as the hidden basements of the Latin-Americans Cold War Dictatorships, the places where different European countries concentrates clandestine immigrants and refugees, the rape fields on former Yugoslavia and the USA and Israeli prisons where illegal combatants are maintained without legal prosecution.

Agamben (2007) calls *homo sacer* the human beings excluded of the legal order, but included as exception, as the inmates on *acamp*. The capture and exclusion of the individuals are possible due to the state of exception, which renders the norm indiscernible of the exception. The *homo sacer* can suffer all forms of atrocities, because they are stripped of any legal and political statute and can be exterminated. Reduced to biological life (*zoé*) without political statute (*bios*), cannot be tried or convicted. Anyone is sovereign over the life of this “non-human being” that can be killed without further consequences.

On “The Question of Palestine”, Edward W. Said emphasizes some aspects that substantiate the interpretation of the OPT situation based on much later Agamben concepts. If the *camp* emerged on the colonial context, Said views the Zionism colonization of Palestine as part of this process and logic, including the racist representation of natives as backward and his territories as *terra nullius*. To advance ethnical interests and conquer disputed lands, Israel developed a system of group management alongside with other colonial experiences. The following discourse by Israeli former deputy Ury Avnery illuminates the principal aspects of *homo sacer* and *camp*: “A complete government ... was created in the Arab sector, a secret government, unsanctioned by law ... whose members and methods are not known ... to anyone [...] It makes fateful decisions affecting Arab lives in unknown places without documents and communicates them in secret conversations or over the telephone” (Said, 1992).

This “secret government” referred by Avnery is the crux of our analyses, because it keeps the OPT in the “fullest possible indeterminacy” without effective normative control by the legal order -so, rights can be violated because there are no rights at all, they are suspended (Said, 1992). On the Israeli system of control there is an intricate coexistence of “apparent legality” with extrajudicial means, something like a “standardized state of exception”. Agamben (2004) points the contemporaneous tendency of transforming the state of exception from a security measure to protect the system to a police apparatus to suppress oppositions and stresses the implicit exception on the place of the former statements of “emergency”. In the OPT - apart of the extrajudicial means employed - the norms of the occupation themselves are explicitly based on military

and emergency regulations that reduces drastically the “legal” protection of the Palestinians.

Basing his considerations about Israeli occupation on Foucault more general reflections about power, Neve Gordon (2008) stresses the crisis of the “colonization principle” that guided Israeli presence on the OPT from 1967 until the First Intifada, oriented by bio-power and disciplinary apparatus to normalize the occupation and manage the Palestinians, turning them in better workforce at the same time that undermines their political conscience. The perception that the native and refugee population could not be domesticated through improvements in their living conditions led Israel to undertake a slowly reformulation of this paradigm. The principle of colonization and life was substituted by other based on separation and death, reorganizing the occupation to assure his continuity and control over the natural resources (land and water). The attention regarding the occupied population was abandoned (except for those living on the borders or wanting to move across the land) and the forms of violence and control over the occupied spaces and bodies were drastically changed, emphasizing the sovereign power to suspend the law and enforce the exception. From Second Intifada onwards, no matter anymore is to mold the comportment of the Palestinians, but extirpate the non-normalized and law breakers. The new logic to uphold the occupation is based on distant occupation, irresponsibility and indifference, maintaining the situation on the verge of catastrophe (Gordon, 2008).

Some aspects of this “death logic” stand out. During the Second Intifada, the Israeli forces defined the events in the OPT as an “armed conflict short of war” justifying secret and more lenient regulations to open-fire with live ammunition, even in cases not involving immediate life-threatening danger. Exacerbating the Palestinians *homo sacer* condition, “the military also granted immunity to virtually every soldier who opened fire, regardless of the circumstances” and - according to a B’Tselem report -, as consequence, “shooting at innocent Palestinians has practically become a routine” (Gordon, 2008: 202). The extrajudicial execution also characterizes the changes on Israeli violence and control methods. If this tool dates back to the 1970’s, during the new millennia it was officially recognized and the OPT was transformed into the “international military complex’s lab for aerial assassinations”<sup>1</sup>. These practices lead us again to Agamben concepts, since Palestinians

are killed with no opportunity of fair legal process with presumption of innocence and possibility to appeal the sentence. The military operation dubbed “Defensive Shield” (2002) exposes other shifts on the Israeli repertoire of violence: massive attacks (involving aerial shelling, tanks, armored bulldozers, and infantry); prolonged curfews (denying access to basic services); and using of more remote and lethal controlling mechanisms and methods of military engagement, culminating in extreme violence. On infantry place, air-force squadrons and tank battalions assumed a central role in attack, maintenance of the occupation and policing the population. The colonized bodies and the material means and infrastructure to managing the population became targets of the occupant (governmental and civil society offices and buildings, roads, water pipelines, electricity grids, TV and radio stations, crops and trees, wells, houses, medical centers, schools, humanitarian supply centers).

