

HCJ 9132/07

1. Jaber al Bassiouni Ahmed
2. Najjar Maher
3. Adalah – The Legal Center for Arab Minority Rights in Israel
4. Gisha – The Center for Freedom of Movement
5. Moked – Center for the Defence of the Individual
6. Al Haq
7. Al-Mizan Center for Human Rights
8. Physicians for Human Rights
9. Palestinian Centre for Human Rights
10. Public Committee against Torture in Israel
11. Gaza Community Mental Health Programme
12. B'tselem – The Israeli Information Center for Human Rights in the Occupied Territories

v.

1. The Prime Minister
2. The Minister of Defense

The Supreme Court sitting as High Court of Justice

[20 Shevat 5768 (January 27 2008)]

Before President D. Beinisch, Justice E. Hayut & Justice Y. Elon

Petition for an *order nisi* and an *interlocutory injunction*

For Petitioner: Noam Peleg; Professor Kenneth Mann; Fatma al-Aju;
Hassan Jabarin; Sari Bashi

For Respondents: Gilad Shirman; Osnat Mendel

JUDGMENT

President D. Beinisch:

1. The petition before us is directed against respondents' decision to reduce or limit the supply of fuel and electricity to the Gaza Strip. In their petition for relief from this Court, petitioners primarily argued the need for various types of fuel, gasoline and diesel, for the proper running of hospitals and water and sewer pumps, as well as the need for supply of electricity, whether via power lines originating in Israel or through supply of industrial diesel for running the Gaza Strip power plant.

2. The circumstances surrounding the petition are the combat activities that have been taking place in the Gaza Strip for a long period, and the continuing campaign of terrorism directed against the citizens of Israel. The terrorist attacks have intensified and worsened since the Hamas organization secured its control of the Gaza Strip. These attacks include continual firing of rockets and mortar shells toward civilian communities inside the State of Israel, as well as terrorist attacks and attempted terrorist attacks directed against civilians and IDF soldiers both at the border crossings along the fence between the Gaza Strip and the State of Israel, and within the State of Israel. Respondents' decision to limit the supply of fuel and electricity to the Gaza Strip was taken as part of the State of Israel's actions against the continual terrorism. The wording of the decision, which was made by the Ministerial Committee on National Security Issues on September 19 2007, is as follows:

"The Hamas organization is a terrorist organization which has taken over the Gaza Strip and turned it into hostile territory. This organization carries out acts of hostility against the State of Israel and its citizens, and the responsibility for such acts lies with it. In light of that, it is resolved to adopt the recommendations presented by the security agencies, including continuation of the military and preventative activity against the terrorist organizations. Furthermore, additional restrictions will be placed upon the Hamas regime, in a way that will limit the passage of goods to the Gaza Strip and reduce of the supply of fuel and electricity, and there will be restrictions placed upon the movement of persons to and from the strip. The restrictions will be implemented after legal examination, taking into account the humanitarian situation in the Gaza Strip, and with the intention of preventing a humanitarian crisis".

The petition is directed against this decision.

3. The petition against the decision was submitted on October 28 2007, and on November 7 2007 the petition was heard, with the parties present. On the date of the hearing the State announced that implementation of limitations upon supply of electricity to the Gaza Strip had not yet been finally decided upon, and thus only arguments regarding the limitation of fuel supply were heard. During the hearing, respondents' counsel stated before the Court that the State recognizes that it has a duty not to prevent the supply of goods to meet basic humanitarian needs to the Gaza Strip, and thus it announced that it will monitor the situation and verify that the cuts do not reach the extent of compromising basic humanitarian needs. At the end of the hearing we determined that within seven days, the State would submit the data predicated its assessment regarding the effect of fuel supply reduction to the Gaza strip, and explain the ways of monitoring and of verifying the data with which it intends to safeguard the humanitarian needs of the inhabitants of the Gaza Strip.

