



Law Enforcement under Occupation: The Case of Willful Killings in the West Bank

Diakonia International Humanitarian Law Resource Centre
August 2015



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PEOPLE CHANGING THE WORLD

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Published by:

Diakonia
Diakonia International Humanitarian Law Resource Centre
www.diakonia.se/en/IHL/
ihl@diakonia.se

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I. Introduction

In addition to the terrible loss of life and injury experienced in and around the Gaza Strip between July and August 2014, there was a significant increase in the number of deaths and injuries of Palestinians during Israeli ‘law enforcement’ operations in the West Bank, including East Jerusalem. Last year, at least 56 Palestinians were killed by Israeli forces in the West Bank.¹ In comparison, there were 28 Palestinian fatalities in 2013 and 8 in 2012 during law enforcement or policing operations. Furthermore, approximately 6,000 Palestinians were injured in 2014, a dramatic increase the roughly 3,800 injured in 2013 and around 3,000 injured in 2012. In many cases, death and injury resulted from the use of live ammunition by Israeli forces.²

For some time now, human rights actors and international organisations have voiced serious concern at Israel’s excessive use of force and live ammunition against the protected Palestinian population during law enforcement activities.³ This position was echoed several times in 2014, alongside criticism of Israel’s failure to conduct appropriate investigations and to hold the perpetrators of such acts accountable.⁴

The United Nations (UN) Office of the High Commissioner for Human Rights (OHCHR) expressed serious concern about the killing of two Palestinian teenagers on 15 May,⁵ what is known as ‘Nakba Day’, and suggested that the killings may well amount to extrajudicial executions under international human rights law (IHRL) and willful killings under international humanitarian law (IHL). More recently, the UN Human Rights Committee also highlighted reports of “excessive use of lethal force” by Israeli security forces and noted that “accountability for such acts remains weak.”⁶ Furthermore, the UN Commission of Inquiry into the 2014 Gaza Conflict raised concerns with regard to “the pervasive use of live ammunition...combined with the spike in fatalities and casualties arising out of Israel’s law enforcement activities in the West Bank, which appears to confirm a change in policy or in the open–fire regulations guiding IDF law enforcement operations in the West Bank”.⁷

There is, however, often some confusion about how international law regulates the use of live fire and force in situations of ‘passive’ occupation that largely lack active military hostilities. For example, what legal framework applies during the conduct of law enforcement activities by the Occupying Power in the West Bank? What is the relationship between law enforcement and IHL?

¹ See OCHA–oPt, Humanitarian Bulletin Monthly Report (Dec. 2014), https://www.ochaopt.org/documents/ocha_opt_the_humanitarian_monitor_2014_01_27_english.pdf. See also OCHA oPt, *Fragmented Lives: Humanitarian Overview* (Mar. 2015), http://reliefweb.int/sites/reliefweb.int/files/resources/annual_humanitarian_overview_2014_english_final.pdf.

² For example, 25 out of 27 deaths in 2013 resulted from live ammunition; see Amnesty Int’l, *Trigger Happy–Israel’s Use of Excessive Force in the West Bank*, at 6, AI Index MDE 15/002/2014 at 6 (Feb. 27, 2014), <https://www.amnesty.org/en/documents/MDE15/002/2014/en/> [hereafter ‘Trigger Happy’].

³ See, e.g., Presentation of the Executive Secretary for Economic and Social Commission for Western Asia (ESCWA) to the Second Committee of the UNGA, *Arbitrary Detention, Excessive Force, Israeli Settlement Activity Increasing Palestinian Hardship*, Regional Commission Chief Tells Second Committee (Oct. 26, 2011), <http://www.un.org/press/en/2011/gaef3319.doc.htm>. See also, Al Haq, *Repression of Non–Violent Protest in the Occupied Palestinian Territory: Case Study on the village of al–Nabi Saleh* (2011), <http://www.alhaq.org/publications/publications–index/item/repression–of–non–violent–protest–in–the–occupied–palestinian–territory–case–study–on–the–village–of–al–nabi–saleh>; B’Tselem, *Show of Force: Israeli Military Conduct in Weekly Demonstrations in a–Nabi Saleh* (Sep. 2011), http://www.btselem.org/download/201109_show_of_force_eng.pdf.