Darryl Li (2006) highlights three Israel policies applied on the Strip after 2005 and possible in the West Bank as it becomes an archipelago of non-contiguous “Gaza’s”. Closure, buffer zones and the use of airpower enables the occupant to combine maximum control by distance with minimum responsibility, attrition and public opinion outrage at the same time that the Palestinian Authority exercises minimum control with the maximum of responsibility. We need to add to these three elements, sporadic and intensive punitive raids as has been occurring in Gaza, since the unilateral disengagement. In this new context, Israel altered also its relation with the law. According to Gordon, until September 2000 the control of the OPT population was exerted mostly by the application of the law. Thenceforth, the norm is no more the rule of the law (nevertheless the continuation of military and emergency laws that allows *per se* a series of human rights and humanitarian law violations), but its suspension or the legal exception. Extrajudicial executions, use of Palestinians as dispensable human shields and impunity of the violence against the colonized – with the exceptional cases just confirming the rule – underpin the *homo sacer* condition of the Palestinians and the *camp* condition of the OPT, specially Gaza.

Focusing on the Israeli Military Court System (IMCS), Lisa Hajjar (2005) emphasizes the legal aspect of Israeli occupation. She also argues that until 2000 the

occupation “has made prodigious use of law to maintain and legitimize its rule over Palestinians in the West Bank and Gaza and to punish and thwart resistance” and thereafter the predominance of the “law enforcement model” was counterbalanced by a “war model”. If the IMCS continued to function as a legalistic mean to keep control through the application of military and emergency laws, extrajudicial executions and pure violence began to dispute place as mean of punishment and deterrence. In the new millennia, reasserting its capacity to control the Palestinian population, the occupant mixed sheer military force, law enforcement and geographic segregation, putting itself in a grim zone from which disclaims any responsibility as occupant over foreign civilians.

According to Hajjar (2005), Israel tries to “domesticate” international laws, forging interpretations of occupant/occupied relations to accommodate state practices and domestic agendas, denying Palestinians rights by criminalizing them and on the pretext of “war on terror”. The legal ordinance has various exception gaps: the laws in itself are martial or emergency laws that allow unjustified detention of prisoners and situations of prolonged incommunicado; the legal system deprives Palestinians of minimal standards of justice and legal guarantees; and the organ responsible for interrogatories (Shin Bet) acts from a indiscernible zone (legal suspension) and submits the inmate to torture. Therefore, apart from the extrajudicial means, the exception is on the proper foundation of the institutional repression, driven by the emergency or counterinsurgency situation and by the imperatives of national security. It was the Israeli High Court of Justice (IHCJ) that legitimated the exemption of the state of any obligation to retreat from the OPT and assured the occupation *sui generis* condition, separating the territories and the population and depriving it of defined humanitarian protection, which granted the colonization process, deportations, demolitions, prolonged incommunicado condition, arbitrary arrests, collective punishment and absence of adequate legal assistance, lawyer-client meetings and crucial safeguards against torture or ill-treatment<sup>ii</sup>. If during the First Intifada the “ticking bomb” scenario was invoked to justify and authorize “moderate physical pressure” of accused of “hostile terrorist activity” (which included nationalist activities and resistance to the Israeli occupation), in the new millennia the “ticking bomb” had acquired a more