Reducing the Supply of Fuel to the Gaza Strip

4. On November 29 2007 we determined, regarding the part of the petition dealing with the reduction of fuel supply to the Gaza strip, that the fuel which the Palestinian Energy Agency purchases from the Israeli Dor Alon corporation, which is distributed by private suppliers to the highest bidder and without prioritization, can be

distributed in another fashion. We noted that the various types of fuel supplied to the Gaza Strip can be distributed according to prioritization that takes into account the humanitarian needs of the civilian population, as well as the running of the generators for operating the water pumps and electricity installations in the area. In our decision, we attached weight to the State's position, according to which, during this period, in which there are combat activities and missile attacks against Israeli communities, part of the fuel entering the Gaza Strip is used, in fact, for various objectives of the terrorist organizations, and in those circumstances, the reduction of supply of fuel, in the measured way it is carried out, might harm the terrorist infrastructures and their ability to strike at the citizens of the State of Israel, considering that the amount of fuel inserted into the strip is supposed to suffice only for the humanitarian goals that require fuel. Thus, we were not persuaded at that stage, according to the data relayed to us, that respondents' decision to reduce the amount of fuel brought into the Gaza Strip through the crossing points with Israel impinges upon the basic humanitarian needs of the Gaza Strip at this time. Thus, it was determined that no order *nisi* or interlocutory injunction regarding the reduction of fuel supply (gasoline and diesel) would be granted. This decision of ours was primarily based upon the State's commitment to monitor the situation in the Gaza Strip and verify that said reduction is not causing a humanitarian problem for the inhabitants of the Gaza Strip, as required by the law of Israel and international law. Under these circumstances, we concluded the hearing of the issue of the limitations upon fuel supply to the Gaza Strip, and proceeded to examination of the arguments regarding the expected harm to the inhabitants of the strip due to the restrictions upon supply of electricity.

Reduction of Supply of Electricity to the Gaza Strip

5. The hearing of the part of the petition regarding the reduction of supply of electricity to the Gaza Strip required complex factual examination, and we had difficulty receiving figures on this issue from the representatives of the State, and thus the proceedings on this issue continued, as on various dates we received detailed filings from petitioners, and written and oral responses by respondents. On November 15 2007, petitioners submitted an urgent application for an interlocutory injunction in the framework of the petition, and on November 23 2007 they requested an urgent hearing of the petition in light of State's announcement, according to which, starting on December 2007, limitation of the amount of electricity supplied to the Gaza Strip would begin. Petitioners argued that there is no physical way to limit the electricity to the Gaza Strip without causing power outages in hospitals and interruption of the pumping of clean water to the civilian population in Gaza, and without causing severe breakdowns in provision of basic needs. Their main argument was that implementation of the decision would cause certain, severe and irreversible harm to the necessary humanitarian systems in the Gaza Strip, to hospitals, to the water and sewer system, and to the entire civilian population.

6. According to uncontroversial figures, the amount of electricity needed for the Gaza Strip at peak times is a bit above 200 megawatts. Approximately 120 megawatts are supplied by Israel, and about 17 megawatts are supplied by Egypt. The remainder is supplied by the Gaza Strip power plant. The electricity supplied to the Gaza Strip by the State of Israel is supplied via 10 power lines, on four of which load limiters have been installed. Respondents' intention was to reduce the supply of electricity through those four power lines in a gradual fashion, reducing 5% of the

amount of the electricity relayed through each of the lines. According to respondents' argument, that step would require the Hamas organization controlling the Gaza strip to carry out load management and to reduce the actual consumption of electricity in the area to which the relevant line supplies electricity, to prevent supply of electricity for the purposes of terrorist activity such as workshops for creating Qassam rockets, *et cetera*. According to their arguments, if the regime in Gaza properly manages consumption of electricity, the flow of electricity from Israel to the Gaza strip will continue uninterrupted. However, if consumption exceeds that permitted, the supply of electricity will cease automatically, due to the load limiters installed upon said four power lines. Respondents emphasized in their response that said reduction of electricity does not compromise fulfillment of basic humanitarian needs of the residents of the Gaza Strip.