⁴ See, e.g., *Trigger Happy*. See also UN Human Rights Council, *Report of the detailed findings of the independent commission of inquiry established pursuant to Human Rights Council resolution S–21/1*, U.N. Doc. A/HRC/29/CRP.4 (June 24, 2015), 142–146 [hereafter ‘Gaza Col report’].

⁵ UNOHCHR, *Press briefing notes on Israel/OPT, Syria/Aleppo Central Prison and Dominican Republic/new citizenship law* (23 May 2014), <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=14632&LangID=E#sthash.xUQpm3ep.dpuf>.

⁶ UNHRC, *Concluding observations on the fourth periodic report of Israel*, U.N. Doc. CCPR/C/ISR/CO/4 (Nov. 21, 2014), <http://unispal.un.org/UNISPAL.NSF/0/724DA0C48E837FOA85257D9A0070D766>. See also UNHRC, *Report of the United Nations High Commissioner for Human Rights on the implementation of Human Rights Council resolutions S–9/1 and S–12/1*, U.N. Doc. A/HRC/25/40 (Jan. 13, 2014), <http://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Pages/ListReports.aspx>.

⁷ *Gaza Col Report*, 544.

This brief will identify the appropriate legal standards that regulate the use of lethal force and live fire by the Occupying Power, outside situations of active military hostilities. This brief also will detail four case studies of Palestinian deaths that occurred during Israeli law enforcement operations and that highlight concerns with Israel's lack of compliance with the applicable legal standards. The circumstances of these four incidents, and many others like them, are suggestive of willful killings, which are a grave breach of the Fourth Geneva Convention and a war crime under the Rome Statute of the International Criminal Court (ICC).

This brief will also include a short Q&A that addresses some of the key questions connected with law enforcement in situations of military occupation.

II. Interplay between IHL and IHRL in situations of occupation

The position of Israel as the Occupying Power in the West Bank, including East Jerusalem, and the Gaza Strip, has been clearly established as a matter of law and fact, as has the applicability of IHL to the occupied Palestinian territory (oPt).⁸

It also is important also to note that IHRL also applies in situations of occupation. As reaffirmed by the International Court of Justice (ICJ) in the Wall advisory opinion,⁹ IHRL protects the rights of individuals in occupied territory as a matter of international law, in tandem with the protections guaranteed by IHL. The ICJ advisory opinion identified three different ways in which IHL and IHRL interact in occupied territory: "some rights may be exclusively matters of international humanitarian law; others may be exclusively matters of human rights law; yet others may be matters of both these branches of international law".¹⁰

This interaction between IHL and IHRL is highly relevant analysis of law enforcement activities in the West Bank, including East Jerusalem. In situations of occupation that do not include active hostilities, the right to life and other rights associated with policing activities are regulated primarily by IHRL and reinforced as necessary by protections under IHL.

It should be noted that the overall situation in the West Bank does not amount to a situation of active hostilities currently.

III. The right to life under international law

"Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life"

Article 6, International Covenant on Civil and Political Rights

International law does not comprehensively protect the right to life in all circumstances, despite its position as one of the most fundamental of human rights. While life should never be taken arbitrarily, under both IHL and IHRL, the deprivation of life may be permitted and considered lawful in certain, limited, circumstances.

⁸ See, e.g., ICRC, Statement by the International Committee of the Red Cross (ICRC), Geneva (5 December 2001), <https://www.icrc.org/eng/resources/documents/misc/5fldpj.htm>; it notes that "the ICRC has always affirmed the de jure applicability of the Fourth Geneva Convention to the territories occupied since 1967 by the State of Israel, including East Jerusalem...As an Occupying Power, Israel is also bound by other customary rules relating to occupation, expressed in the Regulations annexed to the Hague Convention respecting the Laws and Customs of War on Land of 18 October 1907". See also: UNSC Res. 242, U.N. Doc. S/RES/242 (Nov. 22, 1967); UNSC Res. 338, U.N. Doc. S/RES/338 (Oct. 22, 1973); Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136 (July 9) [hereafter 'Wall'].

⁹ See also, UN Human Rights Committee, General Comment 31: Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), 11; and International Court of Justice, Armed activities on the territory of the Congo (D.R.C. v. Uganda), 2005 I.C.J. 168, 216 (Dec. 19).

¹⁰ Wall, 106. See also, Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, 1996 I.C.J. 226, 25 (July 8).