literal meaning and was invoked to authorize the policy of assassinations and other military operations” in the OPT, reinforcing the *homo sacer* situation (Hajjar, 2005). According to Hajjar and Gordon, at the foundation of Israeli occupation is the differentiation between the habitants and the land, which sustain Israeli demands for historic rights over the OPT. Following Ilan Pappé and Nur Masalha, this distinction dates back to the first Zionists colonialists, for whom the natives have not true link with the ground, so it is *terra nullius* apt for conquest and colonization. When the Jewish State was proclaimed, in 1948, more than 500,000 Arabs flee or were evicted of the territory becoming refugees. From 1967 onward, Israel took control of all the territory of historic Palestine and over his populations, without giving them Israeli citizenship. This episodes in Palestine/Israel can be related to Agamben (2007) appointment that the camp situation come to been justly with the new laws on citizenship and denationalization. It is not fortuitous that ethnicity is on the core of the conflict and the touchstone of citizenship. As bare life deprived of any political value - contrasting with the authentic, legal and political life of Israeli colons - the OPT natives are at least theoretically protected by parcels of the human and humanitarian rights (Israel deny the full application of the Hague Conventions and of the Convention against Torture and ill-treatment on the OPT). Agamben (2007) stresses the actual separation between the humanitarian and the political as the extreme phase of the detachment of the human rights and citizenship rights. The politic/state rights are separated from the humanitarian, reproducing the isolation of the bare life (excluded from the state ordainment) over which sovereignty is based on modernity. The question of denationalization (Agamben, 2007) can also serve to consider the fragility of the “Arab Israelis” if we remember that on the last Netanyahu government the right-wing proposed amendments on the Israeli citizenship law, binding it to loyalty to the State and making it revocable.

Gordon (2008) underlines how, even after the apparent Israeli disengagement of parts of the OPT, it keeps the control over the people movements inside and for outside, adopting measures (as permission system, buffer zones, closures, curfews, fixed and mobile checkpoints, physical barriers and the Separation Wall) to control and contract the Palestinian space with the goal of expand and reproduces dominations and

inscribing it on the space, incorporating land but not the Arabs (a mechanism to solve the contradictions emerged from Israeli geographical and demographical ambitions). In last stance, following the ethnocracy concept the occupation is a question of territory, ethnicity and demographic, the backdrop for bio-politics, *homo sacer* and *camp*. Israel expand its territories incorporating parts of the West Bank under a double standard legal system based on military and emergencies laws for Palestinians (alongside extrajudicial politics) at the same time that mitigates de “demographic danger” by denying Israeli citizenship and slowly expel the native population. With the Wall and other movements constrains, the Palestinians are reduced to discontinuous and quasi-independent enclaves with its borders fully controlled by distance, being Gaza Strip the model. While Israel deepens the occupation and the judaization of parts of West Bank, get rid of its responsibility over the densely populated Palestinians areas and isolated colonies guided by a politic that maintains violently Jewish dominion and ethnic segregation and inequality. Gordon resorts partially to James Ron dichotomy between ghetto and frontiers to expose parts of the transformation of the OPT and the Israeli principle of life/colonization to death/separation – even if Ron didn’t considers the special relation of Israel with the Palestinian space and that the occupant never relinquished supposed rights over it. Until the early 1990, the OPT were Israeli ghettos – spaces highly institutionalized, deposit of neglected and marginalized population, inside Israel legal sphere of influence and where it employs ethnic policing, mass arrests and harassment. With the redefinition and redeployment of the occupation resulting from the First Intifada, the OPT became a frontier, a place no more institutionalized by the occupant where it employs destruction of life and infrastructure and lethal and remote violence as means of control and deterrence. The Israel institutional dissolution over the OPT was followed by abdication of moral responsibility over Palestinian population, locked in isolated ghettos or big prisons where the law was suspended. Spatially the OPT was becoming ghettos and institutionally frontiers.

#### **THE HUMAN RIGHTS REPORTS AS EVIDENCES OF *HOMO SACERS* ITUATION**

The Israeli NGO *Yesh Din* goes straight to the point of state consent with the ethnic violence or the non-applicability of the law to protect Palestinians, as in the

data sheet published in 2011 about Samaria & Judea District Police investigations into complaints filed regarding offenses committed by Israeli civilians against Palestinians and their property. The document conclusion (similar to previous and subsequent ones) is that, the State of Israel – represented by the district police – does not comply its duty to protect the population living under occupation and his properties, inasmuch the police fails to investigate crimes perpetrated against it by Israeli settlers: “90% of the investigations in the cases monitored by Yesh Din were closed on grounds that reflect failure on the part of the investigators: ‘offender unknown’, and ‘lack of evidence’ [...] The up-to-date figures in this data sheet reveal that the State of Israel is still failing to uphold its duty to maintain an effective law enforcement apparatus against its citizens who commit offenses, including grave ones, against Palestinian civilians who reside in territories under Israeli military occupation” (Yesh Din, n.d).