7. Petitioners argue that there is no physical way to reduce the supply of electricity to Gaza without causing power outages in hospitals, and interruptions in the pumping of clean water to the civilian population of Gaza, and thus that implementation of the decision will cause certain, severe and irreversible harm to the necessary humanitarian systems in the Gaza Strip, to hospitals, to the water and sewer system, and to the entire civilian population. In their supplementary arguments of November 27 2007, petitioners argued in detail regarding the future reduction of electricity to the Gaza Strip, and according to their argument, even now, and since the bombing of the local power plant by the Israeli air force in 2006, the Gaza Strip has been in a situation of electricity shortage which has left the "Company for Distribution of Electricity" in Gaza with no other choice than to initiate power outages for a number of hours a day. They argue that even now the frequent power blackouts disturb the functioning of necessary systems in Gaza, such as hospitals, since the infrastructure in the Gaza Strip does not allow differentiation between cutting the power off to necessary systems and cutting off the power to the civilian population. In addition, it was emphasized that denying electricity to the homes of Gaza residents denies them the possibility of receiving clean drinking water to their homes, and harms the functioning of the water and sewer pumps.

8. On November 29 2007 we held a hearing of the petition, in which we heard the arguments of the parties. During the hearing, we also heard respondents' affiants, Colonel Shlomi Muchtar, Head of the Operations Department of the Unit of Coordination of Government Activities in the Territories, and Mr. Idan Weinstock, Director of the Electricity Authority in the Ministry of National Infrastructures. For petitioners we heard petitioner no. 2, Mr. Maher Najjar, Deputy Director of the Water Authority in the Coastal Municipalities Authority in Gaza. After having heard the arguments of the parties and their affiants regarding the planned reduction of supply of electricity to the Gaza Strip, and as a result of the partial figures relayed to us, we found it appropriate to request supplemental submissions from respondents on a number of points, regarding the possibility of controlling the flow of electricity to the Gaza Strip, in order to prevent a blow to fulfillment of humanitarian needs. We also ordered that until receipt of said supplemental submissions, the plan to reduce the supply of electricity to the Gaza strip was not to be implemented.

9. During the period in which the petition was pending, petitioners once again requested that we obligate the State to continue regular supply of electricity to the Gaza strip, with no restrictions. Their arguments focused mainly upon the fact that

the local power plant, which provides electricity to necessary humanitarian locations, cannot function properly due to a severe shortage of industrial diesel fuel. According to their argument, the amount of industrial diesel that respondents are allowing to be inserted into the Gaza Strip does not meet the needs of the power plant, and does not allow production of the amount of electricity which the residents of the strip need during the winter months. According to the arguments, the shortage in industrial diesel caused a reduction of approximately 30% in the amount of electricity produced by the power plant in the Gaza Strip, leading to long electricity outages in the strip. It was emphasized that the industrial diesel provided to the Gaza Strip is used solely for producing electricity by the power plant. On January 9 2008 petitioners submitted an update, in which they noted that as a result of the severe shortage of industrial diesel for the power plant in the Gaza Strip, power outages of eight hours every day were being carried out in central Gaza, and in the city of Gaza itself, outages of eight hours every two days were being carried out. It was further argued that as a result of the reduction of electricity production, the central hospital in Gaza was suffering power outages of 6-12 hours every day, causing a breakdown in the activity of the hospital. On January 21 2008 petitioners updated the Court, stating that due to the shortage in industrial diesel, the power plant in Gaza had stopped the production of electricity completely, leading to a shortage of approximately 43% of the amount of electricity needed by the residents of the Gaza Strip. According to their arguments, on January 20 2008 respondents completely prohibited insertion of industrial diesel into the Gaza strip, and with no reserves, that led to the closing of the power plant. In the circumstances which had developed, petitioners claimed that access to clean water was denied to many residents of the Gaza Strip, sewer water was flooding, and those residents needing to run various medical equipment in their homes were not able to do so.