The two paradigms under which the deprivation of life may be permitted are the:

- law enforcement paradigm that applies during policing and law enforcement activities; and
- hostilities paradigm that applies to warring parties during active armed conflict.

1. Law enforcement paradigm

The law enforcement paradigm outlines the limited circumstances when State officials engaging in policing activities may deprive life in a manner consistent with international law. It is primarily regulated by IHRL¹¹ and applies in situations of civil unrest, including protests and demonstrations, as well as during armed conflict.

A. Law enforcement and international human rights law

The most comprehensive guidelines governing the use of lethal force by law enforcement officials are encapsulated in the United Nations Basic Principles on the Use of Force and Firearms by Law Enforcement Officials (Basic Principles).¹² The Basic Principles limit the use of firearms or lethal force to the following circumstances:

- self-defence or defence of others against an imminent threat of death or serious injury;
- to prevent the perpetration of a serious crime involving grave threat to life; and
- to arrest a person presenting such a danger and resisting the authority of the officials or to prevent his/her escape.¹³

The *Basic Principles* clearly state that the lethal use of firearms should only be used as an absolute last resort and “when strictly unavoidable in order to protect life”.¹⁴ Both the UN OHCHR¹⁵ and the UN Human Rights Committee¹⁶ have called on Israel to comply fully with the Basic Principles.

These principles apply in all situations of law enforcement, whether in times of peace, emergency, armed conflict or occupation.

B. Law enforcement and international humanitarian law

“...in trying to prevent arbitrariness in the use of lethal force outside the conduct of hostilities, IHL in fact contributes to the shape and content of the normative paradigm of law enforcement in situations of armed conflict.”¹⁷

In situations of armed conflict, the law enforcement paradigm and protections set forth above under IHRL are supplemented by clear provisions of IHL. This especially holds true in situations of occupation.

At its most basic level, the law of occupation prescribes a balance between the military and security requirements of the Occupying Power on the one hand, and the needs of the occupied population on the other. The Hague Regulations stipulate that the Occupying Power “shall take all the measures in his power to restore, and ensure, as far as possible, public order and safety” in the occupied territory.¹⁸ This position is reiterated in the Fourth Geneva

¹¹ Under IHRL, there is a clear prohibition against the arbitrary deprivation of life. See, International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, 999 U.N.T.S. 171.

¹² Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, adopted by the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, Cuba (Aug. 27 to Sep. 7 1990).

¹³ *Id.*, provision 9. Only when less extreme means are insufficient to achieve these objectives.

¹⁴ *Id.*

¹⁵ *Supra*, n5.

¹⁶ *Supra*, n6.

¹⁷ NILS MELZER, TARGETED KILLINGS IN INTERNATIONAL LAW 140 (2008) [hereafter ‘Melzer’].

¹⁸ Hague Convention (II) with Respect to the Laws and Customs of War on Land, Annex: Regulation concerning the Laws and Customs of War on Land art. 43, July 29, 1899, 32 Stat. 1803, 1 Bevens 247, 26 Martens Nouveau Recueil (ser. 2) 949, 187 Consol. T.S. 429.

Convention, which allows the Occupying Power “to subject the population of the occupied territory to provisions which are essential to enable [it] to fulfil its obligations...to maintain the orderly government of the Territory”.¹⁹ The Fourth Geneva Convention further outlines some of the safeguards that must be afforded to the occupied population, while permitting the Occupying Power to take certain measures for control and security.

However, these IHL principles should not be misconstrued as granting *carte blanche* to the Occupying Power to take any and all measures to restore order and safety. *Vis-à-vis* the occupied population, the Occupying Power is compelled to ensure respect for persons according to Article 27 of the Fourth Geneva Convention. This provision has been interpreted by the world’s leading IHL and IHLR experts as a gateway to mainstream respect for international human rights standards into the Occupying Power’s obligations under the law of occupation. Measures the Occupying Power may take are further limited by the Hague Regulations, the Fourth Geneva Convention and Protocol I to the Geneva Conventions.²⁰ These limitations are supplemented by the principle that under no circumstances may the occupied population be deprived of the protections afforded to it under international law.²¹

...where a party to an international or non-international armed conflict resorts to lethal force against persons whose lives it is obliged to respect, namely persons who do not constitute legitimate military targets, the lawfulness of such deprivation must be determined by reference to the paradigm of law enforcement.²²