According to another Yesh Din (2013a) data sheet, the same complicity with Palestinians rights violations extends to Israel soldiers. Most of the Palestinians killed by the Israeli security forces in the OPT since September 2000 died in circumstances suspicious of are unlawful according to international law. Due to the policy implemented following the Second Intifada, the Military Police Criminal Investigation Department (MPCID) opened investigations only into a minority of those cases and an infinitesimal number of Israeli soldiers was convicted. From September 2000 through mid-2013, only sixteen investigation files opened led to indictments and of the total of twenty one soldiers accused of the death of nineteen civilians in the OPT only seven were convicted (besides two others by attempted obstruction of justice) (Yesh Din, n.d). Considering the full data regarding the number of criminal investigations undertaken by the MPCID in alleged offenses committed by soldiers against Palestinians and their property since 2000, Yesh Din (2013b) points out that the Military Advocate General (MAG) Corp has filed indictments in just five percent (117) of the investigations it had opened (2,207), prosecuting 196 soldiers and officers. If compared to the Intifada years, the already very low rate of indictment fell even more in the last years, with the investigations presenting systemic failures. In parallel, a sharper fall characterizes the number of criminal investigations opened regarding the number of notifications received by the MPCID (Yesh Din, 2013b).

Illustrating this “culture of impunity”, at March 2014, contesting the circumstances involving the death of Yusef a-Shawamreh (fourteen years-old Palestinian), Gideon Levy (2014) heard from the IDF commander supposedly responsible: “I am the law here, I am the sovereign”. If is troublesome to simply consider the West Bank a *camp*– after all there is a high Israeli institutionalization in it-, in practice the native population was placed on a state of exception due to non-applicability of the law that increases its vulnerability and turns it liable to suffer any kind of violence. A similar case occurred two months later, on the Nakba protests at 15 may, when two Palestinians teenagers walking unarmed were shot dead by Israeli soldiers at distance. The video spread the world and aroused cries for investigation. The father of one of them (Nadeem Nuwara) discredits the Israeli justice: “I know that Israel has law, but when it comes to Palestinians that law is vulnerable’ he said. ‘They [the Israeli authorities] can play with the facts” (Beaumont, 2014). Yuval Diskin, former director of Shin Bet, gave an interview for German newspaper “Der Spiegel” that reinforces the “culture of impunity” thesis. Answering why the Israeli security service is not as vigorous to Jewish terror as to Palestinian terror, Diskin said that while in the OPT for the former is applied the civil law the last falls on the military regime, being the biggest of the problems prosecute Israeli settlers and take them to prison because the tribunals are too rigorous with Shin Bet when the defendant are Jew (Heyer, 2014).

Yesh Din reiterates on its website that, despite Israeli legal obligations, its security forces in “West Bank frequently participates or stands idly by while violence against Palestinians is being committed. Behind this indifference is a pervasive culture of impunity that is maintained by the various Israeli authorities operating in the West Bank (Yesh Din, n.d). This violence goes unpunished. When criminal investigations are opened, they almost always fail. Data collected by Yesh Din points out that “approximately 94% of criminal investigations launched by the IDF against soldiers suspected of criminal violent activity against Palestinians and their property are closed without any indictments. In the rare cases that indictments are served, conviction leads to very light sentencing” (Yesh Din, n.d). During the last assault on Gaza, twenty Palestinians died and hundreds were hurt with live ammunitions on West Bank without present any risk to

Israeli soldiers. According to Gideon Levy (2014), no one will be investigated.