10. Respondents submitted a supplementary statement, in which they addressed the various arguments, as well as the dynamic changes in the factual situation. It was noted that in a meeting between Head of the Operations Department of the Unit of Coordination of Government Activity in the Territories, Colonel Shlomi Muchtar, and the representatives of the Palestinian Energy Authority, the Palestinian representatives had relayed that the Palestinians are able to control loads through reduction of the consumption of electricity in the area of distribution of each power line, and that such control is being exercised already; thus, for example, the Palestinian representatives confirmed that they are able to reduce the consumption from a certain power line in order to allow the proper functioning of the hospital. We came to understand further that as a result of an agreement between the Electric Company of Israel and the Palestinian Authority in 2005, the supply of electricity through two of the lines providing electricity from Israel to the Gaza strip was restricted to 11 megawatts. Respondents stated that, indeed, the Nachal Oz crossing, through which the industrial diesel fuel needed to run the Gaza power plant enters the Gaza Strip, had been closed for a number of days, and thus transfer of industrial diesel to the power plant in the Gaza Strip had been prevented during those days. Respondents explained that the closing of the crossing and the prevention of passage of industrial diesel to the power plant took place in circumstances of a most severe missile attack against Israel, in which during the period between 15-18 January 2008, 222 mortar shells had been shot toward the Israeli communities bordering the Gaza Strip, Ashkelon, and Sderot, wounding 7 civilians, and causing many cases of trauma and great damage. Despite that – so we were informed – it was decided that the amount of industrial diesel

inserted into the Gaza strip would total 2.2 million liters a week, just as it had been previous to the reduction plan. Regarding the supply of electricity supplied by Israel, respondents noted that they intend to carry out a gradual reduction in three power lines only, of 5% of the total current in each of those lines, so that the amount of electricity supplied through them will total 13.5 megawatts in two of them, and 12.5 megawatts in the third. Respondents emphasized in this context that the Palestinians themselves announced on a number of occasions that they are able to carry out load reductions in case of restrictions upon the power lines, in order to prevent harm to humanitarian objectives. Last, respondents noted that the breaking open of the Rafiah passage into Egypt, carried out unilaterally by the Palestinians, might have implications upon the entire situation in the Gaza Strip, and upon the entirety of the State of Israel's duties to toward the strip, but added that the latter subject is a new development and is being examined from the factual, legal and political standpoint. On January 27 2008 we held a hearing that focused upon the supply of industrial diesel fuel to the Gaza Strip, in which the parties reiterated their main arguments, as detailed above, and the State announced, as mentioned, that industrial diesel fuel would be inserted into the strip at the same volume that it had been in the past.

Discussion

11. The question before us is, then, whether the various limitations upon supply of fuel and electricity to the Gaza Strip compromise the fulfillment of the basic humanitarian needs of the residents of the Gaza Strip. As we noted in our decision of November 29 2007, the State of Israel has no obligation to allow passage of an unlimited amount of electricity and fuel into the Gaza strip in circumstances in which some of it is in fact being used by the terrorist organizations for the objective of striking at the civilian population of Israel. The duty obligating Israel is derived from the basic humanitarian needs of the residents of the Gaza Strip. Respondents must fulfill their duties pursuant to the provisions of International Humanitarian Law, and in that framework they must allow supply to the Gaza Strip only of the goods needed in order to fulfill the civilian population's basic humanitarian needs.