Thus, in situations involving the unlawful deprivation of life in situations of occupation or armed conflict, there is a close interplay between IHL and IHRL.²³

Echoing the International Criminal Tribunal for the Former Yugoslavia’s jurisprudence, the UN Commission of Inquiry into the 2014 Gaza Conflict noted that “the prohibition of willful killing includes the intent to cause serious bodily injury which, as it is reasonable to assume [the perpetrator] had to understand was likely to lead to death, which is a clear risk when using live ammunition [in confronting protest]”.²⁴ Willful killing constitutes a grave breach of the Fourth Geneva Convention²⁵ and is an enumerated war crime under the Rome Statute of the ICC.²⁶ There is no qualitative difference between the terms ‘willful killing’ and ‘murder’.

“in material terms ‘willful killing’ within the meaning of the Geneva Conventions describes unlawful acts or omissions occurring in relation to an international armed conflict, and leading to the death of at least one person under one or several of the Geneva Conventions.”²⁷

2. Hostilities Paradigm

The hostilities paradigm under IHL applies in situations of active hostilities between two or more warring parties, wherein the parties engage in military acts aimed at undermining the military capacity of the other. Under this paradigm, in which the use of force is governed by the IHL principles (of military necessity, distinction, proportionality and precautions), warring parties have greater freedom to use lethal force against others, namely military objectives. However, it is important to stress that the current situation in the West Bank, including East Jerusalem, does not amount to a situation of active hostilities. Overall, therefore, the hostilities paradigm does not apply to the West Bank, including East Jerusalem.

¹⁹ Geneva Convention Relative to the Protection of Civilian Persons in Time of War art. 64, Aug 12, 1949, 75 U.N.T.S. 287 [hereafter ‘Fourth Geneva Convention’].

²⁰ Although Israel is not party to Protocol I, customary provisions apply.

²¹ Fourth Geneva Convention, art. 47.

²² MELZER, 149.

²³ ICRC, Study on Customary IHL rule 89, https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule89. See also, ICC, Elements of Crimes art. 8 (2) (a) (i), U.N. Doc. PCNICC/2000/1/Add.2 (2000), <http://www.icc-cpi.int/nr/rdonlyres/336923d8-a6ad-40ec-ad7b-45bf9de73d56/0/elementsofcrimeseng.pdf>. See also ICRC Commentary to art. 147 of the Fourth Geneva Convention, 597, <https://www.icrc.org/ihl/COM/380-600169>.

²⁴ Gaza Col Report, 546. ICTY, Prosecutor v. Zejnib Delalic and Others, IT-96-21-A, Appeals Chamber Judgment (Feb. 20, 2001), 422.

²⁵ Fourth Geneva Convention, art. 147.

²⁶ Rome Statute of the International Criminal Court art. 8 (2) (a) (i), July 17, 1998, 2187 U.N.T.S. 3.

Accordingly, this paradigm is not addressed in detail here. Instead, the table below sets out key practical differences between the application of the law enforcement and hostilities paradigms to highlight the importance of assessing and applying the appropriate framework.

	Hostilities	Law Enforcement
Resorting to the use of force	Use of force against military targets is accepted.	Must establish “absolute necessity”. Force should be last resort and only to pursue a legitimate aim, such as protection against imminent threat to life.
Proportionality	Only prohibits disproportionate attacks, ²⁸ with reference to incidental civilian harm.	Even where there is an imminent threat, response must balance risks posed by individual versus potential harm to individual. Least amount of force necessary should be used.
Precaution	Take constant care to take feasible precautions to spare civilian life and objects	All precautions must be taken to avoid the use of force as such. This applies not just to ‘incidental’ civilian death or injury, but all those affected.

IV. Illustrative cases

The following four cases, which are briefly outlined, raise serious concerns about Israel’s compliance with the Basic Principles and international law. In none of the cases outlined below does there appear to have been an imminent threat that would justify the use of lethal force.

Each of the following cases appear to illustrate the unlawful deprivation of the life of a protected person and, as such, may have amounted to willful killing.