Besides the harassment and abuses practiced on West Bank, we must consider the Israeli state violence against Gaza population by means of military operations and "retaliatory attacks" - not to mention the collective punishment represented by the siege and boycott. Both the military actions of the armed Palestinian resistance from Gaza and the Israelis against it are directed against random targets, with the difference that Israel holds technological and military capability to precisely retaliate against military targets, but almost ever provokes a high percentage of havoc against civilian corps and properties, which led the UN and different NGOs to conclude that it makes frequent use of disproportionate and indiscriminate military force-the "mass attack" exposed by Neve Gordon(2008).The most striking example is the Cast Lead and Protective Edge operations, which unleashed an extreme violence against Gaza civilians. Quoting the paragraphs 1893 and 1929 of "Goldstone Report", "the Mission concludes that what occurred in just over three weeks at the end of 2008 and the beginning of 2009 was a deliberately disproportionate attack designed to punish, humiliate and terrorize a civilian population, radically diminish its local economic capacity both to work and to provide for itself, and to force upon it an ever increasing sense of dependency and vulnerability [...]The Mission also finds that the Israeli armed forces unlawfully and wantonly attacked and destroyed without military necessity a number of food production or food-processing objects and facilities (including mills, land and greenhouses), drinking-water installations, farms and animals in violation of the principle of distinction [...] This destruction was carried out with the purpose of denying sustenance to the civilian population [...] The Mission further concludes that the Israeli armed forces carried out widespread destruction of private residential houses, water wells and water tanks unlawfully and wantonly" (UN Fact Finding Mission, 2011).

Along the Cast Lead operation, roughly five thousands Palestinians were wounded, thousands become homeless and approximately one thousand and four hundred died. Under international pressure, Israeli state made an inquiry into the alleged human rights violations committed by its armed forces in Gaza. Against all evidence presented by the UN and various NGO reports, the final official conclusion was that there were no

abuses except by a handful of isolated cases, already punished (obviously with soft penalties).Richard Goldstone uses the "culture of impunity" expression, arguing that the Strip is an occupied territory (by distant occupation)and "there are serious doubts about the willingness of Israel to carry out genuine investigations in an impartial, independent, prompt and effective way as required by international law". Otherwise, "the Mission is also of the view that the Israeli system overall presents inherently discriminatory features that make the pursuit of justice for Palestinian victims very difficult"(UN Fact Finding Mission, 2011)<sup>iii</sup>.

An Amnesty International (AI) report (2009) reinforces these fears presented by Goldstone. It highlights the biased stance of official Israeli investigations, which excludes the Palestinians from legal protection allowing abuses over them and even death. Citing the report of AI, the supposed investigations on abuses led by Israel "only refers to a handful of cases and lacks crucial details" and "mostly repeats claims made by the army and the authorities many times since the early days of Operation 'Cast Lead'", but does not provides evidence to back up the allegations". Hence, "the army's claims appear to be more an attempt to shirk its responsibilities than a genuine process to establish the truth. Such an approach lacks credibility" (Amnesty International, 2009).This point of view is also shared by a press release of the Israeli NGO B'Tselem (2012), from May 2012, which rejects the lenient investigations made by the MAG Corps and defends the urgency of the creation of an Israeli investigation mechanism external to the army.

As the evidences presented by Yesh Din, UN, AI and B'Tselem seems to show, on the OPT the exception became the rule in a permanent way, which allow us to think in terms of *camp* and *homo sacer*. According to another AI report, about excessive use of force in suppressing uprisings on the West Bank dated from February 2014, the situation became harder than ever after the Second Intifada, when the MAG Corps contended that the army was engaged in an "armed conflict short of war" in the OPT, then the investigations on Palestinians killed by Israeli forces was made conditional first to an internal inquiry ("operational debriefings" carried out by commanders in a non-independent way and undertaken within the military chain of command), worsening the chances of just judgment. In 2011, the IHCJ ruled that this ordinance was inadequate, but still valid for the cases involving

“clear elements of combat” and for civilians killed in Gaza Strip – being this territory the zenith of legal exception. Anyway, the entity that by this 2011 law can initiate criminal investigations (MPCID) “also cannot be considered independent as it operates under the authority of the MAG, a serving military officer” (Amnesty International, 2014). For Israeli army prevails in the OPT a situation of “armed conflict” so its legal advisors argues that the international law does not require automatic investigations. Even when an investigation was complete, it is transmitted to the Military Advocate for Operational Affairs (unit created in 2007 within the MAG Corps) that review the investigation and its findings and decides the next steps, having the power to close the case and no need to provide information to complainants. The AI report generalizes the partiality of the Israeli military justice, since the beginnings of the occupation in 1967: “UN agencies, local and international human rights groups and others have documented a pattern of war crimes and other serious violations of international law committed by Israeli military and security forces [...] Throughout this 47-year period, however, the Israeli authorities have signally failed to carry out independent investigations that meet international standards into alleged crimes, including war crimes, committed by soldiers against Palestinians and their properties. Moreover, Palestinians affected by the apparently arbitrary or abusive use of force and firearms or their legal representatives have been denied meaningful access to an independent process, including judicial process, contrary to UN standards of law enforcement. This failure to conduct independent and effective investigations and take corrective action has undermined the rule of law and denied justice to the victims. Furthermore, extending impunity to the perpetrators has served to encourage further abuses [...] Indeed, soldiers and other security force personnel have rarely been prosecuted at all in connection with the killings of Palestinians in the OPT, although many appear to have amounted to unlawful killings, and convictions have been even rarer” (Amnesty International, 2014).