12. The State argued before us that it conducts itself according to the rules of international law, and respects its humanitarian duties pursuant to the Laws of War. According to the argument of State's counsel, these duties are limited duties, derived from the state of armed conflict existing between the State of Israel and the Hamas organization that controls the Gaza strip, and from the need to prevent harm to the civilian population that finds itself in the combat zone. Note, in this context, that since September 2005, Israel no longer has effective control over the events in the Gaza strip. The military government that had applied to that area was annulled in a government decision, and Israeli soldiers are not in the area on a permanent basis, nor are they managing affairs there. In such circumstances, the State of Israel does not have a general duty to look after the welfare of the residents of the strip or to maintain public order within the Gaza Strip pursuant to the entirety of the Law of Belligerent Occupation in International Law. Nor does Israel have effective capability, in its present status, to enforce order and manage civilian life in the Gaza Strip. In the circumstances which have been created, the main duties of the State of Israel relating to the residents of the Gaza Strip are derived from the situation of armed conflict that exists between it and the Hamas organization controlling the Gaza Strip; these duties also stem from the extent of the State of Israel's control over the border crossings

between it and the Gaza Strip, as well as from the relations which has been created between Israel and the territory of the Gaza Strip after the years of Israeli military rule in the area, as a result of which the Gaza Strip has now become almost completely dependent upon supply of electricity by Israel.

13. In this context, respondents noted, in their arguments, various provisions of International Humanitarian Law that apply to the matter at hand. *Inter alia*, respondents referred to Article 23 of Convention (IV) relative to the Protection of Civilian Persons in Time of War, Geneva, 12 August 1949 (hereinafter "the Fourth Geneva Convention"), which requires a party to a conflict to allow free passage of goods intended for the civilians of the adversary party. However, they noted, that is a most limited duty, as it only obligates a party to a conflict to allow free unlimited passage of medical equipment, and to allow passage of foodstuffs, clothing and medicine intended for children under the age of fifteen and expecting mothers. Respondents also referred to Article 70 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977 (hereinafter – "The First Protocol"), which in their opinion is customary international law, and which determines a general and wider duty, according to which parties to the conflict must allow passage of goods necessary for the civilian population rapidly and unimpeded. Last, respondents also related in their arguments to Article 54 of The First Protocol, which prohibits starving the civilian population as a method of combat, as well as attacking, destruction, removal or rendering useless of installations necessary for the civilian population, including stores of food, agricultural fields, and installations for provision of drinking water.

14. The State's arguments on this issue are based upon norms that are part of the customary international law, that set out basic duties that apply to the combating parties during an armed conflict, and obligate them to ensure the welfare of the civilian population, and to respect its dignity and basic rights. It is worthwhile to add that according to customary International Humanitarian Law, each party to the conflict is obligated to refrain from restricting the passage of basic humanitarian relief to populations needing it in areas under its control (J. HENCKAERTS & L. DOSWALD-BECK, 1 CUSTOMARY INTERNATIONAL HUMANITARIAN LAW (ICRC 2005), pp. 197, 199). It is also stated in the commentary to Article 70 of The First Protocol that articles 54 and 70 of The First Protocol should be read together, such that a party to a conflict should not be able to refuse to allow passage of foodstuffs and the basic humanitarian equipment necessary for the survival of the civilian population (COMMENTARY ON THE ADDITIONAL PROTOCOLS OF 8 JUNE 1977 TO THE GENEVA CONVENTIONS OF 12 AUGUST 1949 (YVES SANDOZ, CHRISTOPHE SWINARSKI, BRUNO ZIMMERMAN, eds., ICRC, Geneva, 1987), p. 820).

15. It appears from the abovementioned that respondents do not deny whatsoever the existence of their humanitarian duties, which require the State of Israel to allow passage of necessary humanitarian goods to the Gaza Strip, and to refrain from intentional harm to humanitarian installations. According to respondents' arguments, which they backed up in affidavits and declarations by the authorized authorities, not only are respondents allowing transfer of necessary goods to the civilian population in the Gaza Strip; they even see it as their humanitarian duty pursuant to international law, and pursuant to the ministerial committee decision. However, respondents

emphasized that this does not oblige them to allow transfer of unnecessary goods or goods in amounts beyond that necessary for basic humanitarian needs, and that is the main dispute between them and petitioners.