1. Nadim Nuwara and Muhammad Salameh

On 15 May 2014, two Palestinian teenagers were shot and killed by Israeli forces outside Ofer, Ramallah, in the context of a demonstration commemorating Nakba Day.²⁹ CCTV footage clearly demonstrated³⁰ that the two boys were not posing any direct or imminent threat of death or serious injury to Israeli forces or others at the time of their deaths.³¹

²⁷ MELZER, 149.

²⁸ Launching an attack that may be expected to cause loss of civilian life, injury to civilians, or damage to civilian objects, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.

²⁹ Human Rights Watch, Israel: Killing of Children Apparent War Crime (June 9, 2014), <http://www.hrw.org/news/2014/06/09/israel-killing-children-apparent-war-crime>.

³⁰ Jack Khoury, Video: Palestinians shot dead at Nakba Day protest did not threaten soldiers, HA’ARETZ (May 20, 2014), <http://www.haaretz.com/news/diplomacy-defense/.premium-1.591738>.

³¹ One Israeli Border Police Officer was arrested in November in connection with one of the deaths on Nakba. See, Day. C Levinson, ‘Policeman faces murder charge in Nakba Day shooting of Palestinian teen’, HA’ARETZ (Nov. 12, 2014), <http://www.haaretz.com/news/diplomacy-defense/1.626011>.

2. Yusef Shawamreh

On 19 March 2014, a 14-year-old Palestinian boy passed through a gap in the Wall with two friends to collect herbs from family-owned land west of Hebron.³² He was shot and killed by Israeli soldiers who reportedly opened fire on the three boys without warning.³³

3. Samir Awad

On 15 January 2013, Samir Awad, 16, died after being shot three times by Israeli forces while protesting against the Wall in Budrus, west of Ramallah.³⁴ After firing warning shots in the air, Israeli soldiers shot Samir in the leg, knocking him to the ground. When he tried again to flee in the direction of his village, Israeli soldiers shot Samir twice more. One bullet struck him in the back and another hit him in the back of the head.

There was no suggestion from either the Israeli military or organisations monitoring the incident that Samir Awad was posing an imminent threat to the lives of the Israeli military or to anybody else. In response to queries, an Israeli military spokesperson alleged that the military had responded to an “infiltration attempt” and were “securing the fence”.³⁵ In addition, given that Samir was unarmed, there is no reason to believe that Samir could not have been apprehended after having been shot in the leg.

At the time of writing, nobody had been held accountable for the killing of Samir. A response to a petition to the Israeli High Court is expected early in 2016.³⁶

4. Saleh Amarin

On 23 January 2013, Saleh Amarin, 15, was shot in the head with live ammunition by an Israeli soldier who was positioned some 65–75 metres away and reported to have been inside a military tower.³⁷ A military statement claimed that security forces opened fire at a Palestinian individual who was “slinging stones”. Even if Saleh was throwing stones, or holding a catapult, as was reported, he cannot reasonably have been deemed to pose an imminent threat to the lives of the Israeli military inside a fortified tower.

At the time of writing, an investigation was still ongoing into the killing of Saleh.

V. Key questions

1. Does human rights law regulate the law enforcement paradigm, and IHL regulate the hostilities paradigm?

It would be inaccurate to suggest that the law enforcement paradigm is purely regulated by IHRL and the hostilities paradigm purely governed by IHL. IHL and IHRL together shape the application of both the law enforcement and the hostilities frameworks. While IHRL may inform the law enforcement paradigm more extensively, IHL also outlines legal obligations in such circumstances. This is particularly true in situations of occupation, when IHL places general limitations on the Occupying Power. Conversely, while IHL predominately regulates situations of hostilities, IHRL also provides a degree of regulation to these situations.

³² Al-Haq, Palestinian Boy Shot Dead While Crossing Over the Annexation Wall into Palestinian Lands (Mar. 28, 2014), <http://www.alhaq.org/documentation/weekly-focuses/791-palestinian-boy-shot-dead-while-crossing-over-the-separation-barrier-into-palestinian-lands>.

³³ B’Tselem, Responsibility for killing 14-year-old Palestinian lies primarily with commanders who ordered armed ambush (Mar. 26, 2014), http://www.btselem.org/firearms/20140326_killing_of_yusef_a_shawamreh_deir_al_asal.

³⁴ B’Tselem, B’Tselem inquiry: No justification for shooting and killing Samir ‘Awad, 16. Budrus, 15 Jan 2013 (Updated May 18, 2014), http://www.btselem.org/firearm/20130221_killing_of_samir_awad_budrus.