In sum, according to this report, like *homo sacer*, Palestinians life depends on the sovereign decision and they are subjected to violent death and to all kinds of abuse and rights violations. “Soldiers are permitted to do so effectively with impunity – inasmuch as the official system established to investigate alleged human rights

violations or other abuses by Israeli soldiers is neither independent nor impartial” (Amnesty International, 2014). All this culminates on a situation of “absolute absence of justice and the growing environment of impunity” which the Israeli army, police and settlers have enjoyed along the last decades, “with the full knowledge of the Israeli government and military command”. The French historian, Pierre Razoux (2006), corroborates that sight. According to various reports of the Public Committee against Torture in Israel, on the OPT the practice of torture continues widespread and unpunished, corroborating the placement of the Palestinians in the realm of legal exceptionality<sup>iv</sup>.

A weighty and well documented report sustaining our thesis was published by Human Rights Watch (HRW), on 2005, whose title speaks for itself: “Promoting Impunity: The Israeli Military’s Failure to Investigate Wrongdoing”. The finding also denounces the official connivance with violence against Palestinians. Whilst between 2000 and 2004 thousands of Palestinian civilians were wounded or killed by Israeli forces (including a high percentage of children), the IDF informed that it investigated just seventy four cases of illegal use of lethal force (less than five percent of the civilian deaths). The report points out that, even when the cases are investigated, “Israeli military’s investigative practices and procedures are not impartial, thorough, or timely. The military rarely has brought wrongdoers to justice, and existing practices have exerted little deterrent effect” (Human Rights Watch, 2005). The novelty of this report is not present the “systematic impunity”, but its enlargement on the new millennia<sup>v</sup>.

#### **THE DIFFERENCES BETWEEN WEST BANK AND GAZA**

As the UN and different NGO reports pointed out, included on the legal system as exception – as threat to the order and “normality” – Palestinians can be harassed and killed without constituting a legal offense. With varying intensity according to the specific context, the systematic and unpunished violations of human rights on the OPT, including the right to life, occurs since 1967. In Gaza and West Bank, as underlined by Gordon, the al-Aqsa Intifada consolidated the new paradigm of distance and segregation, almost closing at all the investigations on Palestinian civilian deaths by Israeli forces. Under the occupation “death politic” or “separation principle”, the territories came closer to the condition of *camp* on the sense that the law was suspended and exception is exercised all the time, in a

permanent way. Even on its institutionalized aspects, the OPT are governed by the martial law or the state of emergency or siege, since 1967. We can record that until today the OPT are still considered by Israel army as zones of "armed conflict".

But, we must stress a meaningful distinction between West Bank and Gaza Strip, necessary to explore not to fall into a "Procrustean bed". If the exceptions acts are currents on the first too, at least formally there is an investigative process of very few cases involving civilian injuries and death by Israeli forces and civilians and, despite the difficulties, Palestinian can resort to Israeli justice, even if the chances of getting a favorable sentence are very low. Compared to Gaza, the Israeli presence and control is more visible, which leads to a higher assumption of formal responsibility on the Palestine population (at least theoretically). The occupant still makes use of "legal" bio-power and disciplinary measures as detentions, curfews and different kinds of process that meet distinct functions and reinforce the appearance of legality, albeit the arbitrariness of such instruments (as "administrative prisons") is in itself indicative of the suspension of the law guiding the relationship between the occupant and the Palestinians.

The difference between Gaza and West Bank increased substantially after the Israeli unilateral disengagement. Despite being common the death of a Palestinian civil not carry legal implications on West Bank, these cases are not so widespread as in Gaza and the exception is not total because there is still a narrow margin of legality explored by human and civil rights NGOs. The most evident example is the successfully appeal to the IHCJ of Justice that in 2011 "reinstated" the investigative process on West Bank. But, instead of this thin layer of legality mean de facto protection for the Palestinian population, it is part of a mix of different apparatus employed to perpetrate abuses and arbitrary actions, comprised of defined elements of the Israeli military order with others of purely exception and emergency. This conjugated system seems to serve to give an appearance of legality, at the same time that affords no protection for Palestinians under its sovereignty.