16. Regarding this last aspect, Colonel Nir Press, Commander of the Coordination and Liaison Authority, appeared before us during the final hearing, and detailed the relevant data and the information upon which respondents are acting. Colonel Press clarified the declarations made on behalf of the State, and explained that the amount of fuel and electricity delivered to the Gaza Strip is sufficient for the proper functioning of all the humanitarian systems in the strip; Colonel Peres further described contacts with Palestinian representatives for routine monitoring of the functioning of the humanitarian systems in the Gaza Strip. *Inter alia*, he described that the State of Israel allows passage of sick persons needing treatment into the boundaries of the State of Israel, and allows unlimited passage of food and medicine, in order to avoid harming the residents of the Gaza Strip beyond the extent necessitated by the armed conflict between the State of Israel and the Hamas organization. Colonel Press confirmed to us that, indeed, the situation of the civilian population in the Gaza strip is difficult; however, he mentioned examples of exaggerated descriptions regarding a humanitarian crisis in the area, published in the name of the Hamas organization.

17. The main issue remaining before us, as became clear from the last hearing, is the amount of industrial diesel fuel needed in order to run the power plant in the Gaza Strip. As mentioned, we were persuaded by the declarations of respondents that they intend to continue to allow supply of industrial diesel fuel at the volume supplied previous to the implementation of the limitations, in other words, 2.2 million liters per week. After it was clarified that industrial diesel can be used, and is used, solely for the power plant in the Gaza Strip, it can be assumed that the supply of industrial diesel will not be lower than that amount. Our examination revealed that supply of industrial diesel to the Gaza Strip during the winter months last year was similar to the amount that respondents now promise to allow to be delivered to the Gaza Strip, and this fact also indicates that it is a reasonable amount, that is sufficient for the basic humanitarian needs in the Gaza Strip. Although for a number of days the border crossings were closed, and thus the amount of diesel needed was not delivered, as explained, that was a temporary security need caused by a most severe missile attack launched against Israeli communities from within the Gaza Strip. Needless to say, during this period as well, in which there was a specific security need to close the border crossings, the State of Israel continued to provide the amount of electricity provided to the Gaza Strip by Israel, unaltered.

18. Regarding the updated plan presented to us, regarding a 5% reduction of supply of electricity through three of ten power lines providing electricity to the Gaza Strip, to a level of 13.5 megawatts in two of the lines and 12.5 megawatts in the third, we have been persuaded that said reduction does not breach the State of Israel's humanitarian duties in the framework of the armed conflict taking place between it and the Hamas organization controlling the Gaza Strip. This conclusion is based, *inter alia*, upon the fact that respondents' affidavit reveals that the relevant Palestinian officials announced that they are able to carry out load reductions when limitations are placed upon the power lines, and that they have made actual use of that ability in the past.

19. We emphasize that during the hearing of the petition, the State reiterated its commitment to monitor the humanitarian situation in the Gaza Strip, and in that context we were informed, in various affidavits in respondents' name, that said commitment is fulfilled most responsibly and seriously, and that the security agencies develop a situation report on the subject every week, which is based, *inter alia*, upon contacts with Palestinian officials in the areas of electricity and health, as well as contacts with international organizations. Note, in that context, that the hearing of this issue before us, as well as of other issues regarding humanitarian needs about which a need arose for an immediate response, revealed that it is possible to reach understandings and arrangements between the parties. And, indeed, solution through contacts, between the security agencies' authorities and the authorities in contact with them who outline the necessary basic needs, is the best way to find speedy solutions to concrete problems that arise from time to time; that is testified to by the fact that even before we held a hearing, the State announced, at its own initiative, the recommencement of supply, at the volume provided previous to the reduction, both of regular diesel fuel, needed, *inter alia*, for movement of ambulances and running generators in hospitals, and of industrial diesel. That data shows that the State is indeed monitoring the situation in the Gaza Strip, and allowing supply of the amount of fuel and electricity needed for the basic humanitarian needs in the area.