³⁵ Trigger Happy, 16.

³⁶ B’Tselem, Father of Palestinian youth killed by soldiers in Budrus petitions High Court to end delay in investigation (Mar. 30, 2014), http://www.btselem.org/press_releases/20140327_samir_awad_investigation_petition.

³⁷ Trigger Happy, 17.

2. Is a situation of occupation not more extreme than the more 'normal' situations envisaged by international human rights law?

International human rights law is designed to regulate even the most trying of situations, including national emergencies, while IHL is specifically designed to regulate armed conflict. It is widely accepted that IHRL also continues to apply during situations of military occupation, whether or not active hostilities continue. This is evident in the repeated position of the UN human rights treaty bodies³⁸ and in the ICJ Advisory Opinion on the Wall, which reiterates that Israel's IHRL treaty obligations also apply to the occupied Palestinian territory.

3. How do you identify a situation of active hostilities?

Active hostilities include situations involving protracted armed violence between organised armed groups or forces. Hostilities may take place between States, between a State and a non-State armed group, or between armed groups, whereby the parties engage in military acts aimed at undermining the military capacity of the other. In order to be classified as a situation of active hostilities, protracted armed violence must have reached a certain level of intensity. Protests, demonstrations and other forms of public disturbances, even if some weapons are used, do not usually reach the threshold of active hostilities (nor the threshold of armed conflict).

In relation to the oPt, the hostilities paradigm can only be applied on discreet occasions, including the hostilities between Israel and Palestinian armed groups in the Gaza Strip in 2008–9, November 2012, and July–August 2014. Demonstrations and clashes in the West Bank, including East Jerusalem, during these periods and beyond, remain regulated by the law enforcement paradigm.

4. What is the status of Palestinians who engage in demonstrations or protests?

Palestinians participating in protests or demonstrations are not considered to be combatants, and so lawful military targets under IHL. They are civilians and part of the protected population under IHL. Given that the law enforcement paradigm applies to the West Bank, the same rules apply to Israeli forces responding to protests in the West Bank as to security forces anywhere else in the world. According to the Basic Principles, lethal force should only be used as a last resort and when other measures are insufficient.

5. What are the legal consequences of violations during armed conflict or during peacetime?

When a protected person is unlawfully deprived of their his or her life during an armed conflict, it most likely amounts to willful killing, which is a grave breach of the Fourth Geneva Convention and codified as a war crime by the Rome Statute. The person or persons responsible should be subject to prosecution. Outside of a situation of armed conflict this same crime would amount to murder or extrajudicial killing. There is no qualitative difference between the terms 'willful killing' and 'murder'. Murder may also amount to a crime against humanity under Article 7 of the Rome Statute of the ICC if committed in the context of a widespread and systematic attack.

Any death that appears to amount to willful killing should be thoroughly, independently and impartially investigated in a timely manner and those responsible held accountable in a clear and transparent manner that provides legal due process.

³⁸ See, e.g., UN Committee on Rights of the Child, Concluding observations on the second to fourth periodic reports of Israel, adopted by the Committee at its sixty-third session, 3, U.N. Doc. CRC/C/ISR/CO/2-4 (July 4, 2013), <http://www2.ohchr.org/english/bodies/crc/docs/co/CRC-C-ISR-CO-2-4.pdf>.

6. Why does the legal consequence arise from the IHL framework if the lawfulness of the act is determined by the law enforcement paradigm and the UN Basic Principles?

As outlined above, human rights standards guide the protection of life during law enforcement operations, both inside and outside of situations of occupation. However, the unwarranted deprivation of life in situations where IHL applies amounts to willful killing, even if the illegality is determined by IHRL. It can also be classified as an extrajudicial killing under IHRL.

IHRL has been applied to interpret a variety of patterns of conduct where IHL applies in recent decades, including situations of military occupation. As such, if an Occupying Power deprives the life of a protected person, outside of the permissible standards under IHRL, this IHLR violating conduct may constitute a grave breach under IHL. Such an accusation is not political in nature, but simply the direct legal consequence of such illegal actions occurring under a situation of military occupation.