However, in Gaza there is only exception. After the unilateral disengagement, the territory followed a distinct trajectory as Israel proclaimed the end of the occupation and of any legal responsibility over it. The Palestinians of Gaza were considered no longer under

Israeli jurisdiction and civilian death cases no more competent to Israeli courts<sup>vi</sup>. Deteriorating even more the grim situation of the Strip, on September 2007 the Israeli security cabinet voted unanimously to increase sanctions against the Hamas-run territory and declared it literally a "hostile territory" and "enemy entity", legalizing collective punishment in response to each rocket fired (despite the international law forbid it) on the form of limiting or even suspending the supply of fuel and electricity, the transfer of funds and goods through the crossings and the movement of people. Indiscriminate, disproportionate and unsupervised "retaliatory" attacks proliferated. The goal was to "compromise the ability of Hamas to govern in Gaza as the quality of life deteriorated" (Issacharoff, Ravid & Shamir, 2007). Until now, this is the exceptional situation of the territory, putted at the margin of the Israeli legal order. This allows the sovereign state "by distance" to practice every kind of exceptional act and decide upon the live or death of the population. In last case, innocents are terrorists too or died as their human shield.

If in West Bank there is an intricate mixture of exception and military rule, Gaza seems to have been turned into a *camp*, the place of exclusive exception exercised on a permanent way. While maintains an occupation by distance, controlling almost every aspect of the population and often intervening militarily and causing deaths, Israel argues that Gaza is an independent territory outside its jurisdiction rejecting by this way the UN and NGOs position that it is still an occupied territory and humanitarian law is applicable. Fitting perfectly into Agamben (2004) definition of *camp*, Gaza is de facto maintained to "the fullest possible indeterminacy and without any control or link with the current legal order". According to Bradley Burston (2007), Israeli decision to disengage and consider Gaza as a "hostile territory" is "a model of vigorous ambiguity", allowing "Israel to order a number of administrative sanctions". For the NGO al-Haq (2007) it was an attempt to "distract from Israel's occupation of the territory and the international legal obligations incumbent upon it as the occupying power [...] relinquishing Israel's legal obligations" (Burston, 2007). On an Adalah ("Legal Center for Arab Minority Rights in Israel") statement to the UN Human Rights Council we found the same conclusion: "Since the beginning of the occupation in 1967, the Israeli legal system has failed to prevent the continuation of illegal

policies and practices in the OPT, which violate international law. During and after Operation Cast Lead, human rights NGOs demanded the opening of criminal investigations into suspicions of war crimes committed by the Israeli army [...] The Israeli Attorney General and the Military Advocate General have rejected these demands [...] Since 2006, Gaza has been a legal black hole in the Israeli legal system with no applicable legal protections, especially following the State of Israel's declaration that Gaza is an "enemy entity". The Israeli Supreme Court has approved all punitive measures imposed by the state and the military against the 1.5 million Palestinian people living in Gaza" (Adalah, 2012).

### CONCLUSION

In Gaza and West Bank the Palestinian population is treated as *homo sacer*. They are submitted to bare life on his day-to-day, despite all the legal paraphernalia of the occupant. While the concept of *camp* can be applicable to Gaza, nowadays we need to do some caveats to consider the West Bank situation as such because of its relatively high grade of institutionalization. Perhaps this will no longer be necessary if the occupation continue to advance, increasingly restricting the Palestinian population to well defined and surrounded territories. This insulation process, the freezing of the peace talks and the advance of unpunished deaths seems to reinforce the prospects of Neve Gordon and Darryl Li about the transformation of West Bank in "isolated Gaza Strips". As the more refined stage of Israeli occupation, Gaza presents the lowest possible institutionalization that grants the practice of sheer violence against these "frontier". If we will see in the coming years only the Gaza stage of the occupation it will depend on the efforts of the international community to enforce over Israel the obedience of the international law.