20. This Court has stated, more than once, that it does not interfere in the security means employed by those responsible for security – not regarding their efficiency and not regarding their wisdom – but rather, it examines their legality. Our role is limited to judicial review of the compliance with the rules of Israeli and international law obligating the State of Israel, and respondents declared before us that the State is persistent in fulfilling them. On that issue it has already been said that legal norms apply during times of combat as well, and that the Laws of War are to be fulfilled. In the **Church of the Nativity** case we ruled, in a similar context, that:

"Israel finds itself in severe combat against raging terrorism. Israel acts pursuant to its right to self defense (*see* Article 51 of the Charter of the United Nations). This combat is not carried out in a normative void. It is carried out pursuant to the rules of international law, which determines principles and rules for conduct of combat" (H CJ 3451/02 *Almadani v. The Minister of Security*, 56 PD (3) 30, *Barak P.*; *see also* H CJ 168/91 *Murkus v. The Minister of Defense*, 45 PD (1) 467, 470).

In the judgment dealing with the State of Israel's humanitarian duties during the combat in the "Defensive Shield" operation, it was noted that:

"Even during periods of combat the law applicable to combat is to be upheld. All must be done in order to protect the civilian population (*see* H CJ 2901/02; H CJ 2936/02; H CJ 2977/02, *and* H CJ 3022/02)" (H CJ 3114/02 *Barake v. The Minister of Defense*, 56 PD (3) 11).

21. Indeed, at a time of combat, like the one under discussion, the civilian population finds itself, unfortunately, in territory in which combat is taking place, and they are the first and primary victim of the combat situation, even when efforts are being made to reduce the harm to them. In the territory of the State of Israel as well,

in an era of terrorist attacks that have been continuing for years, the immediate and main victims of the combat situation are the civilian population. However, regarding the actions carried out against Israel, that is by no means random or collateral harm, but rather frequent terrorist attacks aimed directly at the civilian population, and intended to strike at innocent civilians. That is the difference between the State of Israel, a democratic state fighting for its life in the framework of the means that the law puts at its disposal, and the the terrorist organizations that rise up against it. **"The State fights in the name of the law and in order to preserve it. The terrorists fight against the law, and in violation of it. The war against terrorism is also the law's war against those who rise up against it"** (HCJ 320/80 *Kawasme v. The Minister of Defense*, 35 PD (3) 113, 132; see also HCJ 3451/02 *Almadani v. The Minister of Defense*, 56 PD (3) 30). In this case, the data presented to us, which was detailed above, show that the State of Israel accepts and respects the rules determined in the Laws of War, and is committed to continuing to allow passage of the amount of fuel and electricity needed for the basic humanitarian needs of the civilian population to the Gaza Strip.

22. In conclusion, we reiterate that the Gaza Strip is controlled by a murderous terrorist organization, which acts tirelessly to strike at the State of Israel and its inhabitants, violating every possible rule of international law in its violent acts, which are directed indiscriminately toward civilians – men, women and children. However, as mentioned above, the State of Israel is committed to acting against the terrorist organizations within the framework of the law and in accordance with the provisions of international law, and to refrain from intentional harm to the civilian population in the Gaza Strip. In light of the entirety of information presented before us regarding provision of electricity to the Gaza Strip, we are of the opinion that the amount of industrial diesel that the State announced it will supply, as well as the electricity supplied regularly via power lines originating in Israel, fulfill the basic humanitarian needs of the Gaza Strip at the present time.

Thus, for the reasons detailed above, the petition is rejected.

Justice E. Hayut

I concur.

Justice Y. Elon

I concur.

Decided according to the judgment of President D. Beinisch.

Given today, 23 Shevat 5768 (January 30 2008).