7. How have the Israeli authorities responded to fatalities amongst the protected Palestinian population?

Despite strong and credible evidence suggesting a multitude of willful killings by Israeli forces in the West Bank, including East Jerusalem, since Israel's 1967 occupation, only a very small number of soldiers, police officers, and especially commanding officers, have been held accountable by the Israeli authorities for what may amount to war crimes under IHL.³⁹ Between September 2000 and June 2013, only 16 military police investigations into Palestinian civilian deaths by Israeli forces led to indictments. Of the 21 soldiers indicted for acts that led to the loss of civilian life, none were discharged from the army and none served prison sentences in excess of seven months.⁴⁰

This concern was recently raised by the UN High Commissioner for Human Rights, who highlighted "the lack of accountability for such incidents"⁴¹ as well as the UN Human Rights Committee, which noted that "accountability for such acts remains weak".⁴²

8. What obligations do Third States have when grave breaches of the Fourth Geneva Convention are committed?

High Contracting Parties to the Geneva Conventions have a clear obligation to search for persons alleged to have committed, or to have ordered to be committed, grave breaches of the Fourth Geneva Convention. Third parties should bring such persons before their own courts, regardless of the nationality of the alleged perpetrator.⁴³ Third States have an obligation to "respect and ensure respect" for the Geneva Conventions.⁴⁴

The European Union Guidelines on Promoting Compliance with International Humanitarian Law also list several measures that can be used to address violations of IHL.⁴⁵

³⁹ Yesh Din, MPCID Investigations into the Circumstances surrounding the Death of Palestinians Convictions and Penalties (Data Sheet, July 2013), http://www.yesh-din.org/userfiles/file/datasheets/data%20sheet%20july%202013/ICAP%20Death%20cases%20investigations%20and%20indictments_July%202013_ENG.pdf. See also, Trigger Happy, 60-64.

⁴⁰ Id.

⁴¹ Supra, n5.

⁴² Supra, n6.

⁴³ Fourth Geneva Convention, art. 146.

⁴⁴ Common Article 1 to the Four Geneva Conventions.

⁴⁵ European Union Guidelines on promoting compliance with international humanitarian law, 2005 O.J. C 327/04.

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Diakonia's IHL Resource centre seeks to increase awareness of IHL among:

- The international community present in the oPt – international NGOs, international agencies such as United Nations and European Union bodies, international media and diplomatic missions as well as decision makers visiting the area;
- Israeli and Palestinian civil society, media, lawyers and the general public in Israel and Palestine;
- EU and UN bodies based in Brussels and Geneva;
- International corporate actors active in the oPt.

Where possible, the disseminated IHL information and work with partner organisations also includes a gender perspective.

How we work

The IHL Resource Centre consists of four interlinked components:

- Legal research and briefings to civil society and the international community;
- Education and information, including through the creation of an IHL Helpdesk and work with local partners;
- Monitoring of and reporting on IHL violations;
- Advocacy from Diakonia's Head Office in Stockholm.



What is Diakonia?

Diakonia is a Swedish development organisation working together with local partners for a sustainable change for the most vulnerable people in the world. We support more than 400 partners in nearly 30 countries and believe in a rights-based approach that aims to empower discriminated individuals or groups to demand what is rightfully theirs. Throughout the world we work toward five main goals: human rights, democratisation, social and economic justice, gender equality and sustainable peace.

Diakonia International Humanitarian Law Resource Centre

The goal of Diakonia International Humanitarian Law Resource Centre is to increase the respect for and further implementation of international law, specifically international humanitarian law (IHL), in the Israeli–Palestinian conflict. We believe that addressing violations of IHL and international human rights law tackle the root causes of the humanitarian and protection crisis in the oPt, in a sustainable manner. Our Centre makes IHL expertise available by providing:

- Briefings to groups and organisations on IHL and its applicability to Israel and the oPt;
- Tailored in-depth trainings on specific issues and policies relating to IHL;
- Legal analyses and ongoing research on current IHL topics; and
- Legal advice, consultation and legal review of documents for other actors in the oPt, to support policy formulation and strengthen advocacy with an IHL perspective.

Do you or your organisation want to learn more about IHL and its applicability to the oPt? Visit our website ‘An Easy Guide to International Humanitarian Law in the occupied Palestinian territory’ at: www.diakonia.se/en/IHL/ – or contact us to set up a general or specialised legal briefing by our legal advisors.

Contact us at: ihl@diakonia.se