Considering the series of reports produced since the 1990's by the UN "Special Rapporteur" and since the late 1960's by the "Special Committee to Investigate Israeli Practices Affecting the Human Rights of the Population of the Occupied Territories"<sup>vii</sup>, if we look panoramically since the early days of Israeli occupation until now we are faced with a longstanding context of social engineering, state violence and submission of an entire population (the Palestinian one) to systematic oppression. As exposed by Gordon, since 1967 Israel has combined disciplinary, bio-power and sovereignty measures, emphasizing one or another and the legal or the exceptional means according to the different

contexts of the longer-lasting occupation of the world. Since the Second Intifada the exception is increasingly becoming the rule. If we consider that the still "normalized" part of the occupation in itself is based on exception and emergency law (as represented by the minimal rights of the Palestinians, the biased justice and the Shabak operations), what can we expect from it application?

At July, 2014, a new Israeli military operation was triggered against Gaza, in a similar and more destructive way that Cast Lead. Once again, people all around the world witnessed and protested against Israeli wanton destruction of civilian houses and infrastructure, the injury of around ten thousand and the death of two thousand Palestinians, most civilians. Once again, the UN will investigate evidences of war crimes. On the best case, the human tragedy that struck Gaza can be explained through the new IDF ethic code, according to which Israel must prioritize avoid harms on his "civilian combatants", so almost every collateral damage are justifiable as the rules of engagement and open fire were relaxed (Khalidi, 2010). On the worse case, "Protective Edge" is a reiteration of the politic described by Goldstone and by various NGOs reports as aimed at spread terror among the Palestinians, seeking to reformulate his political and social ties – so, it was a continuation of a "genocidal social practice"<sup>viii</sup>.

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<sup>i</sup> According to Lisa Hajjar (2005: 292), the rationale for Israeli "extrajudicial executions" was that people whom the army was unable to arrest could be killed.

<sup>ii</sup> Although aware of the exceptionality present on the 'normalized aspects' of the occupation, Lisa Hajjar (2005: 54-56) highlights Israeli legalistic preoccupations, strategies and discourses to address the conflict and in some chapters of her book illuminates the possibilities of legalistic confrontation and resistance to the occupation exploring its legal contradictions and institutions, as the Israeli High Court of Justice. The law on the OPT would be a "double-edged sword" that at the same that serves the interests of the state and legitimizes it, can serve as a resource to protect from and contest the power. See also: Amnesty International. (1991, July). 'Israel and the Occupied Territories, The military justice system in the Occupied Territories: detention, interrogation and trial procedures'. Amnesty International Publications (London), Retrieved from <http://www.amnesty.org/en/library/info/MDE15/034/1991/en>.

<sup>iii</sup> About the false debate around the legitimacy of the Goldstone Report, it is based on a great range of reports from different human rights NGO, that never questioned the pertinence of his findings. Anyway, Goldstone said that he will not retract. Shamir, S. (2011, April 8). 'UN chief to Peres: I will not retract the Goldstone Report'. *Haaretz* (Tel Aviv), Retrieved from <http://www.haaretz.com/news/diplomacy-defense/un-chief-to-peres-i-will-not-retract-the-goldstone-report-1.354920>.

<sup>iv</sup> See PCATI website, <http://www.stoptorture.org.il/en/odot>.

<sup>v</sup> It's important to note in this report that, it pointed out the worsening of the situation in comparison with the first decades of the occupation, when although the quality of the investigations was often poor at least there was investigation from all civilian deaths and injuries.

<sup>vi</sup> More about the consequences of the Israeli disengagement see: Aronson, G. (2005). 'Issues Arising from the Implementation of Israel's Disengagement from the Gaza Strip'. *Journal of Palestine Studies* (Washington), XXXIV (4), 49-63; Aronson, G. & Roy, S. (2005). Praying with Their Eyes Closed: Reflections on the Disengagement from Gaza, *Journal of Palestine Studies* (Washington), XXXIV(4), 64-74.

<sup>vii</sup> The reader can find both series of documents in the online UN database (<http://documents.un.org/default.asp>) or in a lot of other websites.

<sup>viii</sup> This concept was developed by Daniel Feierstein to explicate the deaths of Jews during the III Reich and leftists under the Argentinean Dictatorship. Genocidal social practice is an instrument of governments in the modernity to reorganize the solidarity ties of its populations, eliminating identifications that can be pernicious to the interests of the governing class. See: Feierstein, D. (2011). *El genocidio como práctica social: entre el nazismo y la experiencia argentina* (Genocide as social practice: between Nazism and Argentinian Experience). Buenos Aires: Fondo de Cultura Económica.